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OFFICIAL REPORT

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

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House of Lords

Wednesday 27 February 2019

3 pm

Prayers—read by the Lord Bishop of Oxford.

Genocide Prevention
Question

3.06 pm

Asked by ***Lord Selkirk of Douglas***

To ask Her Majesty's Government what assessment they have made of the United States' Elie Wiesel Genocide and Atrocities Prevention Act, signed into law by the President of the United States on 14 January 2019; and what steps they are taking to help ensure the timely prevention of the genocide of religious minorities.

Baroness Goldie (Con): My Lords, the UK does not normally comment on the policy of close allies—however, we welcome all efforts to help prevent mass atrocities. As a majority of mass atrocities occur in and around conflict, the Government believe that a focus on conflict prevention is the best means to prevent most mass atrocities. Through our diplomatic development, defence and law enforcement engagement, the UK participates in a range of international initiatives aimed at preventing atrocities.

Lord Selkirk of Douglas (Con): I thank the Minister for her reply. She will recall that it is 70 years since the United Nations General Assembly adopted the Convention on the Prevention and Punishment of the Crime of Genocide. Should the Government not consider the introduction of new legislation which would ensure that their response to genocide is as immediate and effective as possible, and which would also protect religious minority groups, including Christians?

Baroness Goldie: I thank my noble friend for a pertinent question. The UK's work in this area is long-standing, both in preventing atrocities and in securing accountability and justice for atrocities committed. My noble friend will be aware that UK activity has in-built flexibility, both in identifying situations and in swiftness of response—for example, we work across early warning mechanisms and diplomacy, and from development to programmatic support to help with prevention work, and defence tools. That offers an effective and a swift response, where necessary, to any unfolding situation.

Lord Alton of Liverpool (CB): My Lords, given what we have seen unfold against the Yazidis and the Christians in northern Iraq and northern Syria, and against the Rohingya Muslims in Burma and the Kachin, is it not clear that the noble Lord, Lord Selkirk, is absolutely right that we need to look again at the ways in which we conform to our duties under the 1948 Genocide Convention—to prevent, protect and then to punish? Does the Minister not think it would be prudent to do as the noble Lord suggested, and to look at the American Elie Wiesel legislation which has just passed—especially the complex emergency fund and the mass atrocities taskforce that have been established—and to consider doing something similar in the United Kingdom?

Baroness Goldie: I respect the noble Lord's immense experience in relation to these matters. As I indicated to my noble friend, the UK has, over many years, developed a long-standing modus operandi to deal with mass atrocities. The benefit is obvious in terms of preventing situations unfolding where we deploy or in the humanitarian aid we offer where those situations have unfolded, particularly in relation to Christians who have found themselves persecuted. The noble Lord will be aware of the current review commissioned by the Foreign Secretary—that is a very important step forward. We are aware of the scale of the problem—for example, we are aware that about 215 million Christians experience extreme persecution. However, the UK, as I indicated, works closely across a range of areas and sectors, and it works well.

Baroness Northover (LD): My Lords, I was pleased that in the coalition Government we managed to put in place measures in Syria and Iraq to gather evidence in these conflicts—an extremely difficult and novel approach—so that those who committed crimes against humanity, war crimes of genocide could be held to account. Will the noble Baroness fill us in on what progress has been made and say whether people will indeed be held to account?

Baroness Goldie: I thank the noble Baroness for raising an important issue. It is fundamental that where such atrocities have been committed, people are investigated and held to account. The noble Baroness will be aware that the United Kingdom has been working closely in endeavouring to facilitate the gathering of evidence to ensure that if matters are appropriate for reference to the International Criminal Court, there is a proper evidence base on which they can proceed. I do not have detailed information on the specific point the noble Baroness raises, but I shall undertake to look into that and respond to her.

Lord Singh of Wimbledon (CB): My Lords, does the Minister agree that many countries turn a blind eye to genocide carried out by important trading partners or strategic allies? Will she further agree to ensure even-handedness with regard to those responsible for the mass killing of minorities? Responsibility for the pursuit of punitive action should be taken out of the hands of government and placed with an independent arbiter such as the High Court, as suggested in a debate in this House last September.

Baroness Goldie: The noble Lord will be aware that the United Kingdom Government work closely with global partners in the consideration of such situations and in determining how best to address them. The system has demonstrated that trying to gather evidence is at the root of this, as evidence matters for whatever legal process we then choose to deploy. The United Kingdom Government take the view that the International Criminal Court is an important forum, and, as I indicated to the noble Baroness on the Liberal Democrat

[Baroness Goldie]
Benches, the Government have been working to try to facilitate getting hold of evidence and making sure that it is preserved; that will then facilitate prosecution.

Lord Collins of Highbury (Lab): My Lords, I welcome what the Minister said about conflict prevention and the excellent work the FCO has been doing on that. However, is the FCO training its staff, particularly its overseas representatives, to spot the early signs of atrocities and genocide? Often they are not simply about people being murdered—they start in a much more pernicious way.

Baroness Goldie: The noble Lord makes an important point, with which I am sure the entire Chamber is in sympathy. Again, I do not have specific information about training, but I will undertake to get hold of that. The noble Lord will be aware that the FCO is proactive with regard to activity in other countries where we detect problems, and we try to facilitate training in these other countries where that is possible within the framework of the country.

Lord Pickles (Con): My Lords, the training point is an important one; Section 4 of that Act specifically makes it routine to spot the early signs and not just to deal with the after-effects. I urge the Government to look seriously at co-operating with the United States and our other allies on this trend, because it is a very important point. Can the Minister also thank our noble friend the Leader of the House for her robust letter in support of the Holocaust memorial in Victoria Tower Gardens, immediately outside this House? I am most grateful for that positive act from the Government rather than just pious words.

Baroness Goldie: I have noted my noble friend's letter to the Leader of the House; I am sure she will welcome it. On his point about training, he is absolutely right. A lot of cross-government work is currently being done to tackle insecurity and instability, whether through the National Security Council, the Cabinet Office, the FCO, DfID, the Ministry of Defence or the Stabilisation Unit. They are all supported by the Conflict, Stability and Security Fund. So there is a lot of very positive work going on.

Human Bodies: Commercial Exhibition

Question

3.15 pm

Asked by ***Lord Hunt of Kings Heath***

To ask Her Majesty's Government what consideration they have given to updating the Human Tissue Act 2004 to ensure that human bodies being imported into the United Kingdom for commercial exhibitions are governed with the same ethical and legal responsibilities that pertain to bodies originating from the United Kingdom.

Baroness Manzoor (Con): My Lords, in England and Wales and Northern Ireland, the law requires that people who wish to be displayed in public after death must give written permission. This does not apply to bodies imported from abroad and any change to the provisions would require amendment of the Human Tissue Act. The Government are working with the Human Tissue Authority to consider what more can be done within existing legislation to address any concerns around the display of bodies.

Lord Hunt of Kings Heath (Lab): My Lords, I am grateful to the noble Baroness. The Human Tissue Authority does a very good job. However, as the noble Baroness said, the key provisions of the Act do not apply to bodies imported from abroad. This means that, when it comes to commercial exhibitions such as the Real Bodies exhibition in Birmingham last year, there is no guarantee that the bodies used are not those of executed prisoners, including prisoners of conscience from China. The noble Baroness said that the Government were prepared to work with the HTA to look at the existing legislation. Does she accept that we need an amendment to the HT Act in order to be able to regulate these commercial proceedings? Will she agree to meet noble Lords to discuss that?

Baroness Manzoor: My Lords, I am always happy to meet noble Lords to discuss this issue. As the noble Lord knows, changes to primary legislation will be required to activate the change that he is seeking. To be clear, the Human Tissue Authority ensured that the Birmingham exhibition met licensing standards and licensed it in line with the law. We have no evidence to suggest that the exhibition contained the cadavers of political or other prisoners from China.

Baroness Finlay of Llandaff (CB): My Lords, do the Government recognise that in a statement in 2004 Gunther von Hagens, who is behind the plastination of bodies, said that he could not prove that the bodies had not been executed? He has publicly stated that he received fresh bodies from which livers had been removed only a few hours previously, indicating that this may be the tip of the iceberg of organ harvesting from prisoners of conscience. This has resulted in a call from the medical fraternity for 400 papers to be withdrawn from the literature, because consent has probably not been given by those people who were deemed to be patients.

Baroness Manzoor: My Lords, as I have said, written consent is deemed to be necessary in the UK. It is different for other countries. There are allegations and concerns about organs being removed from people who are being held, for instance, in re-education camps in Xinjiang province, though we do not have evidence to corroborate this. We are working closely with the HTA to ensure that consent is sought in line with the countries concerned.

Baroness Thornton (Lab): My Lords, there is a much more fundamental ethical issue at play here. Leaving aside the need for cadavers and human tissue for scientific and medical training purposes—which is regulated by the HTA—it seems likely that all the exhibitions which use plasticised cadavers and foetuses for supposedly educational purposes could use modern materials and production to create the same exhibits. That begs the question: why use cadavers and human

body parts at all? If the answer is that people want to see such things and will pay to do so, I remind noble Lords that people used to flock in their thousands to see public executions until 1868. Does the HTA exist to regulate what, in this case, is akin to ghoulish curiosity and its manifestations? What is the ethical position and who should be examining it?

Baroness Manzoor: My Lords, of course the ethical position is not one for government. The Government have made law and set up the Human Tissue Authority in primary legislation. The exhibitions that have been taking place are in line with the law. However, I understand the noble Baroness's point, which is valid, and I have empathy with what she says.

Out of interest, I looked at the exhibition review and interview in *What's On: Your What's on News and Culture Guide*. This is what it wrote about the exhibition:

"Fabulously fascinating, incredibly informative, gloriously gruesome … Real Bodies The Exhibition is an unforgettable experience for sure".

That is the other side—it is not my view, I am just saying—but I understand the noble Baroness's point.

Lord Dholakia (LD): My Lords, I have never quite understood the morbid curiosity that drives some people to attend commercial exhibitions of human bodies which, in many cases, are imported. There are two questions: what criteria are being used by local authorities to allow such public exhibitions to take place; and what efforts are being made to ensure that such bodies are not imported from countries such as China where the illegal harvesting of organs is rife? We are repeatedly told about the representations that the Government have made at a very high level to the Government of China. We have never been told the reaction of the Chinese Government.

Baroness Manzoor: My Lords, involuntary organ removal is illegal under Chinese law. In January 2015, China committed to stop removing organs from executed criminals without their prior consent or the permission of their relatives. But NGOs have reported that organ harvesting from ethnic minority groups, religious groups and political prisoners predominates in this practice and that the trade could cover 60,000 to 100,000 people per year. As my noble friend Lady Goldie said on Monday in answer to an Oral Question, we cannot find evidence to corroborate that at this moment.

River Ecosystems

Question

3.22 pm

Asked by ***Baroness Redfern***

To ask Her Majesty's Government what measures they are taking to address the threat posed to river ecosystems by a combination of farm chemicals, sewage and excessive abstraction.

The Parliamentary Under-Secretary of State, Department for Environment, Food and Rural Affairs (Lord Gardiner of Kimble) (Con): My Lords, I declare my farming interests as set out in the register. England's river ecosystems are the healthiest they have been since the Industrial Revolution. More than 5,900 miles of rivers have been improved since 2010. Where our catchment-sensitive farming programme operates, pesticides in our rivers have fallen by 50% since 2006. Serious sewage pollution incidents have fallen by 89% in the past 25 years. More than 40 billion litres per year of unsustainable abstraction has been prevented since 2008. We intend to go further.

Baroness Redfern (Con): I thank my noble friend the Minister for his encouraging words, but farmland birds have declined by more than half since 1970. More urgent action is needed to tackle sewage effluent chemicals and damaging abstraction of water from rivers and groundwater, which is preventing 15% of rivers meeting good ecological status. On the announcement for abstraction reform to review existing licences and introduce more controls to protect water resources, will this review feed into the 25-year environmental plan, and will targets be set?

Lord Gardiner of Kimble: My Lords, the whole 25-year environmental plan—and, indeed, all our plans, including in the Agriculture Bill and the environmental land management schemes—is predicated on the need to enhance our environment. Water quality and water supply is clearly one of our priorities. On abstraction reform, we will certainly be looking at increasing supply, reducing demand and reducing leakages. We are already bringing back targets in many of those areas into our law.

Baroness Jones of Whitchurch (Lab): My Lords, I refer to my declaration in the register of interests. Natural England has responsibility for ensuring that our farmland is managed responsibly and our rivers protected, but its budget has been cut by 47% over the last five years. In addition, 50 staff have been poached by Defra to deal with Brexit. How can it possibly be expected to carry out its job effectively when it really does not have the resources to do it?

Lord Gardiner of Kimble: My Lords, the figures have shown how not only Natural England but the Environment Agency and the water companies have actually produced very strong improvements in difficult times, when everyone has had to retrench. River basin management plans involving Natural England, Defra and water companies are all about improving water quality across river basins from 2015 to 2021. All of this, and a lot more, is why water quality and supply will be increasingly important.

Baroness Miller of Chilthorne Domer (LD): My Lords, among the most important components of sewage that have become more detrimental to wildlife are the pharmaceuticals going down the lavatory as part of human sewage. They are causing infertility in everything from killer whales to dog whelks, because hormones are extremely damaging to wildlife in the long term. Can sewage treatment plants do anything to improve this situation?

Lord Gardiner of Kimble: My Lords, this goes back to the products produced and the importance, with research and technology, of alternatives. It is why our

[Lord Gardiner of Kimble]
ban on microbeads is tremendously important. We need to do more, both in our own products but more generally with what we put on the land. That is where alternatives and precision farming will be very important.

Lord Krebs (CB): My Lords, can the Minister tell us his department's assessment of the impact of future climate change on our rivers and freshwaters and what steps are being taken to deal with the threat of climate change on water quality and quantity?

Lord Gardiner of Kimble: The noble Lord raises something hugely important: we have not only to adapt but to mitigate. That is why the environmental land management schemes, involving what we hope will be 70% of the land farmed in this country, will be precisely about how we mitigate and adapt and how we ensure that we improve water quality through things such as planting trees and better environmental management generally.

Lord Ribeiro (Con): My Lords, I declare an interest as a riparian owner. Abstraction is an issue in any area with few reservoirs, and particularly with rivers designated as being of special scientific interest. Of equal concern is abstraction for commercial purposes to clean salads. In particular I point to Bakkavör, a company in Alresford, which imports salads from Europe and cleans them, and the water then goes back into the river system. My question to my noble friend the Minister is: what steps can we take to ensure that water that goes back into the river after cleaning processes is of the same quality as the water abstracted in the first place?

Lord Gardiner of Kimble: My Lords, this goes back to the point about needing to ensure that we reduce abstraction and that we have only sustainable abstraction of water. On the principle that the polluter pays, we certainly need to ensure—and we do increasingly ensure—that people using water return it in better quality than they might do now.

Lord Davies of Stamford (Lab): My Lords, our rivers are now cleaner than at any time since the Industrial Revolution. That is a very reassuring and fine achievement, but is it not largely the result of the environmental policies and directives of the European Union?

Lord Gardiner of Kimble: The noble Lord raises the point that we are bringing back environmental law. We the British have been some of the pioneers of that within the European context and we are very pleased to have that environmental enhancement, wherever it comes from.

Viscount Ridley (Con): My Lords, the Northumberland Rivers Trust, of which I was at the time a trustee, tried to solve the problem of poor water quality in the River Blyth in spring and summer, when it went turbid and cloudy and there was a detrimental impact on the ecosystem. After doing a lot of work on farms, it was concluded that the main problem was the invasive alien signal crayfish. Does my noble friend agree that invasive alien species are a form of pollution that can be even more damaging than other forms?

Lord Gardiner of Kimble: My Lords, even invasive species usually need good-quality water in which to, unfortunately, flourish. I am very strong on this—invasive species have caused great harm to our natural ecosystems, and we need to manage those species properly, because otherwise we will lose our natural ecosystems.

Help to Buy: Housebuilders' Profits

Question

3.29 pm

Asked by ***Lord Shipley***

To ask Her Majesty's Government what steps they will take to restrict the profits being made by housebuilders through the Help to Buy scheme.

The Parliamentary Under-Secretary of State, Ministry of Housing, Communities and Local Government and Wales Office (Lord Bourne of Aberystwyth) (Con): Schemes such as Help to Buy equity loan have helped to deliver 222,000 new homes in 2017-18, the highest level since 2007-08. However, we expect builders to act responsibly. We expect all housing developers to deliver good quality housing, to deliver it on time, and to treat purchasers of new-build homes fairly.

Lord Shipley (LD): I thank the Minister for his reply. He will be aware that yesterday, the housebuilder Persimmon declared annual profits of over £1 billion, having built 16,449 homes. That is £66,000 per house built, with half the sales funded through Help to Buy. That represents almost a trebling in profit per house since Help to Buy was introduced in 2013. Does the Minister accept research concluding that Help to Buy has led to house prices being 15% higher than they would be compared to similar properties that were not eligible—in turn, fuelling profits? What plans do the Government have to clamp down on huge bonuses arising from the increased profits, made from the public purse under Help to Buy?

Lord Bourne of Aberystwyth: My Lords, I should point out to the noble Lord that the Help to Buy scheme was initiated under the coalition Government. Some of the figures he has quoted were made by his leader, the right honourable Member for Twickenham, Vince Cable, who is in a much better position than I am to know how successful the scheme has been in delivering houses. It has delivered over 190,000, and he was a Cabinet Minister when it started. Ensuring we get value for money is of course important, and we are focused on that. Regarding directors' salaries, there are provisions in the Companies Act 2006 relating to directors' duties. Section 173 includes a complex corporate code that governs listed companies. Persimmon, which he has referenced, realised how unacceptable the situation was and the chairman, the chairman of the remuneration

committee and the chief executive resigned. That is an indication of the realisation, which I share, that it was inappropriate.

Lord Kennedy of Southwark (Lab Co-op): My Lords, does the Minister accept that the Government should set a framework for space standards, quality of design and energy efficiency so that, no matter if the home is for sale or rent, it will provide a quality dwelling for many years to come? It is disappointing that many of the homes benefiting from the Government's scheme fail in these respects.

Lord Bourne of Aberystwyth: My Lords, I do accept that standards are important. The noble Lord will be aware that the National Planning Policy Framework tightens up some of these quality and design requirements, and there are also rules relating to safety. These will be at the forefront of the Government's mind when we have the new Help to Buy scheme. We will look at all of the providers, not just Persimmon, to make sure that they are delivering value for money for the consumer and the taxpayer.

Lord Bassam of Brighton (Lab): Will the Minister return to the point made by the noble Lord, Lord Shipley: that the vast profits Persimmon is making would be far better invested in bricks and mortar and new council houses?

Lord Bourne of Aberystwyth: My Lords, I leave it to the Labour Party to have an assault on profits; there is nothing wrong with profit itself. It is inappropriate when the money is not being invested properly and providers are not taking proper account of their duties; that is unacceptable. The noble Lord will know that the lifting of the cap on local authorities will help with an issue on which he and I agree: the need for more social houses.

Lord Best (CB): My Lords, the Minister is suggesting that the oligopoly of major-volume housebuilders has let us down on quantity, affordability, design, workmanship and quality of product. Could he update us on the arrival of a new homes ombudsman, who can deal with a good number of the complaints that, justifiably, people are making about the appalling quality they experience when they buy some of these properties?

Lord Bourne of Aberystwyth: My Lords, most of the suppliers of homes under the Help to Buy scheme are small and medium-sized enterprises, although I accept that the larger players are delivering the volume. I agree with the noble Lord about the need for a new homes ombudsman and he will know that, when legislative time allows, we will introduce that. In the meantime, with the Home Builders Federation we are looking at the possibility of a voluntary homes ombudsman, to make sure we have the qualities he and I are keen on and that they are enforced.

Lord Campbell-Savours (Lab): My Lords, I understand that, as of 2021, the scheme will be restricted to only first-time buyers. In those conditions, what will stop first-time buyers being subjected to inflated house prices?

Lord Bourne of Aberystwyth: My Lords, the noble Lord is right: the new Help to Buy scheme, which will start in April 2021 and run for two years, will be restricted to first-time buyers. At the moment, 81% of the uptake is first-time buyers. We will look carefully across the board at who is designated under that scheme as a provider, and we will have an opportunity to review that because it is a new system. We will look at it in the round to ensure that there is quality and proper consumer reference around some of the complaints that may be made. We will look also at leaseholds, to ensure that is no longer there. In 2021, all the new entrants and refreshed members will be required to sign up to that.

Baroness Thornhill (LD): My Lords, it is important to state for the public record that the figures provided by my noble friend Lord Shipley are from research done by the *Times*. Is the Minister aware that in 2018, the largest housebuilders declared dividends amounting to £2 billion? On hearing this, does he have any sympathy for the many council planning officers who regularly do battle with those developers who are still exploiting the Government's viability loophole to avoid paying the community infrastructure levy and Section 106 money rightly owed to councils, thus depriving communities all over the country of millions of pounds that should be spent on roads, schools and much-needed social housing? When will the loophole finally be closed for good?

Lord Bourne of Aberystwyth: My Lords, the figures are right, to the extent that they stack up mathematically. I accept that the figures set out by the noble Lord, Lord Shipley, featured in the press, but they are simply an exercise in looking at the profit and then dividing it by the number of houses built, without any attempt to isolate those in the Help to Buy scheme. It is very much a back-of-a-fag-packet exercise and does not bear mathematical analysis.

I hope the noble Baroness will accept that her more detailed questions have slightly blindsided me because they are not on this specific point. However, I will write to her and ensure that a copy of the letter is placed in the Library.

Jammu and Kashmir

Statement

3.38 pm

Baroness Goldie (Con): My Lords, with the leave of the House, I will repeat in the form of a Statement the Answer given by my right honourable friend Mr Mark Field in response to an Urgent Question in the other place. The Statement is as follows:

"I understand that the Prime Minister made reference to this earlier during the course of Prime Minister's Question Time. The UK is and remains deeply concerned about rising tensions between India and Pakistan. Understandably, there has been huge interest in this rapidly developing situation. This House will understand that it would not be appropriate for me to comment in detail on reportage at this time as the situation evolves.

[Baroness Goldie]

However, what we do understand is that, on 14 February, at least 40 paramilitary Indian police officers were killed in a suicide attack in India-administered Kashmir. The Pakistan-based militant group Jaish-e-Mohammed, or JeM, claimed responsibility for that attack. India-Pakistan tensions, already at a high level, rose significantly following that attack, and both countries publicly exchanged heated rhetoric.

On Tuesday 26 February, Indian and Pakistan news reported that Indian jets had crossed the line of control between India and Pakistan-administered Kashmir. There have been further reports of ceasefire violations across the line of control overnight and the situation remains unclear but fast developing.

The Foreign Secretary spoke to his Indian and Pakistani counterparts on Monday to discuss the situation and we are in regular contact with both countries at senior levels to encourage restraint and to avoid escalating tensions further. We are monitoring developments closely and considering the implications for British nationals. I shall be speaking to both the Indian and Pakistani high commissioners this afternoon and I will continue to press the importance of restraint.

We urge both sides to engage in dialogue and to find diplomatic solutions to ensure regional stability. We are working closely with international partners, including through the United Nations Security Council, to de-escalate tensions.

India and Pakistan are both long-standing and important friends of the United Kingdom. We have many and significant links to both countries through sizeable diaspora communities. As a consequence, we enjoy strong bilateral relations with both nations. The UK Government's position on Kashmir remains that it is, and must be, for India and Pakistan to find a lasting political resolution to the situation, taking into account the wishes of the Kashmiri people. It is not for the UK to prescribe, intervene or interfere with a solution or to act as mediator.

I know that the House has previously raised concerns about the humanitarian and human rights situation in both India-administered Kashmir and Pakistan-administered Kashmir. We continue to monitor the situation and encourage all states to ensure that their domestic standards are in line with international standards".

3.41 pm

Lord Collins of Highbury (Lab): My Lords, I should have done this earlier: I wish the Minister a very happy birthday.

Noble Lords: Hear, hear!

Lord Collins of Highbury: I thank the Minister for repeating the response and for the Government's efforts with Pakistan and India to cease all action that risks escalating the conflict. Mark Field said that we would work closely with international partners, including through the UN Security Council, to de-escalate tensions. Surely one action would be for the UN Security Council to formally designate Masood Azhar—the head of the group responsible for this terrorist atrocity—so that he can face the resulting sanctions and restrictions. Therefore, will she urge the Foreign Secretary to speak to his Chinese counterparts about lifting their inexplicable veto on that designation?

Our thoughts today must also be with the innocent people of Kashmir, who are literally caught in the middle of this crossfire and have been for the last 70 years. Can the Minister tell us how we are working with international partners to ensure that the UN is on the ground and able to investigate all human rights abuses?

Baroness Goldie: I thank the noble Lord. I will turn to his last point first, if I may. Yes, we totally share his concern about the plight of the citizens within Kashmir. Our thoughts particularly are with the victims of the terrorist attack in Pulwama and their families.

The United Kingdom is conscious of the importance of the United Nations as a forum for influence and action. The UK continues to support the listing of Masood Azhar, the leader of Jaish-e-Mohammed, under United Nations Security Council Resolution 1267. That organisation is already listed by the UN and has been proscribed in the UK since 2001. To our knowledge, Azhar remains the head of JeM. The noble Lord makes a very important point. We will continue to work closely with global partners, as we work closely on our bilateral relationships with the two countries to exercise restraint and to try to ensure that a safer environment can be created in Kashmir.

Baroness Northover (LD): My Lords, I thank the noble Baroness for repeating the Answer to the Urgent Question on this extremely challenging development in the region. Did she hear a commentator on the "Today" programme this morning regretting a lack of leadership in the world when conflicts such as this arise? He said that that was, from the Americans, because of Trump and, from the UK, because of Brexit. Does she agree? If not, what specific action is the UK taking in the UN and elsewhere to seek a peaceful resolution to this conflict, especially to its underlying causes?

Baroness Goldie: Sadly, the conflict in Kashmir long predates Brexit. The noble Baroness will be aware that the United Kingdom has, with global partners, been working tirelessly and doing everything it can to urge restraint and to encourage both sides to avoid escalation and discuss constructively a political resolution to this situation. The United Kingdom has demonstrated, both in its diplomatic activity and in the high-level contact between the Foreign Secretary and his counterparts in India and Pakistan, that it is an influential bilateral partner. As I said in the initial response, Pakistan and India are good friends of the United Kingdom. We are deeply concerned about the escalating situation in Kashmir and are using all the influence we can, both bilaterally and in global fora, to try to improve it.

Baroness Anelay of St Johns (Con): My Lords, I welcome the fact that my noble friend has set out so carefully the work that is being carried out by the international community to defuse the situation, with the UK playing a leading part, because the security

situation there will be of great concern to the wider region. However, can the UK work through the Human Rights Council on a longer-term basis to help those who clearly find life extremely difficult in both parts of administered Kashmir? I understand that the Human Rights Council is sitting this week and it may be an appropriate time for it to consider the matter.

Baroness Goldie: My noble friend makes a very pertinent comment. We recognise that there are deep human rights concerns in both India-administered Kashmir and Pakistan-administered Kashmir. Any allegations of human rights abuses are deeply concerning and must be investigated thoroughly, promptly and transparently. I am sure that her observation will be heard clearly.

Lord Singh of Wimbledon (CB): Kashmir is a large and beautiful state, which in normal circumstances could get by and do well on tourism alone. Unfortunately, as has been mentioned, it has been caught in this crossfire between India and Pakistan. Should we not encourage both states—Pakistan and India—to move towards recognising near autonomy for Kashmir, with important trading and cultural links between both countries?

Baroness Goldie: That is an important observation. Both countries have much to gain from a more peaceful environment in Kashmir and both have much to lose if that peace is disrupted. As a Government, we have made it clear that we regard it to be the responsibility of both India and Pakistan to resolve this situation politically and, in doing so, to take into account the wishes of the people of Kashmir. However, both countries will recognise that there are gains to be made if peace can be achieved.

Lord West of Spithead (Lab): My Lords, some 20 years ago, India and Pakistan came within a hair's breadth of nuclear weapon exchange. As the CDI at the time, I was shocked to discover that a lot of opinion-makers and decision-makers on both sides felt that it was quite practical to have a nuclear war and to use nuclear weapons for war fighting. There was no understanding of nuclear deterrent theory and absolutely no understanding of the fallout patterns for the targets that both sides had selected, and we embarked on a major programme of trying to teach those things. Has that continued and have we resolved those issues within both countries? There is absolutely no doubt that nuclear weapons are not war-fighting weapons.

Baroness Goldie: I cannot answer that specific question, as I do not have that information in my brief. However, I undertake to investigate and shall write to the noble Lord. He refers to 20 years ago, since when I think that there has been a far greater global awareness of the huge significance of nuclear weapons. Although this country and others, as participators, support multilateral nuclear disarmament, there is clearly still a place for a nuclear deterrent in current times. However, he makes an interesting point and I shall investigate it.

Baroness Warsi (Con): My Lords, I welcome the comments of the Foreign Secretary this morning asking for both sides to de-escalate. I would like to put two matters on record and ask my noble friend to comment on them. Are the Government familiar with the comments made by Prime Minister Imran Khan, with his clear and unequivocal condemnation of the attack in Pulwama; his open and unconditional offer to assist India in every way in relation to that investigation; and his consistent hand of friendship and diplomacy in this matter? I am sure that the House is familiar with the fact that there was a 10-year boycott of Narendra Modi because of his association with religious violence—violence that took the lives of British citizens who lived in Dewsbury and Batley, where I was born and raised. Therefore I encourage the Government to speak to Prime Minister Modi and ask him to put the interests of the Indian people—most significantly, personnel within the Indian Air Force—over and above his personal political interest, given the forthcoming elections.

Baroness Goldie: What I would say to my noble friend is that this will require wisdom and reflection by both countries. We have India-administered Kashmir and Pakistan-administered Kashmir. Any gestures by statesmen in either country that facilitate dialogue, investigation and exploration of how life can be made more peaceful and the risk of escalation of violence can be avoided is to be commended.

Baroness Sheehan (LD): My Lords, the Minister says that the dialogue between India and Pakistan is the way to resolve this conflict. How would she suggest that India is brought to the table, in the absence of international pressure?

Baroness Goldie: Speaking for the United Kingdom Government, they have been very proactive in engaging with both India and Pakistan. As I said, on Monday the Foreign Secretary communicated by telephone with both his counterparts. On a bilateral level, we are certainly deploying every diplomatic measure available to us to encourage both countries to speak to each other and try to investigate, explore and—it is hoped—bring to fruition the necessary political resolution that is the only way to deal with this situation.

Further Discussions with the European Union under Article 50 of the Treaty on European Union

Motion to Take Note

3.52 pm

Moved by ***Lord Callanan***

That this House takes note of the further discussions with the European Union under Article 50 of the Treaty on European Union.

The Minister of State, Department for Exiting the European Union (Lord Callanan) (Con): My Lords, it is a pleasure to be opening, yet again, today's debate.

[Lord Callanan]
Before I begin, I ask noble Lords for their patience, as, like many Members of the House, I am struggling with rather a troublesome cough.

The Motion before the House asks us to take note of the further discussions with the European Union under Article 50 of the Treaty on European Union. Those further discussions were set out in detail during a Statement repeated by my noble friend Lady Evans, the Leader of the House, yesterday. Today, both here and in the other place, we will be taking stock of our position and, in the other place, voting to help set the direction going forward.

Following the vote on 29 January and the mandate set by the other place, the Prime Minister and members of the Government, including my right honourable friend the Secretary of State for Exiting the EU, have been engaging with colleagues on all sides of the House and across Europe to find a way forward that will work for both sides. As my noble friend told the House yesterday, the Prime Minister was in Brussels last week to meet President Juncker, to take stock of the work that has been done by the UK and EU teams so far. The Prime Minister also discussed what legal changes are required to ensure that the backstop is temporary, along with whether there are additions or changes to the political declaration that could be made to secure Parliament's confidence in this starting point for a strong and ambitious future relationship with the EU.

The Prime Minister has been engaging extensively with EU leaders over the past few weeks, and has now spoken to the leader of every other EU member state to explain personally the UK's position. We have made good progress in our discussions, and that work continues so that we can leave on 29 March with a deal that commands the support of the other place.

Noble Lords will be pleased to hear that I will not test the patience of the House by restating in full the Statement repeated yesterday by my noble friend the Leader. However, I would like to touch on a couple of the key points made by my right honourable friend the Prime Minister. The UK and the EU have agreed to work on arrangements that will ensure the absence of a hard border in Northern Ireland, with the aim of avoiding the need for the backstop ever to be used, even in a scenario where the future relationship is not enforced by the end of the implementation period. Beyond the backstop, we have been working in other areas so that we can reach a deal that, again, the other place can support. The UK has a proud history of upholding and protecting standards in workers' rights, environmental protections and health and safety. We are committed to ensuring that leaving the EU will not lead to the diminution of standards in those areas. The Prime Minister set out yesterday how we will bring forward proposals to uphold, and even strengthen, protections in areas such as workers' rights and health and safety. We will do this engaging with colleagues across parties and with businesses and trade unions.

The Prime Minister has recognised MPs' concerns that time is running out and Parliament will not be able to make its voice heard on the next steps, as well as concerns over the uncertainty facing businesses. She has set out a clear process that will guarantee that Parliament gets a vote on whether it wants to leave without a deal on 29 March and, if that is rejected, a vote on extending Article 50. The Prime Minister does not want to extend Article 50; she has never wished to do so.

Lord Lamont of Lerwick (Con): I am grateful to my noble friend for giving way. The Prime Minister has made a commitment that there will be a vote by the House of Commons as to whether it wishes to leave without a deal or not, but that is a resolution. The law of the land is that we leave on 29 March, as enshrined in the Act of Parliament. What is the significance of the vote? What will happen as a consequence of the vote if it is, let us say, against leaving with no deal? What would actually happen to alter the law?

Lord Callanan: As a consequence of that vote, nothing. What will then happen is that the following day the Government will ask the House of Commons whether it wishes to extend the Article 50 process. If the House decides that it wishes to do so for a short, time-limited period, the Government will introduce the necessary legislation—and will of course need to negotiate the relevant extension with the EU, as that is something that we cannot just decide to do unilaterally.

Lord Foulkes of Cumnock (Lab Co-op): Has the Minister seen today's statement by the Government of Gibraltar that, from their point of view, the best solution would be immediately to revoke Article 50? That has been suggested by the noble and learned Lord, Lord Mackay, and many others. It would be the best thing from the point of view of the UK, it would end uncertainty and it would enable us to get on with our business in an untroubled way. What is the reaction to the request from the Government of Gibraltar? They are literally on the front line in this matter.

Lord Callanan: The noble Lord will be unsurprised to know that, as usual, I disagree fundamentally with him. The Prime Minister has been clear that we will not be revoking Article 50 because to do so would disavow the results of the referendum. We take the concerns expressed by the Government of Gibraltar seriously, but the whole UK family, including citizens in Gibraltar, will be leaving the EU together.

As I said, the Prime Minister does not wish to extend Article 50 and has never wished to do so; it would simply defer the moment of decision and put off difficult choices. We want to leave with a deal on 29 March. Should MPs vote for an extension to Article 50, it should be time-limited and as short as possible, as I said in response to the earlier question. It remains the case that the best way to rule out no deal is to agree a deal. We do not want a no-deal outcome. The Government's primary aim is to ensure that the UK leaves the EU on 29 March with a negotiated deal that will honour the result of the referendum. However, as a responsible Government, we continue to plan for all eventualities.

Lord Campbell of Pittenweem (LD): My Lords, on the matter of Gibraltar, if we leave without a deal, what will the consequences be for the people of Gibraltar, and their close economic relationship with Spain?

Lord Callanan: Many serious consequences will flow from leaving with no deal, but we do not want to leave with no deal. If the noble Lord is so convinced of the need to leave with a deal, perhaps he could talk to his colleagues in the House of Commons and ask them to vote for the deal that is on the table.

Lord Wallace of Tankerness (LD): The Minister has just said that the Government are planning for all eventualities. If the House of Commons has a vote on 13 March on whether to support no deal, what would the Government's position be in that eventuality?

Lord Callanan: Does the noble and learned Lord mean if the House of Commons votes to support no deal?

Lord Wallace of Tankerness: If the House of Commons has a vote on whether to support no deal or not, what will the position of the Government be?

Lord Callanan: That is a very good question. I will leave my colleagues, the Whips in the House of Commons, to determine that. I suppose it will depend on what the Motion says and the results at the time.

Yesterday, we published a paper that summarises government activity to prepare for no deal as a contingency plan and provides an assessment of the implications of a no-deal exit for trade and for businesses, given the preparations that have been made. More information for businesses and citizens can be found on the Government's exit website.

Yesterday, my right honourable friend the Prime Minister set out three clear commitments to the other place that should provide reassurance and clarity about the way forward:

"First, we will hold a second meaningful vote by Tuesday 12 March at the latest. Secondly, if the Government have not won a meaningful vote by Tuesday 12 March, then they will, in addition to their obligations to table a neutral, amendable motion under section 13 of the European Union (Withdrawal) Act 2018, table a motion to be voted on by Wednesday 13 March, at the latest, asking this House if it supports leaving the EU without a withdrawal agreement and a framework for a future relationship on 29 March. So the United Kingdom will only leave without a deal on 29 March if there is explicit consent in this House for that outcome.

Thirdly, if the House, having rejected leaving with the deal negotiated with the EU, then rejects leaving on 29 March without a withdrawal agreement and future framework, the Government will, on 14 March, bring forward a motion on whether Parliament wants to seek a short, limited extension to article 50, and, if the House votes for an extension, seek to agree that extension approved by the House with the EU and bring forward the necessary legislation to change the exit date commensurate with that extension. These commitments all fit the timescale set out in the private Member's Bill in the name of the right hon. Member for Normanton, Pontefract and Castleford".—[*Official Report*, Commons, 26/2/19; cols. 166-67.]

Lord Grocott (Lab): It seems to me that the crucial words are "short extension". Can the Minister confirm that there is an imperative in the conclusion of any short extension—a date in June? Should that not be observed, we would be in the indefensible situation of having to fight European elections for a new European Parliament. Can he think of anything more insulting, not just to the 17.4 million people who voted to leave the European Union three years ago but to our democracy, if we were to say to them, "Sorry about that decision you made three years ago. We're now in the process of electing a brand new European Parliament"? That would not be an economic cliff edge, but a democratic one.

Lord Callanan: Despite the chuntering from a sedentary position from the noble Lord, Lord Foulkes, the noble Lord speaks great sense—as he does on so many things. It would make no sense whatever to have European Parliament elections because we will not be members of the EU going forward and, indeed, the legislation no longer exists on the UK statute book.

While these discussions continue at the European level, work continues domestically to prepare ourselves for all negotiated outcomes. The Government have undertaken extensive work to identify the primary legislation essential to deliver our exit from the EU in different scenarios. The Government are also making good progress on laying statutory instruments to ensure a functioning statute book for exit day. Over 450 statutory instruments have been laid to date, which is over 75% of all SIs required for exit day. Of these, almost half have been sent to the sifting committees of both Houses.

The Government are committed to ensuring that we have a functioning statute book for when we leave the EU, while also ensuring that legislation receives appropriate scrutiny. Once again I place on record my thanks, for their valuable and extensive work, to the committees chaired by the noble Lords, Lord Trefgarne and Lord Cunningham.

I can only reiterate that this Government stand firm on their commitment not to second-guess the result of the 2016 referendum by holding yet another people's vote. Noble Lords will be well versed in these arguments now but, nevertheless, I will quickly recap.

Viscount Waverley (CB): Could the Minister clarify one point? Was Mr Alberto Costa MP sacked, or did he resign, over his attempt to have EU citizens' rights in the event of no deal ring-fenced? What is the Government's view on this amendment—do they support it or not?

Lord Callanan: The noble Lord is asking me to comment on what happens in the other place. My understanding—it is no more than that; I have not spoken to him—is that Alberto Costa resigned following the long-standing tradition that members of the Government and PPSs do not table amendments to government Motions. I also understand, however, that the Government are accepting the amendment put forward—such is the logic of government.

[Lord Callanan]

When we held the referendum, the Government pledged to respect the result, whatever the outcome. We repeated this commitment once the result was delivered, and this Government, as well as the Opposition, were elected on a manifesto maintaining this same commitment: to uphold the result of the 2016 referendum. Even though the Opposition seem to be U-turning on their manifesto commitment, we still stand by ours. Indeed, as the PM said yesterday, it is,

"the very credibility of our democracy",—[*Official Report*, Commons, 26/2/19; col. 168.]

that we jeopardise if we break our explicit promises.

Lord Dykes (CB): I am grateful to the Minister, who is struggling not only with a bad cough but with some very bad arguments; I sympathise greatly. At the beginning of his remarks he emphasised that the Prime Minister had been badgering people endlessly in Brussels, the Middle East and elsewhere, and had spoken to the Heads of Government, or whoever was appropriate, of the 27 other member states. How many of those member states agreed with the Prime Minister's bizarre arguments, and how many thought them a load of rubbish?

Lord Callanan: The noble Lord will not be surprised to know that I have not seen read-outs from all those conversations, but I know from speaking to other Europe Ministers at various gatherings that there is considerable sympathy for many of our arguments.

It is imperative that the British people are able to trust in the Government to respect democratic processes and deliver effective outcomes for them. For that reason, it is our firm belief that even to consider holding a second people's vote would set a damaging precedent for our democracy and the principles that underpin our constitutional order.

Lord Garel-Jones (Con): Would my noble friend give way?

Lord Callanan: I thought that might prompt some interventions.

Lord Garel-Jones: My noble friend will no doubt be aware of the ruling by the Supreme Court following the 2016 referendum. It stated that the,

"legal significance is determined by what Parliament included in the statute authorising it, and that statute simply provided for the referendum to be held without specifying the consequences. The change in the law required to implement the referendum's outcome must be made in the only way permitted by the UK constitution, namely by legislation".

Consequently, if Parliament is unable to reach a consensus on any particular deal, is not the logic then that the people should be consulted again?

Lord Callanan: I am afraid I do not follow my noble friend's argument. Parliament agreed to respect the outcome of the referendum in tabling the notification of withdrawal Bill.

Lord Garel-Jones: But the Supreme Court has made it clear that under the British constitution, while Parliament agreed to hold the referendum, it did not agree on the outcome, and that outcome must be agreed by Parliament. If Parliament cannot agree, the people must be consulted.

Lord Callanan: I am afraid that I do not follow the noble Lord's logic on this. Parliament did support the outcome of the referendum. The Government made it clear at the time that they would abide by the result and spent £9 million putting a leaflet into every house in the country saying, "It's your decision—we will respect the outcome". Parliament then voted for the notification of withdrawal Bill, which gave notification of our intention to leave the European Union. Parliament then confirmed our exit date in the EU withdrawal Bill, passed in the summer. So it is not true that Parliament has not supported the result of the referendum.

Lord Robathan (Con): I am sorry to interrupt my noble friend again. Has he seen the demonstration—unusually, by people supporting leave—outside the Palace of Westminster today, with placards saying, "Parliament versus the People"? Does the Minister consider, given what he has just said, that this might give resonance to the terrible shame of this country, and indeed to the detriment of its democracy?

Lord Callanan: I have not seen any particular demonstration; I do not take an awful lot of notice of them. There seem to be people from all sides shouting at all of us as we walk in. I often wonder why they think that it will make a difference if they shout loudly "Stop Brexit" every five minutes—that somehow we are all going to have a flash of inspiration and suddenly change our minds. The wider point, however, is that the votes of 17.4 million people should be respected. It was the largest democratic vote in the history of this country. We said that we would respect the outcome of the referendum, and this Government are committed to doing that, even though many noble Lords are not so committed. Perhaps we have another one here now.

Lord Wigley (PC): I am grateful to the Minister, as always, but does he not accept that in neither the referendum nor the general election did any party advocate a no-deal leaving of the European Union? In those circumstances, should this not be ruled out—and if it cannot be ruled out by Parliament, should it not, in line with what is being shouted outside, go back to the people?

Lord Callanan: No, I am afraid that I do not agree with the noble Lord. Neither the two-year time limit set by the notification of withdrawal Act on when the treaty will cease to apply to the UK, nor the exit date placed by Parliament in the EU withdrawal Bill, is dependent on whether we have a deal: they were firm commitments now set in statute at both European and domestic level. Of course we want to leave with a deal, but under domestic legislation we will leave on 29 March unless something changes. I give way.

Lord Thomas of Gresford (LD): The Minister will be aware, because he carried the Bill through, that the withdrawal Act has a provision that allows the Government to amend the date and time of leaving simply by regulations—it can be done overnight.

Lord Callanan: I have to say that many noble Lords have argued strongly against statutory instruments being approved "overnight", as the noble Lord suggests, in other cases. He is, however, quite correct that there is such a provision. Nevertheless, the original provision is in the legislation. I give way to the noble Lord.

Lord Lansley (Con): I am very grateful for my noble friend's generosity in allowing these interruptions. He is manfully explaining all these processes, but he has not yet discussed the most important one: can the Government bring back—not least to the other place—a withdrawal agreement that the other place is likely to accept? Without that, we are in a very unenviable dilemma, and that question goes to the essence of the discussions that we are currently holding in Europe. Can he give the House any update on the possibility of a change to the withdrawal agreement that would allow us, once we have entered the backstop—although we may not—to leave it?

Lord Callanan: The noble Lord speaks with great experience and wisdom, and he is absolutely correct: the important thing is for us to bring back to Parliament solutions to the backstop that the House of Commons can accept. While I do not want to go into further detail, I can assure him that discussions are continuing as we speak: the Attorney-General was in Brussels yesterday for further talks, which will be continuing at pace as we attempt to get the reassurances that the House of Commons has asked for.

The debate is taking place in the other place today, and I know that contributions made here will be of great interest to MPs and to those outside this House.

Lord Grocott: It is the way he tells them.

Lord Callanan: Absolutely true, of course. I look forward with interest to hearing noble Lords' contributions this afternoon. I do not know who writes this, but that is good. I must pay tribute to the stamina of many noble Lords on the speakers list today who have spoken in many, if not all, of the Brexit debates we have had in the past few months. Yet again, the challenge will be to introduce new points that we have not heard before: I am sure that noble Lords will rise to the occasion. As usual, my noble and learned friend Lord Keen is champing at the bit in his enthusiasm and looking forward to the utmost to responding to the issues raised in his winding-up speech.

Lord Lea of Crondall (Lab): I can help the Minister with a new point. Is not one of the serious difficulties that we have entered into an arrangement with Brussels whereby we cannot discuss new relationships until we have left? Yet all the time people are trying to spatchcock new relationships, whether it is the customs union, the single market or other arrangements. Is it not time to consider whether the sequencing is satisfactory? I do not know how one would answer that, but there is a difficulty in the way in which the sequencing has been laid down.

Lord Callanan: Of course, we can and have discussed the future relationship. There is a whole political declaration devoted to the new relationship, but the legal position is that the EU cannot legally conclude a further, ongoing relationship until we are a third country. If there are no more interventions, I beg to move.

4.16 pm

Baroness Hayter of Kentish Town (Lab): My Lords, it is a good thing that the Minister has a sense of humour. I have to say that he is struggling not just with his throat but with finding anything new to say. That, I understand: some of us are in the same position. More seriously, he is struggling to recognise the seriousness of the state we are in. I think it would be good if the Minister would heed the advice given to him the last time we met that he should stop being,

"the boy who stood on the burning deck",—[*Official Report*, 5/2/19; col. 1430.]

and face today's reality. The reality is that a 29 March departure is simply not going to happen.

What we are witnessing, to the mystification of observers here and abroad, is a wholly divided Government and a Prime Minister who has let down Brexit voters by failing to provide the promised "smooth and orderly" departure to get the very best out of leaving—a Prime Minister who has unnerved the very businesses which have traditionally looked to her party to understand and promote their interests, who has divided her party and Parliament and who, unforgivably, has failed to unite the country after a divisive referendum. She has failed to reach out to remainers to reflect their interests as well as those who voted to leave. We see a Prime Minister who has failed to reach out to the Opposition, engaging not at all until the last few weeks, and even now refusing to move one iota towards our priority for a deal—a Prime Minister who promised the Commons a vote to halt no deal only when she faced defeat in the Lobbies, yet who even then offered only a temporary reprieve, leaving a no-deal threat on the table after 29 March and, as we have just heard, only the promise of a vote, with no indication of whether the Government would whip against a no-deal exclusion. That, to me, means that she is keeping it tight in her armoury. The noble Lord, Lord Callanan, endlessly reminds us that no deal is the legal default position. We say to him that it is not the moral default position.

I fully expect, when some future committee, no doubt chaired by someone in your Lordships' House, reviews how the Government handled this sorry saga, it will ask the normal tin-opener question written by the secretary to the committee—cui bono? Had we girls been taught Latin at school, I would be able to pose in Latin, instead of having to do so in English, the more important question—not just cui bono, but who pays? I am sure it is not the ERG members.

It will be businesses, consumers and the country. Fitch is putting our AA credit rating on negative watch, due to the potential exit without a transition

[Baroness Hayter of Kentish Town]
period. Of course, that signals a possible downgrade. Meanwhile, the UK would lose its current market access to the 60 third countries covered by special arrangements with the EU, Mr Fox having spectacularly failed to roll these over or to prepare all those exciting new ones with a swathe of other countries, as we were promised.

All of us have heard endlessly about the risk to supplies and businesses of no deal—from a shortage of pallets and life-saving medicines to delays, handling costs, legal queries and, of course, tariffs. I discussed tariffs earlier this week with the noble Lord, Lord Lilley, when we were at LBC. I am glad to see him here in his place in case I get this wrong, because I have to say that he slightly shrugged off the tariff problem, saying that a drop in the pound would compensate for it. That is not what it would feel like to consumers.

Lord Lilley (Con): I am grateful to the noble Baroness for giving way. What I said was that the drop in the pound would compensate those whose tariffs were around the average of 4%, but that, in aggregate, the tariffs amount to £5.3 billion. The saving we make from leaving is more than £10 billion. We would therefore be in a position to help those who face above-average tariffs and still have money in hand.

Baroness Hayter of Kentish Town: So the consumers will pay. Just an extra 5% on tariffs? Are we really going to go round subsidising food?

Lord Lilley: With respect, the money we save will not come from consumers; it will just no longer be available to the EU to finance its projects. Every year, we pay £10 billion more to the EU than it gives us back. We will no longer do so, and will therefore be in a position to use some of that money to help those industries—particularly farmers and car producers—and ensure that the effect of tariffs, if the EU is foolish enough to continue applying them to us, is offset.

Baroness Hayter of Kentish Town: I am talking about the tariffs that we will have to apply to the goods that we import, such as meat and cheese. Those will be paid for by consumers. The Government's own analysis shows the likelihood of food shortages and increased prices just from the interruption to trade, but a lower pound—whereby people will have less money in their pockets to buy any imported food—means that, in addition to prices going up because of shortages and delays in things arriving here, it will be even more expensive for consumers. The answer to "Who pays?" will be the consumers.

For those wanting to travel, mile-long queues for Eurostar trains, long waits at ferries, green cards for drivers and the loss of health cover will all impact British families. Does this no longer matter to a party traditionally careful of consumer prices and its electorate? The noble Lord, Lord Heseltine, warned last year in your Lordships' House of the electoral damage to his own much-loved and lived-in party. This continuing drift to no deal must be fuelling his fears. It is certainly fuelling mine, as well as those of the CBI, the IoD and all those affected by the Government's recklessness.

Baroness Deech (CB): Since the noble Baroness has mentioned morality, I raise a question with her: does morality lie with no deal? Brussels asked us what we wanted and we said we wanted a change to the border situation—a way out of the backstop—and it said no. It is not this Government who have led us to no deal—it is Brussels. When it comes to moral leadership, I have no idea what the leader of her party in the House of Commons has wanted for the last two years—it is not clear to the average observer. Leaving aside, for a moment, the moral swamp going on there, we have no idea what his position is.

Baroness Hayter of Kentish Town: We do. I made it clear yesterday—I am not sure whether the noble Baroness was in her place when I spoke to the House—that no deal is our choice because if we amend the deal on the table, we can get one. It is our choice, not that of the other side.

The costs of no deal, as I said, have been set out. The worries of the CBI, the IoD and of all the others have been made pretty clear to the Government—I am sure they have been if they are making them clear to me—and I wonder sometimes whether Ministers read their own papers. Yesterday, the Government's own paper predicted that the economy would be between 6% and 9% smaller in the long term in a no-deal scenario compared with today's arrangements, with the north-east losing out more than anywhere else—I am sure the Minister noticed. I thought that that, at least, would have attracted his attention.

Baroness Altmann (Con): Would the noble Baroness ask the Minister to agree that yesterday's paper which predicted the 6% to 9% reduction in the economy in the event of no deal noted that that excluded any short-term disruption costs from no deal?

Baroness Hayter of Kentish Town: It is a shame that he will not be replying but I am sure that his colleague—judging from that lovely poker face of his—has made a careful note of that and will respond later today.

We know that one bit, at least, of the Government is listening because we know they are preparing to set up a hardship fund—presumably with the money that the noble Lord, Lord Lilley, thinks will be available to pay for all those who will lose out; this seems a funny way of running the economy. Despite all that and the pressures for the hardship fund, the no dealers today have been attacking the grown-ups in their own party as "saboteurs, wreckers and blackmailers". This, coming from politicians who have blackmailed the Prime Minister by voting against her and who are willing to wreck the economy and sabotage business, all for their own ideological hang-up. This has to stop and it has to stop now.

Will the Minister who will sum up, and who is definitely not an ERG hardliner, push his political masters—or, perhaps, his political mistress—to rule out unequivocally any no-deal departure, with its lack of a transition period and the chaos that goes with that? Will he urge the Prime Minister to change her approach and to find a consensual way forward to unite the Commons and the country, and will he

ensure that an extension to Article 50 is requested this week? It is clear we will need it, but requesting it this week, rather than being forced into it, will help to calm nerves and offer some certainty to business. Will he work to see that such an extension is used not for more pretence and tweaking of words, but for a serious reconsideration of how we withdraw from the EU?

4.29 pm

Lord Newby (LD): My Lords, this is now the 11th debate or Statement on the Government's withdrawal agreement and political declaration since last December. During the three months in which these debates have taken place, not a single thing has changed. The purgatory continues.

For a number of months, when my colleagues have become exasperated that Jeremy Corbyn appeared to set his face against supporting a referendum on the Brexit deal, I have sought to reassure them by using the analogy of the five year-old schoolboy who does not want to go to school. As he is being dragged to school by his parents, he stamps his foot and says, "I don't want to go to school! It's not fair! I'm not going to school!" He knows, of course, that he will have to go to school, but his amour propre will not allow him to admit it. Only when he crosses the school threshold does he stop his wailing and run to join his classmates. Mr Corbyn has now crossed the threshold.

This is a fair analogy of Mr Corbyn's behaviour, but until yesterday, I did not think that it applied equally to the Prime Minister. Yet this is exactly what she has done with regard to an extension of Article 50. She has said publicly, all along, that 29 March is a sacrosanct departure date. She stamped her foot as late as the weekend to repeat this mantra but she has now proposed giving the Commons a vote to extend Article 50 for an unspecified number of months. She must have known for some time that she was going to have to shift her position but she has done so with the greatest reluctance, and in a manner which will enable her to blame the Commons for the decision which she will have flunked. She should herself be advocating a short extension on the basis of her conviction that her deal will succeed, for without an extension, it is simply impossible to get the necessary legislation through in an orderly manner.

When I debated this with Brexit Minister Chris Heaton-Harris on last Saturday's "The Week in Westminster" programme, he said that everything would be on the statute book in time, but apparently only by dropping half the primary legislation which we had previously been told was necessary and by implying the use of emergency procedures to get the rest through. Can the Minister tell the House which pieces of legislation the Government believe they will need to pass before 29 March if their deal is approved by the Commons? Specifically, does it include the Agriculture, Fisheries, Trade and immigration Bills? We have repeatedly asked these questions but from the Government, answer comes there none.

Yesterday, the noble Baroness the Leader of the House said in respect of Brexit-related primary legislation that we,

"need to ensure that this House has adequate time to scrutinise it in the usual manner".—[*Official Report*, 26/2/19; col. 148.]

Can the Minister explain how we will be able to scrutinise the European Union (Withdrawal) (No. 2) Bill in the usual manner? We will not know until 12 March whether the Government's deal has been approved. If it has, that gives a mere two weeks to take the Bill through all its parliamentary stages. Will the Minister acknowledge that we would have to break our normal rules in considering legislation if we were to get the Bill through in time, and will he apologise to the House on behalf of his noble colleague the Leader for giving such a misleading impression yesterday? Therefore, the Prime Minister refused to contemplate extending Article 50 to give time for her deal, if it is passed, but she has been forced to concede a vote on the extension of Article 50 if, as is highly likely, it does not.

The purpose of any extension, as is clear both from the Cooper-Letwin initiative and the possible rebellion of members of her Cabinet and government more generally, is to ensure that we do not crash out without a deal on 29 March. If anybody had any doubts about why they should avoid no deal, the Government's damning document of yesterday, *Implications for Business and Trade of a No Deal Exit on 29 March 2019*, should put them right. The noble Lord, Lord Livingston of Parkhead, summarised the position brilliantly yesterday when he described no deal as,

"not a negotiating card, but an act of wilful self-harm".—[*Official Report*, 26/2/19; col. 154.]

There are going to be votes on 12 and 13 March, which are likely to lead to further rejection of the Government's deal and a rejection of no deal. The following day there will be a vote—which is likely to pass—to ask the Government to request an extension of the Article 50 period. The danger is that everybody then relaxes. That would be a big mistake because the clock will still be ticking—just for slightly longer. The Government will still argue that no deal is on the table.

Lord Foulkes of Cumnock (Lab Co-op): Can the noble Lord remind me: is that not the ides of March?

Lord Newby: I am afraid I did not have the benefit of a classical education, but I know that the noble and learned Lord, Lord Keen of Elie, will be able to answer the question.

Noble Lords: It is the 15th.

Lord Newby: Only in your Lordships' House would the vast majority of people know the answer to that question. I believe the answer is yes.

Noble Lords: No, it is the 15th.

Lord Newby: Sorry—it is 15 March. I am not sure whether that answer is helpful to the noble Lord, Lord Foulkes, or not.

What are the options going forward beyond 14 March if an extension is approved? In reality, there are very few. We know that Labour will be supporting a people's vote on the Government's deal versus remain, as a way of breaking the impasse. So will we. We know that a mere extension does nothing to make resolving the backstop issue easier. We would be no clearer about

[Lord Newby]
our future relationship with the EU if, by some miracle, the Government were to get their deal through the Commons. As the noble Lord, Lord Kerr, demonstrated last week, the lack of substance in the political declaration condemns us to years of wrangling, during which time investment, business and jobs would leach out of the UK. In these circumstances, what will those Conservative parliamentarians—inside and outside Government—who are fiercely opposed to no deal and believe that remain would be in the country's best interests, actually do?

We have been watching with fascination as, week after week, a growing chorus of members of the Government has been discussing circumstances in which they might resign and follow the example of Phillip Lee and Sam Gyimah. So far, they have all teetered on the cliff edge. If Ministers remain in post after 13 March, they will, according to the Prime Minister's Statement yesterday, be still working in support of a Government who are keeping no deal on the table until the end of the extension period. Liam Fox, Chris Grayling, the noble Lord, Lord Callanan, and the Leader of your Lordships' House, might not find that offensive to their beliefs, but many—most—of the Government Front Bench in both Houses would. Yet they seem willing to keep going along with it. Why? What greater good than an aspiration to keep the Tory party in one piece can possibly motivate them? Might I suggest that they heed the statement of Duff Cooper who resigned as First Lord of the Admiralty in October 1938, in opposition to the Government's appeasement policy? He said:

"I have ruined, perhaps, my political career. But that is a little matter; I have retained something which is to me of great value—I can still walk about the world with my head erect".—[*Official Report*, Commons, 3/10/1938; col. 40.]

Kicking the can down the road remains the Prime Minister's defining attribute, but this is now no longer a credible strategy. Purgatory has its limits. For every parliamentarian, the day of judgment really is now at hand.

4.39 pm

Lord Howell of Guildford (Con): My Lords, it has been a habit in these debates to say at the beginning of each that there is nothing new to discuss, but this time there is a great deal to discuss, and I want to share my thoughts on it with your Lordships. In addition, we have had a new joke from the noble Lord, Lord Newby, which is always helpful and familiar.

From inside the Westminster bubble, I can see that things still look very confused, but if one stands aside outside and pauses for a moment, the situation is in fact as clear as daylight. In practice, the great binary choice on offer has shifted from the withdrawal deal or no deal to the withdrawal deal or Article 50 being delayed. The delay may be short and limited or it may be longer; it depends on what goes on in the other place. We have no control over that and no one really knows.

Obviously, the Prime Minister was always going to be reticent, to put it mildly, about what happens if she loses again before 12 March. That is entirely understandable. You do not enter a race announcing what you will do if you fall off at the first big fence; you enter the race to win. But this new situation, where the binary choice has changed, poses an acute dilemma for the European Research Group warriors, who now face an almost impossible choice. With the Prime Minister having nodded towards a short delay, as she did yesterday, the dilemma for the Brexiteers—the harder-line ones—is even deeper. The excellent Mr Nicholas Boles MP pointed this out in the *Evening Standard* the other night, and he is right, although he did not mention that this will also encourage some of the strongest remainers to oppose Mrs May's deal in the hope of ending up with no Brexit at all. That is their hope and they are quite open about it.

None the less, it seems to me that the Prime Minister has outfoxed her own rebels, half the media and now the Cooper-Letwin ensemble—we shall see about that this afternoon; it is going on now. Labour's new-found love of a second referendum—although on precisely what question is not at all clear—deepens the dilemma for the ERG rebels even further. If they vote with the Prime Minister, with or without add-ons to the withdrawal treaty and with or without a backstop softening or any other so-called alternative arrangement, she is over the hump, at least for the moment. If they vote her down, we delay and lurch into another bog land of uncertainty with all sorts of outcomes, of which a second referendum is only one—that would please the Liberal Democrats—and no Brexit is another.

In all this, the group I feel most sorry for—well, not really, but almost—is the ERG warriors, with their marshalled ranks and drawn swords. We were just talking about the Ides of March. My mind went back to Lars Porsena and his glittering Etruscan hordes, who planned to capture Rome but found that things went rather differently when they got to the city gates and the bridge. Instead of taking control, they ended up with those behind shouting "Forward!" and those in the front crying "Back!"

Of course, the absolute diehards in my party will never give in. I read one ill-informed article, alas by a recently joined Member of your Lordships' House, claiming that they had taken over the Tory party. In reality, they now risk losing everything. If even half the ERG breaks ranks now and just some of the Labour remainers who are waverers support the Prime Minister, she will win this round, contrary to all the predictions of the noble Lord, Lord Newby, and his friends.

This is what I believe will happen. The people worrying about shipping goods here by sea from Tokyo after 29 March need not worry. By April, we will either be on the path to frictionless trade and an admittedly slow journey out of the present customs union to a new form of free trade or still in the European Union. There can now be no crash-out, managed or otherwise. That does not seem to have been absorbed, judging by some of the comments made this afternoon. I am afraid the Brexiteers' dream has, for the moment, gone up in smoke. My belief is that the Prime Minister, with her deal, the massive agreed treaty with the European Union and all those in this country—the majority, I suggest—wanting to settle matters now and move forward, will win the day. Any further concessions from Brussels may come before 12 March if Brussels is

feeling helpful, or afterwards if not. Obviously the negotiators will not reopen the agreed treaty, but they may well agree to a codicil about its interpretation as time goes by. I gather they are now working it—the so-called joint interpretative instrument.

My prayer is that after this unhappy phase we will get on vigorously with building close relations—not just in trade but in security, defence, cybertechnology and even possibly in physical links such as the mooted second channel tunnel—with all our regional European neighbours, all as part of our new, unfolding international policy stretching out to Asia, Africa and the Americas, and to carefully balanced ties with China, where all the growth will be. For this we will need powerful networks and the know-how to nourish and benefit from these networks, the Commonwealth being foremost among them. Old alliances are falling away and new ones are becoming necessary as we enter a new cycle in international history.

This morning your Lordships' International Relations Committee heard evidence that we were on the verge of a terrifying new arms race and the possible spread of tactical nuclear weapons, and that the limits on nuclear warfare that the world has hung on to since Hiroshima are now slipping away and could leave our cities in smoking ruins. Somehow our Brexit bickering, breakaways and gabbling interviews with excitable MPs all seem rather small in comparison.

4.46 pm

Lord Kerr of Kinlochard (CB): Following the noble Lord, I am reminded of how much he has done down the years to encourage our engagement in Asia and Asian investment in this country. I feel very sorry for him, because this must be a sad time for him. If you take just Anglo-Japanese relations, his work down the years was remarkable. We know what the Japanese banks here are doing. We know what Hitachi and now Honda are doing. We know what Toshiba is doing. We know about Sony and Panasonic. When will we hear from the third of the great car companies, Toyota? Actually, we did hear from it. It exports 80% of its UK production to the European Union. Its executive vice-president, Didier Leroy, said that:

"The UK government should … understand that we cannot stay in this kind of fog when we don't know what will be the output of the negotiation",

and that any kind of EU import tax would create a huge,

"negative impact in terms of competitiveness",

for its UK plant. That quote—

"we cannot stay in this kind of fog"—

was from October 2017. It is still in this kind of fog. We have not told it anything, so it is not surprising that it has given up and is backing off. It has given up expecting clarity from us.

Lord Lilley: I am sure the noble Lord will want to congratulate Toyota on opening in this country a year later—in October last year—a line producing the best-selling car in the world, opened by the Secretary of State. That shows a rather different picture to that he was portraying.

Lord Kerr of Kinlochard: I wait to see what will be the fate of its massive investments in Deeside and in Derbyshire, both of which are very important. I am concerned; I know the company is concerned. The noble Lord, Lord Howell, has worked very hard to secure investment in this country and must be very sad.

The noble Lord, Lord Newby, started with a Churchillian quotation, which put me on my mettle. I was determined to match him. I can just beat him on vintage; mine is a 1936 quotation. Churchill described Chamberlain as,

"decided only to be undecided, resolved to be irresolute, adamant for drift".—[*Official Report*, Commons, 12/11/1936; col. 1107.]

As we kick the can down the road, somehow it came to mind. It is actually quite unfair to Mrs May; it was probably unfair to Chamberlain too. What is more striking about Mrs May is her messianic, Mosaic mission, and her determination not to listen to anybody else. I am impressed by her belief that she knows all the answers, and does not have to pay attention to any of us.

Lord Winston (Lab): I think the noble Lord will find that Moses listened. That was one of the issues.

Lord Kerr of Kinlochard: But what he brought down was graven on a tablet of stone, and what Mr Nick Timothy drafted for the Prime Minister in September 2016 was not, in my view, to be taken as graven on a tablet of stone. We know now that the Cabinet was not consulted about it. We knew at the time that the country and this Parliament were not consulted, but these four red lines have determined where we are now.

The European Union has said all along—it said it in the cover note of its first mandate—that if our red lines were to change, then it was happy to look again at its mandate and change it. However, we do not seem to listen to those across the House of Commons who propose something that would break one of the red lines. When Labour talks of customs union, and this House votes for customs union, it is dismissed because it breaches one of the four red lines.

By the logic of the Prophet Timothy, Switzerland, Turkey and Norway are not sovereign states independent of the EU, because in at least one respect each breaches at least one of the four red lines laid down by Mrs May in the party conference speech in September 2016. Yet the Swiss think that they are independent. They do not think they are in the EU, and are commonly regarded as not being in the EU. I do not know why the definition of Brexit that was laid down without consultation in September 2016 has to be accepted as the only definition, and why it is a denial of Brexit, flying in the face of democracy, to argue that there might be a better Brexit than the one defined by Mr Timothy and the Prime Minister in September 2016. That is why I am offended by the "my deal or no deal" choice.

As everyone has been saying and as the document published yesterday proves, no deal is an economic catastrophe for the country, but it cannot be right that the only alternative is the lineal descendant of the tablet brought down by Moses to the party conference

[Lord Kerr of Kinlochard]
in September 2016. There are at least two more options available. One is to try for a better Brexit, which I do not believe the Prime Minister is going to do with the short extension she says that she might be ready to foresee. She is not looking at anything other than the sort of declaration that could be fitted into the political declaration, or might be free-standing, in some way adding emollient words about the backstop. However, the backstop is not the only defect in this dreadful, humiliating package—this humiliating treaty and vacuous declaration.

If we were prepared to contemplate the Swiss approach to free movement of persons, the Turkish approach to a customs union or the Norwegian approach to the single market, or if we were prepared to envisage an EEA-type arrangement, we do not know what new prospects might open up—we have never tried, because No. 10 does not listen. It has never been tested. We have never discovered what the EU means when it says that, if we were to change our red lines, it would change its negotiating position. That makes the "my deal or no deal" position irresponsible.

Others have explained why no deal is extremely bad for our trade. There would be no preferential arrangement with the EU or with any of the countries with which it has preferential deals, which amounts to more than two-thirds of our trade. The non-EU countries I am talking about include some very big ones, such as Japan, South Korea and Turkey. We are told that we have rolled over six agreements, but these are with minnows—not Japan, not South Korea and not Turkey.

Quite apart from the question of our domestic tariff, which the noble Baroness, Lady Hayter, spoke about, we have to accept that our export market would be seriously damaged by no deal. Whether it happens in April, May or June, no deal is no better then than it would be on 29 March.

Lord Howell of Guildford: I apologise for interrupting the noble Lord—he said some very nice things about me and I have a lot of very nice things to say about him. However, he has presented me with a puzzle. He keeps talking about this business of "my deal or no deal". In fact, the Government have now recognised that it is not "my deal or no deal", but "my deal or postponement"—admittedly, in the words of the Prime Minister, a "short" postponement. We all know perfectly well that an overwhelming majority in the other place supports a delay in Article 50. If the Prime Minister fails on 12 March—I do not think she will—there will be a postponement. The concept of "my deal or no deal" is last week's story. It is simply out of date, so why is the noble Lord worried about it?

Lord Kerr of Kinlochard: I am worried about it because I do not believe that the Prime Minister intends to use the short delay she says she is prepared to settle for—although she has not said that she would vote for it—to explore the possibilities of a better Brexit. As far as she is concerned, the only deal is that which she brought back in November, possibly titivated slightly in the declaration to try to deal with the objections of some to the backstop. I believe that is all she intends to do. The right thing to do is to have a long enough extension to go back and consult the people. This has turned out so differently from what we were told, and it is absolutely right that we would go back and consult the people.

The point I was trying to make was about trade. I would like to end on a warm and friendly note towards the noble Lord, Lord Callanan, who is in such sparkling form today—I shall try to sparkle back in what is, for me, an unusually friendly way. I congratulate him on his honesty in the last debate, when he put to rest the Legatum Institute theory that the answer to the problem of WTO terms and no preferential trade deals was Article 24. It was extremely straightforward and honest of him to say of Article 24:

> "This provision refers to interim agreements. In order to use it, we would need to agree with the EU the shape of the future economic partnership, together with a plan and schedule for getting there. This would then need to be presented to all 164 WTO members and they would be able to scrutinise it, suggest changes and, ultimately, veto it".—[*Official Report*, 13/2/19; col. 1935.]

That, I believe, is absolutely correct. I think it was generous and honest of a Minister to put it on record. Article 24 is absolutely no way out in the situation we would be in with no deal. It depends on a deal being struck. It depends on a process going on. It is possible that eight years into future negotiations this is what we might be able to do, although we would, as the Minister rightly said, be dependent on the agreement of 164 parties in GATT. Therefore, even that cannot be assumed.

5 pm

The Lord Bishop of Oxford: My Lords, I always rise to speak in this Chamber with some fear and trepidation but never more so than today: not only because of the expertise, passion and conviction in this Chamber but also the jeopardy in which we find ourselves as a nation and a Parliament. My journey through the Brexit process is that for seven years until the referendum year, I was the bishop in Sheffield and south Yorkshire, where some of the communities voted by almost 70% to leave the European Union. I moved shortly afterwards to the diocese of Oxford, where the three counties, by and large, are significantly in favour of remain.

I suspect that historians will look back on this process and focus not so much on the calling of the referendum or even the referendum itself but on the long period of indecision and paralysis that has followed. I spent some time in Canterbury Cathedral some weeks ago and stood on the place where Thomas Becket was murdered. We were reminded in the cathedral of Eliot's play "Murder in the Cathedral". In his moment of great peril and jeopardy, Becket is visited by four tempters who, in the play, become his four assassins.

I think four significant temptations have grown in proportion to become dangerous assassins facing Parliament in the coming weeks. The first is to allow our course to be shaped by self-interest and personal ambition. This Brexit debate has been marred from the beginning, it seems, by the narrow calculation of those hoping to gain or retain high office. From the perspective of the country, nothing has undermined trust in our politics more than this untrammelled ambition, which is apparent to all.

Lord Lilley: Who is the right reverend Prelate accusing of this untrammelled ambition which is apparent to all?

The Lord Bishop of Oxford: I prefer not to name names.

Lord Lilley: Even though it is apparent to all?

The Lord Bishop of Oxford: I do not single out a particular party or a section of a particular party. One of the dangers of our politics at present is that personal ambition is being put before the country and I think we need to draw that period to an end with great urgency, lest our politics and our confidence in democracy be damaged for a very long time. Conversely, nothing will restore trust in our politics more than putting the interests of the nation ahead of personal position.

The second temptation is to allow yourself to be swayed by narrow party interests and the pursuit of or retention of power in the short term. The issues at stake here are much greater than the rise and fall of particular parties or factions. We need our MPs and Peers to act in the greater national interest and for national unity. I would argue that Parliament needs to come together if the nation is to come together and emerge from this long period of division and introspection.

The third temptation is nostalgia—a romantic attachment to the past. It is wrong to imagine that we can reverse the effects of one referendum by another or go back to a time before the Brexit debates began, when all was well, or go back still further to a different age of independence and imagined glory. We cannot. We must deal with the world as it is, not as we would like it to be, and steer our course accordingly; the leadership that we offer will be judged by this measure.

The fourth and final temptation is idealism: in a world of difficult choices and necessary compromise, holding on to an ideal which is no longer tenable, whether it is a particular kind of leaving or remaining or something else. This, it seems to me, is currently the greatest barrier to positive cross-party consensus. A coming together across Parliament is impossible without the willingness to compromise, and one of the encouraging features of recent weeks has been cross-party engagement.

As others have said, there are huge issues facing our world and our country: climate chaos, care for the poorest, increasing equality and opportunity, our changing relationship with technology, and the challenge of social care and health funding. We cannot allow our national attention to be diverted from these issues by prolonging still further a series of adjustments to our relationship with Europe. The nation is looking to its political leaders for a strong, compelling and united vision of the future that enables us to see beyond these debates in a way that brings unity and common purpose.

The most reverend Primate the Archbishop of Canterbury has spoken in this House about the vital importance of reconciliation in these debates and the protection of the poorest in society. The most reverend Primate the Archbishop of York has written of the need to preserve trust and confidence in our democratic institutions through a time of significant national jeopardy. I hope and pray that, in the midst of these difficult debates, we will be able to turn aside from those four temptations, seek meaningful compromise and act for the common good. I underscore the request to the Minister to lay out for us the ways in which the Government will continue to foster cross-party collaboration and listening, move towards a positive consensus and work to draw Parliament and the country back together.

5.07 pm

Lord Cormack (Con): My Lords, I am sure that we are all grateful to the right reverend Prelate for a challenging and interesting speech. If I remember rightly, the words that TS Eliot used were:

"The last temptation is the greatest treason:
To do the right deed for the wrong reason".

A number of things have happened since our last debate, and my noble friend Lord Howell of Guildford was right to refer to that. As far as the last 24 hours are concerned, two very significant things have happened. First, we have had the publication of a document entitled *Implications for Business and Trade of a No Deal Exit on 29 March 2019*. Most of your Lordships will have read it. It is brief and to the point, and it is sombre and very worrying. It records, for instance, that we have done a deal with the Faroe Islands but that we still wait to do ones with Andorra and San Marino. It puts into perspective the real problems that still lie ahead.

The other thing that has happened in the last 24 hours is that one of our number has produced something which I am sure will be read far more widely than any of our speeches in this debate. I refer to my noble friend Lord Finkelstein, who is sitting in front of me. If any of your Lordships have not read his piece in today's *Times*, I commend it to them most warmly. He illustrates the real problems that have been caused to our nation and to the Conservative Party in particular by the zealots of the ERG.

I want to reflect on perceptions. I was encouraged to do that by two things this morning. First, Carolyn Fairbairn, the director-general of the CBI, gave a very sober interview on the "Today" programme. She appealed to people in all parties to come together to put aside what she called "tribal politics". Having listened to that programme, I heard a different version of that appeal, when I came in in a taxi. I always like to talk to taxi drivers, and this particular taxi driver was very upset about what is happening to our country. He said, "The trouble is that there are people in Parliament on the far right who don't really mind if the ship goes down, so long as the captain is British". I thought that was a very perceptive observation. He went on to say that he felt that the problem with the Prime Minister was that she was giving the impression, the perception—we all know how important perceptions are—that party unity was more important than national unity. I do not believe that the Prime Minister has that in mind for half a second. I believe that she is an intensely patriotic woman, who is indeed seeking to do good for the country. Nevertheless, that is the perception out there among many people, and it is crucial that she puts that right.

[Lord Cormack]

As my noble friend Lord Callanan knows, I hope very much that a deal can be agreed. I was a staunch, fervent remainer. As he knows, I accept the result of the referendum, with sadness and disappointment. I do not want a second referendum. I do want us to move on after a deal—as, I inferred, did the right reverend Prelate, my noble friend Lord Howell, and others. But we cannot be held to ransom by an extreme group within our party, which frankly does not put country before party.

A noble Lord: They have a different view of things.

Lord Cormack: They have a very different view, and it is one that is damaging to our nation. If we look at the paper produced by the Treasury yesterday, we cannot really deny it. What I would like, as I have mentioned in your Lordships' House before, is for the Prime Minister to reach out to all parties. There is one particular and specific way in which she can do that: by having a free vote in the House of Commons, as the late Sir Edward Heath did when we entered the European Economic Community, as it was in those days. That enabled those on the Labour Benches, who were torn between party loyalty and national loyalty, to give the latter preference. It enabled the late Lord Jenkins of Hillhead—Roy Jenkins, as he then was—to lead a significant group of Labour Members into what I considered to be the right Lobby, and so to change the course of history, for nearly 50 years.

I believe that the Prime Minister would be doing a great national service if she took the Whips off, because it would be very difficult for Mr Corbyn to have the Whips on in those circumstances; and it would be very easy for those he attempted to whip to discount the whipping. The right reverend Prelate was right: we really do have to bring our country together. There will inevitably be a period of extension, whatever happens in the other place, to get all the necessary legislation through. There is nothing wrong with that.

I would make another appeal. I have made it in your Lordships' House before; it fell on deaf ears, but that does not mean that I cannot make it again. In June 2016, after the referendum, I suggested that we should have a Joint Committee of both Houses, with all parties examining the pros and cons. It was sad that red lines were drawn so quickly. It was sad that a certain person was appointed Foreign Secretary so quickly. It was sad that that attempt to bring parliamentarians of both Houses and all parties together was neglected. In the transition period, concentrated and probably fairly brief as it will be, there is no reason why that should not happen and every possible reason why it should. If we are to bring our country together, if we are to heal bitterness and strife, we have to do that, and I very much hope that we will.

5.15 pm

Lord Davies of Stamford (Lab): My Lords, it is a great pleasure to follow my fellow Lincolnshireman, the noble Lord, Lord Cormack. He is a man I have known for many years—decades, really—and I find the two proposals that he has just made rather alluring. They are very characteristic of his continual commitment to finding consensus in our national affairs wherever it is possible to do so. I also thought that his quotation from TS Eliot was the most apt literary quotation that I have heard in the course of these debates—indeed, in all these years that we have been discussing Brexit.

I begin by correcting the noble Lord, Lord Callanan, on a point of constitutional convention. He criticised the Labour Party for resiling from its commitments in the last Labour election manifesto. I have to tell him that we cannot have resiled from those commitments because they disappeared the day we were defeated in the general election. If a party wins an election, it has a contract with the electorate and must fulfil that contract—that is how our democracy works—but if a party is defeated, it has no such obligation, and not only is it free to find other policies if it wishes to do so but, indeed, it is encouraged to do so. Not only constitutional principle but common sense leads in that direction. If the noble Lord thinks about this for a moment, and I hope he might, he will realise that on his approach the Labour Party would still be committed to the nationalisation of the means of production, distribution and exchange, while he and his party would still be committed to opposing Catholic emancipation or the abolition of the Corn Laws, although maybe the noble Lord opposes those things retrospectively. The only reason things move on is that when you are defeated in an election your commitment at that election disappears and you have to think anew. That is a vital part of the process of progress and renewal in a democracy.

Anyone who has been involved in negotiations knows, or ought to know, that your greatest enemy is complacency, self-delusion and a tendency to underestimate the challenges and obstacles you face, to underestimate the strength of the bargaining power of the counterparty with which you are dealing and to overestimate your own. This Government have always believed that, in the immortal words of Mr Gove at the time of the referendum:

> "The day after we vote to leave, we hold all the cards".

They have proceeded on the basis that that was true. They have fundamentally and systematically underestimated the bargaining strength of the people they were dealing with. They thought that because the EU sells more to us than we do to it, and the Germans sell more than anyone else, the Germans would be running the show and would more or less instruct the Commission to be gentle with us and make whatever concessions were necessary because that would be in the interests of their own firms. The idea that the EU would take a permanent stand on behalf of the Irish, who are rightly defending their right not to have their country divided in half by a hideous permanent border, will not have occurred to them. They will have said, "Oh no. There's no way that the EU, with 500 million people, will allow a country of 2 million or 3 million to stand in its way". They were completely wrong on all those points—disastrously wrong. What is more, they were wrong for the wrong reasons, coming back to the TS Eliot quotation given by the noble Lord, Lord Cormack.

I am afraid the British have underestimated the Irish for 800 years. I am sorry that that dreadful tradition still continues in the Tory party of today. The Tory party has never understood the moral force or the genuine idealism behind the European Union, or its genuine commitment to the concept of solidarity. It does not understand those things at all. I suppose this is what Castlereagh called,

"a piece of sublime mysticism and nonsense".

But it is not mysticism and nonsense; it is a fact that the Tory party should take into account. It will go on making this mistake. The continental countries will not abandon the Irish or ban the backstop. The sooner the Government realise that, the better.

The Government's capacity for self-delusion does not end there. It goes right across the board and is an extremely worrying facet of the present Administration. It stretches into the economy. I do not want to be seen to be unduly critical of the noble Lord, Lord Bates, first, because I am very fond of him—in common with the rest of the House, I think—and secondly, because he is not in his place today. I regret that, but of course it is totally understandable and that is not a criticism of him either. Nevertheless, he is a government Minister and if he says something before the House, he is accountable for it and it is reasonable for us to continue to say what we need to say on the subject, whether the Minister is present at that moment or not.

I will quote what the noble Lord, Lord Bates, said last week in the debate we had on the same subject. We had been speaking about the economic cost of Brexit, a matter which has naturally come up this afternoon, and on which I want to say something else as well. The noble Lord said:

"What was not given was any potential up side to leaving the European Union"—

he was talking about an economic up side—

"and the ability to have our own trade deals and set our own economic and trade policy. That needs to be factored in, and we remain confident that we have a bright future outside the European Union".—[*Official Report*, 20/2/19; col. 2280.]

The Government have now, at last, released their impact assessment of Brexit. It is frightening and appalling. As the noble Lord, Lord Callanan, must know, in the case of his part of the world, the north-east, it predicts that GDP will be 10.5% lower than it otherwise would be, as a result of Brexit. The average decrease throughout the country is between 6.3% and 9%. That is pretty horrific. If you say, "You have not taken the good things and the positive economic return into account," I have to say: what is the positive economic return? No one has mentioned it. We have had these debates for months and years now, but I am yet to hear about it.

We are now told that we will have trade deals with a lot of countries around the world. However, the day we leave the European Union, we lose 40 trade deals, as we know. Dr Fox said, "Don't worry, I'll negotiate the 40 trade deals and have them ready for you by March or April 2019". What has actually happened? We have five trade deals, I think. In aggregate, they represent about 2% of British exports. Even if he had got all 40 trade deals, it would not have made a penny's contribution to offset the economic costs of Brexit. It would merely have meant that there would not have been any further costs from losing trade deals. I do not know whether he will get to 40; he is 12.5% of the way there. That is not particularly encouraging.

The big issue is whether we could ever have a trade deal with the United States, which represents 25% of our exports. Does any noble Lord in the House think that is a feasible possibility? That would mean we would have to accept from the United States beef impregnated with antibiotics—a serious and long-term threat to public health. We would have to accept our own beef producers being undercut by incredibly cruel methods of cultivation—such as zero grazing—in the United States. We would also have to accept chlorinated chicken, and so it goes on. Are we going to accept that? I do not think so.

The European Union had discussions with the United States on these features, which broke down, and discussions on the investment guarantee, which might also be a problem. Does any noble Lord believe that the United States would sign a free trade agreement with us, leaving aside agricultural products? No one who knows the United States could possibly believe that for a moment. The enormous influence of the farm states in the Senate is one of the first things that hits you about Congress. It has been the case for a long time. So it is out of the question. We are not going to do it—it is not going to happen. It is fairyland, dreamland.

What about China? Now we are moving a long way down the scale, because we are talking about people who receive a much smaller proportion of our exports, although that proportion could increase rapidly over time. But who, of those who know China, is not aware of the Chinese sensitivity to unequal treaties? Who could imagine suggesting to Mr Xi Jinping an unequal treaty under which we have free trade with China but place quotas on the import of Chinese steel? Do you suppose that any British Government could abolish those quotas and see the end of the steel industry in south Wales and elsewhere? Of course, the Government are committed to not abolishing those steel quotas. So, is there a realistic possibility of a free trade deal with China? No, there is not.

What about India? We know, from the noble Lord, Lord Bilimoria, during previous discussions on these matters, that Mr Modi—and India generally—has a tradition of not signing free trade agreements with developed countries, which is unlikely to change. Mr Modi has said that the one thing he really wants is more visas. Since a major factor in the result of the referendum was probably immigration, how are we going to turn around and say that now, as a result of that referendum, we are going to give many more visas to India on special terms? That is not likely to happen.

This is rubbish. That is the point: this is total rubbish. We are buying hot air. There is nothing in it at all. There are no countervailing economic benefits from Brexit, no economic gains or economic revenues. Not one has been mentioned in the months of discussion here, and not one exists. None exists outside the fantasies of the Government. It is a very serious matter. I do not know whether the Government have deceived themselves,

[Lord Davies of Stamford]
but they must not be allowed to deceive the British people. Above all, the Government must not be allowed to deceive the British people and, as a result, lead them into a situation in which 10% of their wealth will be destroyed.

5.28 pm

Lord Campbell of Pittenweem: My Lords, it is always a pleasure to follow the noble Lord, Lord Davies. I confess that I do so with a certain amount of envy, because I wish I had the same capacity to speak for 10 minutes without notes and avoid repetition, hesitation or anything of that kind, and to speak, as always, entirely relevantly to the issues that we are discussing.

One of the consequences of this debate is that it has forced me to ask myself if I am a tribalist. I do not think I am, but I certainly believe that the best interests of the people of the United Kingdom rest with remaining in the European Union, and none of the arguments I have heard, right back to the beginning of the campaign for what we may in time come to call the first referendum, has caused me to change my mind in that regard. I make this admission at the outset, so that it is clear precisely which direction I am coming from.

I was interested in the references to the ides of March and Lars Porsena of Clusium. My recollection is that Lars Porsena was not present when Julius Caesar was assassinated, but he was present when Horatius held the bridge. If 14 and 15 March are now so closely allied, I would, if I were the Prime Minister, stay pretty close to my close protection unit—certainly on 15 March.

I go back to the Statement made yesterday by the Prime Minister and repeated here. I have swithered between considering its terms in some respects naive and considering them disingenuous; I am not quite sure which. The Statement, however, assumes that there will be success in obtaining binding legal changes to the agreement that contains the backstop. There is no evidence to justify that. Why should the European Union make any such concession? Noble Lords should ask themselves what would happen if the position were different. Suppose that the European Union had put the backstop in the agreement and that we had agreed to it, and then the EU had come along and said, "Well, actually we want to change the agreement". What would we be saying here? We would be saying "Pacta sunt servanda"—this is a day for Latin and for a classical education—or, in other words, "You have entered into the agreement and you are bound by it". It is therefore hardly surprising that there is no rush to offer the changes that the Prime Minister appears to think she is capable of getting.

If the conversations with Mr Tusk to which the Prime Minister referred in the Statement were as constructive as she claimed—if there had been a miraculous breakthrough—we would have heard about it. Being of such significance, it would have been leaked within 10 minutes of the end of the meeting. Exactly the same treatment would be given to the information that the Attorney-General had engineered some legal triumph in Brussels. The truth is that no progress has been reported because there is no progress to report.

I have some sympathy for the Prime Minister, to the extent that, rather like a yacht in heavy weather, she finds herself tacking to one side then the other. According to today's newspapers, the remainers and soft Brexiteers in the Cabinet were favoured yesterday. As if to balance that, however, the Prime Minister expressly refuses to depart from maintaining the apocalyptic possibility of no deal. She does that because she wants to offer some balance to the fundamentalists. I have not yet read the article by the noble Lord, Lord Finkelstein, but I shall do so as soon as I am released from my obligations in your Lordships' House.

The most significant thing that has happened is the publication of the document entitled *Implications for Business and Trade*. I suggest to the Minister, who referred to the document that was sent to every household in the country, that we send a copy of this document to every household and see what their responses are to the proposal that we should leave no deal on the table.

If this were the United States Congress, I would read the whole document into the record. That, I fear, would make unnecessary demands on the patience of your Lordships. I refer, however, to paragraph 12—to which reference has already been made by the noble Lord, Lord Cormack—which explains how little has been achieved in relation to these so-called trade deals. Furthermore, Article XIV of GATT—to which the noble Lord, Lord Kerr, referred—is eloquently set out in paragraph 14. Later, in paragraph 17, it is stated that:

"Evidence suggests that individual citizens are also not preparing for the effects that they would feel in a no deal scenario".

Paragraph 18 goes on to say:

"Government judges that the reason for this lack of action is often because a no deal scenario is not seen as a sufficiently credible outcome to take action or outlay expenditure".

If the public do not think it is a sufficiently credible outcome, why on earth is the Prime Minister determined to stick to it? If ever there were an opportunity to go with public opinion, it is surely there.

The other point I wish to make is that we talk here about Northern Ireland and about the backstop. Noble Lords will see, at paragraph 37, dealing with the question of Northern Ireland:

"Northern Ireland is particularly vulnerable given its high proportion of, and reliance upon, SMEs (75% of all private sector employment) and the number of businesses who trade directly with Ireland (Northern Ireland's largest international export market)".

It would be something of an irony, would it not, if Ireland, about which there has been so much discussion in the course of these many debates, were to be the part of the United Kingdom that suffered worst as a result of a no-deal option?

My last reference repeats a question asked of the noble Lord, Lord Callanan. Paragraph 50 consists of three and a half lines under the heading, "British Overseas Territories and Crown Dependencies":

"The UK Government continues to work closely with British Overseas Territories, Crown Dependencies, and Gibraltar to prepare for all outcomes, including a no deal scenario. Overseas Territories are likely to experience effects to those parts of their economies with close ties with the EU".

What are we doing for Gibraltar? What is in the plan for Gibraltar, which is, in many respects, at the mercy of Spain if the United Kingdom withdraws from the European Union? I have not heard any detail about

that. If these issues are of such importance to the Government, then surely the Government should have been up front and clear as to precisely what they were offering, and should have considered whether compensation or something else of that kind might be required.

The truth is that anyone who has read that document could no longer, either in conscience or common sense, believe that to leave no deal on the table as some kind of bargaining counter makes any sense whatever. My noble friend Lord Newby beat me to the draw in quoting the noble Lord whose designation is Parkhead. Those who know football in Glasgow will anticipate that at some stage we will get a noble Lord of Ibrox, but perhaps that is a little too frivolous for the occasion. How could anyone who has read that document still hold the notion of a no-deal exit?

On occasion I have accused the Prime Minister of incompetence, and now I fear I accuse her of a lack of responsibility. It is not responsible to take this country down to the wire. If we consider that there have been two and a half years, are we not entitled to ask why that time has been so badly spent that these are still live issues within a few days of the statutory requirement that we leave the European Union? I think it was the noble Lord, Lord Cormack, who mentioned the fact that the Prime Minister has managed, whether inadvertently or otherwise, to give the perception that she put the interests of her party above those of the national interest. It is irresponsible of her not to seek to remove that perception at the earliest opportunity.

My last point is, I suppose, rather more personal than I would normally make. I have said already that I do not believe I am a tribalist, but I believe in the European Union and I am afraid to say that nothing that has happened in recent times has caused me to alter that belief. I am told that leaving is a result of the decision of the British public in a referendum, but in the late 1980s and early 1990s—the noble Viscount, Lord Hailsham, will recall this—the question of capital punishment was a live issue in the Commons. On two occasions, we had votes on whether capital punishment should be restored. I am in no doubt that, had there been a referendum at that time on capital punishment, it would have been carried overwhelmingly in favour. But on both those occasions I voted against capital punishment. I did so because I had successfully prosecuted in capital murder cases where the accused would have been hanged; equally, I had unsuccessfully defended in such cases. I therefore believed that capital punishment was wrong. I believed it was not in the best interests of society or the United Kingdom.

I freely accept that leaving the European Union is of a different order. It is not a precise parallel—parallels are rarely precise—but I have the same strength of feeling that the best interests of this country do not lie in being outside the European Union, and I have the political consequences in mind as much as the economic ones. If I may coin the phrase, "It's not just the economy, stupid". We face challenges from Moscow, Beijing and—yes—to some extent, Washington. It is far better to meet these challenges as part of a 28-member Union, which is unique and whose contribution to economic and political stability in Europe has been overwhelming. Why should we give that up?

5.41 pm

Viscount Hailsham (Con): My Lords, it is a very great pleasure to follow the noble Lord, Lord Campbell. Neither he nor I is a tribalist; we have in fact worked together over many years, often in agreement, starting with our joint opposition to the second Iraq war. We are entirely in agreement with the debates on Brexit. It is also a great pleasure to follow two of my neighbours—my noble friend Lord Cormack and my former honourable friend Lord Davies of Stamford. They and I represented Conservative constituencies for many years. We know that there is a serious distinction between the admirable views of the association and the views of the ordinary Conservative voter. They are not the same, and I very much fear that the members of the ERG do not understand that basic fact.

I have expressed my views on a number of occasions, though not recently in formal debate. Therefore, I will confine myself to making three substantive points. First, we should acknowledge that no deal that can be negotiated is better for the United Kingdom than staying in the European Union on existing terms. Because of the negotiating skills of successive Prime Ministers, Britain has achieved the substantial advantage of membership while securing the rebate and also opting out of many policies of which we disapproved. That is a hugely advantageous position. The Prime Minister should have the honesty and the courage to state what probably the majority of Parliament believes—that Brexit is a very serious error. It is a policy which, on its merits, should not be pursued.

I say this not as a Europhile. I am perhaps not as enthusiastic about the European Union as the noble Lord, Lord Campbell. All my instincts are in fact the other way. As a Minister in the Home Office, the DTI, the Foreign Office with my noble friend Lord Garel-Jones, and in agriculture, I attended many euro councils. From that experience, I can identify many defects within the European Union. I do not think that it respects democratic values; I do not believe in ever greater integration. Managing BSE was a profoundly disagreeable experience. However, I am firmly and absolutely convinced that our national interests are best served by remaining within the European Union. Should we leave on any of the terms that are conceivably negotiable, our economic, political, cultural and strategic interests will suffer grave and long-lasting damage—we will enter a period of progressive and relative decline.

When I was in the DTI, I was frequently involved in discussions on inward investment—for example, with the Japanese. In our discussions, we always emphasised that Britain was the gateway to Europe; if you close that gateway, or obstruct the passage, potential overseas investors will simply look elsewhere. In 1962, Dean Acheson said that Britain had lost an empire and had failed to find a role in the world. At that time he was right but, subsequently, we have developed an important role as a leading nation within the European Union—a role which has reinforced, not diminished, our influence on the world stage. We are about to throw all of that away.

I turn to the question of delay. Unless Brexit is delayed, we are due to leave on 29 March. Here, I may have a declarable interest. My family and I have long-standing plans to go abroad on 31 March—that may

[Viscount Hailsham]
have been an extremely unwise decision. It is essential that the deadline be extended and it is clear that our European partners would welcome this. There are, of course, short-term reasons for seeking an extension. As the noble Lord, Lord Newby, rightly said, the legislative programme is not, and will not, be ready in time. The problems with the backstop have not been resolved—matters spoken to by the noble Lord, Lord Davies of Stamford. However, in arguing that we need more time, I am talking about a much longer extension than is generally suggested, particularly by the Prime Minister. I entirely agree with the view of the noble Lord, Lord Kerr, on this point.

My reasons for asking for a very long extension relate to the holding of a further referendum. I think that it is increasingly obvious that a further referendum is probably the only acceptable way forward—I entirely agree with my noble friend Lord Garel-Jones on this point—but one difficulty lies in determining the question to be put to the electorate. In determining that question, we in fact identify the proper way forward. Clearly, one question should be: should the United Kingdom remain in the European Union on existing terms? That is an essential question, but what about the other questions? I am very cautious about putting the option of leaving the European Union without a deal to the electorate—there is not likely to be a parliamentary majority for such a policy. To impose an obligation on Parliament for which there is no supportive majority is to invite a constitutional crisis of a devastating kind. The question that has to be determined is: what are the other questions? It has to be the negotiated deal, but here lies the problem: what deal?

The deal presently negotiated by the Prime Minister is an interim and transitional deal; it does not and cannot reflect the ultimate arrangements between the European Union and the United Kingdom. It is therefore a very unsatisfactory subject for a referendum. I also acknowledge the arguments of those who say, "Another referendum? How many more?" So if there is to be a further referendum, it should not be on the present and transitional deal but on the final deal, yet to be negotiated, and that may be many years distant.

If that proposition is accepted, much else falls into place. The deadline must be extended well beyond 29 March. Article 50 must be revoked—we are still in time to do that. Then, as full and remaining members of the European Union, we should embark on orderly negotiations to leave the European Union. Once those have crystallised into a concluded agreement, regulating the ultimate arrangements between ourselves and the European Union, that agreement could be put to the country in the further referendum—unless, of course, the electorate is prepared to leave the question to Parliament, which within our constitutional practices would be wholly proper.

I am conscious that what I have suggested will be very unpopular in some quarters. But none of the alternatives are attractive. We are facing the worst peacetime crisis for over 100 years—certainly since the failure of the Home Rule legislation, perhaps before. Now is the time to put what we deem to be the national interest before any party consideration. That is what our predecessors did in May 1940. The Prime Minister fell and a national Government was formed. If the Prime Minister is seen to put nation before party, she may fail, and she may fall. But she will have earned great respect, and history will then judge her generously.

5.52 pm

Baroness Bull (CB): My Lords, in my family, before any departure we have a tradition of doing what we call a "last-minute nervous"—an 11th-hour check that in our preparations to leave, nothing has been overlooked or left behind. In thinking about whether to take part today, I found myself doing that same nervous check: asking whether there could be any issue that we have not properly considered in our take-note debates thus far. Over seven days, according to *Hansard*, noble Lords have collectively contributed some 280,000 words. The noble Lord, Lord Callanan, is surely right when he suggests there can be nothing we have overlooked. But in searching those 280,000 words, I was astonished to find just 80 covering the specific effects of Brexit on women. It is 99 years, almost to the day, since the first woman spoke for the first time in Parliament and yet over seven days of transcripts, the word "women" appears only 13 times. So I rise again, not wishing to test your Lordships' patience, but duty-bound to put on the record the potential impact of exiting the EU on women in the UK.

Since joining the EU, as noble Lords will know, there have been substantial gains for gender equality and women's rights in the UK. Equality between men and women was one of the EU's founding values, with the principle of equal pay included in the 1957 treaty of Rome. Over the past 45 years, women in the UK have won the right to equal pay, including for work of equal value. We have seen progressive reforms related to part-time workers—the majority of whom are women—parental leave and the gender pay gap. There is now uncapped compensation in discrimination claims and increased protection for pregnant women at work. We have not only seen enhanced employment rights for women; protection for women escaping domestic violence has been strengthened, with European protection orders guaranteeing victims similar protection in all EU member states.

It would not be right to claim that all these advances are solely because of our EU membership; nor would it be right to assume that, on leaving the EU, all this would fall away. Indeed, much of the EU's equality legislation is already incorporated into domestic law by the Equality Act 2010. Nevertheless, the Equality and Human Rights Commission has raised concerns about the effects of Brexit on women. In doing so, it echoed concerns expressed by the House of Commons Women and Equalities Committee in February 2017. Its report concluded that transposing EU law was not enough and that,

"the Government needs to take active steps to embed equality into domestic law and policy".

In response, the Government said that they,

"share the goal of ensuring there is no erosion of equalities rights and protections at the point of leaving the EU".

But confidence in that commitment has been undermined by the absence of any references to women in the main body of the withdrawal agreement and by the potential

for Henry VIII powers to lead to reductions in protections in future. As the noble Lord, Lord Cormack, noted in this House in March last year,

"the very last thing we should refer to Henry VIII clauses is women's rights".—[*Official Report*, 8/3/18; col. 1227.]

Perhaps the biggest threat to women is dependent on what happens to our economy if—and after—we leave the EU. Any negative impacts of an orderly Brexit, or, in the worst case, of leaving without a deal, will hit women—specifically, the most vulnerable women in our society—hardest. Reductions in public spending have a higher impact on women, as the primary users of public services. Cuts in public sector employment or pay disproportionately affect women because of their greater concentration in this sector. Strains on social care increase pressures on women because they are more likely to care for elderly or disabled family members.

In reviewing the research, it becomes clear that it is not just in the area of hard law that the UK's equality architecture has been shaped by our relationship with the EU. Equally important is so-called soft law—non-binding measures that serve as tools for promoting gender equality. For example, including gender equality in the evaluation criteria for European research or social funds has created financial incentives for countries to think about gender issues when otherwise they might not have done so. European social funds have played a key role in developing an infrastructure of voluntary organisations providing support to vulnerable women in the UK. Funding streams, such as the Daphne fund, enable research and support aimed at tackling violence against girls and women in the UK. I understand that the Government have committed to honouring this funding until 2020, but it is not clear how these vital services will be supported from this point on.

Membership of the EU has also meant that the UK's progress on gender equality has been regularly evaluated through the OMC—the open method of co-ordination. The OMC is informed by the systematic collection and analysis of data on, for example, employment and social conditions for women, or underrepresentation of women in political or economic decision-making, or in research and innovation. These international datasets have enabled comparative research on gender issues that provides a valuable evidence base. Of course, this research is EU-funded. Exiting the OMC—if we leave the EU—could mean that the cycle of scrutiny through evaluation, benchmarking and good practice exchange is replaced by a more insular approach to policy design. The challenges to collaborative research in a post-Brexit environment could exacerbate this, with academics and policymakers finding it harder to work across borders and to access shared funding pots.

The Government's stated commitment to preserving rights and protections for women is, of course, welcome, as were the reassurances of the noble Lord, Lord Henley, in response to questions from the noble Baronesses, Lady Crawley and Lady Gale, in January and March last year. But in the UK's journey towards gender equality, our membership of the EU has given us something more than just hard and soft laws. Representation at EU level of marginal groups such as women—I find it hard to consider a group that makes up 51% of the country as marginal, but nevertheless—makes them less vulnerable to the ideological preferences of the domestic Government of the day, whatever colour that Government may be. Choosing to pool sovereignty in key areas such as gender equality has enabled the development of initiatives that promote the interests of marginal groups in the national context. I do not see this as giving up control; I see it as providing valuable checks and balances to ensure that certain interests in national policy-making can never be privileged, either consciously or unconsciously, if they have a negative effect on women and their rights.

If nothing else, today I have at least succeeded in adding 1,300 words to the existing 80 on the potential impact of Brexit on women. Your Lordships will note that, throughout, I have not said "will", I have said "could". I ask not just the Minister but the formidable women who make up the ministerial team alongside him to play their part in ensuring that "could" is never allowed to become "will".

Whatever happens next, women's rights as set out in equality, employment and human rights legislation must be protected. Funding must be made available to maintain vital women's services, especially for the most vulnerable. The Government must ensure that any economic impact of Brexit does not fall disproportionately on women. This Government and the next must commit to keeping pace with going beyond future EU directives on gender equality. Deal or no deal, leave or remain, we cannot allow ourselves to resile from the steps we have taken over the past 45 years to advance gender equality and enhance the lives of women across the UK.

6.01 pm

Baroness Wheatcroft (Con): My Lords, it is a pleasure to follow the noble Baroness, Lady Bull. I congratulate her on finding a relatively unexplored but vital angle on the issue. Although she said "could", not "will" many times, I note that she also said "must" many times, and I hope that the Minister will take account of that.

It is also a pleasure to speak in this debate, for it is not like other debates on Article 50. For more than two years, we have been told repeatedly that the UK is leaving the EU on 29 March 2019. In the other place, the honourable Member for Wellingborough, who keeps tabs on this sort of thing, calculates that the Prime Minister has issued this declaration 108 times. My noble friend must have come quite close to that total. I was going to ask him if, just this once, he could bring himself to utter the words, "The UK may not be leaving the EU on 29 March 2019", but I sympathise with his Brexit throat issue, so I wonder whether my noble and learned friend Lord Keen might utter that sentence for the general delectation of the House.

There is, however, no reason for sanguinity. Despite what was said yesterday, the possibility of leaving the EU without a deal remains real—merely potentially postponed. If anyone really believes that leaving without a deal would not be a disaster for our country, they need only to read the document produced yesterday by the Government—not, one might think, a bad day

[Baroness Wheatcroft]
to bury bad news—which has been mentioned several times in the House already. The grim forecasts for the economy in there are eye-popping. It could shrink by 9% on average and 10.5% in the north-east. Between the first quarter of 2008 and that almighty financial crash and the second quarter of 2009, the economy shrank by just 6%. Just think of the many years of austerity it took to finish that. We are talking about a much worse situation and potentially walking right into it of our own volition.

The costs of a no-deal Brexit are literally horrendous. HMRC estimates that the burden on business from customs declarations alone, based on 2016 UK-EU trade in goods, could be around £13 billion a year. I am really sorry that my noble friend Lord Lilley is not in his place to put that £13 billion in context with the £10 billion—it is not really £10 billion—that he feels we might be saving. According to HMRC, that is without,

"accounting for any behavioural change",

which is HMRC-speak for companies just stopping exporting because it is too much trouble.

Business is simply not ready for no deal. Only 40,000 of the 240,000 businesses that currently export to the EU have even applied for the necessary licences. Apparently HMRC is capable of issuing them at the rate of 11,000 a day, so there is no way they are all going to get their licences for 29 March—and probably not for two months later. Can the Minister tell the House whether he thinks all this trouble is truly worth while. The Government tell us there will need to be import tariffs; of course there will. The document tells us:

"Further details will be announced in due course".

I wonder whether the Minister could tell us in due course when that might be. The boats are already having to get loaded up with the items to be exported. Indeed, some of those boats have already set off.

We know trade deals have not been signed. The no-deal briefing tells us that certain deals will categorically not be in place for exit day. For some reason, the ones it singles out are,

"Andorra, Japan, Turkey, and San Marino",

as the noble Lord, Lord Cormack, remarked. Quite why Japan and San Marino are viewed in the same way by our Government I cannot imagine. I ask the Minister whether, when these trade deals are put in place, Parliament will have a proper opportunity to scrutinise them. Not all of us may be as terrified of chlorinated chicken as some, but we ought to be able to have parliamentary scrutiny of the trade deals to which we are thinking of signing up.

It is already clear that shop prices are going up, but figures from the ONS only today show that last year the poorest 20% in this country saw their real incomes fall by 1.6%. They are already finding life a real struggle, and as shop prices go up they will find it harder and harder.

As my friend, the noble Lord, Lord Campbell of Pittenweem, said, this is not just about the economy. There is far more at stake, and many of us believe that the UK is better off from every point of view—not just financial but in terms of culture and security—as part of the EU. That is why I listened with interest to the right reverend Prelate the Bishop of Oxford and took note of the four elements he saw as the temptations—but I am afraid I cannot agree with him in his call for compromise. I find it absolutely appalling to be asked to take our country into a situation that I believe will make us worse off in every way. I will not refer to Churchill but to GK Chesterton, who said that compromise used to mean that half a loaf was better than no bread. Among modern statesmen, it really seems to me that half a loaf is better than a whole loaf. I want the country to have the whole loaf.

6.09 pm

Lord Lipsey (Non-Afl): My Lords, I have not addressed this House on Brexit since 31 January 2018, and I doubt whether many other noble Lords who have spoken tonight can say the same. This has partly been a matter of ill health but also, when I look back, I have found that I have nothing to say that I did not say the last time I spoke. I am not as passionately against leaving the EU on the right terms as most noble Lords who have spoken this evening, as the arguments are reasonably finely balanced, but I am totally against leaving without a further referendum. I do not see how a referendum in which the choice was between what exists and a blank piece of paper can bind a future Parliament. If there is a new referendum, it will be between what exists and a deal, whatever that may be. That seems to be a real choice, and it is cracking on immoral to deny that second choice.

My Trappist silence over this last year has not, I am afraid, set an example to the House. I see my great friend, the noble Baroness, Lady Hayter, is laughing—her speech today was her 178th contribution in the course of these debates. I single her out because of the magnificence of the speeches she has given. A veritable Niagara of words has spilled out of this House, all of them eloquent, and most of which I agree with. However, I hate to be Eeyore-ish, but what effect have these words had on policy? None; sweet FA; less than Jacob Rees-Mogg has when he passes wind. There is a good reason for this. We as a House have taken the view, I believe rightly, that the will of the elected House must prevail. We have watched in horror, spoken in shock and awe of events down the Corridor, but we have mostly done so feeling that we are powerless to change the course of what is going on. That explains why I am breaking my Trappist silence this evening.

Over the last few months—certainly the last few weeks—the old argument that the non-elected House must give way to the elected House is no longer centre stage. We are now seeing something quite different, which is a battle between the Executive and Parliament. We have had the unedifying situation where the Prime Minister, no less, has decided to ignore the votes cast down there—huge votes against her deal. She goes round, gives it a little dust off, and thinks, "Next time, I'll try again". This is no way to run a country, and no way to treat Parliament.

I welcome Mrs May's forced retreat yesterday. Nothing concentrates the mind like the imminent prospect of defeat, but even after she made these commitments

yesterday, there were people in the Commons saying, "We can't trust her on this. She has wriggled for so long, she's ignored the Commons for so long; we can't trust her to observe these", and they were looking for statutory protections to prevent her doing it. I do not want to go down that road, or for us to be in a situation where we have to intervene. The true power of your Lordships' House is not what we do; it is what we stop Governments doing because they are fearful of what we could do. We are here, to coin a phrase, as a backstop, and it is fear of the backstop that stops things happening.

I hope a way through can be found from here that avoids constitutional controversy. In noting the right reverend Prelate's words, and without stirring things up, I would be willing, as a compromise, to allow Mrs May's deal to go through, provided that she agreed that it would then be put to the people in a referendum, but there are other ways of solving it.

In a nutshell, my point is this. If there is a clash between an unelected House and an elected House, the elected House wins every time. We, as noble Lords, support that. But if the clash is between Parliament and the Executive—Henry VIII re-run, as it were—there is only one right course for us to take: we have to be unequivocally on the side of Parliament, wherever that may lead us.

6.15 pm

The Duke of Wellington (Con): My Lords, as before, I declare my European and agricultural interests as detailed in the register. I also declare, as I have done before, that if I were a Member of the other place, I would vote for the Prime Minister's deal, either in its current form or with any amendments she may be able to achieve in the coming days. In this sense, I disagree with those noble Lords who have referred to the inadequacy of the proposed deal. We must keep reminding ourselves that it is only a mechanism to get to a transition period and to the serious negotiation about the future relationship.

This debate is really to take note of the Prime Minister's Statement yesterday, and it would surely be churlish of us not to welcome that Statement. It changes matters considerably.

In passing, I say this. I am sorry the right reverend Prelate is not in his place. He advised us to resist some temptations to which politicians are so often prone. I very much admired what he said.

The sad truth is that our political system has failed badly in the two and a half years since the referendum. In July 2016, no one could have predicted or imagined that, with only five weeks to go before we leave the EU, the Government of the day have so far been unable to negotiate withdrawal terms that have the support of the House of Commons. Even yesterday, the Prime Minister again delayed a second meaningful vote. But at least she now accepts that the House of Commons must be allowed a vote to block a departure without a deal and to require the Government to seek an extension to Article 50—so obvious to so many Members of this House. This recognition of the seriousness of the situation is to be supported, but how sad that it did not happen weeks or even months ago.

Yesterday evening, the Government published a document on the implications of a no-deal exit, as a number of noble Lords have referred to. Within it, there is much information, most of it not new. It repeats what farmers and businesses have been saying for months:

> "For example, the EU would introduce tariffs of around 70% on beef and 45% on lamb exports, and 10% on finished automotive vehicles".

How serious is that? Surely, only the ultras now deny these predictions. I am quite sure that a majority of both Houses of Parliament agrees that we cannot possibly leave without a deal, that we must have a transition period and that, at this stage, we must also seek to extend Article 50. I still do not support another referendum but it looks as if the tactics of the hard Brexiteers are, in fact, making a referendum more likely. I realise, as the noble Lord, Lord Lipsey, just said, that our power in this House to influence these matters is limited but I am sure that we are right to articulate that the mood of the country is not for a no-deal departure. Promoting that concept can only perpetuate the political gridlock from which the escape route may, in the end, become a second referendum.

I think that the wish of the public now is for an orderly withdrawal—a transition period for the multitude of adjustments we have to make and then a long-term trading agreement without tariffs and non-tariff barriers. We must, surely, end up with a close relationship with our nearest neighbours and largest trading partners. We must co-operate on security, on research, in academia and in so many other ways. In the end, in one form or another, we must support the Government's deal. We undoubtedly need more time. We cannot leave with no deal. I salute the Prime Minister's eventual recognition of the situation and I hope the House of Commons will, in the next two weeks or before, take the necessary decisions to get us out of this low place of political stagnation.

6.22 pm

Lord Hannay of Chiswick (CB): My Lords, it is a great pleasure to follow the noble Duke. He and I were twinned together in proposing an amendment to the EU withdrawal Act on the question of the "tablets of Moses" status of 29 March 2019. I do not expect that the noble and learned Lord who will wind up or his colleague on the Front Bench will admit that they would be in a much more comfortable position today if they had accepted that amendment, but that is a fact and I think it will be borne out within a few weeks.

There has been some shift this week in the course of action to which the Government once appeared to be committed—leaving the EU on 29 March with or without a deal and at any cost. This involved three reckless gambles, not one of which, let alone all three, is likely to be pulled off. Gamble number one is that the EU will blink and concede the changes to the Irish backstop in the withdrawal treaty called for in the Brady amendment which the Government supported and which, I remind noble Lords, involves the "replacement" of the treaty backstop. That is not going to happen, however many lashings of reassurance or clarification are ladled over the treaty, nor will a

[Lord Hannay of Chiswick]
time limit to the backstop be conceded, nor will an open-sesame key to a unilateral UK exit from it be conceded.

Gamble number two is that the majority of 230 who voted in the Commons in January against the Prime Minister's November deal—described, I may say, at that time, as the best deal conceivable—will be reversed, transformed by the philosopher's stone of running down the clock into a vote in favour. That, too, seems unlikely to happen.

Gamble number three is that there is still enough parliamentary time before 29 March either to pass through all the stages and changes in domestic law that will be needed to ratify the deal, if it is approved by the Commons or, alternatively, to prepare the statute book for leaving without a deal. That clearly is simply no longer credible.

This House, on three occasions and with substantial majorities, voted against all three of those gambles, but the Government do not seem to pay much attention to that. They appear to be either unaware of it or impervious to it, and I have never heard a government spokesman actually mention those votes, which is rather sad. However, we do not need to repeat them today: we have said it; it is all in *Hansard*; it is on the record.

Meanwhile, unlikely as it is that the UK will in fact leave the European Union without a deal either on 29 March or on 30 June, the Government continue to divert billions of tax revenues to the fruitless task of lending credibility to that disastrous option. If press reports of the tariff schedules that we would apply in such an eventuality are to be believed, and they looked pretty convincing to me when I read them this morning, the Government are now also in the process of trying to boost the credibility of leaving without a deal, grievously damaging the jewel in the Brexit crown—an independent trade policy—because they are going to reveal that we, the UK, neither need nor desire to keep the large majority of our present trade protection. What an unrequited gift to those third countries with which we hope to negotiate. Why on earth should they make concessions to us in order to achieve access to our market, which we wish to give them anyway? That is another of the appalling errors that are made as the Government zig-zag around.

I ask the noble and learned Lord just one precise question. It seems that the Government wish to maintain the protection for beef, sheepmeat and dairy products, which we will then apply to trade from our EU partners. Where will those tariffs on EU exports of beef, sheepmeat and dairy products be levied on trade within the island of Ireland? Presumably it will be done on the border but I would like to hear the noble and learned Lord answer that.

It is surely time for all those three gambles to be taken off the table, and the sooner the Government do that, the better, both for them and for the country. Alas, the message from the Government—we have heard it again today from the noble Lord, Lord Callanan—is, as it was the last time we debated it and as it was the time before, "Jam yesterday, jam tomorrow and never jam today". That message will not suffice next month and it should not even do so today.

6.28 pm

Baroness Altmann: My Lords, it is a pleasure to follow the noble Lord, Lord Hannay. It seems that we are participating in yet another act of that long-running theatrical exercise that has been going on in Parliament for quite some time. Perhaps we could call it "The Brexit Chronicles". We are not sure yet whether it is a farce, a tragedy, a comedy or some combination of all three—indeed, one could suggest that it encompasses many more aspects of theatre. However, as has been directed by the last act of our play, we are led to believe that somehow the Prime Minister will go back to the EU and get 27 countries to reconsider the withdrawal agreement that she herself agreed, with concessions made on all sides, and tell them to tear up the backstop, which the EU considers essential to protect its external border and one of its smaller nations. The fact that our own Government are willing to play fast and loose with the Irish border is indeed shameful, but that is how it appears.

My noble friend Lord Cormack referred to the excellent article by our noble friend Lord Finkelstein. It seems that the ERG has roundly rejected the only agreement on offer for the orderly—if only for the short term—Brexit that apparently it has always wanted. It has now bullied the Prime Minister into disgracefully refusing to take no deal off the table. The Orwellian arguments being used to keep threatening no deal are almost beyond belief. Indeed, the nationalist obsessions behind these arguments reflect Orwell's words:

"Nationalism is power-hunger tempered by self-deception".

The self-deception is on quite an exceptional scale.

I will quote from an article today by my right honourable friend David Davis, who writes that the announcement yesterday,

"sends the wrong message to the EU".

He says that,

"ruling out No Deal, or extending Article 50 … may harm our negotiating position … because it takes away our leverage in negotiations and is against our national interest".

So no deal is somehow in our national interest. In any case, the EU has said that the negotiations are over. Even the Prime Minister, in her Statement yesterday, of which we are taking note now, says that these are discussions, not negotiations. As other noble Lords have said, the EU will not reopen the withdrawal agreement. Yet the ERG says that we must not abandon this no-deal charade. That is either dishonest or delusional. I fear that it is the latter, especially as, in the same article, Mr Davis says:

"Above all we all want an orderly exit from the European Union",

and that:

"Conservatism is based on pragmatism and realism".

He says also that:

"The public has always been ahead of and more relaxed on No Deal than politicians. They are right to be".

Somehow, therefore, no deal represents an orderly exit from the EU and is the pragmatic and realistic choice. Words almost fail me.

In previous acts of our play we have been told that the purpose of no deal is a necessary fiction of some kind, whose purpose is to threaten or bully the EU

into capitulating on the backstop. That is playing Russian roulette with several chambers of the gun loaded. This no-deal threat is not like a normal deal, where you walk away and go back to your village if the other side does not agree to your terms. If we leave with no deal, we will have set fire to many of the homes in our village. It is not like, as some suggest, having an independent nuclear deterrent. We hope never to have to use it. Others also would assume that we will not actually use it, but our enemies cannot be 100% sure. This no-deal threat is not like that. It is about as realistic as threatening to use our nuclear arsenal when the missiles are primarily trained directly on ourselves, or as—as the leader of the Opposition suggested—having our nuclear submarines sailing around without any missiles on them. No deal would be an unmitigated disaster for many parts of our country—not, perhaps, for the individuals who are promoting this idea, but certainly for many innocent people around the nation.

Many noble Lords have referred to the Government's paper from yesterday. Indeed, my noble friend Baroness Wheatcroft has pointed to one thing that stood out particularly to me, which was the HMRC estimate that the administrative burden on our country's businesses just from customs declarations on UK-EU goods trade could be around £13 billion a year. I looked up the receipts that the Government get from corporation tax in this country. For the year 2015-16, which is the year to which the £13 billion refers, corporation tax receipts were £43.7 billion. So the impact of a no-deal Brexit, just from customs declarations, would be the equivalent of a 30% increase in corporation tax on British business. Having trumpeted the reduction of corporation tax and tried to attract businesses to the UK, making us the best place to set up a business, the Conservative Party is suddenly suggesting that we contemplate slapping an increase of this nature on our companies, just for a business to be able to carry on doing what it has already been doing freely for years.

The Government have created risk and uncertainty for some of the UK's largest manufacturing sectors, including automobiles, food and drink, and chemicals. Let us take a couple of examples. Chemical firms with integrated supply chains, whose products cross borders many times, would have to register with the European Chemicals Agency. Currently that is automatic via the EU, but businesses would have to register for 12,000 different registrations if there were no deal and they still wanted to sell into the EU. They would also have to transfer their existing registration to an EU-based entity. Each of those registrations costs £1,500 plus the associated administrative expenses.

For food, the impact of leaving with no deal would be particularly grave. The country is not even remotely ready for a no-deal Brexit. In fact it is probably the small and mundane procedural issues that will cause some of the worst problems. For example, Defra has suddenly realised that we do not have enough pallets to be able to cope with the consequences of no deal. Most pallets that are used by British exporters do not conform to the third-country rules that the EU requires for trade because we have a much more relaxed set of regulations as a member. The UK will apparently not have enough EU-approved pallets for the exports that we require if we leave with no deal in March. Those UK companies that miss out will have to wait for new pallets, which can take weeks to be ready.

Another example is that labels that food and drink companies put on their products will become illegal from 29 March if we leave with no deal. It can take months for new labels to be produced. Any UK company without a presence in the EU would have to take down its websites with a .eu suffix. Here is an example that I find particularly interesting: March/April is a particularly bad time to leave without a deal because it is the very time when we are most reliant on importing fresh fruit and vegetables from the EU. Some 90% of lettuces come from the EU at that time. By May or June there is less reliance on the EU so that would actually be a better time to leave without a deal. That might also help to avoid the worst initial disruption to food supplies, as well as giving more time to prepare for no deal.

This is where I see the situation very differently from my noble friend Lord Howell. I am deeply concerned about how the final act of this Westminster Brexit chronicle may unfold. I am concerned that the possibility of no deal may actually have risen. This could indeed be the final denouement of the saga that we are engaged in. Everyone knows that we are not ready to leave in March with no deal. An extension has to be requested. If it is agreed, the Prime Minister insists that it must be a one-off, it must be short and it must not last beyond June. There will be no renegotiation of the withdrawal agreement, so it is entirely possible that a short delay would be designed just to give us more time to prepare for no deal. In the meantime we will keep threatening no deal and hope that the EU will surrender to our wishes, but if, as most of us in today's debate agree, the EU will not give us anything better than the withdrawal agreement apart from some slight changes to the political declaration and reassurances on the backstop, what next? We will face the choice between vassalage and suicide. Neither represents the freedom and control that people who voted to leave voted for. The ERG would, it appears, choose the suicidal route, perhaps believing that the gun is not really loaded, or that some deus ex machina will rescue us. Other Members of your Lordships' House—I entirely understand this—would choose vassalage, at least in the short term, and then hope that the political declaration will deliver some decent terms for us.

However, I believe that Parliament would be betraying our democracy and our country if we refuse to go back to the people and check before taking any of these courses, to make sure that this is what they will support, given that the circumstances are so different from those that people were presented with when they voted in either 2016 or 2017. It is time to respect the British people. We have respected those votes. It is now time to respect the people by asking again for confirmation of whether they wish us to proceed in this way before the final curtain comes down.

6.41 pm

Lord Liddle (Lab): My Lords, it is a very great pleasure to follow the noble Baroness, Lady Altmann, who, together with the noble Baroness, Lady Wheatcroft,

[Lord Liddle]
has shown great courage and consistency on this, the greatest question of our times. I think the House owes them a tribute for that.

It is now three months since the Prime Minister reached her withdrawal agreement in Brussels, but we do not seem much further forward. There are very few good options before us. I understand the speech of the noble Duke, the Duke of Wellington, in which he said that we have to vote for this agreement because at least it avoids the calamity of no deal and gives us a transition period in which we can sort out all the problems. I have to say that my main objection to the Prime Minister's withdrawal agreement and political declaration is that, despite her constant mantra that the only way to end uncertainty is by voting for her deal, all the deal does is guarantee years and years of uncertainty. We had Ivan Rogers at our Select Committee last week. He thought it would be another five years, if not longer, before we reached what he would call an equilibrium position.

For all the extravagant talk offered by Ministers two years ago, at the start of this process—they said that we would know exactly where we were and that we would have a trade deal by now—none of the key questions about the future relationship between Britain and the European Union has been resolved. In economics, what trade-offs have been faced up to between sovereignty and market access? I think that it was the noble Lord, Lord Bridges, who first asked about that in the House. What decisions have the Government taken? None. On security, are we determined to align ourselves with the structures of European co-operation, at the same time accepting the legal obligations essential to making those work? On foreign policy and defence, will we stick together with the European partners whose values and interests in this troubled world we most share, or will we drag ourselves off into the foggy mists of some mid-Atlantic anglosphere? The Government have not resolved any of these crucial questions and that is why this deal deserves to fail. All it offers is uncertainty, drift, division and strife for years to come.

There have, however, been a couple of interesting developments in the last week or so. As other noble Lords have pointed out, the first is the Government's willingness to contemplate some kind of extension of Article 50, at least in theory. In my view, a short extension is not much use, unless the House of Commons has passed the withdrawal agreement and we need that time to carry through the necessary legislation with proper parliamentary scrutiny. In those circumstances, it would be essential, but it is not going to create the conditions in which we can tweak Mrs May's agreement even more. I do not think Brussels will be prepared to listen again.

The most serious failing of the Prime Minister on this matter is that she appears to have ruled out any possibility of a fundamental rethink of her negotiating position. Although Monsieur Barnier and the President of the European Council, Donald Tusk, have said that they would be very interested in further discussing membership of a customs union, single market alignment and all the rest—in fact, they responded rather positively to the letter that the Labour leader sent to the Prime Minister—the Prime Minister has decided this is impossible, so we are not going to get a new approach from her. I think some time ago she decided that her historical role was not that of Robert Peel, but that her main mission in life was to keep the Conservative Party together and in some sort of order. Therefore, I do not think the short extension will do much good. It could be regarded by Brussels simply as giving time for more effective preparation for the consequences of no deal and completing necessary mitigating actions.

The second interesting development is Labour's commitment to a referendum. I do not often say nice things about my leader, Jeremy Corbyn, but on this occasion I congratulate him on having the good sense to move in this direction. But the whole question of the referendum is not a simple one. Once one has said that one is in favour of a referendum, what would the question on the ballot paper be? I have very clear views. It would be intolerable if the choice offered to the public was between no deal and remain, because no deal is a complete fantasy. At our committee, Ivan Rogers said that if there was no deal, within a week British officials would be on their way to Brussels to negotiate solutions to all the problems we have heard it would create; problems of costs, bureaucracy at the border, EU trade deals we are part of, all sorts of sectoral issues which have been raised in the various SIs that have come before this House. Brussels would say, "Yes, we might discuss this with you, but first you must commit to the £39 billion in the withdrawal agreement that you say you reject and are walking away from". There is therefore no such thing as no deal: it is a fantasy. I hope that if we do have a referendum and the Bill comes to this House, this House has the courage to say that a no-deal option is not a credible option for us to put to the people.

My final point is that if we are to have a referendum we should not rush into it: we should not try to do it within three months, by the end of June. There is real merit in the idea that is emerging on the continent of a very lengthy Article 50 extension, and we should think about that very carefully. Brussels will not want to deal with Britain during the rest of 2019. It has many other more important things on its plate, including the European Parliament elections, the establishment of a new Commission, and decisions on who the officeholders will be. There will be nobody in Brussels to have a discussion with for most of the remainder of this year. The noble Lord, Lord Callanan—an experienced former MEP—knows that is likely to be the case.

This provides us with an opportunity to try to create a more open and civilised debate than we have had in the past two years about the big questions around what kind of relationship we want with the European Union—questions that have not been properly addressed at all since the referendum, and were certainly not addressed during it. Former Prime Minister Gordon Brown, for whom I have great respect, has suggested some ways in which this might be done. I do not know the details of that but I think that this is an opportunity to try to reset the whole Brexit debate, in order to reach a conclusion that is truly in the national interest.

6.52 pm

Lord Farmer (Con): My Lords, I feel rather lonely in this debate. I think that I am fairly well known for being a passionate leaver—a beast in the Brexit herd. Right now, I feel like an isolated wildebeest surrounded by a pride of noble lions, possibly about to be torn limb from limb.

We in Parliament need to lift our heads and see that the mood in the country is one of wanting to get this over the line. People want Parliament to deliver on what 17.4 million voted for, and are profoundly disappointed by the continuous party politicking and thwarting of our departure. It would reflect well on both Houses—and especially on this one, where courtesy is the currency—if the polarising language and behaviour were softened. Currently, anyone who dares to suggest that leaving on WTO terms would not be terminal for our future prosperity is treated with deeply discourteous contempt. Yet that represents a position held by many outside this House, who resent the vitriol that is, by extension, also being poured on them.

If the Prime Minister, who is being attacked from all positions, can be magnanimous, then so can we. Yesterday she acknowledged that:

"For some honourable and right honourable Members, taking the United Kingdom out of the European Union is the culmination of a long and sincerely fought campaign. For others, leaving the EU goes against much that they have stood for and fought for with equal sincerity for just as long. But Parliament gave the choice to the people".—[*Official Report*, Commons, 27/2/19; col. 168.]

Yesterday in the other place she also made it clear that there is not just real determination in both the EU and UK Government camps to enable us to leave with a deal, but also tangible work to operationalise the concept of alternative arrangements for the border in Ireland. This would not be taken seriously by both sides if it were really the unicorn some scornfully dismiss it as. Scornful dismissal ignores the fact that MPs coalesced around this as an acceptable plan that would avoid an indefinite Northern Ireland backstop. It also suggests a desire to block Brexit at all costs, as does the push for a second referendum.

Some say we have to give people another vote because no one in the country voted leave in order to be poorer and less secure, or to have fewer choices in the supermarket. I do not know how this can be said with such certainty, especially when there is hard evidence of what people did vote for. Lord Ashcroft's polling on referendum day, which was in the same ballpark as findings from YouGov and the British Election Study, found that nearly half of leave voters, 49%, said the biggest single reason for wanting to leave the EU was, "the principle that decisions about the UK should be taken in the UK". One-third said the main reason was that leaving, "offered the best chance for the UK to regain control over immigration and its own borders." Just over one in eight said that remaining would mean having no choice "about how the EU expanded its membership or its powers in the years ahead". Only 6% said their main reason was that, "when it comes to trade and the economy, the UK would benefit more from being outside the EU than from being part of it". Yet when the Prime Minister's Statement was repeated in this House yesterday, in the exchanges that followed much was said about trade and economics, as was said today—

Lord Hannay of Chiswick: The noble Lord has just read out a long list of the motivations of those who voted leave in June 2016, with percentages for those who were moved by those considerations. Will he say which one the Prime Minister's deal fulfils?

Lord Farmer: Will the noble Lord repeat the question?

Lord Hannay of Chiswick: After he has read out the list of motivations of those who voted to leave, will he say which one, if any—I do not believe there are any—the Prime Minister's deal actually fulfils?

Lord Farmer: The issue is sovereignty, which, as I said, was not mentioned yesterday and I do not think it has been mentioned today.

Lord Wallace of Saltaire (LD): It has.

Lord Farmer: That was the main issue, according to the polling, behind people voting to leave. It was not about trade and the economy, where the UK would benefit more from being outside the EU than from being part of it. When the Prime Minister's Statement was repeated in the House yesterday, much was said in the exchanges that followed about trade and economics, but no one mentioned the fundamental importance of sovereignty to those who voted leave. Our silence in this area makes us seem very out of touch, so I shall take a little time to spell out why so many wanted to leave the European form of federal government—not, I might add, to leave the continent of Europe itself. I have not heard anyone express an interest in pulling up the drawbridge or stopping the flows of trade which so many forms of business value greatly.

Many noble Lords, perhaps particularly those on the Benches opposite, will be familiar with the erstwhile Viscount Stansgate, Mr Tony Benn, and his five questions for people of power. I must admit, I never thought I would be quoting this particular political giant, but he makes a powerful point. His five questions were,

"what power do you have; where did you get it; in whose interests do you exercise it; to whom are you accountable; and, how can we get rid of you?".

They will also be aware of his maxim:

"Anyone who cannot answer the last of those questions does not live in a democratic system".—[*Official Report*, Commons, 16/11/98; col. 685.]

We cannot get rid of President Juncker, President Tusk, Monsieur Barnier, Herr Selmayr or the European Commission. But, according to the House of Commons Library, the democratic deficit of the European Union is much wider and deeper than this. Its main characteristics are:

"The increased use of qualified majority voting … for the adoption of legislation in the Council; limiting Member States' powers by removing their veto in the Council of Ministers; expanding the policy areas in which the EU has a role, sometimes excluding any action by Member States (EU 'exclusive competence'); an increase in executive power and a decrease in national parliamentary control with deeper EU",

regulation.

Lord Liddle: First, is the noble Lord aware that the only areas in which the EU has exclusive competence are trade and competition? Secondly, is he aware that the European Parliament has the power to dismiss the European Commission, which it has in fact done, in a way that I am not aware that our Houses of Parliament have done in recent times?

Lord Farmer: I thank the noble Lord for his intervention. I am quoting from the House of Commons Library information on democratic deficit. It goes on to say—

Lord Hannay of Chiswick: I am most grateful to the noble Lord for giving way. Is he by any chance aware that the biggest extension of qualified majority voting was conducted under Baroness Thatcher, with a view to establishing the single market? Why does he think it terribly undemocratic that decisions can be taken by a majority, when he has just told us that because 17 million people voted to leave we have to agree with them?

Lord Farmer: I believe that the system until now has been that each country has a veto, and, as I say, the qualified majority voting would now override that veto. I will carry on about the democratic deficit. The Library document goes on:

"The EU's executive, the Commission, is unelected; the EP is too weak compared with the Council and Commission",

and elections to it are not really European elections. Electorates vote on the basis of their support for domestic parties, and turnout is low. It has fallen by 30% since the first elections in 1979. The European Union,

"is too distant from voters",

and,

"adopts policies that are not supported by a majority of EU citizens; the Court of Justice makes law rather than interpreting it; there is a lack of transparency in the Council's adoption of legislation and in certain appointments (e.g. EU Commissioners); EU law has primacy over national law and constitutions".

Unsurprisingly, the latest Eurobarometer survey shows that among the EU 28 countries only 42% tend to trust the EU versus 48% who do not, and the UK lags very far behind—53% of those in the UK do not tend to trust the EU versus 31% who do. This, like so many other things, could be blamed on Brexit, but even back in spring 2015 the United Kingdom had one of the lowest trust ratings of the EU's institutions across the 28 nations. Only 27% tended to trust the European Commission, compared with the EU 28 average of 40%, and only 29% tended to trust the European Parliament, compared with the EU average of 43%.

National leaders are also painfully aware that the EU is in urgent need of reform. According to Tim Shipman's book about the road to Brexit, *All Out War,* Merkel was consulted before David Cameron gave his Bloomberg speech pledging an in/out referendum in the Conservative 2015 election manifesto and she,

"urged him to 'couch the speech in an argument about Europe having to change'".

He fell in with this, taking,

"Merkel's advice on how to pitch his call for reform",

in that speech, by saying:

"I am not a British isolationist. I don't just want a better deal for Britain, I want a better deal for Europe too".

That completely sums up my own position.

As I said at the beginning of my speech, we have to lift our heads and see beyond the current entrenched positions. The painful reality and process of Brexit will or should exert enormous moral pressure on the European Union to reform so that continental citizens are better served—otherwise, we could be the first of many to leave. This is another reason why holding a second referendum would be so damaging. Instead of sending the message that democracy and sovereignty matter, and sowing unchokeable seeds of reform, we would instead be saying that they have to be traded off so that we can stay in thrall to a status quo that really serves only the elites who prop it up. In our own and countless other electorates, there would forever be that recognition that democracy ain't what it seems to be.

Lord Wallace of Saltaire: My Lords—

Lord Farmer: Noble Lords will be pleased to know that I am finishing my speech. As a metals trader for more than half a century—I shall change tone here—I want to finish by saying something about trade. In the financial markets, there is a fear of global stagnation. I read this afternoon about the American factory output being disappointing again. While this has very little to do with our leaving the EU, Brexit could be a can opener for new trade initiatives. By breathing life into a world somewhat obsessed by tariffs, it will potentially end up boosting the global economy by breaking up the rather sedentary three big blocs of the US, China and the EU. The world needs competition to be encouraged and Britain could be an agent for that. So instead of a harbinger of doom, Brexit could be a force for reform, both economically and politically, but we have to get on with delivering it. It is, after all, the will of the people.

7.07 pm

Lord Anderson of Ipswich (CB): My Lords, as the last speaker before the winding up speeches, I should have liked to offer your Lordships a peroration, but could not hope to equal the force or the humanity of the noble Lord, Lord Campbell of Pittenweem, and the noble Baroness, Lady Wheatcroft, who have spoken so eloquently, and with whom I agree so completely that the vote to leave the EU was a historic and very sad mistake, significantly compounded by decisions made since.

To go to the other extreme, I offer instead a short endnote—a little dry, perhaps, but I hope of a nature to pique the professional interest of the noble and learned Lord, Lord Keen, and to coax a response out of him when he closes this debate. The three-month extension to be debated on 14 March, if previous votes so require, would fall well short of the minimum 22 weeks that the UCL Constitution Unit and others have suggested would be necessary for a referendum. In practice, and allowing for the time necessary to give effect to the result, this would require an extension at least until the end of the year or, if the advice of the noble Viscount, Lord Hailsham, is followed, deep into

the middle of the next decade. The Prime Minister was at pains yesterday to resist the possibility of a long extension on the basis that an initial extension beyond the end of June would require the UK to take part in the European Parliament elections, and that a supplementary extension, entered into after the end of June, would be "extremely difficult" if we had not taken part in them.

I invite the Minister to agree with me that when there is a will, there is a way. Does he agree that this country could take part in the European Parliament elections if we are still a member state at that point? Indeed, that is expressly contemplated by the Council decision of 2018 that establishes the composition of the Parliament, and the Electoral Commission has already set aside a budget for it. Yes, some might find an election in those circumstances a little odd. The noble Lord, Lord Grocott, right at the start of this debate, described it as indefensible, but it is democratic. Why should it be any more odd or less defensible than continuing to participate in the other institutions of the European Union—the Council, the Commission and the court—as we shall do for as long we are a member, as provided for in the treaties?

Then the legal service of the European Parliament, in an opinion of 7 September 2017 that received some publicity at the time, confirmed that the European Parliament would be validly constituted, and its legislation valid, even in the event of a failure by the UK to organise elections. That is unsurprising, one might think, since if laws were not valid in those circumstances, any member state could hold the whole EU legislative process hostage by refusing to hold elections. Does the Minister agree with that opinion?

I do not underestimate the difficulties that would have to be surmounted before any further referendum could be held, not least the definition of the franchise, the choice of the question or questions, and the measures that would be needed to prevent the serious malpractice, or worse, that attended the last one. We will know in a couple of weeks whether there is the necessary public or political will to start down that road. But I suggest that the time needed for a referendum will not be denied to us by the electoral law of the EU, and I ask the Minister to confirm that narrow but important point.

7.10 pm

Baroness Ludford (LD): My Lords, we have had an unhappy almost three years of the Tory Government supposedly taking back control, restoring parliamentary sovereignty, launching global Britain and respecting the will of the people. They have not achieved any of those things. "What control?", you might well ask. The Prime Minister is in fact simply muddling through. She trots out the same tired old mantras and slogans which have been emptied of any meaning. There is a leadership vacuum, her Cabinet is totally divided, and her authority and that of her Government have thoroughly dissipated. The whole Tory outfit is dysfunctional.

Incredibly, they want to inflict that dysfunction on the country, continuing to hold, over 66 million people, the threat of a chaotic, catastrophic no deal which would slash GDP, public spending, jobs and security, while creating new red tape, costing businesses £13 billion, and big new hassles for individuals wanting to travel, which are spelled out in some detail in yesterday's document. There are not enough adjectives, or at least not enough polite ones, to do justice to the lack of responsibility of the Government.

One commentator wrote this week that it was Nick Timothy who,

"persuaded the prime minister to trigger Article 50 so quickly and drew the red lines that defined the UK's Brexit negotiating position, with his boss apparently unaware of the consequences of being so disastrously boxed in".

That rings absolutely true, and as the noble Lord, Lord Kerr, said, alternatives such as the EEA were simply not explored. Has the Prime Minister been admirably determined, ignorantly stubborn or too vain to consult, listen and change course? I tend to the latter conclusion.

Some voters seem to think that no deal means that we stay as we are, in the EU, which seems to account for the high score that no deal gets in polls. But one other factor must be the sheer incredulity that any Government would inflict, or contemplate inflicting, such appalling destruction on their own citizens, let alone a Tory Government who have always asserted their claim to economic competence—I think that was the point made by Nick Boles MP in the *Evening Standard* the other day.

As for restoring parliamentary sovereignty, we have had three years of Theresa May's Government trying to boss Parliament around, denying its proper constitutional role, and wasting taxpayers' money fighting court cases, before kicking and screaming as they had to concede some power over the triggering of Article 50 and the withdrawal process. Even now they are resisting proper parliamentary involvement in trade negotiations. As the noble Lord, Lord Liddle, pointed out, the European Parliament has shown more muscle towards its Executive—the European Commission—than the House of Commons has shown towards its Executive.

A lot of this is the consequence of the excessive power that our defective first past the post voting system gives a British Prime Minister, and whatever happens with Brexit, it will have woken up a lot of people to the fact that the cause of political and constitutional reform is not some dry arcane fancy but a crying need to reflect a diverse population and liberate it from elective dictatorship.

It is now time for Parliament to take control, as I hope it has been doing. The Prime Minister cannot be trusted to put the interests of the country before her own and those of her party. There is a real sense that MPs are finally getting their act together in refusing to let this Government—or indeed the Official Opposition—drive us over a cliff. The Prime Minister has been forced, more or less, to take no deal off the table and to open the prospect of an extension to Article 50, which President Tusk rightly described at the weekend as a "rational solution". Meanwhile, the leader of the Opposition has been forced, more or less, to concede that a people's vote is the best way to resolve the impasse.

I very much welcome the prospect that MPs will vote on 14 March to seek an extension. That would be a fitting birthday present for me. As President Macron

[Baroness Ludford]
has said, there needs to be a real purpose to an extension, not more delay and prevarication. Unfortunately, the Prime Minister continues to play tiresome games, such as yesterday when she promised legally binding changes to the backstop. We all know that this does not reflect reality, as my noble friend Lord Campbell of Pittenweem pointed out. The Brady amendment's purpose of effectively removing the backstop is not going to happen. The Prime Minister insults not only our intelligence but her own, if she thinks we believe that it will.

Similarly, a game of smoke and mirrors is being played about the Government's position on no deal. The Minister could not tell us how the Government would want their MPs to vote on 13 March, if one takes place. One journalist has—legitimately, in my view—called Mrs May a post-truth Prime Minister, because you never know what to trust in what she says.

Global Britain was always a farcical slogan. We have had more international influence as a leading member of the EU in recent decades than since the height of empire. All that Brexit has achieved is to leave us remarkably friendless. In the UN General Assembly decision to refer the question of sovereignty over Chagos to the International Court of Justice, our EU allies deserted us; whereas, pre-2016, one of the strengths we enjoyed was reliance on their support in multinational fora. I say to the noble Lord, Lord Farmer, that Brexit reduces our national sovereignty.

Global Britain seems, in fact, to consist of making gratuitous insults and silly gestures, by pretending to be more powerful than we are, at enormous cost to our economic well-being. In the last couple of weeks alone, members of the Government have, in various ways, upset Japan, China and Bangladesh. Post-Brexit Britain will not have any trade links at this rate. As the noble Lord, Lord Hannay, said, unilateral abolition of tariffs deprives us of trade negotiating leverage.

The UK spent decades building a strong relationship with Japan as its principal economic partner in Europe, in the expectation that we would be members of the European Union and offer stable policies, including, crucially, seamless access to the European market—the gateway to Europe, as the noble Viscount, Lord Hailsham, put it. It was on this basis that Mrs Thatcher wooed companies such as Honda, Nissan and Toyota. The Government have now comprehensively trashed that relationship with the third-biggest economy in the world, while the EU forges ahead with its new free trade agreement with Japan. Japan was very upset—and made its feelings known—to get a letter from Jeremy Hunt and Liam Fox that told it to get a move on with a UK-Japan trade deal—the one we will need if we crash out on 29 March.

China is meant to be a big new trade opportunity, as the noble Lord, Lord Howell, emphasised, even though EU membership should not have prevented us expanding trade with it. EU partners manage to have a bigger volume of trade with China—and, indeed, India—than we do, so EU membership is clearly not a constraint. Then along comes the Defence Secretary, Gavin Williamson, absurdly vowing to send our aircraft carrier to the South China Sea. There are real issues about Chinese encroachment there, but gunboat diplomacy is not going to solve them.

The latest example is Bangladesh. The Home Secretary decided to revoke Shamima Begum's British citizenship on the assumption that she would be eligible for Bangladeshi citizenship, but apparently without consulting the Bangladeshi authorities about whether they wanted her as a citizen. They said that they did not, and the British Government thereby rendered her stateless and broke international law in enormously careless fashion. The noble Lord, Lord Anderson of Ipswich, spoke knowledgeably and wisely about that.

Our relationship with our EU partners has hardly fared better. The disdainful way in which many Brexiters have treated the demands of the Good Friday agreement and the position of the Republic of Ireland has been a disgrace. Some of them have hurled absurd insults at Germany. We have given Spain licence to raise problems over Gibraltar and offended east European countries over the treatment of their citizens. Are we supposed to rely on President Trump—a protectionist keen to sell us chlorinated chicken and unreliable on the US NATO guarantee?

The extent of cross-party co-operation and the breaking down of tribal barriers that we have seen recently is very significant. We have seen the formation of the Independent Group, with defections from both the biggest political parties and the demonstration of muscle from some Ministers and shadow Ministers, all displaying that pluralist politics at last has a chance in this country. If this can happen under first past the post, imagine the possibilities for co-operation and common sense if we change the voting system.

To the Prime Minister, the will of the people worthy of respect has a very narrow definition, meaning only those who voted leave. It was amusing that yesterday, the Government stressed that the opinion of the ICJ on Chagos was non-binding, whereas they have treated the result of a non-binding referendum as holy writ. Those who voted remain have been shunned as citizens of nowhere: in effect, non-persons who can be ignored and belittled.

If the Prime Minister really wants to respect the will of the people, she must put her deal to a vote of the people, with an option to remain. That would show real leadership of a type that we have lacked. That is not to second-guess the 2016 referendum, as the noble Lord, Lord Callanan, claimed in opening. It would be the first opportunity to judge the real nature of Brexit. I am hopeful that such a vote will happen and I will win my £5 bet with the noble Lord.

7.21 pm

The Advocate-General for Scotland (Lord Keen of Elie) (Con): My Lords, I am grateful to all noble Lords for their contributions. I am particularly grateful to noble Lords who have said something new.

The noble Baroness, Lady Hayter of Kentish Town, began by referring to the Prime Minister leaving no-deal threats on the table or not taking such a deal off the table. Similar observations were made by the noble Lord, Lord Campbell of Pittenweem, and the noble Baroness,

Lady Altmann. The noble Lord, Lord Liddle, contented himself with alluding to a fantasy. Let us be clear. This may help some people's conscience, but the Prime Minister did not put no deal on the table; nor did she threaten with regard to no deal. This Parliament put no deal front and centre of the issue. This Parliament passed the referendum Bill. I wonder how many people here voted against it. They passed the referendum Bill. Then this Parliament passed the Bill to allow the Article 50 notification to be served. I wonder how many people here voted against that. I see one or two.

Lord Liddle: I did.

Lord Keen of Elie: Well done, you are entitled to refer to a fantasy; others are not. The consequence of that was that we were leaving consequent on the application of Article 50, which required at the level of international law that a certain notice period should be given.

Lord Hannay of Chiswick: I am most grateful to the noble and learned Lord for giving way. He said that the Prime Minister was not responsible for putting no deal on the table. Did he read the Lancaster House speech, in which she said that no deal was better than a bad deal, and then repeated it several hundred times?

Lord Keen of Elie: The noble Lord's observation is utterly irrelevant in this context. Let us be clear as to what the legislation provided. Ultimately, it provided that we would leave the EU on 29 March 2019. This Parliament determined that date—not the Prime Minister, not the Executive. Let us bear that in mind, shall we? It is in that context that you have to look at where we are going.

I come on to some of the observations of the noble Lord, Lord Newby. I am a little concerned for him, because he appeared to proceed on the basis that purgatory has its limits. I am terribly sorry to inform him that, as and when he arrives in purgatory, he may find that it is actually indefinite. He had better proceed with a degree of care in that context. He made an allusion to Mr Corbyn as a "schoolboy". I do not want to take the allusion too far, but I will refer to one well-known fictional schoolboy called William, who said you cannot have a referendum if you do not know the question. We all know that. The point is that Mr Corbyn may be in favour of a referendum, but we have no idea what question he might or might not have in mind. Other members of his party have advanced questions, of course, but Mr Corbyn himself has not told us what his question is or is going to be. It appears that it is hidden in his allotment at present.

Baroness Hayter of Kentish Town: I know Cabinet responsibility has gone a little awry on that side, but we actually still have it. We have made it clear—Keir Starmer, Emily Thornberry and I have made it clear—

Lord Callanan: What about Corbyn?

Baroness Hayter of Kentish Town: On his behalf. We do not wheel him out on every occasion to make these speeches. I can call him in, if you like. We are quite clear what the questions are. It depends what happens down there but, assuming a deal goes through, it would be the deal that goes through against remain.

Lord Keen of Elie: It is comforting to know that Mr Corbyn has friends. It is also comforting that they can speak for him when he does not speak for himself. It remains interesting that he has yet to express his view as to what the question would be. As I say, at the end of the day you cannot have a referendum without a question.

The noble Lord, Lord Newby, also raised a question about the time for further legislation. Our position remains that, as with the secondary legislation programme, the Government are confident that primary legislation required for exit will be delivered. Business in both Houses is being scheduled accordingly to allow for that. I acknowledge that there will be a need to balance the requirement to pass vital legislation sent to us by the Commons with the need to ensure that this House has adequate time to scrutinise such legislation.

Lord Newby: I am very grateful to the Minister for clarifying that. Could he go further and answer my question about whether the Government intend to get through by 29 March the Agriculture Bill, the Fisheries Bill, the immigration Bill and the Trade Bill?

Lord Keen of Elie: As I indicated, all necessary legislation will be taken through in time for exit day, and that is our intention.

Noble Lords: Oh!

Lord Keen of Elie: Barking from a sedentary position does not advance matters. I wonder if it might just be noted that it is our intention to take through all necessary legislation required for exit day, and we will deliver the business as required in both Houses. That is what is planned.

Lord Stoneham of Droxford (LD): Will the Minister define what "necessary legislation" will be?

Lord Keen of Elie: Yes, of course. Necessary legislation is the legislation necessary to have in place for exit day. I hope that clarifies that point for the noble Lord.

I turn to some of the observations of the noble Lord, Lord Kerr of Kinlochard, who among other things asked us to contemplate the Swiss approach to free movement. It was a very interesting observation. I ask him to contemplate the Swiss referendum to end free movement and the threats then faced by Switzerland from the EU as a consequence of having had that referendum. It was not the Swiss approach to free movement that succeeded.

Lord Hannay of Chiswick: I am most grateful to the noble and learned Lord, because he is telling us a little Swiss story. Perhaps he would end by explaining how they had a second referendum.

Lord Keen of Elie: I see no need to do that in the circumstances, but many would regard that as an outrage in the context of the democratic traditions of the cantons of Switzerland.

I appreciate that the noble Lord, Lord Kerr of Kinlochard, is deeply attached to the idea of the EU and would not easily give it up. I think he may be an

[Lord Keen of Elie]
alumnus of the Glasgow Academy—its motto is "serva fidem", or "keep the faith". Certainly, he intends to do so, even in the face of the result of the referendum itself.

Turning to the observations of my noble friend Lord Hailsham, I regret to say that his proposition regarding the revocation of Article 50, for the purposes of contemplating a future and final referendum, is unworkable. The European Court of Justice made it clear in the Wightman decision that Article 50 could be revoked only in circumstances where the relevant member state intended to remain, without qualification, in the EU for the future, and could not be revoked in good faith for other purposes. Therefore, that proposal is not workable.

The noble Baroness, Lady Bull, observed that there might have been some deficit in the references to women's rights and interests in our extensive debates on this matter. I will not challenge her on that, but I observe that the UK—not just the EU—has sought to lead the way in establishing clear, unequivocal grounds for gender equality and other equality issues. These are values we wish to see maintained after we leave the EU, and they are already enshrined in retained EU law, but we have that in mind.

My noble friend Lady Wheatcroft asked whether future trade deals would be scrutinised by Parliament. There are mechanisms already in place by which international treaties which the Executive propose to enter into may be the subject of scrutiny by Parliament, and they may be considered further in the context of Brexit. That remains the position.

The noble Lord, Lord Hannay, in his sunny way, referred to leaving on 29 March as a reckless gamble. With respect, it is not, and I share the confidence expressed by my noble friend Lord Howell that the Prime Minister's deal—the withdrawal agreement—will be approved by the House of Commons when it comes to a vote on 12 March or earlier. Sharing that confidence, I do not consider that we are indulging in what was termed a reckless gamble. He also raised the question of where tariffs on beef and other agricultural products will be levied in Ireland. The answer is that there are many schemes by which that can be dealt with, without the erection of a hard border. As he is aware, various parties are looking at various schemes at present in that context.

Regarding the commitment to a referendum by the Labour Party, the noble Lord, Lord Liddle, observed that it took us to the issue of what the question would be, one which he regards as extremely complex, requiring careful consideration, and which he does not appear to regard as having been resolved by Mr Corbyn's fellow shadow Cabinet members. That will be an issue.

The noble Lord, Lord Anderson of Ipswich, asked a series of questions. First, I agree that a three-month extension would not be sufficient to arrange and carry out a second referendum. No one would take issue with that, but then we do not propose a second referendum. Secondly, could we take part in the EU elections if we had a post-June extension? No, because we have already repealed the relevant domestic legislation for the purposes of having that election. Thirdly, the noble Lord's point that the EU Parliament could sit without the UK having had an election to the European Parliament is correct, because there are circumstances in which the Parliament will sit when one or more member states has declined to carry out the relevant electoral process. Clearly, as he indicated, the EU Parliament could not be held to ransom in those circumstances. The Parliament and its other institutions would continue to function, albeit without the direct representations of UK MEPs in such circumstances.

Finally, I thank all noble Lords for their contributions to the debate—

Lord Campbell of Pittenweem: The noble and learned Lord went out of his way, I think, to say that there is no such thing as a no-deal exit. Am I correct?

Lord Keen of Elie: I did not say that at all.

Lord Campbell of Pittenweem: He might care to have regard to the frontispiece of the document issued yesterday by the Government, which reads:

"Implications for Business and Trade of a No Deal Exit on 29 March 2019".

Someone in the Government seems to think that there is such a thing as a no-deal exit.

Lord Keen of Elie: Nobody doubts that there could be a no-deal exit because that is what Parliament has provided for in the event that there is no withdrawal agreement. There is no question of that whatever. However, we remain confident that we will have a withdrawal agreement in place and, accordingly, will not have to face a no-deal Brexit.

A noble Lord: Is that it?

Lord Keen of Elie: I commend the Motion to the House.

Motion agreed.

House adjourned at 7.36 pm.

Grand Committee

Wednesday 27 February 2019

Arrangement of Business

Announcement

3.45 pm

The Deputy Chairman of Committees (Viscount Ullswater) (Con): My Lords, if there is a Division in the House, the Committee will adjourn for 10 minutes.

International Waste Shipments (Amendment) (EU Exit) Regulations 2019

Considered in Grand Committee

3.45 pm

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

That the Grand Committee do consider the International Waste Shipments (Amendment) (EU Exit) Regulations 2019.

Relevant document: 14th Report from the Secondary Legislation Scrutiny Committee (Sub-Committee B)

Baroness Vere of Norbiton (Con): My Lords, the primary aim of this instrument is to amend EU and domestic legislation on waste shipments to enable their continued operability. The technical changes contained in this instrument will eliminate the risk that UK regulators would be unable to prosecute for, or prevent, illegal shipments of waste. They also provide legal clarity, certainty and reassurance for UK businesses involved in waste shipments. The legislation is this area is reserved, but this instrument has been the subject of extensive consultation with the devolved Administrations, who are content.

This instrument makes many adjustments, and I will highlight some of them. Noble Lords will not be surprised to learn that they are fairly technical in nature.

Part 2 corrects outdated references to the "Department of the Environment" in Northern Ireland to its new name, the "Department of Agriculture, Environment and Rural Affairs".

Regulations 14 and 15 omit references to "Community Regulation". Regulations 16, 17, 42 and 43 omit provisions in the domestic legislation relating to EU bodies, historic transitional provisions and previous revocations, which are all now redundant.

Regulations 18 to 25 make provision for the *UK Plan for Shipments of Waste*, dated May 2012, to continue to have effect and to be changed in the future.

Regulations 26 to 41 make technical changes to the offence provisions in the domestic regulations. These changes preserve the scope of existing offences and ensure that no new offences are created.

Part 4 removes references to the relevant retained EU law in Annexe XX to the European Economic Area agreement. The references are no longer needed because the retained EU legislation on waste shipments has been amended so that it sets out all of the rules which govern shipments to or from EFTA countries.

Regulations 46, 47, 50, 63 and 105 to 108 amend the scope of retained EU law to make it clear that it applies to waste shipments to, from or through the UK; they also correct definitions and out-of-date references to EU legislation.

Regulation 48 amends definitions and make technical changes to ensure that references to competent authorities and references to the 2008 waste framework directive, which appear throughout the retained EU legislation, will continue to be effective.

Regulations 52 and 53 make technical changes that preserve the existing powers of the regulators to object to notifiable waste shipments for disposal or recovery. The draft instrument substitutes references to principles in the EU's waste framework directive with Basel convention obligations to have adequate disposal facilities and to minimise the movements of hazardous wastes and to ensure that shipments of wastes are only allowed if the state of export does not have the facilities to dispose of the wastes in question in an environmentally sound manner. The changes also ensure that regulators can continue to object to proposed shipments where the destination operates to lower environmental standards than those in the UK.

Regulation 69 omits Article 33 of the EU regulation, as this requires member states to set up systems for internal waste movements consistent with the system used between member states. Given that the UK has a system for internal waste movements, these provisions are considered redundant.

Regulation 91 makes a number of amendments to enforcement provisions. The provisions of Article 50 have already been implemented in the UK and so some of these provisions are redundant and can be omitted. The changes made preserve the requirement for a national inspection plan.

In addition, Regulation 91, and Regulations 92, 94 and 96 make changes that preserve obligations to report to the secretariat of the Basel convention, publish information and omits obligations to designate competent authorities and provide information to the European Commission.

Regulation 95 makes technical changes that maintain a power for the Secretary of State to designate places where waste entering or leaving the United Kingdom will be controlled.

Although there was no statutory requirement to consult on this instrument, Defra officials have engaged with industry and NGO representatives. The Explanatory Memorandum refers to,

"a large face-to-face event".

In fact, there have been two large events and a number of one-on-one meetings with industry representatives to explain this instrument's approach. No substantive comments or issues were raised, and questions received related to clarification on how the existing processes will function after the UK leaves the EU.

The Committee will be aware that the Secondary Legislation Scrutiny Committee raised concerns about the UK's ability to continue exporting hazardous and other notifiable waste to the EU in a no-deal scenario. On the basis of those concerns, the committee recommended that this instrument should be subject

[Baroness Vere of Norbiton]
to the affirmative resolution procedure. It highlighted a transitional issue with the validity under EU law of approvals to ship notified wastes where those approvals extend beyond the date of the UK's withdrawal from the EU. The Committee will be pleased to hear that this issue has now been largely resolved.

Should the UK leave the EU without a deal, the UK regulators have obtained agreement from their EU counterparts that 98% of the approvals to ship notifiable waste to the EU can continue in their current form. No new applications will be required to allow the export of these wastes, and there will be no additional administrative costs associated with the approvals process. Spain is the only member state still to provide a response to 11 approvals. Defra officials have met with officials from the Spanish ministry of environment. Given that these shipments have previously been approved, there is agreement on both sides that it is important to avoid unnecessary duplication.

These adjustments represent no changes of policy. While there was no statutory duty to conduct an impact assessment, in developing these instruments we have sought to ensure the minimum disruption to businesses involved in the shipment of waste through retaining existing law. I beg to move.

Baroness McIntosh of Pickering (Con): My Lords, I thank my noble friend for setting out the background to this instrument, which I welcome. I would like to ask a couple of questions.

The Minister referred to a national plan being in place. Has anyone voiced concerns about this plan? Are they entirely happy with it? At what date will that national plan kick in?

I think that my noble friend has addressed the concerns raised by Sub-Committee B of the Secondary Legislation Scrutiny Committee, but there was a scenario referred to whereby 556 UK approvals to export notified waste to the EU, with an associated tonnage of just under 25 million tonnes, might be caused to fall into an abyss. Can my noble friend put my mind at rest that the situations in paragraphs 3.6 and 3.7 on page 3 of the Explanatory Memorandum have been resolved?

Lord Teverson (LD): My Lords, I would also like to thank the Minister very much for participating in a meeting—I only managed to get to the very end of it, but the invitation was there. I also congratulate her on making what seems like a mundane statutory instrument really exciting through the enthusiasm of her reading.

However, this is an exciting issue, and it is a global issue. This whole market has fundamentally changed since the beginning of last year—almost a year ago—when China refused imports of what it called low-grade plastic, anything below about 99.7% pure plastic recyclate. Since then, that tide of waste from the developed world to the developing world has now been stopped by Thailand temporarily, as well as by Vietnam and Malaysia. We had the irony of President Trump blaming Asia for the litter that was washing up on the west coast of America, when of course most of it had already been exported from developing countries, particularly the United States, to east Asia. I will come back to this theme at the very end, but I want to put this SI in the context of an important issue and a quickly changing world.

Perhaps I could go through a few questions about the SI itself. I understand from it that we are, obviously, already members of the OECD and tied by those regulations and agreements, but are also we signed up not just as a member state of the EU but as a member in our own right to the Basel convention, which covers this area, so that we do not have to have a treaty change for that?

I was interested that the Minister mentioned Spain and, as I understand it from her, we have got to a stage where we are agreeing to agree but have not actually agreed. I understand also that the SI's territorial limitations are to the United Kingdom. Does the Minister have any information about the relationship between Gibraltar and mainland Spain regarding its waste disposal? I think that the overseas territory—that is its status—relies very much on Spain for that as well. I do not know whether that is included as part of the negotiations going on at the moment.

I note the Minister's remarks on consultation, but I would be interested to understand whether waste contractors and waste exporters have now been sent precise instructions on what they have to do.

I found the actual form on page 33 of the SI rather quaint. It read a little like one of those forms you get when you go to the United States, which says, "Have you indulged in terrorist activities recently?", as if you are going to casually tick that for yes. I was quite surprised to see such a 1950s-style document here, but perhaps it is all computerised. I would be interested to understand that from the Minister.

I want to be clear on another area which affects all these things. As we know, Defra is the department that has suffered more cuts under our fiscal regime than pretty well any other department, outside that for local government—the MHCLG, as it is now. Does the Environment Agency have the capacity to take on any additional responsibilities in this area, particularly given the rise in waste crime that there has been? Frankly, I suspect that the amount of waste crime internally in the UK is absolutely dwarfed by the amount of potential exported material that should not be exported. Despite saying that we should not export waste to countries that have lower environmental standards than us, I see no track record of that whatever.

I come back to the fundamental point I made at the beginning. I read through the resources and waste strategy published by Defra at the end of last year. Chapter 6 of that is entitled "Global Britain: international leadership", and I could not see anywhere in it a wish to stop this trade in waste, so that we would clean up our own backyard and no longer send that waste to other parts of the world. The greatest thing about this SI ought to be that it should become absolutely redundant within five to 10 years.

4 pm

Lord Dubs (Lab): My Lords, I join in thanking the Minister and her officials for a useful and helpful discussion yesterday. It was probably intended to answer questions to shorten this debate, but unfortunately it

gave me more things to think about after the discussion, so it may not have achieved its end. However, I appreciate the trouble the Minister and her officials went to to answer questions and to brief us.

I appreciate this SI is based on the Basel convention, which is not an EU convention, and therefore it is quite right that we should conform to it. I also hope that the bulk of what we are talking about will be proved unnecessary if we do not crash out of the EU, as some people fear. I am not sure whether yesterday's discussions in the House of Commons have made that easier, but that is not for debate today. I understand that something has to be done, even if we leave the EU on the basis that the Government are suggesting, as some elements of this will have to be carried over eventually, but that is not for today.

There is obvious concern about Spain and Gibraltar but not because there may not be a simple answer. I read in the papers that the Spanish Government are concerned about Gibraltar and may be using this and other measures to bring pressure to bear on our Government about the future of Gibraltar. The danger is that this may drag on beyond the exit date—although we now probably have three months longer—but what happens if the Gibraltar and Spain issue is not resolved by the time we leave the EU? How many businesses will be affected? What is the position there? The House of Lords Secondary Legislation Scrutiny Committee was,

"concerned that any refusal by a competent authority to treat an existing approval as valid could have an impact on the UK's ability to export notified wastes".

If we cannot reach an agreement with Spain in time, we would presumably have to have new agreements with other countries to get rid of the waste there, or are we stuck with it? What is going to happen?

I have a few more questions beyond Spain and Gibraltar. Do the Government expect an additional workload for the UK's competent authorities—the Environment Agency, the Scottish Environment Protection Agency, the Northern Ireland Environment Agency and Natural Resources Wales—as a result of Brexit? What will be the cost to taxpayers of any additional workload?

The Secondary Legislation Scrutiny Committee recommended that the instrument should be upgraded,

"to the affirmative procedure so that the House may consider any potential impact on UK manufacturers".

Can the Minister tell us a little more about what impact there might be on British manufacturers? Is there an impact assessment somewhere, or do the Government feel one is not necessary?

Paragraph 6.4 of the Explanatory Memorandum, which is perhaps easier to understand than the main document—that is not surprising—states:

"Provisions …. on waste shipments, which transfer legislative powers from the European Commission to the Secretary of State, are included in a separate cross-cutting transfer of legislative functions instrument relating to the environment".

Is that a different statutory instrument? If so, which is it, when will it be published and how does it relate to the SI we are discussing now?

Paragraph 7.4 states that, in the event of no deal,

"UK exporters will need to familiarise themselves with the customs guidelines the EU has laid down for imports of waste from outside the EU".

What have the Government done to publicise these guidelines to UK exporters? What is the cost to UK exporters if we leave the EU without a deal?

Paragraph 7.6 states that the instrument is:

"Amending references to the EU and EU institutions and administrative processes to UK equivalents".

What are the UK equivalents? What is the cost to the UK taxpayer for this additional workload? Will the UK equivalent institutions need to take on new members of staff to handle the administrative processes? How many new members of staff have already been hired to deal with this?

Paragraph 7.8 states:

"A number of amendments … on waste shipments are not included in this instrument but will instead be contained within a separate cross-cutting statutory instrument relating to the environment".

Which SI is that? Is it the one I asked about earlier? Has it already been published? If no, when will it be?

Paragraph 10.2 states:

"Government informally engaged stakeholders at a large face-to-face event … No substantive comments or issues were raised".

What stakeholders did the Government engage with? What were their concerns?

Finally, I am not trying to pull a fast one, but page 29 of the instrument refers to Article 55 under the heading "Designation of frontier crossing points". I must ask about Northern Ireland; the Minister is nodding. Is any waste going back and forth between Northern Ireland and the Republic? If so, what are the implications of this designation on the wider discussions concerning an open border between the United Kingdom and the Republic? I should have given the Minister some warning about the last point; she will not have been expecting it, but I thought I should make it anyway.

Baroness Vere of Norbiton: I thank noble Lords for their contributions, especially the noble Lord, Lord Dubs, whose approach to this SI has been particularly forensic—I hope that he will do many more. I will address some of the issues raised today. A number of questions were asked that go into slightly more detail beyond the nugget of legislation that noble Lords are looking at today. I will therefore probably write a letter in addition to what I say today, particularly on the border crossing issue, which goes far beyond the scope of our considerations. I hope that I can answer noble Lords' questions and put their minds at rest.

My noble friend Lady McIntosh mentioned the UK plan. I assure her that there are no concerns about the UK plan; it has been in place since 2012 and will continue.

Furthermore, my noble friend referred to the 556 approvals. She is quite right: when this instrument was laid, it looked like we had a mountain to climb in getting this waste approved and out of the country. I am pleased to say that this is an example of us working really well with our EU counterparts, who recognise the same as us that the shipment of this type of waste is hugely beneficial on both sides. It is an economic arrangement and makes sure that we get our waste treated in the right place, particularly where we do not have the capacity to do it ourselves.

[Baroness Vere of Norbiton]

The noble Lord, Lord Teverson, mentioned the trade in waste, both with China and more generally. If we lived in a perfect world, we would be able to dispose of and treat waste in our own nations, and that would continue for ever. However, some waste has a greater economic value to other countries or they have greater facilities to process that specific sort of waste, so I cannot see a future, at least in the short term, where we will ban all waste exports, because we simply cannot deal with some waste ourselves. However, we want to promote UK-based recycling and export less waste to be processed abroad. We are looking at a suite of measures, such as increasing the monitoring of international waste shipments and charging higher fees to improve compliance. We set out all these ideas in the recent resources and waste strategy, as the noble Lord will know, and we will publish more detailed plans soon.

The instrument retains the prohibition on the export of waste for disposal to countries outside the EU or the European Free Trade Association. The export of hazardous or household waste for recovery to countries outside the OECD is prohibited. Where we export waste destined for recycling to countries such as China—there will be other examples—that are better able to cope with this sort of waste, they will have specified which wastes they are willing to import and the procedures that UK exporters must follow are very well set out.

Lord Teverson: Do we have officials who check what happens to this stuff once we have exported it outside the EU and EFTA? Do we follow the supply chain and check what happens to it?

Baroness Vere of Norbiton: I would not want to confirm that 100%, but I hope very much that that is the case. I will investigate exactly what happens in the supply chain in order to find out whether we know exactly what happens at the other end. I think that all noble Lords will find that interesting; I know that I certainly would.

Turning to the Basel convention, I can confirm that we are members in our own right and that in fact we play a leading role within the convention in the way that it moves forward. We ensure that we get the best environmental outcomes from that particular organisation. That will remain the case and noble Lords should be reassured in that regard.

On Gibraltar, we are working closely with the Government of Gibraltar to support their EU exit preparations on waste shipments. Where the UK has 11 approvals outstanding, Gibraltar currently has 45 consents to ship waste to Spain which extend beyond exit day, and these will require reapproval by the Spanish authorities. It is a transitional issue for approvals to ship waste which have already been consented to. The EU legislation provides a framework for where consent has yet to be granted. Gibraltar is covered by the UK's ratification of the Basel convention and our membership of the OECD, so there is no legal impediment to Gibraltar continuing to ship waste to Spain after our departure from the EU. If no agreement is reached within the next short period of time, what will happen is that Gibraltar would put forward new applications which will be submitted from 30 March onwards. Again, there is no legal impediment to those applications being agreed to. There will be a slight break in the continuity of service, but we do not think that it would be for very long. The Environment Agency has spoken to the affected exporters and contingency plans are being made.

I turn now to consultation, an issue which was raised by the noble Lord, Lord Teverson. This is a technical instrument and, if I may coin a phrase, nothing has changed. Much of what happens already will continue to happen. Organisations will get their approvals. There will be two countries working together, and the waste will go from A to B. However, it is important that we make sure that everyone is aware of the plans we have in place. As I explained earlier, we have held events where we talked to the stakeholders involved in this area. The conversations were focused strongly on contingency planning and encouraging them to make sure that they are ready for Brexit, if it is a no-deal Brexit, on 29 March. We have issued a technical notice on the continuity of waste shipments which was published on 14 October.

A number of questions were asked about costs and resourcing. I would like to reassure noble Lords that much of this will not change. The amount of enforcement which has to happen will stay the same, and the number of applications which have to be submitted to a certain office in a certain place will also remain as it is. We do not foresee any significant changes in costs or additional resources being required as a result of us leaving the EU without a deal. The systems are already in place, and we are confident that they will continue.

I would like to respond to some of the questions put by the noble Lord, Lord Dubs. He mentioned the sister—or brother—legislation, which has been mentioned. This is happening with some of the no-deal SIs, in particular Defra SIs. Some of the cross-cutting SIs are picking up various issues from other SIs and putting them into one because they sit more comfortably with each other. The SI we are talking about is the Environment and Wildlife (Legislative Functions) (EU Exit) Regulations 2019. These regulations were approved by the House of Lords on 12 February and the instrument was then passed by the House of Commons on 14 February. That piece of legislation has gone through and, once this instrument has gone through, the two will combine together and the SI will be made.

Turning now to the imports of waste from Ireland and the impact on the Irish border— which again I will try to answer as much as possible—we have in the past agreed to allow imports of hazardous waste to the UK for specialist disposal, for example, by high-temperature incineration. This has been at the request of the Irish Government, and these imports have been agreed on the basis that suitable disposal facilities are not available in Ireland. This is the same for many countries when they work together on these transactions. When the UK leaves the EU, such import of waste for disposal from EU member states will be prohibited under EU law. If EU member states wish to continue to export waste to the UK for disposal—that is, from Ireland to Northern Ireland—it will be for the EU to amend its legislation to make this possible. So it will

not be possible in the future. In 2017, the UK imported 12,973 tonnes of waste from Ireland. Of this, 7,978 tonnes of hazardous waste was imported to England for HTI.

I shall probably stop at this point on the Northern Ireland-Irish border issue. I can see myself getting into hot water around it, and it would be sensible for us to give a considered response on this specific issue.

However, in general terms, I hope noble Lords will agree that the SI does what it says on the tin and keeps as much the same as possible. We hope it will not be needed in the future, but if it is, we know that the international transfer of waste will happen in an orderly fashion. I commend the Motion to the Committee.

Motion agreed.

Veterinary Medicines and Animals and Animal Products (Examination of Residues and Maximum Residue Limits) (Amendment etc.) (EU Exit) Regulations 2019

Considered in Grand Committee

4.17 pm

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

That the Grand Committee do consider the Veterinary Medicines and Animals and Animal Products (Examination of Residues and Maximum Residue Limits) (Amendment etc.) (EU Exit) Regulations 2019.

Relevant document: 14th Report from the Secondary Legislation Scrutiny Committee (Sub-Committee A)

The Parliamentary Under-Secretary of State, Department for Environment, Food and Rural Affairs (Lord Gardiner of Kimble) (Con): My Lords, veterinary medicines are tightly regulated here in the United Kingdom and in Europe. They are essential for the treatment of animals and ensuring animal welfare but can also present a risk to human health and the environment. If misused, they can affect human health directly or may enter the natural environment, causing long-lasting damage. The UK's existing Veterinary Medicines Regulations 2013 set out the requirements on the manufacture, authorisation, supply, possession and administration of veterinary medicines in the UK.

Separately, the surveillance of residues from veterinary medicines in animal produce is an important safeguard to provide assurance that any meat, eggs or milk consumed is free from harmful residues of medicines used in animals. The Animals and Animal Products (Examination for Residues and Maximum Residue Limits) (England and Scotland) Regulations 2015 provide for a surveillance programme for residues in England and Scotland. These regulations adopt the level of permissible residues set by the EU and also prohibit the use of certain substances as growth promoters. As residues surveillance is a devolved matter, there is equivalent secondary legislation covering Wales and Northern Ireland.

The Government share the British public's high regard for animal welfare and the need for safe and effective veterinary medicines. These regulations address technical deficiencies in our veterinary medicines legislation to ensure that it continues to operate effectively when we leave. They will ensure that the legal framework continues to provide an effective regime for the regulation of veterinary medicines through which we can safeguard the well-being of our animals. The instrument does not diminish the high standards in the established veterinary medicines and residues surveillance regimes. I emphasise that the amendments in this instrument are to ensure operability and that the high safety standards we have in place will continue. I particularly emphasise, given the reference in the Explanatory Memorandum to some concerns, that these regulations—I repeat this on the record—are for nothing other than to retain the high safety standards that we all desire and must have in this country.

The UK's regulator, the Veterinary Medicines Directorate, is already established as one of the leading regulators in Europe for veterinary medicines and will continue to lead on the international stage. The current legislation is designed to work in the context of EU membership. Some elements will therefore not work sensibly in a national context. Part 3 of this instrument amends the existing national legislation. For example, the mutual recognition provisions for medicine approvals between member states are no longer relevant. Similarly, approvals of generic marketing authorisations rely on the sharing of information between member states, and cannot continue to operate in the same way. Minor corrections are also made to the text to address references concerning EU membership which are no longer accurate or appropriate.

The instrument introduces a change in relation to the location of holders of marketing authorisations for veterinary medicines, which is needed as a consequence of leaving. Marketing authorisation holders must be established in the UK. As set out in the Explanatory Memorandum, this may result in a small increase in cost to those marketing authorisation holders currently based outside the United Kingdom. This is necessary to ensure that there are appropriate regulatory controls to ensure full compliance with UK law and standards, and that all marketing authorisation holders are treated equally. It is vital that marketing authorisation holders can be held accountable for their products, and these regulations provide for that.

Part 4 of the regulations sets out the necessary amendments to retained EU regulations. Regulation 470/09 sets out how maximum residue limits for substances used as veterinary medicines are set. MRLs are the maximum safe limit of a particular substance in produce from animals. These limits are used to establish withdrawal periods—the period that must elapse after the last administration of a medicine before produce from that animal may enter the food chain.

The Government have proactively engaged with the animal health industry to ensure that the regulatory regime continues to function effectively after exit day. I have met the veterinary pharmaceutical industry association, the National Office of Animal Health, on a number of occasions as part of our extensive

[Lord Gardiner of Kimble]
engagement. Officials from the Veterinary Medicines Directorate continue to hold regular meetings with key industry representatives. Industry has welcomed our proactive and continued engagement with them. We have also worked comprehensively with the devolved Administrations on this instrument where it relates to devolved matters, and they have given their consent to this instrument being made on a UK-wide basis.

The Government are committed to ensuring continued levels of protection for human and animal health, as well as making it straightforward for businesses to put products on the market; and ensuring UK businesses and individuals can continue to access a range of veterinary medicines. This instrument will help to maintain the established veterinary medicines and residues surveillance regimes, and ensure that an effective regulatory framework for veterinary medicines is in place. It remedies deficiencies in the law to enable that operability and I beg to move.

Lord Trees (CB): My Lords, I thank the Minister for his explicit and clear explanation of these regulations. I have very little quibble with them, but just a few points. As he emphasised, a significant change is to require the holders of market authorisations to be registered in the UK. This will impose a small burden. About £100 was estimated in the Explanatory Memorandum, which seems extremely reasonable and justified, because this measure is required to bring the market authorisation holders under UK legal jurisdiction. That is clearly extremely important to protect animal health and public safety.

The monitoring of residues, to which the Minister referred, is extremely important. As he mentioned, it is devolved. Can he tell us which processes are, or will be, in place between the devolved authorities in the UK to ensure that we maintain consistent levels and standards, so as not unduly to interfere with internal trade within the UK? I was going to ask the Minister about the concerns raised by your Lordships' Secondary Legislation Scrutiny Committee in relation to the lowering of standards, but I accept his assurance that those concerns are unfounded.

Finally, I make a plea to the Minister, which I am sure he will fully understand. These regulations will significantly increase workload for the regulatory departments in our pharmaceutical companies, which form an important industry in the UK. I ask him to ensure that at least some degree of understanding and flexibility applies to the government agencies responsible for interacting with those companies. All in all, however, this is a very satisfactory SI.

Baroness McIntosh of Pickering (Con): I congratulate my noble friend the Minister on introducing this SI. I am not a vet but an associate fellow of the British Veterinary Association, and I am grateful for the briefing it has given me for today's purposes. I want to press the Minister on the question of the potential cost. Historic and current approvals will obviously remain in place, but can he put my mind at rest on what the future cost will be? Can he also assure the Committee that the SI before us this afternoon will not potentially raise a barrier to trade?

In particular, I understand that the previous harmonisation and mutual recognition of products will not necessarily go forward. It is good that we are being nice about products coming this way, but will the Minister ensure that those going the other way will be equally assured? I understand that reciprocity will not be guaranteed in the event of no deal. I do not disapprove of the SI; I understand the absolute need for it, and welcome it. But what is happening to ensure reciprocity going forward?

Can my noble friend also give a hint to the Committee—this could be in the SI; I might have missed it—of what the cost would be of placing a veterinary product from the UK across the EU? That would be most helpful to know, as I understand that there will potentially be additional costs going forward. Could this lead to some companies, which might otherwise have chosen to establish themselves in the UK, choosing not to do so? This is one of the concerns that was expressed by the Secondary Legislation Scrutiny Committee Sub-Committee A, as it could mean a reduction in the number of veterinary medicines being available after exit. I assume this is something that the SI deals with. There are two sides to the coin. One is that a new product is going to cost more to be placed in another EU member state, or potentially an EEA country, even in spite of this. The flip side is that a company that may have wished to place itself in the UK may have second thoughts about doing so. Will this cover the situation if there is no deal, as the statutory instrument before us will presumably replace what would have been a transition period?

4.30 pm

Lord Addington (LD): My Lords, as a tenderfoot in no-deal SIs, I seem to have landed on my feet in a comparatively soft zone. No one I have received briefing from thinks that this, unto itself, is a bad thing. That seems to be the general consensus. Although there are going to be small rising costs—and as we have just heard, there is always the danger that we will be going into a world that is not as good for trade as Europe as it was before—that probably comes with the territory. We will have to accept that, if this SI comes into being; that is the reality of what we have here.

My only question is—and the briefest of thumbnail sketches is all I would require—what would be the alternative? Some idea about what might be happening or what might be the other way might put in context whether this is necessary at the moment. Most of the time, everybody says it is good, but if we do not do this, what else would be available? We had a brief look at the briefing meeting which the noble Lord very kindly arranged. A little hint at what else is available might let us stare a little closer into this pool of reality that comes with these documents.

Baroness Masham of Ilton (CB): My Lords, I declare an interest as I have horses. One issue of particular concern relates to the deletion of the requirement to retest horses entering the UK for disease when initial test results are inconclusive. The omission of this requirement suggests diseased horses will potentially be allowed to enter the UK without adequate care or protection for other animals and human health after the UK leaves the EU. Does this mean that we—

Lord Gardiner of Kimble: May I help the noble Baroness? I have a slight feeling that this might be in tune with the next SI, on the animal products and arrangements, rather than veterinary medicines, but I may have got that wrong.

Baroness Masham of Ilton: I had 2019.

Baroness McIntosh of Pickering: They are all 2019.

Lord Deben (Con): Just to make it easy.

Lord Gardiner of Kimble: This may well come into the trade and animal-related products SI.

Baroness Masham of Ilton: I will repeat it then.

Lord Gardiner of Kimble: Thank you for the forward notice.

Baroness Jones of Whitchurch (Lab): My Lords, I thank the Minister for his introduction to this SI and his helpful briefing beforehand and all noble Lords who have spoken. As the EM set out, this is an important issue for animal welfare, the safety of treated animals, the people handling the medicines, consumers and the environment. It is important that we get the regulation of veterinary medicines right for the future. We know, for example, that the overuse of antibiotics in animals is contributing to a developing public health crisis, as resistance and immunity to their impact becomes more widespread. It is very important that we are able to continue to harness the best and latest scientific advice to control the use of veterinary medicines.

The EM also made it clear that a partner SI will set the future maximum residue limits. Unfortunately we do not have before us today. We have debated why that happens on many occasions, and I will not repeat those arguments.

Both the Lords and Commons Scrutiny Committees recommended that this SI should be upgraded from a negative to an affirmative procedure. They did so for two reasons, which I would like to explore in more detail. First, they had concerns about the new requirement on holders of marketing authorisations for veterinary medicines to be based in the UK. The Minister has already explained in a little detail why this is necessary. The Explanatory Memorandum states that 90 companies would have to establish a UK base. Can the Minister say whether we have concerns about the quality of any authorisations currently being carried out by these 90 companies? The cost of registering a UK base seems insignificant, but, as the noble Baroness, Lady McIntosh, and others have said, the Scrutiny Committees were concerned that some of the companies would not simply bother to register and would therefore not be able to authorise EU veterinary products being imported to the UK. Can the Minister explain the consequences for animal health if this were to happen? Could there be a shortage of products? Has any risk assessment been carried out to ensure that this will not be the case?

Can the Minister also respond to concerns that if we banned products from EU companies that did not have a base in the UK, the EU could retaliate and ban UK-authorised products in the EU? Can he clarify whether products authorised by UK marketing companies will still be valid in the EU after exit? This is particularly concerning given that mutual batch testing would cease after Brexit. This would mean that additional checks for veterinary medicines manufactured in the UK and exported to the EU would have to apply. Is any dialogue taking place to ensure that these trade issues are resolved? Has an assessment of the risks to UK research and business been carried out?

The EM gives the reason for requiring a UK base as being to facilitate enforcement, as the Minister said. It goes on to say:

"The ability to prosecute a holder in appropriate circumstances is an important deterrent to bad practice".

Can the Minister explain what these bad practice risks are? Which UK agency would prosecute the companies if bad practice continued to exist? Have there been any prosecutions in recent memory? I am trying to get to the bottom of where that concern really lies.

The Scrutiny Committee also raised concerns about the potential lowering of safety standards in respect of certain amendments. Clearly this is a scenario we would want to avoid at all costs. The SI appears to retain many of the standards currently in operation within the EU. Can the Minister confirm that we will comply with EU regulatory standards or standards at least as stringent as those currently in place?

We will no longer have the checks and balances on standards which the EU offers. Responsibility for some decisions will now be delegated to the Secretary of State. For example, under Paragraph 22, the veterinary medicines regulations are amended to say that before placing an immunological product on the market, written approval must be sought from the Secretary of State. Can the Minister clarify which agency or department will be authorised to give this approval and what scientific evidence will be required?

With regard to applications for new or amended residue limits, page 9 refers to an appropriate authority producing an assessment report with a risk assessment. In this case the appropriate authority is again defined as the Secretary of State, so will he, in effect, be making a recommendation to himself? Can the Minister clarify how the responsibilities will be defined so that there is a separate assessment and decision-making function?

There are several references to exporting countries having,

"equivalent medicines regulation standards to those of the United Kingdom".

Can the Minister clarify who will determine whether those standards are equivalent?

For the avoidance of doubt, can the Minister state categorically that there is nothing in this SI that would enable the USA to start exporting hormone-injected beef to the UK? He will know that this is a matter of great concern to the British public. I look forward to his response.

Lord Gardiner of Kimble: I am most grateful to all noble Lords for their contributions. We will consider another SI which is yet to clear JCSI. I want to put on record that I am fully seized of the point that statutory

[Lord Gardiner of Kimble]
instruments should be grouped together wherever possible, appropriate and helpful to your Lordships in scrutinising regulations.

Although I mentioned it in my opening remarks deliberately, I emphasise again that this SI is absolutely about continuing existing high standards for veterinary medicines and ensuring that UK businesses and individuals can continue to access as wide a range of veterinary medicines as possible. I specifically reassure the noble Baroness, Lady Jones of Whitchurch, that there is no way that this statutory instrument can do anything to unpick the existing ban on hormone growth promoters, as it is already in UK law. I repeat emphatically that this is not the purpose or intent of these regulations.

A number of your Lordships mentioned the requirement for marketing authorisation holders to be established in the UK, which will result in a small additional cost—there are references to £100 and a further annual fee of £40. We believe it is necessary to ensure the safety and effectiveness of UK medicines and that all companies can be held accountable for the medicines they market. We have endeavoured to make this process as simple and robust as possible. The cost of establishing a UK presence is small compared with the overall cost of developing a medicine and bringing it to market. We do not believe that companies will be discouraged from bringing their products to the UK market. All new companies wishing to market products in the UK may continue to manufacture medicines in Europe and elsewhere, but as a company they must be established here in the UK.

The noble Lord, Lord Addington, is right that we considered alternatives when preparing this in order to provide the same assurance that the products in question are safe and effective. Final manufacturing and product surveillance assurance processes would have been required to take place in the UK under that alternative. That would mean moving manufacturing processes and staff and would certainly have resulted in significant increases in costs to industry. This is why we chose the option that we believe provides the necessary assurances that we would require with the least impact on and cost to business. As the noble Lord, Lord Trees, said, it is a reasonable and proportionate response to what these instruments intended.

My noble friend Lady McIntosh raised the issue of UK companies wishing to market products in the EU. At this stage, the European Medicines Agency has been clear on its expectations. Marketing authorisation holders, final manufacturing certification and post-authorisation surveillance must all be located in the EU. As I have said, our approach has been somewhat different. We have intentionally intended to be pragmatic. We think that is the right way forward. On whether there will be any changes in the arrangements, this is the position as we understand it at the moment. I think this is an area where continuing collaboration is important.

I profoundly agree with the noble Baroness, Lady Jones of Whitchurch, about the imperative of reducing the use of antibiotics in livestock. We must reduce it in humans too. In livestock, there has been a 40% reduction already. We need to go further for all the reasons we understand about animal and human resistance.

4.45 pm

On working with industry, there has been considerable engagement with NOAH and the Veterinary Pharmacy Association, and officials from the Veterinary Medicines Directorate are having continuous meetings with key industry representatives. As I have said, industry representatives have said to me that they welcome this continued and proactive engagement.

In response to the noble Baroness, Lady Jones of Whitchurch, I have had no indication from the industry that companies have decided not to continue marketing products in the UK. Indeed, we are a nation with considerable livestock and animal interests as animal lovers. The UK animal medicines market is worth in excess of £645 million per annum. The additional costs which will result from this regulation have been acknowledged by many of those I have spoken to as being very small compared with the extremely high costs of developing and marketing veterinary medicines. The whole point of this statutory instrument is to ensure that this country has the appropriate medicines we need to look after animals.

Bad practice was another point raised by the noble Baroness, Lady Jones of Whitchurch. Broadly speaking, it means operating outside the scope of the regulatory regime. In this context, that would include failing to report adverse reactions to the VMD or changing a product specification without going through the necessary regulatory approvals. I have not been made aware of any examples of such practices, but if I do hear of any, I will write to the noble Baroness and send a copy to all noble Lords who have spoken in the debate. This is an important feature of the necessary regulatory approvals. We should ensure at every turn that if there are adverse reactions or if there is a change in a product specification, the VMD must be informed.

My noble friend Lady McIntosh asked about the cost of placing products in the EU. As I understand it, the reality is that costs will vary across member states. Due to the complexities of the products, member states are able to set their own fees depending on the number of countries involved and the costs incurred by the individual assessment authorities. I cannot give precise figures to assist my noble friend but, again, if I have any further detail, I will be in contact.

This is about bringing these matters back into the national context and ensuring that there is confidence that it is done robustly. The noble Baroness, Lady Jones of Whitchurch, asked about the scrutiny arrangements of Ministers. The Veterinary Medicines Directorate is the UK's competent authority for veterinary medicines and authorises medicines on behalf of the Secretary of State. There is an established statutory appeal mechanism set out in the Veterinary Medicines Regulations 2013 for anyone who is aggrieved about a decision made under those regulations. This instrument does nothing to reduce or diminish those protections. Regulation 28 of the 2013 regulations provides for an appeal to be made to the Veterinary Products Committee while Regulation 29 provides for an appeal to a person appointed by the Secretary of State to hear the appeal. Once these routes of appeal have been exhausted, the applicant may bring forward judicial review proceedings in respect of the Secretary of State's final decision.

It is important to emphasise that the VMD is recognised across the EU as having considerable experience and a very strong scientific standing. It is acknowledged across Europe as one of the best-performing national EU regulators. It already undertakes a substantial amount of scientific assessment work, the majority of which takes place at national level, so there is a high degree of continuity. Indeed, the VMD has an excellent reputation not only within Europe, but internationally based on the strength of its scientific and regulatory expertise. The industry across the EU uses VMD as one of the lead agencies because of its reputation for excellence.

On scientific expertise and advice, it is important for me to express that in the national context, we will be well protected. VMD already has considerable expertise, but it also has access to independent advice and can draw on the expertise of the UK's Veterinary Products Committee. The committee's membership includes academics with expertise in ecotoxicology, toxicology, the fate of veterinary medicines in the environment and residues in food. In other words, we believe that considerable expertise is already available to us.

The noble Lord, Lord Trees, mentioned consistency. VMD co-ordinates on a UK-wide basis and meets all DAs yearly to set the annual residues control plan to ensure consistency. More generally on all these matters, in the framework and understanding in respecting the devolved arrangements, the common link and common standards, particularly in areas such, as this are well understood by the devolved Administrations. As I said, their engagement was very much alive on this instrument.

My noble friend Lady McIntosh asked about authorisation costs. In the UK, the costs will remain the same. The noble Baroness, Lady Jones of Whitchurch, mentioned product quality. There are no specific concerns about any of the products from holders currently based outside the UK but, clearly, we need to ensure robust assessment to keep animal and human health safe.

Other points were made. On our arrangements and approach, which I described to the noble Lord, Lord Addington, I say to my noble friend Lady McIntosh that we do not wish there to be any barriers to trade. We wish to collaborate and work to ensure that animal medicines are available in this country. In working with NOAH and industry, everyone is seized of the importance of this issue. I will study *Hansard* because I want to respond to the noble Baroness, Lady Jones, with specific details on mutual batch-testing.

In our arrangements with the EU, we all want a deal that reflects the importance of collaboration. That is precisely because in this country, we have expertise that the Europeans wish to use and we in turn wish to work with them. This is a strong area in which we wish to work collaboratively.

Baroness Jones of Whitchurch: My specific concern is about whether we have told the EU that we plan to bring in UK-based registration. Is there a danger of some kind of tit-for-tat? What negotiations are taking place with the EU to make sure that it does not retaliate in some way? We all want a good ongoing relationship, but this SI raises specific questions about the consequences.

Lord Gardiner of Kimble: I am most grateful to the noble Baroness. The EU knows about our arrangements. The way in which we have set out the market authorisation holders could not be a stronger signal to our European friends that we have found what we think is an appropriate way of ensuring that we have the protections we believe we need. We are not being draconian or difficult; we believe that it is important to have an international trade in good animal medicines. That is what we seek. For those reasons, I will look at *Hansard* for any other points to address. In the meantime, I commend the regulations to the Committee.

Motion agreed.

Trade in Animals and Related Products (Amendment) (EU Exit) Regulations 2019

Considered in Grand Committee

4.55 pm

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

That the Grand Committee do consider the Trade in Animals and Related Products (Amendment) (EU Exit) Regulations 2019.

Relevant document: 15th Report from the Secondary Legislation Scrutiny Committee (Sub-Committee B)

The Parliamentary Under-Secretary of State, Department for Environment, Food and Rural Affairs (Lord Gardiner of Kimble) (Con): My Lords, I shall speak also to the instrument grouped with these regulations—the Import of and Trade in Animals and Animal Products (Amendment etc.) (EU Exit) Regulations 2019—as I think it will be helpful to noble Lords, given the close connection between the two.

The Trade in Animals and Related Products (Amendment) (EU Exit) Regulations 2019 amend provisions related to imports, and transit through the EU, of: live animals, including horses; animal products, including meat; reproductive material used for animal breeding, such as semen, ova and embryos; and the non-commercial movement of pet animals.

This instrument importantly ensures operability of our main English animal trade instrument, the Trade in Animals and Related Products Regulations 2011. This is key legislation for the import of these commodities into England that establishes a system for trade in live animals and genetic material with other EU member states and imports of animals and animal products from outside the European Union.

This instrument also ensures the operability of two related instruments that regulate the non-commercial movement of pet animals into Great Britain and ensure protection against the introduction of rabies: the Non-Commercial Movement of Pet Animals Order 2011 and the Rabies (Importation of Dogs, Cats and Other Mammals) Order 1974. The Non-Commercial Movement of Pet Animals Order 2011 enforces in Great Britain the EU pet travel scheme, which sets out rules for identification, vaccination and documentary requirements for pets entering member states from other member states or third countries, and the rabies order sets out

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requirements for quarantine when a pet is not compliant with these rules, in order to protect our biosecurity and prevent the introduction of rabies.

I emphasise that this instrument makes purely technical changes to EU-derived domestic legislation about animal trade to ensure that it continues to operate effectively. It does not introduce new policy and preserves the current regime for protecting the UK's biosecurity. This instrument applies only to imports and does not legislate for export of animals and animal products from the United Kingdom to the EU. The amendments in this instrument will allow all these laws to continue to work after exit, by, for instance, removing redundant references to EU bodies, functions or legislation and replacing them with domestic equivalents. It will also amend phrases that would no longer be correct, such as changing "legislation of the European Union" to "retained EU law".

Different parts of this instrument have different territorial extent and application, and the devolved Administrations were closely engaged in its development. Part 2 applies to Great Britain, whereas Part 3 applies to England only. The devolved Administrations are tabling their own versions of the amendments in Part 3, which will generally reflect the approach taken in England.

Without this legislation, there would be considerable disruption to the UK's import system and a lack of clarity for industry and non-commercial pet travel.

The Import of and Trade in Animals and Animal Products (Amendment etc.) (EU Exit) Regulations 2019 again amend provisions related to imports, and transit through the EU, of: live animals; animal products, including meat; genetic material used for animal breeding, such as semen, ova and embryos; and the non-commercial movement of pet animals. The instrument makes purely technical changes to directly applicable EU regulations and decisions. It does not introduce new policy and preserves the current regime for protecting the UK's biosecurity.

5 pm

This instrument makes technical amendments to ensure continued operability of: 14 EU instruments concerning imports of live animals and reproductive products; 17 concerning imports of animal products intended for human consumption; four that lay down protective measures against the introduction of particular diseases; four that cover the EU pet travel scheme; and seven that relate more generally to the import regime for animals and animal products. This instrument also contains similar technical amendments to references to powers to charge fees found in two domestic instruments.

The amendments ensure the continuation of veterinary controls and other import conditions which safeguard animal and public health. They allow for authorisation of businesses to continue, and for the maintenance of health certification and transport requirements, and allow appropriate actions to be taken in case of reported non-compliance or disease outbreaks in other countries. Furthermore, they provide for the continuation of the existing health and documentary requirements for the non-commercial movement of pets into the UK under the EU pet travel scheme.

In addition, the amendments transfer certain powers and functions from the European Commission to the respective Ministers in the UK. The amendments give Ministers the power, formerly reserved by the Commission, to take appropriate action in relation to trade restrictions resulting from disease outbreaks abroad. Regulation 3 and Schedule 1 lay the foundations for the appropriate Minister and the Northern Ireland Office to amend lists of third countries approved as having equivalent official disease controls for continuing trade with the UK in live animals and animal products, and thus to refuse trade or impose more stringent conditions on countries that pose a biosecurity risk.

Regarding the EU pet travel scheme, the amendments are required in order to ensure that safe pet travel without quarantine can continue into the UK. If these amendments were not made, EU pet passports for pet animals travelling from the EU would no longer be valid in the UK, which would clearly cause disruption. The UK's ongoing application to become a listed third country for the purposes of pet travel between the UK and EU member states is also dependent on maintaining EU minimum health standards.

This instrument applies to the whole of the UK; the devolved Administrations were closely engaged in its development and have given their consent.

Defra has carried out extensive engagement with stakeholders on animal trade and pet travel more generally. Concerning importers of animals and animal products, the department has engaged with over 300 stakeholders to date, covering 50 events. All border inspection posts and all known impacted trade associations have been consulted. Defra will continue this engagement with importers over the coming weeks to ensure they understand the changes that will come into effect.

In relation to the equine sector, Defra has engaged with key stakeholders, including the British Horseracing Authority, World Horse Welfare, the British Equine Veterinary Association and Weatherbys, throughout work on EU exit. The equine sector is content with the proposed approach for imports.

In relation to pet travel, Defra has engaged with key stakeholders, including carrier and industry groups, the British Veterinary Association, the Royal College of Veterinary Surgeons, the Kennel Club, Guide Dogs UK and Dogs for Good. The pet travel sector is also content with the proposed approach.

Additionally, on the subject of this legislation Defra has engaged with various major stakeholders—the Food and Drink Federation, the International Meat Trade Association and the NFU—who raised no concerns with Defra's approach.

The trade in animals and animal products that do not constitute a risk to human or animal health is clearly of significant importance to the UK's food security and economy. These technical amendments are essential for the continuation of the UK's current trade and import regime and for minimum disruption to pet travel. They will also ensure that our strict biosecurity controls with regards to animal trade are maintained at their current levels when we leave. I beg to move.

Baroness McIntosh of Pickering (Con): My Lords, I welcome these two sets of regulations, one of which is clearly more substantive than the other. I would note that the value of exports of animals and animal products is currently running at £6.7 billion, so this is not an insignificant trade. I have some questions for my noble friend.

Concern has been expressed by the British Veterinary Association and others—this is also mentioned by Sub-Committee B of the House of Lords Secondary Legislation Scrutiny Committee—that there could be a hurdle. My first question is this: if we pass this statutory instrument today, will it take immediate effect, thus ensuring that there will not be any form of hiccup? I have read that it could take six months for Britain to be listed as a third country. Does this statutory instrument prevent any hiatus occurring? I hope that my noble friend can reassure the Committee today that our exports will continue. It has been put in terms that the UK may not be permitted to make the application to become a third country until after 11 pm on 29 March—if that deadline is upheld. The briefing from the BVA goes on to state that the process can take several months, while according to the National Farmers' Union, Defra itself has indicated that the process could take up to six months. It would be reassuring to know that that is not the case.

My noble friend will be aware of my concern especially about racehorses. He mentioned that the statutory instruments before the Committee relate to imports. That begs the question: what is the position as regards exports? We have the tripartite agreement which relates to racehorses, presumably covering racing, breeding and so on. What is the position as regards exports under this instrument? Are we going to have a separate SI to cover that aspect, or have I missed something here? Can my noble friend assure me that our racehorses will be able to go to Ireland and France to compete in races on 30 March and beyond?

I turn to passports for pets. What reciprocal arrangements are in place? Again, my noble friend has reassured the Committee adequately on the position of dogs and other animals coming into this country, but if someone wishes to take their pet to an EU country on 30 March, will that still be the case? Where are we as regards reciprocal arrangements for pet passports?

I would like to put down a marker. I know that my noble friend and the department are coming under great pressure to ban the trade in live animals. I would like to be first out of the stalls—to use a racing analogy—that we do not want to see an end to the trade in live animals. I presume that these two statutory instruments should put my mind at rest in that regard.

In introducing the two sets of regulations, in particular as regards the plethora of regulations that they are amending, my noble friend has said that we want to ensure the safety of food and animal products coming into this country. What progress has been made on our remaining within the European Food Safety Authority and signing up to the rapid alert system for food and feed scheme? My noble friend will be aware of my interest since I followed the "horsegate" scenario in 2013 very closely. Obviously, we want to make sure that there is no possibility of that arising again after March this year.

With those comments, I thank my noble friend once again for introducing these two important sets of regulations.

Lord Rooker (Lab): My Lords, I had not intended to visit the Grand Committee on these SIs today because, as the Minister said, there are no major policy changes. I declare an interest—it is not an interest, really—because I am a member of sifting committee B, helping the world go by with statutory instruments.

We published a brief note on these two SIs in our 15th report and I wish to raise a couple of points which I did not know about until earlier this morning. It is not without significance that the medicine SI we debated earlier and this SI started life as negative instruments from Defra, which did not want them debated. That was the view and that is what it is all about. These two SIs were upgraded following the sifting process.

Defra has about 10% of the instruments we have seen and recommended for sifting. It has agreed all the recommendations—I am not complaining about that—but I wish to address a point which was raised with me this morning by Friends of the Earth. While I have been sitting in the Room, I have realised that exchanges have taken place between Defra and Secondary Legislation Scrutiny Committee officials. I want to put on record that Friends of the Earth have sent a note about several matters, including incoherent amendments and drafting errors.

In relation to the Import of and Trade in Animals and Animal Products (Amendment etc.) (EU Exit) Regulations 2019, the Friends of the Earth note states:

> "Regulation 50 … amends the Commission Regulation 2018/659. Regulation 50(13) of the 2019 Regulations omits Article 12(2) of the 2018 Commission Regulation which requires that when checks on live horses coming into the UK return inconclusive, they should be subject to a definitive testing for African Horse Sickness and a list of other diseases listed in Article 11(1) which is retained".

To cut a long story short, Article 12(2) is omitted and not replaced and there is no mention of it in the Explanatory Memorandum. Is this the case?

While the lawyers from Defra were not available earlier today, I understand that the policy lead believes it has fully copied across into the SI the provision from the EU regulation that requires that when checks on live horses coming into the UK return inconclusive they need to be retested. That is the point I want the Minister put on the record. There should be no weakening of testing arrangements, but if Defra has not copied across something then it will be somewhere else. I found this enormously complicated instrument as I tried to go through the aspects raised by Friends of the Earth.

I shall not go through the details of what Friends of the Earth has said—I am quite happy—and I presume it has sent a copy of the note to the Minister. However, there are references to changes in regulations which do not exist. Regulations 7, 26 and 32 all refer to amendments and points which do not exist; they modify something which does not exist. I am quite happy to leave the note for the Minister and his officials. I do not want to go over issues that would not be suitable here.

[Lord Rooker]

The central issue is that some people have looked at this and thought, "Hang on a minute, we have not fully copied across but policy lead thinks we have". I thought it worth while to raise the point because, if it gets out there, you cannot pull it back if it is wrong. If it can be satisfactorily dealt with here, it would be for everyone's convenience.

Baroness Masham of Ilton (CB): My Lords, I apologise for my bungle on the previous regulations. These SIs merge into each other well.

An issue of particular concern which has been referred to—I am going to speak to it again—relates to the deletion of the requirement to retest horses entering the UK for disease when initial test results are inconclusive. Omitting this requirement suggests that diseased horses could potentially be allowed to enter the UK without adequate care or protection. This could apply to other animals and humans after the UK leaves the EU. I declare an interest: I have a pony stud, have exported ponies and am waiting for some to be imported.

There are many different infections. Does this mean that we are downgrading standards? This is one of the fears that many people have about leaving the EU. I hope that the Minister will look at this and do something to make it safer for horses entering the UK.

5.15 pm

Lord Trees (CB): As the Minister said, this is a very large instrument, and, as the noble Lord, Lord Rooker, said, particularly complex and pretty hard reading. I am grateful to the noble Lord for his explanation. I did not have that briefing. The matter is quite significant and I hope it might be addressed.

I will say a few words about the pet travel scheme and one or two other things. I understand that additional rabies controls will be required for the movement of domestic pets, particularly dogs. There will not only be vaccination but post-vaccination blood testing for dogs leaving this country to confirm satisfactory antibody responses. Can the Minister confirm that this will apply to all imported dogs coming to Britain, including those originating in the EU 27 and coming to the UK for the first time, as well as travelling dogs leaving here and going to continental Europe for short periods? In other words, is there reciprocity in that respect?

Also, can the Minister confirm that travelling dogs will require a veterinary health check and an export health certificate before travel? That would impose cost burdens on the owners and substantial workforce burdens. If travelling dogs require export health certificates, are Her Majesty's Government satisfied that there are sufficient designated official veterinarians based in small animal practices to carry this out with hundreds of thousands of dogs potentially moving out of and back to Britain? There are currently a number of countries outwith the EU included in the pet travel scheme. What rabies measures will we require from those countries post-Brexit? Will dogs imported to the UK from those countries require vaccination and testing as required for movement between the UK and continental Europe?

There is one matter not included here—it is not fair to include it—but there are concerns about the importation of ticks and tick-borne disease. I urge that we take every opportunity to impose controls to minimise the risk of ticks being imported when dogs come back to Britain. I hope that Defra will consider and legislate for this at some stage in the future.

This SI refers to the non-commercial movement of dogs. What plans are there, if any, to transfer the regulations on commercial movement of dogs covered by the Balai directive? Will that be dealt with in a different SI?

I have a couple of small final points. Commission Decision 2001/812/EC refers to the expertise of personnel required at border inspection ports. Can the Minister assure us that there will be no change at all in the level of expertise—the numbers as well as the quality—of personnel required at border inspection posts?

Lastly, there are several references in the SI to the "EU Exit Day 1" project, which will affect movements of dogs, which is being worked on by Defra. Can the Minister outline what that project will address?

Baroness Parminter (LD): My Lords, given the plethora of issues raised by colleagues around the Committee, I am just going to focus on one additional matter that has not been raised either here or in the Commons. It relates to the welcome introduction from the Minister, who made it clear that this is a technical statutory instrument; my disappointment is that it is not more substantial. My question, which I will expand on a bit, is: if the Government are really serious about banning circuses with wild animals, why did they not take the opportunity in this statutory instrument to ban the importation of circuses that do just that?

The Minister made it clear—and the EM made it absolutely clear—that we are not under any legal obligation to adhere to the EU rules for trade following exit. This is a unilateral decision. The Secondary Legislation Scrutiny Committee also made it clear that it hoped that this Committee would scrutinise the department's choice of unilateral recognition of current import arrangements. As other Members have made clear, our own animals may not be able to be exported if we are not accepted as a third country, and even if we are accepted as a third country, it may take some time. The noble Baroness, Lady McIntosh of Pickering, has heard six months; newspapers at the weekend suggested nine months. There could be a considerable time lag and administrative burden on pet owners and commercial exporters of equines and dogs, and yet we are unilaterally saying that anybody who has a circus with wild animals can happily bring them in.

The Minister made clear in his opening remarks that this is all about making it easy for business to trade with the UK post Brexit. However, we know that circuses with wild animals are cruel. The majority of the population oppose them; in Defra's own recent consultation on the matter, 95% of the consultees said they wanted them banned; and Scotland and Wales have banned such circuses. I appreciate that this statutory instrument is only about circuses with wild animals coming into the country, and to be fair, none has done so in the past few years. However, acts and trainers

may move around, and resident UK circuses can bring them in. The somewhat inappropriately named Great British Circus brought in some elephants just a few years back. That is elephants, lions, tigers and bears cooped up in small mobile cages, travelling around Europe, coming with the consent of this SI to the UK.

The Secretary of State, Michael Gove, has said that he will ban circuses with wild animals:

"as soon as parliamentary time allows".

My question, therefore, is: why was this SI not looked at as a possible vehicle? On page 19, Regulation 18 sets out quite clearly the conditions that have to be met by circuses bringing animals into the United Kingdom. Paragraph 3(b), which Regulation 18 inserts into Article 4 of the EU regulation, requires:

"a register of animals in the circus in accordance with the model laid down in Annex I".

I have looked at Annex I, which is a one-page document, and in box 2.4 you have to identify the "Species" that you are bringing in. I am no lawyer, but a little asterisk about not allowing wild animals might have been something that the Government could at least have thought about.

The Minister will say, I suspect, that any such amendment goes beyond what is required to maintain the operation of the law after EU exit. However, the Government have made changes in other statutory instruments. The Chemicals (Health and Safety) and Genetically Modified Organisms (Contained Use) (Amendment etc.) (EU Exit) Regulations 2019 proposed removing,

"unnecessary legal burdens on industry".

So, we can take out burdens on industry but we cannot protect animal welfare. Will the Minister tell us whether Defra discussed the potential for using this statutory instrument to halt the importation of circuses with wild animals? Specifically, did it take any legal advice before it laid the instrument to achieve just that?

Unless there are overwhelming legal reasons why this has not happened, we will be forced to believe that, when the Government have to choose between supporting trade and supporting animal welfare, we know where they will go. It gives us little confidence that, in future deals, animal welfare, which we all hold so dear, will be upheld.

Lord Knight of Weymouth (Lab): My Lords, in harmony with our commitment on the Labour Front Bench to recycling, I am speaking for my party in a guest slot. These regulations are complex and somewhat impenetrable—I think I drew the short straw—so I am afraid they raise many questions, some of which may be related to, but not directly affected by, these regulations. I hope the Minister will forgive me for that. Personally, I very much support the points just made by the noble Baroness, Lady Parminter, on circus animals.

According to figures that I have seen, products of animal origin and live animals imported to the UK are valued at over £19.3 billion each year. Of this, 80%—about £15 billion, which is twice the amount suggested by the noble Baroness, Lady McIntosh—comes from trade with the EU. This covers an area of huge significance to our agricultural economy and the economy as a whole; given its effects, it also risks a further nudge for the nation in the direction of veganism should the trade be too much disrupted.

As we have heard, the UK will be treated by the EU as a third country if we leave without a deal. The SLSC recommended that the SIs be subject to the affirmative procedure, and I welcome the Government's decision to accept this recommendation.

Without listed status, no exports to the EU can take place. Defra's no-deal technical notice confirmed that,

"The EU would require the UK to be a listed third country",

and it could not,

"be certain of the EU response or its timing",

for an application. Without this,

"no exports … could take place".

Can the Minister tell us what the usual timeframes are for dealing with third country applications? As we have heard, there are concerns that this could take up to nine months.

In order to be prepared for all possible outcomes, we understand that the UK submitted its application for listing as a third country in November. Can the Minister assure the Committee that the UK's application will be granted? Have the Government formally requested that the UK's application be expedited? Is the Minister 100% confident that, in the event that we leave the EU on 29 March with no deal, the approval for the export of live animals and animal products will have been granted in time for day one? If not 100% confident, what level of confidence does he have, and how will that change if there is a delay—to, say, June—for a no-deal exit?

The NFU says it has been told informally that, although Britain is in complete regulatory alignment with the EU, if there is no deal the same health checks that countries such as China and the US undergo will apply to UK suppliers. This would mean that 6,000 meat processing plants that export to the EU would have to undergo individual audits by British authorities. These would be checked by EU officials and then put to a standing veterinary committee for approval, a process that the NFU has calculated will take six months, "at a conservative reading". These checks will also be conducted on any other companies supplying food and drink to the EU, including those exporting bottled water, honey, jam, dairy and other fresh foods. Does the Minister agree with this projection by the National Farmers' Union? What is his assessment of the impact on the viability of food and drink businesses in the UK in the short and long term if that is the case?

I turn now to model certificates. Paragraph 7.2 of the Explanatory Memorandum states that the instrument,

"has provision to allow existing forms of model certificates to continue to be used for transitional purposes for such period as is published by the appropriate authority".

I would love it if the Minister could expand a little on this. Is it dependent on the transition period following a deal, or can this also apply in the event of no deal? The use of the word "transitional" is quite confusing in that respect.

Then there are border checks. Under EU law, all animal and agri-food, including animal feed and plant produce, has to go through health checks. However,

[Lord Knight of Weymouth]
the necessary border inspection posts do not exist at, for example, Calais. This is because those checks have not been needed for anyone trading within the single market. The nearest border inspection posts are in Zeebrugge and Rotterdam, which have historically acted as the gateway for non-EU traffic, or Liverpool on the route to Ireland. Does the Minister envisage placing UK officers in Rotterdam, or will we reply on post-import checks within the UK?

5.30 pm

A no-deal Brexit will require more work from vets to meet increased demands for the certification needed for the export of animals and animal products and for pet travel. In addition, exiting from EU surveillance systems and uncertainty around access to medicines could have negative impacts on animal health and welfare further down the line, requiring yet more veterinary capacity. The Public Accounts Committee has warned:

"In a no-deal scenario there is a risk of UK exports of animals and animal products being delayed at borders because of a shortage of vets".

That committee also found that the department is cavalier about there being enough suitably qualified staff to take on this work. What help are the Government providing vets—this echoes the point made by the noble Lord, Lord Trees—in the event of a no-deal scenario to prepare for increased demand for export health certificates for animals and animal products? Does the Minister share my concern that a no-deal Brexit will exacerbate the current shortages in the veterinary profession and create significant risks for trade, animal health and welfare, and food safety?

Further, in the event of a no-deal scenario, what help is going to be provided to prepare for increased demand for export health certificates? What will be done to safeguard animal welfare in the scenario of live animals being stuck in trucks for long periods as they wait to go through ports and border inspection posts? Do we have to depend on the failing Secretary of State for Transport's use of disused airfields for queuing freight including, for example, provision for livestock grazing?

The department has created a new role, that of the certification support officer, to provide administrative support for official vets so that they can more easily process the new export health certificates. The main concern of the British Veterinary Association is about who will do some of the checking and that they have the required level of skills. Can the Minister assure the Committee that the veterinary professional will remain as the provider of oversight and reassurance for the whole process of this trade?

I turn to the question of border inspection posts. From my research, it appears that there are none in Wales and the only facilities in Northern Ireland are in Belfast. Is my understanding correct that, if I am a farmer on the Northern Ireland border who wants to take livestock across the border to the Republic, once I have the export certification, and assuming my hauliers have successfully applied for and received their international driving licence, I then have to take my animals to Belfast airport for inspection before driving them back to cross into the Republic of Ireland. Is that right? How much cost will that add? Will the border inspection posts have the capacity for this? Is the Minister making any efforts to expand the number of border inspection posts to ease this burden on farmers?

In respect of hygiene and health, I too have seen the Friends of the Earth briefing. The only point that I will pick up on is one that has not been mentioned already. Regulation 26 provides that, in Part 2 of Annexe I,

"in the section headed 'Notes', omit the general notes and additional notes for day old chicks".

One of the notes under this heading requires that chicks not destined for the EU or with lower quality health should not be transported together. This is not replaced, which will allow for chicks of a lesser quality of health and thus more susceptible to disease and infection to be transported alongside those that meet the health standards of the UK and, as such, possibly subjecting healthy chicks to disease. Why is this change being made? I also share the concerns raised by my noble friend Lord Rooker and the noble Baroness, Lady Masham, in respect of Regulation 50.

I turn now to trade deals. Although the UK is under no legal obligation to adhere to EU rules for trade following EU exit, failure to do so could result in the UK being unable to trade in animals and their products with EU member states and third countries. We therefore welcome these regulations which seek to maintain current standards, legislation and arrangements relating to such trade on the day the UK leaves the EU. Food safety and harmonisation will also have a lot to do with who we sign free trade deals with. There is significant public concern about the implications of a US trade deal for the quality and standard of British food, given the routine use of chemicals and antibiotics used in food production to promote faster growth. Washing chicken in chlorine and feeding growth hormones to beef are both legal in the US but currently banned in the EU. Will maintaining the existing important regime prevent chlorine-washed chicken and hormone-treated beef from being imported to the UK? The World Health Organization is concerned that overuse of antibiotics in farming is a major contributor to antibiotic resistance worldwide. Can the Minister advise whether the regulations will prevent antibiotic-farmed produce, banned in the EU, from being imported? If so, will the Minister commit to preserving these standards when making future trade deals?

There is also the matter of cost. Leaving the EU without a deal would cause considerable disruption to the UK's import system, which would be likely to lead to additional costs for importers and stakeholders. Furthermore, the Minister has advised that these instruments make technical amendments to maintain the existing standards and no impact is anticipated. However, paragraph 6.1 of the Explanatory Memorandum says that these regulations include,

"amendments to the domestic powers to recover fees in relation to activity relating to imports of animals and animal products from the EU".

Does the Minister accept that there may well be additional requirements and costs to stakeholders, and will he commit to a public consultation on any fee increases allowed by these regulations?

I have a few concerns around science, innovation and research. The main concern around the impact of Brexit on science and innovation is about the supply of essential resources to conduct biomedical research and development here in the UK. Animals are used in biomedical and veterinary research to advance scientific understanding, to develop solutions to medical problems to protect the safety of people, animals and the environment and as models to study disease. Critical to the continuing success of our highly significant life sciences centre will be the timely and efficient transport, import to and export from the UK of purpose-bred research animals; biological samples—such as blood, tissues, organs, embryos—from these; medical and pharmaceutical supplies; and supplies of specialised animal feed and research diets for that sector.

In a no-deal scenario, exports of biological samples would require compliance with customs formalities and export health certificates for each individual shipment and for all animal species. As a third party to the EU, the UK will need to negotiate each certificate's content separately with each member state. When the UK leaves the EU, the efficient supply of animals and animal-derived products should be maintained without delays to ensure continued support of the sector, to protect the welfare of animals and to retain the integrity of any consignment being transported.

However, many stakeholders remain concerned about the UK's capacity to cope with the demand for export health certificates and CITES permits. The National Office of Animal Health has specifically raised concern that the replacement for the EU trade control and export system, IPAFFS, referred to in the Trade in Animals and Related Products (Amendment) (EU Exit) Regulations 2019, will not be fully functional on day one of a no-deal scenario, with stakeholders unsure how to use the system. Is the Minister confident that the required IT systems will be up and running? Assuming that this is being developed using modern techniques, is it currently being user tested? How long is the beta phase likely to last? What discussions have taken place with stakeholders to prepare them to use the new system? Has the department prepared and published user guidance? If not, when will it? The no-deal guidance published last week states:

"Businesses importing animals and animal products from within the EU will need to use a separate interim system until the summer".

Can the Minister elaborate? How many businesses will be affected?

I have a couple more points to make. On the pet travel scheme, the Explanatory Memorandum advises that the amendments are required to ensure that safe pet travel without quarantine can continue in the UK. We have heard how important and significant that is. Can the Minister update the Committee on the UK's ongoing application to become a listed third country for the purposes of pet travel between the UK and the EU?

Finally, regarding the Friends of the Earth briefing, I also noted the incoherent amendments referred to by my noble friend Lord Rooker. There was also an issue around penalties: Regulation 43 requires Article 42 of the EU regulation to be omitted. This places a duty on the Commission to assign penalties for failure to comply with these regulations. Without an appropriate body to replace the Commission's role, I fear failure to comply with this regulation could go without penalty.

I look forward to the Minister's reply on that issue and to my questions, of which there were far too many.

Lord Gardiner of Kimble: My Lords, I rather feel that we have gone into interesting territory on a number of the subjects that, in the end, go back to the parent regulations when we are dealing with technical amendments. However, I will endeavour to answer as many of the important points made as I can.

I start with an explanation for the noble Lord, Lord Rooker, and the noble Baroness, Lady Masham. My understanding—I may need a stewards' inquiry on this—is that Article 12(2) was omitted because it refers to samples being sent to the relevant European Union reference laboratory but after exit day, in a no-deal scenario, the UK would have no formal access to check test results at that laboratory. The paragraph is therefore otiose. However, I emphasise that there will be no lowering of standards in checks on horses imported into the UK, so there will be no greater risk of horse disease. I have not seen the Friends of the Earth briefing but all the instruments have been checked by two specialist drafting lawyers in addition to our own. I will take a copy of the briefing, either from the noble Lord or any other noble Lord with a copy, back to the department. In truth, I find the statutory instruments pretty impenetrable without a Keeling schedule, and the Explanatory Memorandum gets me out of trouble. I will look into this issue. I want to take this opportunity to reassure the noble Baroness, Lady Masham, that we have absolutely no intention of allowing a diminution in standards. The omission is because we would not be in a position to refer to an EU reference laboratory in that instance.

A number of noble Lords mentioned listing. I discussed these matters with the Chief Veterinary Officer only two days ago. The Commission's recent contingency action plan states:

"On the basis of the EU veterinary legislation, the Commission will—if justified—swiftly 'list' the United Kingdom, if all applicable conditions are fulfilled, so as to allow the entry of live animals and animal products from the United Kingdom into the European Union".

Following the UK's application, there have been technical discussions. We are working with the Commission to process our application quickly. Obviously, I cannot give any assurances on that point. I am not in charge of the Commission on this matter—I wish I were—but I raised it with the Chief Veterinary Officer, who has been in communication and is working on it.

My noble friend Lady McIntosh mentioned pet listing. If she will forgive me, I will write to her on exports, given the huge number of replies I must give on instruments relating to imports. I understand the import/export point, but a lot of the detail on exports is not in the department's gift. It will be a matter for negotiations and arrangements, but I have set out our proportionate views on how we in this country, where we will have responsibility, will deal with animals and imports coming in from the EU.

[Lord Gardiner of Kimble]

On pet listing, the department has submitted its application to allow the UK to become a Part 1-listed third country under Annexe II of the EU pet travel regulations and is currently in technical discussions with the European Commission. Obviously, it will be for the Commission to consider our application. Clearly, if we become a Part 1-listed country, there will be very little change to current pet travel arrangements.

5.45 pm

In the event of an unlisting, pets would continue to be able to travel from the UK to the EU, but the requirements for documents and health checks would differ, depending on what category of third country the UK is treated as under the EU pet travel scheme. If we were to leave without a deal and were treated as unlisted, pet owners travelling from the UK to the EU would have to obtain a health certificate for their pet which would need to be issued by an official veterinarian no more than 10 days before travel. Considerable work has been done with the veterinary profession. Some months ago—it was some time last year—a lot of discussion took place with the profession, because there would need to be, for example, appropriate and adequate immune responses to rabies vaccinations. That shows why we are working as strongly as we can to get the listing, but it is not in my gift or the Government's gift to agree these things. All that I can assure your Lordships on is that the Chief Veterinary Officer, in whom I have the greatest confidence, and her team are working extremely effectively and collaboratively because our working relationship with EU member states and the Commission on disease and such things is very strong.

The noble Baroness, Lady Parminter, asked why we did not deal with wild animals in circuses at this juncture. I am advised that it is because what we are doing here is through the mechanism of the EU withdrawal Act, which does not give scope for doing what the noble Baroness and the noble Lord, Lord Knight of Weymouth, would wish. It is not within scope, so I suspect that we would have been ultra vires of the Act. As the noble Baroness said, since the licensing regulations were introduced no travelling circuses based outside the UK have applied for a licence to tour. This is unfinished business. The department very much hopes that the Private Member's Bill of the Member for Copeland will have a successful passage—it is currently in the other place—as this matter needs to be attended to.

The noble Lord, Lord Trees, asked about dogs coming in from third countries. These instruments make no policy changes, so the requirements for dogs entering the UK from third countries will not change. On ticks, as the Biosecurity Minister I am always thinking about ways to heighten our biosecurity in the future. However, the Government have no immediate plans to change the pet travel requirements in the short term. For entry into the UK, the current pet travel health requirements will continue to apply. Looking to the future, it may be open to us to look at new opportunities to manage pet travel arrangements and to think more strongly about whether, given that we do not have some diseases that occur in other parts of the EU, we should think about more robust controls on disease, which obviously is important for animal welfare.

A point was made about reciprocity. The Government took the decision not to impose any additional import requirements on movements from the EU. That decision was taken because we did not believe that the biosecurity risk to the UK would change in such a way for us to feel that we should change them on day one. We also think it important to ensure that there is a flow of goods at the border. We already have our existing controls in place, so these instruments do nothing more than to maintain the status quo.

I was asked whether the commercial movements of dogs and others under the Balai directive are still covered. Commercial movements are covered by the Trade in Animals and Related Products Regulations 2011, which are amended by a domestic statutory instrument. I think I had better unclutter that for the noble Lord because it did not flow frightfully will. Regarding disease and import requirements, APHA at Weybridge will undertake the testing on UK exports, and its equivalents in other member states will do the testing before arrival in the UK.

The noble Lord, Lord Knight, made a number of points. I start by saying emphatically—I hear this point every time and will say this for as long as I need to—that we will not compromise food safety in pursuit of a trade agreement. Maintaining safety and public confidence in the food we eat is of the highest priority and any future trade deal must work for UK farmers, businesses and consumers. Any new products wishing to enter the UK market must comply with our rigorous legislation and standards. If any food safety rules change after we leave or any new food products come on to the market, we will apply our usual rigorous risk assessment to ensure that consumers remain protected. On chlorine and hormoned beef, we will continue with all the arrangements we have as a member of the EU; they will continue when we leave the EU. I am delighted to put that on record, I think for probably the tenth time—it may be more—but it is important that I should do so.

The noble Lord, Lord Knight, was absolutely right to raise the veterinary profession, as did the noble Lord, Lord Trees. A lot of work has been done with the veterinary profession, and the department has had very strong and collaborative discussions with the BVA and the royal college. Certification support officers were mentioned. Those officers are there to assist with the paperwork for export health certification. They will be fully responsible to the qualified official veterinary surgeon, who will be the only person that can sign off the certificate. This is designed to enable the vet to get on with their job, given their qualifications. It is entirely pragmatic and no noble Lord should see it as a ruse to suggest either that we are lowering standards or that we want to reduce the number of vets—absolutely not. This is about what we think would be a proportionate way of managing. Indeed, there have been very considerable discussions with the veterinary profession about training and the continuing work that needs to be done to keep our country safe.

The noble Lord, Lord Knight, also referred to BIPs. Consignments originating in the EU will not initially be required to enter the UK through a border inspection post. For this reason, we do not anticipate a significant increase in demand for BIPs at UK ports

receiving ferries coming from the EU. This is based on our assessment that, as there were requirements within the EU for food safety and so forth when we were a member, this is a sensible and pragmatic approach.

Lord Knight of Weymouth: Before the Minister moves off border inspection posts, can he comment on the role of BIPS in terms of exports, whether we have sufficient capacity and whether the scenario I painted in respect of Northern Ireland is accurate?

Lord Gardiner of Kimble: On the particular points about exports, my understanding is that, from the point of view of port authorities and others such as port health authorities, the ports feel that they have sufficient resources to handle imports and exports. However, I think it would be helpful, particularly given my noble friend Lady McIntosh's points about exports and imports, if after this debate I produced one page on imports and one on exports as to how the geography looked.

On the noble Lord's question about import notification systems, with us no longer being part of EU TRACES, the noble Lord is right that we will introduce our own system for import notifications and controls: the Import of Products, Animals, Food and Feed System. IPAFFS will allow importers, or agents acting on their behalf, to create an import notification and legal declaration of consignments bound for the UK before arrival. The notifications will be received by the port health authorities, which can then recall checks on the system. IPAFFS is being released in phases, with testing already under way, and will be available for those importing from outside the EU from day one.

However, as the noble Lord has said, UK importers importing from the EU will need to use a separate electronic process until the summer of this year. My note here says, "Why the delay?", so I should say that the highest-risk goods such as live animals, germplasm and certain animal by-products currently require an ITAHC validated by an official vet in the EU member country on TRACES. The UK is then notified of the movement and required health assurances to follow risk-based post-import checks. To ensure certainty for businesses, and to ensure IPAFFS' delivery for non-EU imports from day one, Defra has decided to remove EU imports from the system until the full functionality is available in the summer. As a result, UK importers importing from the EU will need to use separate electronic system processes, as I have said.

Detailed guidance is to be published very shortly. This process is expected to involve importers downloading forms from GOV.UK and emailing them to the APHA to process ahead of any import arriving in the UK. The rules on the documentation required for travel are unchanged. The APHA will continue to arrange post-import checks on high-risk consignments and sample checks on low-risk consignments, as it currently does. In other words, the same arrangements on checking would continue. I sense that the noble Lord has another question.

Lord Knight of Weymouth: I am terribly grateful. I understand that there is a need for the new system to be fully functional—I guess, to be able to have the right integration with TRACES. The question then is: if it is just an interim system, is it already in existence? Is it being tested? Can we have some assurance that it will work smoothly? The new one is not fully functional yet there is some magical interim solution that is going to work, which seems a little odd to me.

Lord Gardiner of Kimble: Again, the best thing I can do is to ensure that I get this absolutely right. We are undertaking this in the phase I described to ensure that importers know which system they should use and have a guarantee that the system works. The system we are bringing in—IPAFFS—is being tested and is working. Dialogue and engagement with importers is under way. We thought it pragmatic to ensure a straightforward interim system for importers from the EU, until I can give your Lordships an absolute assurance that IPAFFS will work for the full range of them. Most importantly, this ensures that the level of checks will not change, so high-risk consignments will benefit from the clarity of checks and low-risk consignments will face the same arrangements.

6 pm

Lord Knight of Weymouth: What is the interim system?

Lord Gardiner of Kimble: It will be pulled off GOV.UK and sent to the APHA, in the same way as it would be checked in arrangements from the EU where the EU standards will be the same as ours from day one.

My noble friend Lady McIntosh mentioned EFSA. Obviously, these decisions will relate to negotiations. The FSA undertakes robust risk assessment and provides evidence-based risk management advice and recommendations for future food and feed safety issues. The FSA has built its capacity for risk assessment and risk management. The independent scientific advisory committees are being strengthened by recruiting new experts to establish three expert groups. The FSA has already expanded its access to scientific experts providing advice and other scientific services to inform our work. However, again, it is not in my gift to talk about EFSA. It is a matter for negotiations at a later stage.

Lord Rooker: Following what the Minister said in reply to the question from the noble Baroness, Lady McIntosh, I suggest that he had better have a better answer when he comes to deal with the food regulations next week. The noble Baroness asked about RASFF, the rapid alert system for food and feed, but the Minister has not addressed it. We understand that there is still no agreement on whether we can participate in it. The only countries allowed to participate are EU members and EEA members. We need an answer on that. Every day, 10 alerts are issued around Europe—3,800 a year—but we will not be part of that system. The Minister will be asked about that when he comes to deal with the food regulations next week, whereas on this instrument he can easily say that it is slightly outside the scope of the regulations.

While I am on my feet, I know that the Minister has not finished but I am waiting for an answer to the question about farmers needing to take their animals to the central Belfast airport before they can reach the border. I have not heard an answer to that yet.

Lord Gardiner of Kimble: My Lords—*[Interruption.]* Do I need to look at that? This is very novel for me. The Government continue to negotiate full access to the rapid alert system as it will be mutually beneficial for the EU and the UK. I am rather looking forward to an Oral Question from the noble Baroness, Lady McIntosh, on the matter too so noble Lords will get all the bites of the cherry.

The noble Lord, Lord Knight, referred to Northern Ireland. Although it is desirable for the four nations of the UK to co-operate in respect in powers returning from the EU, the SIs do not extend across the entire UK. The UK Government will co-operate with the devolved Administrations so that, for example, powers can be exercised concurrently and collaboratively where appropriate. Continuing close co-operation between the UK Government and the devolved Administrations remains essential to ensuring that an exit works for all parts of the kingdom. These instruments involve joint decision making. We are working with other administrations to agree the detail of the process for delivering joint decision making, as set out in the SI.

I will come back quickly to the tripartite agreement but I have not finished with all the questions asked by the noble Lord, Lord Knight. There is no current intention to increase fees for import checks. I can assure your Lordships that the normal consultation procedures with affected sectors would apply if they were to be increased.

Baroness Parminter: We still have not got an answer about Northern Ireland. It is a really specific question. The Minister's point about co-operation with devolved Administrations is fine, but my understanding is that things are not going that well over there at the moment. What is the position with regard to animals? Are they having to go to an airport and back again? Can we have some clarity on that point?

Lord Gardiner of Kimble: That is an interesting Box note. I think the most important thing is to say that I will write to your Lordships in respect of all those matters. As I have said, this particular SI is absolutely not about exports, but I have ended up answering a lot of questions about them. If I was going to start to get tetchy, I would say, "This instrument is about imports, my Lords". If one wants to spend five hours talking about the whole architecture, we will lose the thread of having proper briefings and discussions on matters so that I can give your Lordships proper answers. I am not a magician. I do not know all the answers about exports at this stage. Noble Lords will get them when I am in that position, and I will write to them on those matters.

Regarding the tripartite agreement, all these matters are for negotiation. We understand fully that this has worked very well for the UK, Ireland and France, and have issued technical notices on equine movements. It is clear that the UK would no longer have access to the tripartite agreement if we were to leave with no deal. The equine sector, with which we have worked extremely strongly, understands the position. Technical notices have been circulated and are widely put across in the equine sector. I will ensure that that element of the points is put in the note that I will send—as I said, it will include exports, although those are way out of scope with the technical instrument about operability on imports before your Lordships this afternoon.

Motion agreed.

Import of and Trade in Animals and Animal Products (Amendment etc.) (EU Exit) Regulations 2019

Considered in Grand Committee

6.08 pm

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

That the Grand Committee do consider the Import of and Trade in Animals and Animal Products (Amendment etc.) (EU Exit) Regulations 2019.

Relevant document: 15th Report from the Secondary Legislation Scrutiny Committee (Sub-Committee B)

Motion agreed.

Waste (Miscellaneous Amendments) (EU Exit) Regulations 2019

Considered in Grand Committee

6.10 pm

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

That the Grand Committee do consider the Waste (Miscellaneous Amendments) (EU Exit) Regulations 2019.

The Parliamentary Under-Secretary of State, Department for Environment, Food and Rural Affairs (Lord Gardiner of Kimble) (Con): My Lords, the Government take the issue of waste and resource efficiency very seriously and place real importance on this area. We always have in mind the need for strong policies to enhance and promote the circular economy and encourage actions to reduce, reuse and recycle. This instrument being presented before your Lordships makes technical changes to ensure the operability of waste-related legislation after exit. These technical and legal amendments will maintain the effectiveness and continuity of UK legislation that would otherwise be left partially inoperable following our exit from the EU. We wish to ensure that the law will continue to function as it does today. It will preserve the current regime, ensuring protection and maintaining improvement in the environment.

I can assure noble Lords that these adjustments represent no changes of policy, nor will they have an impact on businesses or the public, or indeed put any additional burden on or require any working practice changes for the Environment Agency or other UK enforcement bodies. Our recently announced resources and waste strategy sets out how we will preserve our stock of material resources by minimising waste, promoting resource efficiency and moving towards a circular economy. At the same time, we will minimise the damage caused to our natural environment by reducing and managing waste safely and carefully, and by tackling waste crime. It combines actions we will

now take with firm commitments for the coming years and gives a clear longer-term policy direction in line with our 25-year environment plan.

The instrument makes technical amendments to three waste-related Acts of Parliament: the Control of Pollution (Amendment) Act 1989, Part II of the Environmental Protection Act 1990, and the Waste and Emissions Trading Act 2003. It also amends 14 related EU regulations and decisions to ensure operability. The general changes in this instrument include amending references to the European Union, EU institutions and EU administrative processes to UK equivalents, and updating legal references to refer to relevant UK legislation. The instrument introduces modifications into the Acts of Parliament and retained direct EU legislation relating to waste, so that references to EU directives continue to function after exit day as they function before exit day.

One purpose of these modifications is to ensure continuity as to which public bodies exercise certain functions. Those obligations and discretions placed on member states under the directives will continue to be exercised after exit by the same appropriate authorities, appropriate agencies and/or local authorities before exit. In this context, "appropriate authority" means the Secretary of State in relation to England and each of the devolved Administrations in relation to their respective parts of the United Kingdom. "Appropriate agency" means the Environment Agency in relation to England and the relevant environment agency or body in the other parts of the United Kingdom.

The main amendments made to these EU regulations by this instrument are therefore to insert new provisions which set out modifications to the way in which references to EU directives in the EU regulations are to be read on and after exit day. Additionally, technical operability amendments are made to account for the fact that we are no longer a member state. The UK will no longer be allowed to authorise participation in the EU's Eco-Management and Audit Scheme, known as EMAS.

In the United Kingdom, verification will be through a conformity assessment body accredited by the United Kingdom Accreditation Service. In the meantime, verifiers can still apply to be accredited EMAS verifiers through other member states offering the service. Defra made all the businesses and organisations directly impacted aware of this prior to legislation being laid.

6.15 pm

Under the waste framework directive, there is a target to recycle 50% of UK household waste by 2020. As part of the technical amendments made by Regulation 21 of this instrument, we have made changes to ensure that the Secretary of State publishes a report called the "progress report" on whether this target has been met in respect of England. This progress report must be published by the Secretary of State before 1 January 2022. This instrument does not create an obligation on the devolved Administrations to publish such a report and it will be for each country to address these matters.

The instrument also revokes directly applicable EU legislation relating to waste. Some of this legislation is being revoked because it is redundant in a domestic context. For example, Commission Decisions 97/622/EC and 2009/851/EC set the format of questionnaires that EU member states complete and return to the European Commission every three years in relation to the implementation of EU directives on packaging waste and waste batteries respectively.

Some of the directly applicable EU legislation is being revoked because its requirements are already embedded in UK legislation. For example, Commission Decision 2003/138/EC covers material and component coding standards for end-of-life vehicles, and another, Commission Decision 2002/151/EC, relates to minimum standards for the certificate of destruction for those vehicles. In both cases, the requirements of these decisions are already set out fully in the End-of-Life Vehicles Regulations 2003.

We have worked very closely with the devolved Administrations on this instrument and, where it relates to devolved matters, they have given their full support and consent. These regulations will help to ensure that our waste management legislation continues to operate as intended, and as before, following EU exit. I beg to move.

Baroness Bakewell of Hardington Mandeville (LD): My Lords, first, I declare my interests as a member of a local authority and a vice-president of the LGA. I thank the Minister for his comprehensive opening remarks and for his time and that of the Defra officials in the very useful briefing sessions held ahead of these SIs being debated. This SI, as indicated by its title, is something of a catch-all on the waste front, covering a number of waste issues from scrap metal to hazardous waste, batteries and accumulators, glass cullet, as well as landfill. I have a number of minor points to raise.

In paragraph 2.2 of the Explanatory Memorandum there is reference to the criteria for determining when certain of the materials that I have just mentioned would cease to be waste and to calculations of the efficiency of recycling processes. I would be grateful if the Minister could say what is meant by the,

"efficiency of the recycling processes".

A number of EU Commission decisions on waste are revoked, and the Minister has just broadly referred to that. They include Decision 76/431/EEC, which concerns the setting up of a committee on waste management. This is referred to on page 2 of the Explanatory Memorandum and in the main SI on page 62. Can the Minister explain why there is no mention of a replacement committee on waste management? Is there no longer any need for this committee?

The Minister referred to Decision 2003/138/EC establishing component and material coding standards for vehicles, which is being revoked along with Decision 2005/293/EC on the reuse/recovery and reuse/recycling targets on end-of-life vehicles on the basis that they are already enshrined in UK law. I just wonder why they need to be mentioned if they are already enshrined in UK law.

The powers under directive 2008/98/EC, which were in place before exit day, will transfer after exit day to,

"the appropriate authority, appropriate agency or local authority".

After exit day, the European Eco-Management and Audit Scheme, EMAS, will no longer have status and registrations will become invalid, although those wishing to can register under EMAS Global. The Government

[Baroness Bakewell of Hardington Mandeville] are proposing to make alternative provision for references to the certification of environment management standards by retaining a reference to a conformity assessment body. Transitional provisions will ensure that certifications granted to quality management systems will continue to be recognised as valid. Can the Minister say what these transitional provisions will be and when they will come into operation?

I am concerned about the mechanism for publishing and monitoring targets on waste. The Secretary of State is required to produce a progress report on the UK's target to recycle 50% of household waste by 2020. However, this does not have to be published until 1 January 2020 and is not a requirement for the devolved Administrations, which the Minister has already referred to. Given the public's concern about the level of waste, especially plastic waste, would it be better to bring this date forward so that action can be taken to ensure that the targets are met and adhered to?

This SI empowers the Environment Agency and equivalent bodies in other areas, including local authorities, to deal with decisions relating to landfilling of waste and waste from extractive industries, as well as waste criteria for metals, glass and so on. There is, however, no mention of additional resources being allocated to allow these agencies and bodies to take on these powers. Could the Minister say whether there are any plans to provide sufficient resources for this work to be carried out effectively and efficiently?

Finally, reference is made to the reclassification of some hazardous waste products in 1357/2014. The list in Annex III—I am very grateful to officials for providing this—which is referred to in the SI, contains some extremely toxic materials, including explosives, flammable liquids, irritants and carcinogenic materials. This is potentially extremely concerning and could have implications for public safety. Could the Minister give a little more detail on how this might be implemented?

Baroness Jones of Whitchurch (Lab): My Lords, I thank the Minister for his introduction to this SI and his helpful prior briefing; I also thank the noble Baroness, Lady Bakewell, for her contribution.

As the Minister described, this SI contains a series of amendments to different aspects of the waste management system required to be in place by exit day. In the main, we are content with the proposals, which appear to replicate closely the current arrangements with the EU. These are regulations from which the UK has benefitted in the past and it is important that these standards are upheld.

However, I want to make a couple of points about the drafting, then I have some questions. On the drafting of the SI, although this is a very lengthy document, I found both the SI and the Explanatory Memorandum very clear and I commend those that drafted them. In particular, I welcome the inclusion in the SI of a very clear definition of who is the appropriate authority and appropriate agency in each case. The Minister will know that we have raised this issue time and again, but in this document, it is spelled out; indeed, the document goes further. Where there is a more generic reference, it is qualified by the phrase,

"the appropriate authority, appropriate agency or local authority which, immediately before exit day, was responsible for the United Kingdom's compliance with that obligation".

I commend that wording and I believe that this phrase could be used more widely in other SIs to avoid ambiguity. There is learning for us all in that.

I now have a few questions. Along with the noble Baroness, Lady Bakewell, I would be grateful if the Minister could clarify the arrangements for external verification, reference to which is made several times in the document. For example, on page 22, the amendment to Article 5(7) uses an EU regulation to define a "conformity assessment body". Do the Government intend to retain that EU definition and accreditation in the longer term? Is that how we will operate—namely, that we will not have our own UK definition and we will stick with the EU definition?

Paragraph 7(c) adds that other accreditation can be solved through the EMAS scheme, which has been referred to. However, this seems to be slightly at odds with the wording on page 4 of the Explanatory Memorandum, which states that references to EMAS "will be omitted" and that any registration would have to be through EMAS Global. Can the Minister clarify that wording? What is the difference between EMAS and EMAS Global? Does EMAS Global have the same authority and impact as EMAS and are the same resources available to provide the required verification?

I refer now to the reporting on the UK target to recycle 50% of household waste by 2020. As the noble Baroness, Lady Bakewell, said, this is an issue of great public interest, particularly as we seem to be heading towards missing that very important target. This was a requirement to report to the EU, which has been replaced by one called the "progress report" to be published,

"in a manner that the Secretary of State considers appropriate",

before 2022. I am grateful to Richard Gregson, the Defra lawyer, for sending me the existing wording to compare with the new wording. The original wording refers to an "implementation report" that should demonstrate compliance with the targets to the Commission. This is to be replaced by a progress report, which it appears the Secretary of State will publish to himself with no penalty for inaction.

Let us compare this to what would happen if we remained in the EU. I am advised that if a member state is found guilty of failing to meet targets in a directive, an EU penalty formula would be applied—in this case, a maximum fine of around €700,000 each day if we do not meet the target in 2020 and continue not to meet it for a significant period. It does not need too much imagination to see how that threat would concentrate the minds of those responsible for the targets in Defra. Moreover, it once again puts into stark relief the need for an independent watchdog that can hold the Government to account and issue fines that will deliver real compliance with these important environmental objectives.

I am very unhappy with the wording of this SI as it stands. It seems to represent a considerable watering down of the current provision and I would contend that it goes further and represents a policy change as the 50% target now becomes advisory rather than

compulsory. This is of course compounded by the fact, as we have heard, that the targets will apply to England only with no obligation on the devolved nations to report. I ask the Minister to look at this wording again to bring it more in line with the expectation of implementation as set out in the original wording and to put on record that the interim watchdog, the details of which we still await although the clock is ticking, will have equivalent powers to issue fines similar to those currently in operation in the EU.

Finally, on a small point of detail, there is a provision on extractive mining which covers the definition and the dangers therein. However, paragraph 5(c) of new Article 2B on page 16 of the SI includes a reference to,

"Article 2 of Council Directive 2009/158/EC on animal health conditions",

relating to trade with the EU and third countries in "poultry and hatching eggs". I struggle to see the connection between poultry and hatching eggs and extractive mining. I would be grateful if the Minister could explain that connection and why this provision appears not only in the paragraph that I have referred to but in several others. I am curious to hear the answer to that, but I look forward more seriously to his substantive response on the issue of waste targets.

6.30 pm

Lord Gardiner of Kimble: My Lords, I first thank the noble Baroness, Lady Jones of Whitchurch, for her generous remarks on the drafting of the statutory instrument and Explanatory Memorandum. I am the first to say that I always go to the Explanatory Memorandum and hope that I can then somehow figure out the statutory instrument—so many regulations can be most complicated. I will pass the noble Baroness's remarks back as a template; they are on the dot.

I re-emphasise from the start that these regulations make only technical changes that maintain continuity. They will not: make any changes to policy; lead to any change in operational delivery; impose additional costs on businesses, individuals or public organisations; or result in any additional environmental impacts, compared with the legislation being amended or replaced.

The noble Baroness, Lady Bakewell, made an important reference to the efficiency of recycling processes under paragraph 2.2 of the Explanatory Memorandum. Regulation 493/2012 sets out a method of calculating recycling efficiency in relation to waste batteries and accumulators. The calculation method is set out in Annexe I to that regulation. It provides a standard approach for all recyclers of waste batteries so that, in any given case, it can be confirmed whether recycling processes have met the minimum efficiency standards set out in Annexe III to Directive 2006/66/EC. I am sorry to be technical again, but I wanted to make that response.

The noble Baroness, Lady Bakewell, also asked about revocations in relation to the end-of-life vehicles directive. The three EU decisions relating to that directive, referenced in the Schedule to the instrument, are to be revoked instead of being retained and amended. Commission decision 2001/753/EC sets out a questionnaire for member states to report on the implementation of the end-of-life vehicles directive. Following exit, the requirements of this decision would be redundant. The requirements of the two Commission decisions on end-of-life vehicles which relate to minimum requirements for the certificate of destruction, and component and coding standards, are already implemented in UK law. This has been done through Regulation 29 in Schedule 3 and Regulation 15 in Schedule 2 respectively to the End-of-Life Vehicles Regulations 2003. Accordingly, these two decisions are to be revoked as their requirements are already embedded in domestic legislation.

I very much agree with the noble Baroness about plastic waste. Clearly, a huge amount is going on in both the public and private sector to reduce the use of plastic, in relation to the resources and waste strategy as well as what we look to retailers to do, but clearly there is much more to be done. I will endeavour to explain the references to the reporting progress requirement, which the noble Baroness, Lady Jones of Whitchurch, emphasised. As has been said, Article 5 of Commission decision 2011/753/EU, as amended by this instrument, requires the Secretary of State to publish a progress report before 1 January 2022. Following exit, it would not be appropriate to publish a report on the implementation of EU obligations.

This amendment commits the Government to publish a report on progress towards the attainment of the 50% target set out in law for England and the devolved Administrations. The format of this report is to be determined, but it would set out whether England has attained the target and any other necessary information on progress in relation to these targets. On the question of progress or implementation, my understanding is that it is all related to it being set out as before: a report on the implementation of an EU obligation would no longer be an obligation when we are no longer a member. The noble Baroness should not interpret removing "implementation" and putting in "progress"—

Baroness Neville-Rolfe (Con): I am sorry to intervene but on this important subject of reports on recycling, particularly of plastic waste, which my noble friend will remember that I am very interested in, he seems to be saying that this is about implementing an EU obligation which we will no longer have. I thought that the principle of these regulations, which I fully support, was to bring into UK law equivalent provisions to those that exist in EU law. Therefore, it would be helpful if he could tell us—either now or in writing—what the plan is for reporting on the recycling of plastic and other waste in the UK once these regulations come in, because I am worried that there might be a gap. I think that is what the noble Baroness was saying earlier.

Baroness Jones of Whitchurch: Perhaps I might add to that. One cannot have it both ways, as the Minister is trying to do here, because the new wording says that in the progress report for 2020, the Secretary of State shall demonstrate,

"compliance with the targets set in article 11(2)"

of directive 2008. It makes reference to that directive, so it is either a progress report or an implementation report. Either way, it is referring to the directive, and I would contend—as with the noble Baroness's helpful intervention—that an implementation report puts slightly more teeth into it than a progress report.

Lord Gardiner of Kimble: The noble Baroness is absolutely right. It is in reference to Article 11(2) of the waste framework directive, which is still referred to in domestic legislation with the modifications that have been made in this instrument. The 50% household waste recycling target is already part of our statute. I understand what she says: she thinks that "implementation" is stronger than "progress". But because it is already in statute, it is still going to have to deal with whatever references are contained in Article 11(2). There will still be the same requirements of that directive in setting out whether the target has been attained and any other relevant information.

The noble Baroness referred to the environment Bill, which clearly everyone is waiting for. Everyone will be waiting for the new independent body—the office of environmental protection, with its powers to review and take action in relation to the attainment of this target. We will definitely need to attend to those points.

I also have some references, which I have mentioned before. It is understood that with the environment Bill not being on the statute book until sometime in the second Session, while I am not in a position today to talk about the form of that body, the Government have made it absolutely clear that there will be no governance gap. If there were any issues between the day of exit and the day of that office having legal authority, it would be in a position to act on it with full authority. Clearly, the body needs to have a legal entity but, in the meantime, interim arrangements will be announced should there be a governance gap. Obviously we are seeking a deal. I think noble Lords realise that everyone wants a deal, meaning that there would not be a governance gap, but if there is a need to ensure that these matters are attended to, announcements would be made.

Perhaps I should not quibble about the word, but I had better use it again and refer to the "progress" report. We will publish, as we do, yearly statistics setting out the UK and devolved Administrations' progress towards meeting the 50% recycling target. We need to do it.

I am afraid that I did not realise my noble friend Lady Neville-Rolfe has been here since the beginning of the debate. I am sorry. I would have expected her to say something before. These statutory instruments are absolutely to do with operability. We will need to attend to a range of areas through the resources and waste strategy and the clean growth strategy. As I said, work is going on in the public and private sectors to ensure that we move quickly to a circular economy so that we are less wasteful as human beings.

On efficiencies and transitional provision for EMAS, EMAS Global is the European Commission's answer to allowing non-member states to enter and place goods on the market in accordance with the management standards set out in EMAS. Those are the arrangements as I understand them.

The noble Baroness, Lady Jones, mentioned the wording "appropriate authority". This wording has been used more frequently in exit SIs where modifications have been made to EU directives. By their nature, directives often place obligations on a number of different authorities, and we need to maintain that effect. In other EU regulations, decisions are placed more firmly on a finite set of authorities and bodies. In those cases, EU exit legislation will refer specifically to the authority in question.

On poultry and the connection between extractive waste and animal health, given the reference in Regulation 9, I should say to the noble Baroness, Lady Jones, that the reference to EU poultry legislation relates to modifications to the industrial emissions directive which is further down the page. The connection between the two is that the industrial emissions directive applies to pollution arising from industrial activities. One of those activities, which is described further at 6.6 of Annexe 1 of the industrial emissions directive, is the intensive rearing of poultry and pigs. I hope that explains how that appears on that page.

The noble Baroness, Lady Bakewell, raised hazardous waste. Annexe 3 of the waste framework directive sets out the definition of waste which can be classed as hazardous. The statutory instrument makes provision in law to allow reference to Annexe 3—I am sorry, I will have to set that out more clearly—in delivering what waste can be considered hazardous. I have an awful feeling that my official must have been a doctor in another life—prescriptions for chemists are always interesting. I should declare that I have three godchildren who are doctors.

6.45 pm

As to who and what are the verifiers that will replace the EU bodies, in the case of end of waste, UK-based conformity assessment bodies—CABs—can take on the role of verifier to assess whether producers and suppliers have the appropriate management systems in place. We are confident they have sufficient expertise because the option to verify a management system through a UK-based CAB already exists and is currently used by producers and suppliers. Previously, this could be done through either a UK-based CAB or an accredited EU-based body, referred to in the statutory instrument as "any other environmental verifier". The SI will remove this second option so that, after exit day, verification will be done only through a UK body.

Three verifiers are accredited by the UK Accreditation Service—UKAS. These independently verify that the environmental management system—EMS—and the environmental statements prepared by organisations applying to be registered with the EU eco-management audit system meet the conditions for being part of the scheme. For example, for an EMS to meet the requirements of the ISO 14001, internal audits will be undertaken, including checks on legal compliance, environmental performance improvements and environmental statements. Arrangements are in place, but I will look at whether any further details would be helpful.

I want to respond on one further issue. We are not weakening our environmental protection. We will maintain, and wish to enhance, our already high environmental standards. The EU withdrawal Act will ensure existing EU environmental law continues to have effect in UK law. We are absolutely clear that this is a technical instrument to ensure that the law is operable. In every case, there is no change to policy or to the environmental standards already in place. We have a lot of work to do on enhancing the environment,

and the reduction of waste and moving to a circular economy is a clear component of that. We want to ensure that this country is in a better state than when we inherited it. It is important we make sure that this operability SI is successful.

Baroness Bakewell of Hardington Mandeville: Unless I missed it, the Minister did not refer to the committee on waste management. I am very concerned about what, if anything, will replace it.

Lord Gardiner of Kimble: My Lords, I think a letter would be a good idea.

Motion agreed.

Ozone-Depleting Substances and Fluorinated Greenhouse Gases (Amendment etc.) (EU Exit) Regulations 2019

Considered in Grand Committee

6.49 pm

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

That the Grand Committee do consider the Ozone-Depleting Substances and Fluorinated Greenhouse Gases (Amendment etc.) (EU Exit) Regulations 2019.

Baroness Vere of Norbiton (Con): My Lords, this instrument corrects deficiencies in retained EU law so that the UK can continue controlling the use of ozone-depleting substances and fluorinated greenhouse gases—F-gases—following our exit from the EU.

Almost all uses of ozone-depleting substances, such as chlorofluorocarbons, have been phased out under the United Nations Montreal Protocol. EU legislation implements the United Nations Montreal Protocol agreement by restricting ozone-depleting chemicals to certain limited uses where there are no viable alternatives, such as fire extinguishers on aircraft. Usage is kept below the very low levels permitted by the Montreal Protocol by restricting sales to certain registered companies and by applying quota limits on how much each can sell and use. The legislation also requires all imports and exports to be licensed in order to help monitor global compliance.

F-gases replaced ozone-depleting substances for many uses, including refrigerants, aerosol propellants and other industrial processes. These gases do not damage the ozone layer, but they are still powerful greenhouse gases. EU legislation from 2014 requires a 79% cut in the use of F-gases by 2030. Following our lead, a global agreement came into force this year, amending the Montreal Protocol to phase them down internationally over the next 30 years. Most of the provisions in retained EU law can operate in the UK without amendment. However, crucial elements of these EU regulations would not function without this instrument.

Most importantly, the restriction on the amount of F-gas which can be sold is currently achieved through quota limits placed on importers and producers. These quotas are currently allocated by the European Commission directly to individual businesses that are producing and importing. These regulations transfer quota allocation powers to the Secretary of State and the devolved Administrations. This means establishing UK quota systems which are separate from the EU's systems. Instead of an importer or producer of F-gases getting a single quota from the Commission limiting how much they sell in the EU28 market, they would get two quotas, one from the Commission for sales on the EU27 market and one from the Environment Agency for sales on the UK market. UK companies will be able to continue exporting F-gases to the EU as long as they establish an office in the EU or appoint a company to represent them. In order to determine the level of UK quotas and ensure that UK supply remains on track to achieve a 79% cut in 2030, all companies supplying the UK were asked to provide independently audited data on how much they placed on the UK market between 2015 and 2017. This period was after the EU quota restrictions were already in place, meaning that the total UK supply will remain within the existing phase-down limits.

The current EU process assigns quotas to individual companies for placing F-gases on the EU28 market rather than to member states for their domestic consumption. This makes it difficult to identify exactly how much gas is supplied to the UK, as some EU-based companies use some of their quota to supply the UK, and some UK companies use theirs to supply customers in the EU. This mismatch between the location of the quota allocation and the place where gas is used means that there is a risk that in splitting the quota system, we no longer get our current share of supply, as some EU companies may choose not to supply the UK in the future. These regulations therefore include a power to adjust companies' quotas if we find that the overall UK supply of F-gases is below the level it would have been had we not left the EU. This power would be used only where there was evidence of a supply shortfall and where there was a high probability of a significant impact on critical sectors. The power would not be used to increase supply beyond where it would have been had we remained in the EU.

Regarding the specific changes made by this instrument, I would like to highlight a few of the more noteworthy. Regulations 4, 5 and 25 in Part 2, and Regulations 37, 38 and 56 in Part 3 facilitate the transfer of functions to the Secretary of State and the Environment Agency with respect to England, and to devolved authorities with respect to Wales, Scotland and Northern Ireland.

Regulations 7 and 9 reduce the maximum limits for the use of certain ozone-depleting substances to reflect the lower usage in the UK relative to the EU. This is done pro rata based on the population of the UK relative to that of the EU. Regulation 43 enables training certificates issued in EU member states to continue to be recognised in the UK to ensure that EU-trained technicians can continue to work here. Regulation 48 requires the authorities in one part of the UK to consult the authorities in other parts before establishing their own F-gas quota system.

I should now like to bring noble Lords up to date on progress since the Explanatory Memorandum was published. I am delighted to say that on 11 February,

[Baroness Vere of Norbiton]
the IT system needed to administer UK quotas went live. So far, more than 100 businesses have already registered, including two-thirds of the main suppliers, ensuring that they can continue operating in the UK. On 12 February, a power was approved by your Lordships' House through the Environment (Amendment etc.) (EU Exit) Regulations 2019 for regulators to charge businesses a fee to cover the cost of operating a UK system. This is in line with the long-established principle that the polluter rather than the taxpayer should pick up the cost of regulating. Although there was no formal duty to consult, Defra officials have engaged with businesses and environmental groups throughout the process. The clear message has been that we should not vary the F-gas phase-down schedule: neither slowing down nor speeding up. We published guidance for businesses in August, December and earlier this month on how the UK system would work, helping them to prepare for exit.

The requirements of the EU systems will remain very largely unchanged, so the direct impact of this instrument on businesses is small. Defra has assessed that there will be an additional administrative cost for those companies which have to deal with two quota systems—the UK and the remaining EU—rather than one in the future. This is estimated at about £60,000 per year in aggregate for the 50 or 60 UK companies affected. The Environment Agency will administer the quota and reporting systems and the agency has secured the additional staff needed.

Enforcement arrangements will remain the same as they are under EU regulations, with the Environment Agency and devolved Administration regulators undertaking the same sort of activity as they do at present. We do not expect enforcement costs to increase significantly as the number of companies being regulated will be similar.

Dialogue has continued with the devolved Administrations and I am pleased to say that all have agreed to this instrument. For our exit day preparations, they have also agreed that they will remain part of a single UK-wide system, in particular for the purpose of allocating quotas. That means that, immediately after exit, the Environment Agency will allocate quotas for the whole UK market. Discussions are also progressing well on the longer term governance arrangements for the operation of the system and the joint decision-making process, although this does not need to be in place from day one. Should an Administration wish to diverge from a UK-wide approach in the future, they will need to consult the other Administrations to ensure that preparations on both sides can be made.

I end by pointing out that the legislative powers being returned to the UK from the Commission will be exercised in almost all cases by regulation, enabling significantly greater scrutiny by your Lordships' House than has previously been the case. I beg to move.

Baroness Miller of Chilthorne Domer (LD): My Lords, I thank the noble Baroness for introducing the instrument and congratulate Defra on having gone live with the system and being much more successful than the Department for Transport with its ferries—hypothetical as they were.

This is a serious subject, so I will not make light of it. We are delighted that the statutory instrument will maintain the continuity of the ambitious targets that are necessary. In researching this, I reminded myself how much more warming fluorinated gasses are than CO_2: 23,000 times. The Minister said that it is more powerful. I had to check the figure several times because it seems very large, but they are extremely powerful substances. Ozone-depleting substances were one of the first things on which the world got together and decided to act—very successfully, it seemed.

However, in researching this I also came across a disturbing fact discovered by the University of Bristol, which is that some 40,000 tonnes of carbon tetrachloride are still being emitted, although not by anywhere that Defra is responsible for because it seems to be in the Shandong province of China. However, maybe the FCO would like to take that up, because although the EU and the UK are doing their bit, it seems that China is still emitting 40,000 tonnes of this extremely damaging chemical. You can use it in the production of chlorine, but again, that is a staggering figure. The noble Baroness told us about the continuing search for less damaging alternatives; I think the protocol also agrees that we should allow equipment to continue for its useful life so that we are not replacing things unnecessarily but that at the end of its life, we should go for something that involves a less damaging gas.

7 pm

I want to ask about a couple of things in the regulations. The noble Baroness kindly explained the UK quota system, which will be UK-wide, and the Environment Agency will negotiate that with the devolved Administrations. However, what happens in the event that the devolved Administrations disagree about how much quota they get? Does she foresee that that will be an issue? The noble Baroness also mentioned that EU-certified technicians will be able to continue to work in the UK, but will it work the other way round—will UK-certified technicians be able to work in the EU? I understand that access to the EU quotas will require an office being set up in the EU to negotiate them and administrate that process. It would be useful to know whether that exchange of technical personnel will be reciprocal, and to know about the quotas. However, other than that, I hope that by 2030, we will have achieved our targets and perhaps even done better than that and moved past them. It concerns me that, according to the University of Bristol study, other areas of the world continue to emit such vast amounts of something that is so damaging to the atmosphere.

Baroness Neville-Rolfe (Con): I join the noble Baroness in congratulating Defra, both on this regulation and on the very clear Explanatory Memorandum. I know from the useful briefing Defra gave me last summer that it was getting ahead very well with the EU exit regulations, and it is good to see them coming through.

I also wanted to look backwards. In the early 1980s, I was a junior civil servant in what is now Defra, and responsible for research and development in a small way. I went to an interdepartmental meeting to discuss various proposed cuts, one of which was to the British

Antarctic Survey. I remember arguing, contrary to my brief, that we should continue to support the survey because I believed in fundamental research and that sometimes you did not just do research near to the final product. Of course, later in my career, history showed that the survey was very important. That is a story I like to tell to youngsters in schools because it shows the importance of R&D.

I was pleased that the Minister described the work Defra had done to look at the impact on business of this regulation. I have just one point of clarification. She mentioned that 100 businesses were being regulated and then said that the estimate was that the cost—I think of the extra administrative system that we have had to bring in because of the transfer—would be £60,000 in aggregate for 50 to 60 companies. I could not understand the difference between the 100 companies that seemed to be affected by the proposal and the cost figure, which, if that is the only cost, seems modest for this important area.

Lord Grantchester (Lab): I thank the Minister for her introduction to the order before the Committee and for undertaking prior discussions with her team. As she said, this order, while not specifically made to cover the scenario where the UK leaves the EU without a deal, nevertheless makes provision for a no-deal exit with the repatriation of authorising authorities and regulators. It also corrects a series of deficiencies in retained EU law on ozone-depleting substances under Part 2 and fluorinated greenhouse gases under Part 3. The order therefore maintains the 79% cut on a UK basis, as for example in F-gases between 2015 and 2030, as the Minister stated, by steadily reducing quotas for companies that operate in this field. The order maintains that it will continue.

Although many of the changes introduced through this order on the transfer of powers currently exercised in Europe to the UK are technical in nature, other minor noteworthy changes could be construed as shifts in policy. Labour certainly does not challenge the order and will approve it today.

Although the order was laid in December and subsequently relaid on 6 February following exchanges with the Joint Committee on Statutory Instruments, I understand that it is essentially the same document. The order has not been flagged by your Lordships' Secondary Legislation Scrutiny Committee, but it is worth recognising that progress has been made in several areas in which there have been concerns and to which the Minister drew attention. However, there are a few questions around these outcomes, which I will highlight for the Minister.

It is good to note that the UK Government and the devolved Administrations have agreed to the repatriation on the basis of a single UK-wide quota. This quota, following dialogue with the relevant companies on how much they place in the UK market, will be set at 12%, roughly aligned with the size of the UK's population relative to the EU. That the UK's usage aligns in this way is certainly interesting. Under paragraph 2.8 of the draft Explanatory Memorandum, it is agreed between the Government and the devolved Administrations that, should an Administration wish to diverge from the protocol in the future, they must consult the others before doing so. Have the Government consulted the Commission on whether the EU has also agreed to the 12% and on whether, should the UK in the future wish to diverge in any way from the process agreed in the 1987 Montreal Protocol, it will consult with the EU and others before undertaking any divergence?

Paragraph 6.2 of the Explanatory Memorandum states that the Environment Act 1995 will be amended to include a charging regime under the authority of the Environment Agency on a UK-wide basis. I certainly join others in saying that good progress is being made, with this having happened, but I note that these changes are on a cost recovery basis. Can the Minister confirm, because it was in some divergence to the £60,000 figure she gave in her introductory remarks, that the total amount costed in the other place was estimated at £500,000 per annum for the administrative costs? I understand that the Government have put this out to consultation regarding cost recovery, so I have a few questions for the Minister regarding the scope of that consultation.

Paragraph 6.2 also states that the EU allocation mechanisms for quotas and the format for company reports will not be replicated in the UK, as different IT systems will be established here. I understand that this IT system has also been completed, and I congratulate the Government on that achievement as well; while not wishing to appear churlish, let us hope that it will continue to operate successfully under stress.

Returning to costs and charters, I understand that this set-up cost has been financed through the Government. The Minister in the other place, Dr Coffey, stated:

> "Future charges will be for the overall regulation system".—[*Official Report*, Commons, Eighth Delegated Legislation Committee, 26/2/19; col. 8.]

Will the Minister clarify what that means for cost recovery? Will there be an element of repayment of capital included in running cost recovery of fees from operating companies? That is, will companies ultimately be charged for this set-up cost?

The Government will also continue paying into the Montreal Protocol assistance fund to help developing nations across the world move to less harmful gases. Can the Minister confirm whether industry will be re-charged any of these contributions? It would be good to understand whether the Government have included either of these potential costs as possible cost recovery items out for consultation.

The final concern in this regard is about impact assessment. While the Government are satisfied that the cost is de minimis, as the Minister explained, have they assessed whether the new charges could impact on companies' costs in a way that will affect whether they continue to operate in the UK? Several companies operate across the UK and in the EU, and their quotas will come from both in future. Are the Government satisfied that any disruption will not detrimentally impact on these companies continuing in the UK in such a way that the Government may have to use their new powers of increasing quotas to make up for a closure of any company's shortfall to maintain the UK in a steady state? In their dialogue with companies when undertaking these regulations, can the Government

[Lord Grantchester]
confirm that companies operating across borders are generally satisfied with the outcome? One element behind this question on reciprocity—mentioned by the noble Baroness, Lady Miller—is whether UK trading certificates and authorisations will be accepted in the EU after exit in the same way, replicating the recognition of EU certificates in the UK.

I am sure that all contributors to this order will agree that these regulations are vital to the safeguarding of the environment across the world. Can the Minister confirm that, despite abiding by the increasing quota restrictions since 2015, these have been effective in reducing emissions? That is, are they working as envisaged, without loopholes appearing such as displacements on to other gases not specified in the protocols?

While these regulations appear technical, they will certainly be important to companies operating in the UK and the EU, especially given the lack of coherent data on how they may be reapportioned in individual quotas. Can the Minister confirm that, through the Government's discussions, all the operators essentially agree with the regulations and their individual outcomes, and that any potential disputes can be reconciled via due process through the Environment Agency?

Baroness Vere of Norbiton: I thank all noble Lords who took part in what has turned out to be a very interesting and I hope fairly straightforward debate. I have the answers to nearly all of the questions, which is always an added bonus.

I would like to thank the noble Baroness, Lady Miller, for her congratulations on getting the system up and running. We will take congratulations where we can get them. I was very interested by her observations on the wider environment in relation to ozone depleting substances, F-gases. I have a few responses to the questions that she raised. The UK and other parties raised their serious concerns about carbon tetrachloride in China at the Montreal Protocol meeting last year. China has agreed to take enforcement action. We will continue to monitor the situation and make representations in that area.

The noble Baroness also mentioned an F-gas being 23 times more powerful than carbon dioxide. That is true: there is an F-gas—there are many different types of F-gas—that is 23 times more powerful, called SF_6. But this one is rarely used and accounts for less than 3% of F-gas emissions for the UK. It is the HFC emissions that account for 95% of UK F-gas emissions. As the noble Baroness pointed out, many other gases can now be used in various pieces of equipment to the same effect and industries are certainly moving over to those.

7.15 pm

I turn now to the detail of the regulations. Going back to the noble Baroness's point about the devolved Administration, a point that was also raised by the noble Lord, Lord Grantchester, the important thing here, as I mentioned in my opening remarks, is that initially we have this agreement with the devolved Administrations. The Environment Agency will allocate quotas for the whole of the UK. There will basically be one bucket of quota. It will be handed out to individual companies which will then be able to trade their F-gases within a single UK market; it will not be country specific. In the longer term, we need to make sure that that system is very solid, so there will be governance arrangements and joint decision-making. We do not expect there to be divergence in the future, but there may well be. However, the devolved Administrations will not be allowed to diverge without consulting all the other nations in order to make sure that we do not go over the total target, which of course is set for the UK as a whole.

I move on to the certified technicians. This is quite an interesting one, and I certainly had not realised this: there are around 47,000 technicians certified by UK bodies, which is quite a number of individuals. We do not hold figures on how many technicians are working in the UK with EU certificates but, based on the proportion of EU certificates leaving the UK, it could be around 2,000-3,000 people. The point here is that this is clearly a very skilled job, but it also seems to be quite local because it is a practical job in terms of maintaining the pipework, the cylinders and the places where these things are used. At this moment, we cannot guarantee that the EU will accept UK training certificates. We very much hope that we will reach a deal such that it will do so in future. We have made a very open and generous offer to accept the EU training certificates.

I turn to the comments made by my noble friend Lady Neville-Rolfe. There was slight confusion or perhaps misunderstanding about the different types of cost that will be incurred with this process. The 50 to 60 businesses are those that most engage with the system. These are the bigger companies that may need to engage in the UK and may have F-gas quotas. There will be many other companies interested in far less and which might have just a tiny quota for some ODSs. The cost to the business of engaging with the system therefore varies enormously, but in aggregate we expect it to be less than £60,000. However, in the interests of transparency I note that some charges may well go back to the suppliers of these gases on the basis that the polluter rather than the taxpayer should pay. The additional cost of the system that the Environment Agency will face is estimated to be around £500,000 per year. If the agency chooses to recover the cost through charging fees, we estimate that it would be spread among 800-1,000 companies right across the UK, the EU and the rest of the world which might need to use the UK system at some stage. This will all be subject to consultation, which has not yet started. The actual cost to each company will vary depending on the extent to which it uses the system. It is not in place at the moment. For the time being, the costs are being met out of funds received for no-deal preparation work.

I turn to some comments made by the noble Lord, Lord Grantchester, on the 12.4%—I presume he was referring to the ODS quota value. The data for how much ODS is used in the UK is not readily available as the amount is very small and this information has not been aggregated at a UK level—it is available only at an EU level. The use of ODS is very small and is probably not worth the time and effort to try to figure it out. Following the global phase-out, it is utterly disproportionate to try to quantify the amount of

ODS sold and then compare that to the amount sold in the EU. What will we gain as the phase-down has already happened?

I am not as concerned about that side of things, but on F-gas we have to make sure that we are comfortable. Overestimating how much we use is unlikely; it is more the case that we will underestimate because we have asked all these companies how much they supply to the UK market. They have all sent us their numbers, but it could be that a company has not sent its numbers because it has decided that it will not continue in this market. That is what we have to be concerned about. We will watch that to make sure that we get the right amount of F-gas into the country.

We have been talking to the EU while we have been splitting the quotas, but on divergence from the EU with respect to issues relating to the Montreal protocol, we will, as with all of these issues, be speaking to all of the major partners in the world. We take a very serious leadership role in this.

I return to a question asked by the noble Lord about what happens if a company ceases to trade and so that quota no longer comes into the market. We would have a bucket of quota which can be reallocated to people. It is essential that we make sure that we have the correct supply, but it is also essential to make sure that the phase-down happens within the limits that we are expecting over the coming years, so should a company no longer trade, that quota would be able to be allocated to a separate company.

What has been the impact and has this reduced emissions? It has. We know that the regulations took a little time to come into place—I accept that that was when the EU regulations were put into place. Now that they are in place, the amount of gas being placed on the market is already 37% below 2015 levels, so the EU regulations are having a significant effect. What noble Lords are being asked to approve today is for those EU regulations to be copied over and for some small changes to be made to make sure that they continue to work in the UK and that we too can continue to reduce our usage of F-gases and monitor the very small use of ODSs.

Baroness Neville-Rolfe: I thank my noble friend for her clarification on the costs. I had one thought: if the Environment Agency was to decide to recover the administrative costs, would it be possible for it to look at charging smaller companies a smaller amount of money? This was done in relation to the changes on data and was very well received. I do not ask for a commitment, but I make that proposal.

Baroness Vere of Norbiton: Yes it can.

Lord Grantchester: I was ready to jump up before the Committee was asked to agree the Motion, but I will sit down while the Minister answers the noble Baroness and I will then rise again.

Baroness Vere of Norbiton: I thank my noble friend for that comment—I was going to say that anyway. That would be part of the consultation process with the Environment Agency. It seems like a very good idea, but it should at least assess whether that is a viable option.

Lord Grantchester: I apologise for intervening perhaps a little too early on other Members. While paying great regard to the Minister, who has answered all the points most succinctly and very well, I wanted to get a feel for the impact on these regulations and the discussions Defra has had with the various companies. Has the Minister got a sense, or not, that they are going to cause disruption for companies operating in this field, albeit that they then buy and sell the quota in terms of moving in and out of different countries? I understand that happens already, but is there a sense of disruption to industry causing them some dismay, in bringing the regulations back into the UK?

Baroness Vere of Norbiton: I apologise to the noble Lord; he asked about that and I forgot to answer. The department has contacted every single supplier across the EU in this process, so we have a strong feeling of where the industry is coming from. We have spoken to key business, industry and environmental representatives as well. For example, the Federation of Environmental Trade Associations is an umbrella trade body representing refrigeration and air conditioning manufacturers and suppliers. We have spoken to the British Refrigeration Association, the air conditioning and refrigeration board and Mexichem, the biggest producer of F-gases in the UK. While there will certainly be some change, I have tried to highlight that the change will not be significant. If a company trades in the UK and the rest of the EU, it will have to apply for two different buckets of quota, but apart from that, much of the system will stay the same.

Motion agreed.

Committee adjourned at 7.26 pm.