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PARLIAMENTARY DEBATES
(HANSARD)

HOUSE OF LORDS
OFFICIAL REPORT

ORDER OF BUSINESS

Grand Committee

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The first time a Member speaks to a new piece of parliamentary business, the following abbreviations are used to show their party affiliation:

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

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

House of Lords

Monday 4 March 2019

2.30 pm

Prayers—read by the Lord Bishop of Portsmouth.

Death of a Member: Lord Bhattacharyya

Announcement

2.36 pm

The Lord Speaker (Lord Fowler) (Non-Afl): My Lords, I regret to inform the House of the death of the noble Lord, Lord Bhattacharyya, on 1 March. On behalf of the House, I extend our condolences to the noble Lord's family and friends.

Specialist Domestic Abuse Services

Question

2.37 pm

Asked by ***Baroness Healy of Primrose Hill***

To ask Her Majesty's Government what steps they are taking to provide sustainable funding for specialist domestic abuse services.

The Parliamentary Under-Secretary of State, Ministry of Housing, Communities and Local Government and Wales Office (Lord Bourne of Aberystwyth) (Con): My Lords, in January, the Government published their landmark domestic abuse Bill in draft form and a package of non-legislative measures to tackle this issue. These include commitments to fund a range of specialist domestic abuse services. Since 2014 my department will have invested £55.5 million in accommodation-based services to support victims of domestic abuse, including refuges. My department is also conducting a review of how these services are commissioned and funded across England.

Baroness Healy of Primrose Hill (Lab): Although I welcome the draft domestic abuse Bill, I share the concern of charities, local authorities and the Home Affairs Select Committee that without secure, long-term and sustainable funding of refuges and specialist services, the desired outcomes cannot be adequately met. Many victims of domestic violence also have complex needs relating, for example, to drug and alcohol abuse and mental health issues. Specialist services must also be made available to underpin the strategy. How will the Government ensure that these providers are adequately funded?

Lord Bourne of Aberystwyth: My Lords, I pay tribute to the noble Baroness and her interest in this area, which I know is considerable. On specialist services, she will be aware that Women's Aid has said that a good job is being done, but that is not to say that more could not be done. Ensuring that we fund adequate bed space is an issue. She will be aware that we are reviewing how that is provided to ensure a balance between accommodation-based services and provision for those who may wish to stay at home, of whom there are some.

Baroness Lister of Burtersett (Lab): My Lords, the briefing I have been given suggests that the situation is rather less positive. It states that services of particular national importance such as those for BME women or disabled women have felt the impact of funding cuts most acutely. Given that, as my noble friend has asked, what will the Government do to ensure that these services, which are absolutely vital to the welcome domestic abuse strategy, are adequately and sustainably funded?

Lord Bourne of Aberystwyth: My Lords, I pay tribute again to the noble Baroness, who I know has long taken an interest in this area; indeed, she has helped with legislation recently. She cites disabled victims of domestic abuse, and money is going in to provide a helpline. However, she is absolutely right—we need to ensure that adequate resources are provided. As the noble Baroness, Lady Healy, indicated, a broad range of government departments are involved and hopefully, we can bring all that together during the passage of the Bill to ensure adequate focus and, indeed, adequate resources.

Baroness Burt of Solihull (LD): My Lords, I think it must be clear to everyone that the local authority model of funding services for victims of domestic abuse is not working. By the Government's own admission, this is a £66 billion problem, and that funding is provided by financially hard-pressed councils that have been subject to 40% budget cuts since 2010. Organisations such as Refuge and Women's Aid have a hand-to-mouth existence at best. This is not the way to serve abused women and their children. Will the Government consider introducing a sustainable funding model as part of the domestic abuse Bill?

Lord Bourne of Aberystwyth: My Lords, first of all I pay tribute to the people who work in this area. This Friday is International Women's Day, and it is important that we acknowledge the great work done across the sector. I have had the opportunity of visiting a lot of local authority provision, and it is very good. The noble Baroness is right, in that it is important that we take care of specialist services and take account of the fact that many victims will not want to have care in their immediate area but to escape it. That is why we are having this review, which will inform the way we provide the service in future. I share with the noble Baroness a desire to look at this in the round—perhaps during the passage of the legislation, which is about to go through its draft Bill stage—to make sure it is properly resourced.

Baroness Greengross (CB): My Lords, as the Minister may be aware, in recent years the reported incidence of all types of domestic abuse has increased by over 90% for people aged over 65, compared with 60% for those aged under 65. Can the Minister reassure me that

[Baroness Greengross]
elder abuse will also be tackled, along the lines of the programme run by the Metropolitan Police on the abuse and neglect of vulnerable adults in London?

Lord Bourne of Aberystwyth: My Lords, the noble Baroness is right about the particular issues that apply to elderly victims. Again, we are funding a helpline, but she is right to focus attention on this issue. The Bill, which is now going through its draft stages, will be the opportunity to broaden the scope of the domestic abuse covered. As she will know, for example, coercive control is in the draft Bill. There is evidence that people are more readily reporting domestic abuse, which is one reason for the increased numbers the noble Baroness refers to. Nevertheless, she is absolutely right that, in the round, we have to make sure this is properly resourced.

Baroness Browning (Con): Can my noble friend pay particular attention to women who live in very rural, isolated parts of this country? Having represented 600 square miles of rural Devon, I know that women who live in farmhouses isolated from other buildings often find it difficult even to leave the property, let alone receive a visitor, without it being noticed. They often suffer without knowing where they can turn or having access to a wider community. Interestingly, the annual day on which they were allowed to go to the local country fair was the one opportunity some of them had to speak to somebody about the problem at home.

Lord Bourne of Aberystwyth: My Lords, my noble friend highlights a very real problem and in doing so, indicates just how broad this issue is. As we have heard around the Chamber, there are many different instances and different victims of domestic abuse, indicating the need to really grapple with this issue. We should all welcome the opportunity the Bill gives to look at it in the round. My noble friend is absolutely right about the needs of victims in rural areas.

Lord Kennedy of Southwark (Lab Co-op): My Lords, domestic abuse is an appalling, disgusting crime committed behind closed doors. I have raised before the issue of some GPs charging up to £175 for a letter confirming that a victim has been assaulted, so that they can get access to other services. Can the Minister update the House on the progress that has been made in banning this outrageous practice?

Lord Bourne of Aberystwyth: My Lords, I recall the noble Lord rightly raising this issue. The new contract is being revised and considered, and is part of that discussion. I do not have any progress to report at the moment but as soon as I do, I will be happy to write to the noble Lord, if I may, and share that information with the House.

Baroness Uddin (Non-Afl): My Lords, I welcome all that the Government are trying to do to ensure that organisations working in the domestic abuse arena are funded well. Does the Minister accept that organisations such as Women's Aid can only function well and provide the fullest of services if all the surrounding organisations are available to support women once they leave or before they leave? Will the Government consider ring fencing the funding for domestic violence with local authorities?

Lord Bourne of Aberystwyth: My Lords, the noble Baroness is right about the importance of resources and the need to ensure that we properly fund our partners such as Women's Aid, Imkaan and Refuge, which do excellent work. We will have the opportunity to look at this issue as the Bill proceeds. The noble Baroness makes a valuable point.

Brexit: Museums and Galleries

Question

2.46 pm

Asked by ***Lord Lee of Trafford***

To ask Her Majesty's Government what is their latest assessment of the impact of Brexit on national museums and galleries.

Lord Lee of Trafford (LD): My Lords, I beg leave to ask the Question standing in my name on the Order Paper and declare an interest as the chairman of the Association of Leading Visitor Attractions.

The Parliamentary Under-Secretary of State, Department for Digital, Culture, Media and Sport (Lord Ashton of Hyde) (Con): My Lords, DCMS is working with our world-leading national museums and galleries in England to evaluate the potential impacts of Brexit and supporting them as they develop and implement their plans. Due to the ongoing uncertainty, some national museums and galleries have implemented elements of their plans for Brexit, particularly around the movement of objects in March and April.

Lord Lee of Trafford: Is the Minister aware of the sickening abuse suffered by some front-of-house EU nationals at a number of our great cultural institutions, making many reluctant to wear name badges? That aside, there are three areas of particular concern: the ability to recruit and retain staff, particularly those with language skills; the worry that overseas visitors may give the UK a miss this year, until Brexit issues are clarified; and, importantly, whether DCMS and the Treasury will replace the EU culture funds vital to many building projects and exchange programmes.

Lord Ashton of Hyde: My Lords, on the noble Lord's first point about staff being abused, we were aware of that, particularly after the result of the referendum was announced, but we are not aware of it recently. I should make it absolutely clear that it is deplorable, unacceptable and should not happen and that we welcome foreign nationals working in and visiting our museums. It is possible that tourism may go down, but we are optimistic. In fact, VisitBritain forecasts that visits will grow by 3.3% this year, which is similar to the average rate.

Turning to European cultural funds, for the museum and gallery sector these are remarkably small. One or two individual museums have had European funding and we will guarantee to support funding until the end of the multiannual financial framework. However, to put it into perspective, all public funding for museums and galleries is about £844 million a year. The biggest European fund, Horizon 2020, has given €14 million in the entire seven-year multiannual framework.

Lord Cormack (Con): My Lords, does my noble friend accept that many of the greatest exhibitions in London and the provinces depend on loans from kindred institutions in Europe and elsewhere. Will he give an assurance that this will be at the forefront of the Government's thinking? If some of these wonderful exhibitions ceased to be, scholarship would suffer, our museums and galleries would suffer, and we would suffer.

Lord Ashton of Hyde: I completely agree with my noble friend and this has been one of the issues that we have discussed with the museums and galleries. In fact, some of the contingency plans I mentioned are about exactly that: the movement of objects. Museums are using a different route, not taking the short cross-channel crossings, and are allowing more time for that.

Baroness Liddell of Coatdyke (Lab): My Lords, further to the point about the disincentive for people coming to the United Kingdom to work in the industry, whether in galleries, museums or the hospitality sector, £1 spent in a remote community can generate a further £7. However, that requires people to be available to work in hotels, shops and galleries. There is a clear disincentive for them to come. It is six weeks until Easter and the hospitality industry is gearing up for the next season, but it is already saying that it is unable to recruit the young people who make up the backbone of the industry. What will the Government do about that, especially if there is the supposed 3.3% increase in inbound tourism? People will not come back if they do not get good service.

Lord Ashton of Hyde: I completely agree, and that is why, as I said in an Answer on tourism last week, the tourism sector deal concentrates on skills, recruitment and avoiding a high turnover in jobs. It is trying to make those jobs more long-term to provide the service that visitors rightly expect. The third-quarter figures were down, particularly for short-haul visitors, but they have rebounded. The Office for National Statistics reported a 4% increase in October.

Baroness Grender (LD): My Lords, given last week's finding of the employment tribunal regarding the National Gallery 27, which supported their legal claim to worker status—having been denied it for decades—does the Minister regret that precious resource from a DCMS body was spent in legal action to justify shoddy work practices? Will he ensure that their claim is settled soon and that the National Gallery is held to account for it? What advice are the Government now giving to other bodies using taxpayers' money to apply the worst practices of the gig economy?

Lord Ashton of Hyde: My Lords, I am not sure that the noble Baroness's representation is completely correct. The case, as I understand it, was about workers and the employment tribunal has made a ruling. We expect all our arm's-length bodies to obey the law. If there is a dispute over that, that is what employment tribunals are for. They are called arm's-length bodies because their trustees have to arrange and run their organisations in accordance with the law. The Government should not get involved.

Baroness Hooper (Con): My Lords, I am a former trustee of National Museums Liverpool; I believe the Museum of Liverpool is still the only national museum outside London. I thank my noble friend for reassuring us on the replacement of European Union funding, but can he also reassure us on the issuing of visas for experts, researchers and students, who make so much of our museum opportunities?

Lord Ashton of Hyde: My Lords, I am not sure that the Museum of Liverpool is the only national museum outside London; there are the Science Museum Group, the Royal Armouries and the V&A that has just opened in Dundee. I have probably missed one. The point about visas is important, which is why the Government have allowed people to come for three months on a tourist visa. If they want to stay and work in the UK, they will be able to do so for 36 months, subject to security and identity checks.

Women's Rights: SheDecides Day

Question

2.53 pm

Asked by ***Lord Oates***

To ask Her Majesty's Government, following the second global SheDecides Day, what action they are taking to uphold women's rights around the world.

Lord Oates (LD): My Lords, I beg leave to ask the Question standing in my name on the Order Paper, and in doing so I refer to my interests as published in the register.

The Minister of State, Department for International Development (Lord Bates) (Con): My Lords, the UK's development, diplomatic and defence work promotes our values of gender equality and secures women's rights around the world. Upholding women's rights is fundamental to lasting poverty reduction, and to building prosperous, resilient economies and peaceful, stable societies.

Lord Oates: My Lords, I thank the Minister for his response. Will he join me in congratulating the SheDecides movement, on its second anniversary, on championing the rights of women and girls to take decisions about their own bodies and lives?

In view of the UK's strong record of supporting sexual and reproductive health and rights around the world, will the Government join countries as diverse

[LORD OATES]
as Afghanistan, France, Germany, the Netherlands, Senegal and South Africa by appointing a Minister as a global champion of the principles of SheDecides?

Lord Bates: I am very happy to pay tribute to the work of SheDecides. Its launch was attended by a UK Minister, Rory Stewart. It is directing a lot of funding towards the United Nations Population Fund, the UNFPA, of which the UK is a major supporter.

As for appointing a Minister, I cannot think of anyone better than our current Secretary of State, who is not only Secretary of State for International Development but Minister for Women and Equalities.

Lord Collins of Highbury (Lab): My Lords, the sad fact is that when Harriett Baldwin replied to a similar Question she was unable to acknowledge that the organisation exists. I hope the Minister will take the suggestion seriously, because the good thing about this organisation is that it is about empowering women and its diverse nature enables politicians from Africa and Europe to work together to address this fundamental issue. I hope that the Government will take this seriously, not necessarily by appointing a Minister but by ensuring that we have people across government who are able to give support to this organisation in its ongoing work.

Lord Bates: I am very happy to do that. The noble Lord and I are aware that it is a leading ambition of the global goals. Afghanistan and everywhere else have signed up to implementing global goal 5 by 2030. I am very happy to give an undertaking that we will seek to do that. The Secretary of State will make a major speech this week in the lead-up to the UN commission on women next week. On International Women's Day, which is on Friday, we will set out more of our strategy in this area.

Baroness Jenkin of Kennington (Con): My Lords, my noble friend has confirmed that the UK is one of the most generous donors in family planning and sexual and reproductive health for women and girls. The family planning summit last year put the UK at the centre of all this. Will my noble friend confirm that every programme DfID funds will have this at the heart and soul of its work?

Lord Bates: I am very happy to make that commitment. We also have our gender equality strategy, which was published in March last year, which influences every programme we undertake. Some 17 million people have had access to safe methods of family planning since 2015. We want that record to be built upon in future.

Baroness Sheehan (LD): My Lords, do the Government recognise that while spending on family planning is good, it falls far short of the SheDecides goals? For women and girls to be truly able to choose for themselves, the neglected areas of safe abortion, adolescent sexual and reproductive health and rights, gender-based violence and infertility must all be addressed. Surely our Government see the need to step forward and commit money and a SheDecides UK champion to meet that essential UN SDG.

Lord Bates: This is an area that we have been at the forefront of for some time, even going back to the coalition and the work done by the noble Baroness's colleague, the noble Baroness, Lady Featherstone, to raise this issue up the agenda when she was at the department. Violence against women and girls is something we have taken a lead on. My noble friend Lord Hague was at the forefront of raising the issue of preventing sexual violence in conflict. These are areas in which we have a proud tradition, but the need and the cases are still so widespread that we need to take action.

Viscount Waverley (CB): My Lords, the Istanbul convention will have a real impact on women's lives in Europe, but what is the current status of progress reports, and what will be the status of the convention vis-à-vis Brexit?

Lord Bates: The convention at the World Humanitarian Summit set out a number of ambitions in this area. We have incorporated those into our global strategy for our work with our intentional partners, which is unaffected by the events of Brexit.

Baroness Uddin (Non-Afl): My Lords, will the Minister accept that, in upholding women's rights globally, we have fundamentally failed the women of Syria, of whom 8,000 are being raped and tortured in unlawful detention? As well as the great work of SheDecides and Plan International, is he aware of the Conscience Movement's work, and will he ensure that it is supported in its endeavours to release the women detained unlawfully in Syria?

Lord Bates: I am very happy to give a commitment to look at that. We have been at the forefront of work with our partners on the UN Security Council to document what has been happening in Syria to women and girls who have been subject to appalling violence to ensure that those crimes are thoroughly investigated and those who are responsible are brought to justice.

Cannabis: Medicinal Use

Question

3 pm

Asked by ***Baroness Meacher***

To ask Her Majesty's Government what steps they are taking to ensure that patients in need of medicinal cannabis are able to access such treatment on prescription.

The Parliamentary Under-Secretary of State, Department of Health and Social Care (Baroness Blackwood of North Oxford) (Con): My Lords, government officials have been working with colleagues across healthcare and the wider system to ensure that patients can access

medicinal cannabis where appropriate. Clinical guidance has been issued by the Royal College of Physicians, the British Paediatric Neurology Association and the Association of British Neurologists. Specialist doctors will consider this before prescribing, but we are clear that the decision to prescribe should be for individual clinicians to make in partnership with patients and their families.

Baroness Meacher (CB): I thank the Minister for her reply. She will be aware that only about four people have received a prescription for medical cannabis since it became legal on 1 November last year. Doctors have had no training in prescribing cannabis. They need to know the contents, dosages, side-effects and everything else about medical cannabis products. The pressure on doctors with desperate patients whose standard medications are not working or are causing unacceptable side-effects is intense. Doctors urgently need government help. Will the Minister ensure that the medical director of the NHS makes specialist doctors aware of the new guidelines to be launched later this month by the Medical Cannabis Clinicians' Society, and of the 12-module online training course already available from the Academy of Medical Cannabis?

Baroness Blackwood of North Oxford: I thank the noble Baroness for her question. This is a challenging area, and the evidence base is still developing. However, the Government are working hard to ensure that awareness is increasing, which is why we have asked NICE to develop guidance to be released later this year and have asked HEE to develop a training package to increase knowledge and awareness among health professionals. It is also why officials are working closely with suppliers and importers to ensure that prescriptions are filled when they are given. We understand that there is work to do on this issue and will continue to do so.

Lord Howarth of Newport (Lab): Will the Minister comment on the issues illustrated in the predicament of a person who has been prescribed the cannabinoid dronabinol, branded as Bedrocan, which is the only medication that has proved effective for her following the failure of 35 different medications previously prescribed to relieve her chronic pain from cervical and lumbar spondylosis? Given that the Chief Medical Officer stated last summer that there is conclusive evidence that cannabis-based products are effective for certain medical conditions, why is this patient still forced to travel to Holland every three months to obtain the medication that her consultant considers essential for her, and why does confusion still reign over licensing procedures? Will the Minister meet me and the person I have mentioned to see if she can introduce some more sense into these arrangements?

Baroness Blackwood of North Oxford: I thank the noble Lord for his question. I am very sorry to hear about the situation he raises and will be very happy to meet him. As far as I can see, there should be no reason for the situation he has outlined. It is up to clinicians to prescribe as they see fit under the guidelines that have been issued.

Baroness Walmsley (LD): My Lords, when the Chief Medical Officer recommended that cannabis medicines be rescheduled, she produced a report showing that the most rigorous regulatory authorities in the world—those in the US, Australia and Ireland, as well as the World Health Organization—had strong evidence of the benefits of cannabis-based medicines for people with epilepsy. In light of that, it is completely unacceptable that only four licences have been granted. Why are UK patients being deprived of these safe and effective medicines which have fewer side-effects than some licensed pharmaceuticals, such as sodium valproate?

Baroness Blackwood of North Oxford: I do not accept the characterisation that the noble Baroness has just given. UK patients are not being denied access to these medications; they are able to access medication via prescription from a doctor who is on the specialist medical register. The Government have acted fast on the review of the best clinical evidence and we are going further with forthcoming NICE guidelines and a Health Education England training package to raise even more awareness.

Baroness Thornton (Lab): What troubles me about the Minister's answer is that NHS England's guidance says that medical cannabis can be provided only where all,

"other treatment options have been exhausted",

and where there is, "published evidence of benefit". We have heard lots of evidence of the benefit this afternoon but we are right to be worried about the research that is allowing that to happen. Why is it not happening quickly enough? Can the Minister describe what level of opiate addiction and which severe side-effects of other medication can be tolerated before medical cannabis is prescribed?

Baroness Blackwood of North Oxford: The evidence base for the quality and effectiveness of these products is limited; it is developing. This is why the Government have asked the MHRA to call for a proposal to enhance our knowledge of these medications. However, we have not waited for this; we have introduced a route via unlicensed medications which allows for doctors who are on the specialist register to prescribe for patients. This is the right route; these are the doctors who will understand the conditions mostly likely to benefit from prescription and who are able to make a judgment about the safety and efficacy of medicinal cannabis. It is the route usually used for unlicensed medications and already set up by the MHRA. We want to see more licensed products in this route, however; we call upon industry to invest in more trials and publish the results and full underpinning data to build our knowledge so that more patients are able to benefit.

Lord West of Spithead (Lab): The majority of those guilty of violent terrorist crimes in this country are found to be heavy users of cannabis. When one looks at violent crime outside of terrorism, it seems again—although I do not know the details—that very often the people involved are heavy users of skunk—not the

[Lord West of Spithead]
kind of cannabis that we are talking about but the liquid stuff. Are the Government looking at the relationship between the use of these really strong types of cannabis and violent crime, to see whether anything should be done about it?

Baroness Blackwood of North Oxford: The medicines we are speaking about are not skunk. The noble Lord is right that all medicines carry risk, but they can also be beneficial. That is why we have introduced a route to allow medicinal cannabis to be used for those conditions where it will be beneficial. The change in the law allows strict access by specialist doctors who, in making the decisions to prescribe, can ensure that the benefit outweighs the harm to the patient and that the restrictions are line with advice from the ACMD. Any further concerns around the kinds of drugs that the noble Lord is talking about are still strictly controlled by the Home Office and by policing.

Parking (Code of Practice) Bill
Third Reading

3.08 pm

Motion

Moved by ***Lord Hunt of Wirral***

That the Bill do now pass.

The Minister of State, Ministry of Defence (Earl Howe) (Con): My Lords, I have it in command from Her Majesty the Queen to acquaint the House that she, having been informed of the purport of the Parking (Code of Practice) Bill, has consented to place her interests, so far as they are affected by the Bill, at the disposal of Parliament for the purposes of the Bill.

The Parliamentary Under-Secretary of State, Ministry of Housing, Communities and Local Government and Wales Office (Lord Bourne of Aberystwyth) (Con): My Lords, I thank my noble friend Lord Hunt of Wirral for bringing the Bill to this stage with his customary aplomb and expertise. It is not a flashy Bill but a necessary and welcome one, providing for uniformity and consistency in private parking practice. I also thank the honourable Member for East Yorkshire, Sir Greg Knight, for introducing the Bill and progressing it through the other place. I think the whole House—indeed, the whole country—should be grateful for this small but necessary measure.

Lord Kennedy of Southwark (Lab Co-op): My Lords, I join the Minister in thanking the noble Lord, Lord Hunt, and the honourable Member for East Yorkshire, Sir Greg Knight. I agree entirely with the comments that he has made.

Lord Hunt of Wirral (Con): My Lords, I thank my noble friend the Minister and the Opposition spokesperson for their kind words. I pay tribute to Sir Greg Knight for his initiative in bringing forward a Bill that will be widely welcomed. The only additional congratulations that I would like to give are to the Bill team, the clerks and all those who have helped to give the Bill smooth passage through this place, as well as through the House of Commons. I beg to move.

Bill passed.

Offensive Weapons Bill
Report (2nd Day)

3.10 pm

Clause 18: Delivery of bladed products to residential premises etc

Amendment 74

Moved by ***Lord Kennedy of Southwark***

74: Clause 18, page 17, line 36, at end insert—

"(aa) the seller is not a trusted trader of bladed products, and"

Member's explanatory statement

This amendment would create a trusted trader status for those selling bladed products.

Lord Kennedy of Southwark (Lab): My Lords, Amendments 74 and 77 in my name seek to establish a "trusted trader" scheme to enable bladed products to be delivered to home addresses. This is an issue that I raised in Committee. The Bill as drafted prohibits the delivery of bladed objects to residential properties, and there are serious concerns among small and medium-sized knife manufacturers and retailers that this will have a detrimental impact on their businesses.

As more sales move online, consumers expect to be able to receive deliveries directly to their home. I fully support the aims of the Bill but I think this is a legislative sledgehammer that will affect small and medium-sized businesses based in the UK while having little impact on knife crime. There is no evidence that these high-quality knives sold online are being bought with criminal intent; if there were any evidence, it would have already been presented. I think we all accept that if you bought a knife online with criminal intent, you would be creating a very easy evidence trail for the police to follow.

We all want to achieve the objective of the Bill, which is to reduce knife crime, but at the same time we do not want to destroy UK-based businesses. There is a need for greater enforcement of existing legislation prohibiting the sale of knives to under-18s and the carrying of a knife without good reason, and these amendments would enable a trusted trader scheme to come into force. All that I am seeking to achieve is protection for British businesses, whether with the scheme in these amendments, with the scheme suggested last week by the noble Lord, Lord Paddick, or with some other form of approved deliverer scheme, which we discussed when we had a very positive meeting last week with the noble Baronesses, Lady Williams of Trafford and Lady Barran, and representatives of the business community from Sheffield—who, in my opinion,

put a very convincing case to the Minister—along with the honourable Members for Sheffield Central and Sheffield South East.

I am aware that a trusted trader scheme has been ruled out by the Home Office, which claims that it would add more bureaucracy and would cost businesses to establish, but I point out that the scheme is being suggested by the very businesses that would be affected. I make clear that I am not fixed on any scheme; I just want to find a solution for what I think the Minister accepts is a real issue that could have damaging consequences for British businesses. I know that is not the Government's intention—in fact, I support their actual intentions—but we have a problem here. I beg to move.

Lord Paddick (LD): My Lords, I agree with the noble Lord, Lord Kennedy of Southwark, that this legislation is seriously to the detriment of UK companies versus overseas companies, in that if you order a bladed instrument or knife from an overseas company or website it can be delivered to your home, but if you order one from a UK company it cannot. However, I am not sure the trusted trader scheme that he has outlined in the amendments is the answer. Obviously, overseas companies would not have to be members of a trusted trader scheme and therefore the bureaucracy, expense, fees payable and so forth would still disadvantage UK companies.

I am grateful to the noble Lord for mentioning that I have already suggested a solution to this problem: to extend to UK companies the age-verification scheme at handover on the doorstep, which the Government have set out in the legislation and which currently applies only to overseas companies. I believe that is the solution to this problem, rather than the trusted trader scheme that the noble Lord suggested.

Lord Lucas (Con): My Lords, I add to this unanimity of voice. I entirely agree with what both noble Lords have said. The scheme that the Bill sets out enables people to buy knives from foreign websites. A lot of the time you will not know that it is foreign website as it will appear to be in the UK and it will deal in sterling; it is just posted from France, the Netherlands or wherever it might be. It comes through the post in an unmarked packet and is delivered to whoever ordered it. We apparently think this is a reasonable thing to do and that people should be allowed to do this. This is a way in which your average 16 year-old can obtain a knife quite legally under the Bill.

We are imposing much more stringent arrangements on our own internet traders, which will appear exactly the same to customers. All it means is that we will be disadvantaging our own traders to the advantage of overseas traders and we are not achieving anything in terms of safety. I absolutely agree with what the noble Lord, Lord Kennedy, said. I support the aims of the Bill. We want to prevent knives getting into the hands of people under 18. Let us have an effective way of doing it that does not disadvantage our own people. Several alternatives have been offered. I very much hope my noble friend will indicate that she is prepared to pick up one of them.

The Earl of Erroll (CB): My Lords, I support everything the three noble Lords have said. I completely concur with everything that the noble Lord, Lord Lucas, said. He is absolutely on the nail.

Just for fun, today I put on a tie that shows a mouse eating a chunk of cheese. I do not know whether noble Lords remember that there was a book some time ago called *Who Moved My Cheese?*, in which mice run around a maze and get to eat cheese at the end. One day the cheese was moved. One mouse explored and found where the new cheese had been moved to and therefore survived. The other one kept revisiting the old place and died. I recommend this book to the Home Office. The world has changed—the cheese has moved—yet we are legislating as if we did not have an online world and methods of verifying age, and as if people did not have smartphones that they can link to biometrics. We are living in the past. I cannot believe we are passing a piece of legislation such as this. I concur with everything that has been said. I do not mind what scheme is done so long as it is more sensible than the one proposed in the Bill.

The Minister of State, Home Office (Baroness Williams of Trafford) (Con): My Lords, I am most grateful to the noble Lord, Lord Kennedy, for these amendments. I am particularly grateful to him and the Sheffield knife manufacturers for coming to meet me the other week for what I thought was a very helpful and constructive meeting.

We are returning to something we debated in Committee: whether trusted traders should be exempt from the prohibition in the Bill of arranging delivery of bladed products to residential premises or a locker. When we considered these amendments previously, I said that test purchases continue to show that a significant number of online sellers fail to undertake adequate checks to ensure that knives are not sold to under-18s. The most recent test purchases of online retailers, conducted in late 2018, showed that 42% of the retailers sampled failed the test and sold knives to persons under 18.

As the noble Lord has explained, his amendments seek to address this problem by saying that where we know someone is a responsible retailer they should be able to continue to send their products to a person's home address or a locker. This would apply only to the dispatch of bladed products under Clause 18 and not to the sending of corrosive products to a residential premise under Clause 3—presumably on the basis that the noble Lord is content that corrosives should not be sent to a person's home.

These amendments would transfer the responsibility for complying with the legislation, and for ensuring that all sales are handled properly, from the seller to the Government. They would do this by requiring the Government to set out the details of the proposed trusted trader scheme, which would then allow for the delivery of bladed products to residential premises. A trusted trader scheme would require sellers to demonstrate that their age-verification systems and procedures, from the point when they receive the order to the point that their designated delivery company hands the item over, are robust and that they can guarantee that the knife will not be handed over to a person under 18.

[Baroness Williams of Trafford]

The Government are not persuaded, in the light of the results of recent test purchase operations, that sellers can provide such reassurance in a systematic and consistent way. Only by requiring age verification at the point where the item is physically handed to a person at a dedicated collection point is it possible to guarantee that a bladed product will not be handed over to a person under 18. Setting up, administering and overseeing a trusted trader scheme would create a further burden on the Government or local authorities, with inevitable cost implications. Simply being part of a scheme, or being in possession of a seal of approval as a trusted trader, does not guarantee compliance with the conditions of the scheme. Many of us know this to our cost, having hired a plumber or builder accredited by a trusted trader scheme. Such a scheme would impose regulatory burdens on participating businesses. In addition, it would need to be administered by an independent regulatory body or by local authorities, albeit with the expectation that participating businesses would be required to meet the cost of running it.

I hope that I have provided a clear explanation of why the Government do not consider that the noble Lord's amendments would provide the necessary assurance that young people under 18 cannot get hold of knives using online sellers. In coming to this view, I have reflected on the recent helpful meeting with Sheffield knife retailers—which I am very grateful to the noble Lord for arranging—in which something was said about Amazon's view on the issues this amendment raises. He knows that I cannot promise anything, and we are yet to have a definitive statement on it, but I hope that this being the case, he will feel able to withdraw his amendment.

Lord Paddick: Before the noble Baroness sits down, could she just qualify what she said about the test purchase results? Was this a failure in age verification at the point of purchase or at the point of handover?

The noble Baroness also talked about a burden on the Government to design an age verification scheme, but is that not exactly what this Bill does with knives that are bought overseas and that are handed over at residential premises?

Thirdly, could the Minister again tell me why age verification at handover point is likely to be better than age verification on the doorstep?

Baroness Williams of Trafford: Such a scheme would impose an additional burden. The noble Lord talks about other burdens; I am not denying that there will be burdens on various people from the introduction of whatever scheme comes in, but this would very much pass on that burden to local government.

As I understand it, the failures in online test purchases have lain at the point of sale.

Lord Kennedy of Southwark: My Lords, I thank all noble Lords who have spoken in this short debate. I put this provision forward, but I am not stuck on this or any other particular scheme, and I hope I made that clear in my remarks. I am generally very grateful to the Minister for the way she met with the traders—they were very impressed with the interest she took.

All I want to do is to stop us putting on the statute book something which harms British business—nothing else. The Minister has confirmed that discussions are still going on, so will she allow me to bring the issue back at Third Reading? If so, I would be very happy to withdraw the amendment.

Baroness Williams of Trafford: My Lords, I cannot commit to bringing it back at Third Reading, but I know the noble Lord will bring it back at Third Reading. By then, I hope that I will have further information for him.

Lord Kennedy of Southwark: Just to clarify, is the Minister happy for me to bring it back at Third Reading? I do not want any disputes with the clerks afterwards about this situation.

Baroness Williams of Trafford: I do not think there will be any disputes with the clerks.

Lord Kennedy of Southwark: My Lords, in that case, that is all clear and correct. I am delighted to withdraw the amendment.

Amendment 74 withdrawn.

Amendment 75

Moved by ***The Duke of Montrose***

75: Clause 18, page 17, line 41, at end insert "unless the product is for an agricultural or forestry management purpose"

Member's explanatory statement

This amendment would allow a seller to deliver bladed agricultural or forestry equipment to residential premises.

The Duke of Montrose (Con): My Lords, I rise to move this amendment and speak to others standing in my name—namely, Amendments 80, 83, 84 and 85. For those of us who have not had the good fortune to spend our days looking at the wording of the various Acts introduced since 1953 to control unruly public behaviour, I must express my gratitude to Mark Wilcox for giving general access to the Keeling schedule he produced following our amendments in Committee. I am sure this was aimed at Members of your Lordships' House who are much more familiar with these documents than I am, but it provided some enlightening weekend reading for me, such as what is currently defined as a public place and how this legislation will affect sharply pointed articles—it explained that this is limited to those,

"made or adapted for use for causing injury to the person",

as stated in Section 141A of the Criminal Justice Act 1988.

There are other provisions which might answer some of my concerns as well, but I wish to enlarge on the problem which my amendments focus on; this looks at what we have just been discussing from the other end—the purchases end. As I have mentioned before, I approach this legislation as someone who has had to carry on a variety of businesses in a rural context, where many sharp instruments and corrosive

substances are involved—an area which has been subject to immense changes, both in its purpose and in how it is envisaged. A current complication arises in that there are fewer and fewer people available and there is less access to public transport and other essential services. The strong message we get is that the Government expect us to carry on most of our business digitally and online. As the noble Earl, Lord Erroll, pointed out, it appears that this has not been thought through from the point of view that this Bill could limit the effect of that.

I again declare my remaining interest as the recent president of the National Sheep Association.

3.30 pm

Your Lordships will be aware that, in many parts of the country, farmers have sold off their traditional farmhouse and at times even the steading. They then farm in a way that might be termed "remotely", while living in some more urban location, possibly without any permanent structures on the site where they farm. Another factor is that fewer and fewer of those who assist a farmer are employed directly. Some are called in as contractors and presumably can be taken as having their own business to worry about. However, there is always an element of those who are simply employed as casual labour but, even so, would like to bring some of their own tools of the trade. One thinks of people who come to assist at lambing time and others repairing fences. When it comes to the forestry world, there are certainly mechanised felling machines but there is still a need for the self-employed, whose living is made up of constant work with their chainsaw or other sharp weapon.

My noble friend the Minister has shown great patience in responding to my concerns as to what makes a house a place of business. If this is clear, it would naturally make life a whole lot easier for those who are so recognised and wish to obtain articles by post. On our previous day on Report, my noble friend used the phrase "registered business address". I would like to look at that for a minute, since in a rural context there are certainly not so many who would conduct business at the level where they would be registered at Companies House. Many farmers will simply conduct the business in their own name, seemingly without having to register with anyone. Where will the recognition of their place of business come from? Perhaps they can rely on being recognised as having a registered agricultural holding. For others, it might be possible to say that they are registered for VAT; there will be others again who do not conduct a business which reaches the threshold for that registration. Would these reasons be sufficient, or is it just a matter of notifying your supplier and hoping that some of the other authorities which I have noted have not seen what you have been doing?

All these individuals will have to be aware that the Revenue website says that, if you occupy a property part of which is used for non-domestic purposes, you will probably be required to pay business rates. There are two possible ways of relieving this situation: one is that the property you occupy must have a rateable value of less than £12,000, in which case you qualify for 100% relief from business rates; the other is whether your property would be recognised as agricultural, which might be a long shot if you occupy a semi-detached in a suburb. I can see that there will be problems for those who are unwilling or unable to have a site which qualifies as the site of a registered business. I am not saying that there are not many activities which one might seek to exclude in the same way from the prohibition on receiving articles by post, along with agriculture and forestry, but in my judgment they are not constrained by seasonality in the same way and should be in a better position to work their way round the disadvantages.

Two particular activities strike me—though I admit there may be others. One is the gangs who assemble, often from around the world, and come to carry out the essential sheep-shearing operation that takes place every year. They gradually progress northwards through the country, as the season allows, before returning to their homes and countries. They require a constant turnover of clipping blades, which have to be resharpened to an industrial level and then remounted on the clipping machines. These blades have multiple points and are razor sharp. Occasionally, they may even require some old-fashioned sheep shears, which are even more lethal in the context of the Bill. Another element of the agricultural world is the small triangular knife sections that have to be bought and replaced when they go missing from the 10 to 20 foot cutting blades of a combine harvester. In the forestry context, you have independent workers who have to go wherever work is available, and often land up staying in camp for long periods in caravans, in remote places. They need some way of getting access to items that they might need to carry out their trade. I beg to move.

Lord Paddick: My Lords, I have some sympathy with the noble Duke, the Duke of Montrose, on this issue but again suggest that the answer is to have a system of age verification at handover, as there is for overseas sellers.

On the issue of whether a business is carried out at a residential address, the Government accept that overseas companies cannot be expected to know whether that is the case. Again, UK companies are being disadvantaged compared with overseas companies.

I do not know whether the noble Duke can explain why Amendment 75 talks about a product that,

"is for an agricultural or forestry management purpose",

Amendment 80,

"exclusively designed for an agricultural or forestry management purpose",

Amendment 83,

"specifically to be used for agricultural or forestry management purposes",

and if those differences are deliberate and explicable.

Lord Kennedy of Southwark: My Lords, I rise briefly to support the noble Duke, the Duke of Montrose, as he raises valid points. Again, we do not want anything in the Bill that disadvantages UK business.

The Earl of Erroll: My Lords, I rise to support the amendments as well. A lot of effort is going into preserving hill farming and small farming. There is a lot of focus on that area, yet along comes the Home

[The Earl of Erroll]
Office, without consulting Defra, Natural England or anyone else, and it could wipe out all the good that has been done elsewhere. We need to start looking at this approach.

On the point made by the noble Lord, Lord Paddick, which runs through the whole thing, this is about disadvantaging UK against foreign business. There is no logical reason to do that. I say to the Minister that, just because this amendment is aimed at knives because it is in this part of the Bill, that does not mean you would not logically continue that through to corrosive liquids. I cannot think how to describe the argument that says that it does not cover that as well, when we have moved on to this part of the Bill. The intransigence of the Home Office has been evident throughout this, and I do not think that is a good argument against sensible amendments later.

Baroness Barran (Con): I am grateful to my noble friend for his amendments, which return us to the proposed prohibition on the dispatch of bladed products to residential premises and lockers.

I hope I can quickly provide my noble friend with some reassurance on the point he has raised but, before I do so, I would like to answer the point he raised on Report, on 26 February, about the definition of "pointed articles" and whether it includes things like screws carried in someone's pocket. Section 139 of the Criminal Justice Act 1988 makes it an offence to possess in public,

"any article which has a blade or is sharply pointed",

without,

"good reason or lawful authority".

Section 141A of the same Act prohibits the sale to under-18s of articles with a sharp point that are,

"made or adapted for use for causing injury to the person".

The wording "sharply pointed" is used in various parts of the Bill, including Clauses 15 to 17 and Clause 31.

The new offence of arranging delivery to residential premises or a locker is limited to "bladed products"—that is an article which is, or has, a blade and which is capable of causing serious injury by cutting the skin, so does not include pointed articles. It will be for the courts to decide whether an article is sharply pointed, or has a sharp point, in each specific case, but the legislation was clearly never intended to include screws, which are not generally considered to be offensive weapons and which have not been made or adapted for the purposes of causing injury. We are not aware that the definition of pointed articles has caused any problems with the operation of existing offences over the past 30 years.

The amendments in this group would enable bladed products that are used for agricultural or forestry management purposes to be sent by the seller to a solely residential premise. Some agricultural and forestry management items will be caught by the definition of bladed product, and it is therefore reasonable to assume that they will no longer be able to be sent to solely residential premises or a locker. However, the definition of residential premise is limited to those premises that are used solely for residential purposes. My noble friend eloquently set out a number of ways that one could demonstrate whether something was also a business address. It will be a matter for the seller of a bladed product to satisfy themselves that the delivery address is not used solely for residential purposes.

This means that bladed products will still be able to be sent to business premises and this includes, importantly, where a business is run from a residential premise. Therefore, bladed products could be sent to a farm, an agricultural supplier or a forestry centre. They could be sent to the home of a person who runs a self-employed forestry business from their home. We have been clear from the outset that deliveries to farms will not be prohibited under the Bill and, in most cases, agricultural and forestry tools will be related to business activities and should not be affected.

Clause 19 also includes a regulation-making power which will enable further defences to be added by secondary legislation if it becomes clear that the prohibition on home delivery is having a particularly negative impact on certain types of business or not-for-profit activities. A defence for agricultural and forestry equipment could therefore be provided if it becomes clear that there is a detrimental impact on this type of trade or activity. However, for the reasons I have set out, we do not currently think that this is necessary.

I hope I have given my noble friend sufficient reassurance that the deliveries of agricultural and forestry equipment should be largely unaffected by the measures in the Bill. On that basis, I ask him to withdraw his amendment.

The Duke of Montrose: My Lords, I thank my noble friend for all her efforts in answering the questions which I have raised from time to time. What she has said has been much more reassuring. It sounds as if a letter to your supplier is critical to whether or not you have a registered business. It does not have to be certified in any way; you can just say to your supplier: "This is my business address". Maybe that situation is adequate, though there are obviously loopholes.

The noble Lord, Lord Paddick, made an interesting point. The amendments were attached to different parts of the Bill. I thought the wording was a little more appropriate in each case, but I would not stand by it terribly much.

I thank all noble Lords who have participated in this debate. We are in a happier position, for those who require blades and pointed instruments, than we were when it started. I beg leave to withdraw.

Amendment 75 withdrawn.

Amendments 76 and 77 not moved.

Clause 19: Defences to offence under section 18

Amendments 78 to 80 not moved.

Clause 20: Meaning of "bladed product" in sections 18 and 19

Amendment 81

Moved by ***Lord Lucas***

81: Clause 20, page 19, line 24, at end insert—

( ) The Secretary of State must, before the coming into force of sections 18 and 19, publish guidance as to how the definition in subsection (1) may be interpreted.

Member's explanatory statement

This amendment, following the Minister's remarks at Committee stage (28 January, HL Deb, col 160GC), is intended to ensure that guidance will be issued, so that those responsible for designing and carrying out sales and dispatch procedures will be able to judge whether a particular item (for instance, a food processor) falls under it.

3.45 pm

Lord Lucas: My Lords, I am very grateful to the noble Baroness, Lady Hamwee, for substituting for me in my absence on the first day on Report. She obtained for me a very useful answer to the question that underlies this amendment, which is: how is someone going to know? I would be grateful if my noble friend the Minister would make it clear that the Government understand how important it is to get this guidance clear. Big retailers are going to have to decide whether something is a bladed product or not: they need to be able to take that decision with certainty. A reputable UK retailer does not want to find itself on the wrong side of this legislation. It will have to make these decisions every day in relation to items of kitchen equipment which they might ship, and they need to do it properly. It is really up to the Government to get this right. I would be grateful for an assurance that the Government understand this and will use the provisions in Amendment 106 to achieve that effect. I beg to move.

Baroness Hamwee (LD): My Lords, is not really possible to substitute for the noble Lord, Lord Lucas, but I was happy to introduce some of his amendments, as my noble friend did, on our first day on Report. We have Amendments 82 and 86 in this group. Amendment 86 also requests guidance on articles that are not bladed products for the purposes of the Bill—in other words, a negative approach. Amendment 82 would provide that the term does not,

"include a product intended for domestic use which incorporates a blade if the product does not function without the blade".

I could go off down a separate avenue about the range of experiences that we draw on in this Chamber: I could not have begun to talk about sheep shearing; the noble Duke, the Duke of Montrose, might want to talk about food processors—I do not know. Clause 20 defines "bladed product" for the purpose of the clauses dealing with delivery to residential premises. Of course, I am not taking issue with the overall approach of my noble friend, but, as the Government have been resisting, this is to look at the detail.

The definition excludes all sorts of things, some of which I have never heard of: flick-knives, gravity knives, knuckle-dusters, death stars and other weapons whose sale and importation is already prohibited, as well as items excluded from the prohibition on the sale of bladed articles to those under 18. I think it is appropriate to pause here, while thanking the Government for providing Keeling schedules, to say that it is really not immediately obvious what is within Clause 18—in other words, what products it will be an offence to deliver to residential premises. There was a degree of confusion when this was debated in the Public Bill Committee in the Commons. We have just heard from the noble Baroness, Lady Barran, about the distinction between a pointed article and an article with a cutting edge, but it seems to me that that must depend on how the items are used. Surely, with something that is pointed, if you pull it down against somebody's skin it is likely to cut the skin.

In our view, it ought to be clear which items make delivery to residential premises an offence. Apart from its substance, the clause's complexity and its dependence on orders made under other legislation—more accurately, the exclusion of items that are the subject of such orders—is not in the tradition of well-written Acts of Parliament. One cannot employ the defence of reasonable precautions and all due diligence when there is an issue with the definition.

I have occasionally bought art materials online for delivery at home. Go on to any art materials website and you will find a range of palette knives and craft knives, some of which would fall foul of the definition. Not everyone paints, does craft work or shears sheep—but everybody eats, which is why I picked domestic kitchen items. They are relevant to many people's lives, as they buy them either for themselves or for others, for instance from a wedding gift list.

Other noble Lords may have received a letter from John Lewis representatives—whom the noble Lord, Lord Lucas, and I met a couple of weeks ago—who expressed concern that the definition would prohibit them selling and delivering to a residential address a wide range of everyday kitchen products containing blades, such as food processors and scissors. They described to us the careful age-verification steps they take in respect of sales in store, but said:

"Online sales at John Lewis and partners are a key part of our business strategy and account for over 40% of our total sales … Around 50% of these online sales are delivered direct to customers' homes. Any restriction on our ability to continue to sell and deliver products, such as food processors, online would negatively … impact our business. We do not believe this is the intention of the Government"—

nor do I—

"and nor do we believe that this would do anything to help address the issue of knife crime".

We agree. This amendment is not intended as a plug for John Lewis; rather, it seeks clarity and a common-sense outcome in which businesses do not regard more items than is necessary as outlawed from home delivery.

The British Retail Consortium supports the three amendments in this group. In Committee and earlier on Report, we sought to address the issue through the amendments to which my noble friend referred. I appreciate that Amendment 82 only scrapes the surface of the issue, but I wanted to highlight the point.

As we know, under government amendment 106, the Secretary of State "may"—that is the term used—issue guidance. The amendment moved by the noble Lord, Lord Lucas, says "must"; Amendment 86, in my name

[Baroness Hamwee]
and that of my noble friend Lord Paddick, says "shall". No doubt we will be told that "may" means "will", or other close synonyms, but guidance cannot override legislation, so it is essential to get that right. Of course, guidance will be produced by the Executive without parliamentary approval and it can be changed without approval. So at least we should hear from the Dispatch Box—I look forward to the Minister's explanation—what consultation on the guidance the Government intend to undertake. Clearly, it should be thorough. I suspect that the Government have also had a bit of difficulty in pinning down a definition—otherwise we would have one. That simply demonstrates how important this issue is.

The Earl of Erroll: My Lords, we having been discussing this issue in the Digital Policy Alliance's age verification and internet safety working group. Being clear on definitions is absolutely essential.

The Minister said in the previous debate about pointed items that it will be up to the courts to decide. Who can afford that? How can people afford to go that far? That is the trouble. The natural reaction of business will be to be overly cautious. That will close down entire avenues of business and inhibit normal people's ability to carry on with their normal lives. A lack of clarity will cause so much trouble and you will get an awful lot of flak in the papers. I suggest that this group of amendments be taken together so that we can sort something out and produce absolutely clear guidance. We are trying to legislate for only a few outrageous incidents. The trouble is that regulations never prevent what they seek to prohibit. You cannot stop all of this by regulation. Let us make reasonable regulations, which allow normal people to continue with their normal lives. Given that, clarity in the definitions is absolutely essential.

The Duke of Montrose: My Lords, the noble Baroness, Lady Hamwee, has raised the question of pointed articles possibly being used by troubled people to cause injury. I should like further confirmation of my reading of the Keeling schedule that we were offered. I took great comfort from that. The part of the 1988 Act to do with supplying knives and blades to people aged under 18 refers to,

"a blade which is sharply pointed and which is made or adapted for use for causing injury to the person".

That, to my mind, rules out an ordinary pointed article. You would have to prove that it had been used or adapted to cause injury.

Baroness Williams of Trafford: My Lords, I am most grateful to my noble friend Lord Lucas and the noble Baroness, Lady Hamwee, for these amendments. My noble friend has been clever about weaving back into last week's debate on statutory guidance and the one that we have just had on the trusted trader scheme.

I can see that Amendments 81 and 82 attempt to provide further clarity for manufacturers and suppliers of kitchen utensils and to limit the impact of Clause 18 on such companies. As noble Lords will know, I met representatives of some knife manufacturers in Sheffield and I heard at first hand their concerns about this provision. Amendment 81 seeks to assist manufacturers, retailers and others by providing for statutory guidance on which items are covered by the definition of a bladed product. Amendment 82 clearly goes further and excludes from that definition any product "intended for domestic use" that requires a blade to function. As I understand it, the intention is that items such as food processors, and perhaps bread knives and steak knives, could be sent to residential premises if they have been sold remotely. Food processors and similar items are clearly not the sort of things that can be used as offensive weapons and it is not intended that they will be covered by the prohibition on arranging delivery to a residential premises or a locker. Products such as table knives are also excluded from the definition of bladed products because they are not capable of causing serious injury by cutting a person's skin.

I turn to the wording of Amendment 82. The term "intended for domestic use" perhaps lacks clarity. Although most people would accept that kitchen knives are intended for domestic use, there may be some doubt as to whether hobby knives, camping knives and DIY tools can also be said to be intended for domestic use. I worry that amending the definition in this way could lead to sellers of fairly nasty knives marketing them as purely for domestic use to get around the delivery prohibition. That said, if a prosecution was brought for this offence, it would be for the seller to show that the product did not fall within the scope of the offence as it was intended for domestic use. The approach in Amendment 82 is therefore not without risks and there may be issues around defining what is meant by "domestic purposes". However, I agree with my noble friend that this is certainly an area where guidance for retailers and others will be beneficial and it is our intention to provide such guidance, exercising the power conferred by Amendment 106, which we debated last week.

Lord Pannick (CB): Why is it thought that guidance is less likely to lead people to seek to evade the purposes of this legislation than putting a definition in the scope of the Bill itself?

4 pm

Baroness Williams of Trafford: If I understand the noble Lord's question, he is asking whether guidance is less likely to make people abide by the law and why we do not just put it in the Bill. I am struggling to answer that question.

Lord Pannick: The Minister has expressed concern—she may well be right—that, if the Bill were amended to make clear what is and is not covered, there is a risk that sellers would seek to use that definition to try to get around the contents of the Bill. Given that she says that these matters will be dealt with by guidance, is there not the same risk? Would it not be better to define in the Bill what the Bill covers and does not cover, not least because guidance will not bind the courts? It is for the courts to interpret. The problems of uncertainty will inevitably arise if the Government rely purely on guidance. That is the point.

Baroness Williams of Trafford: I stick by the point that people will use the list in the Bill to try to get around the law, and therefore guidance is helpful. It is helpful both to the retailers who will be selling items but also to the courts in interpreting the legislation. Of course, the difficulty in this legislation is that knives have myriad uses, which in many ways is why this has been quite a difficult Bill to take through.

Baroness Hamwee: My Lords, given the problems with the Bill itself, I make a point so that at least *Hansard* is accurate on this. The Minister talked about using terminology such as I have used to allow retailers to sell knives online and deliver them to domestic premises—she talked about bread knives and steak knives. This wording would require the product to function only with a blade. That clearly would not apply to a bread knife; if it does, every knife can function only with a blade. I am not suggesting that the precise detail of this amendment be included in the Bill, but this all goes to show that if we resist being specific here, we risk causing more problems, not fewer. If I did not say so before, nothing I have said seeks to undermine in any way what my noble friend Lord Paddick said about his overarching approach, which we should be following.

Baroness Williams of Trafford: It comes back to the noble Baroness's point about consultation. In developing the guidance, we must and will engage with business and organisations such as the BRC. The intention is that it will be developed with them. We could have a circular argument here about whether things should be directly specified in the Bill or how helpful the guidance will be in helping retailers and the criminal justice system, but guidance generally will help the Government keep pace with developments.

Amendment 86 is similar to Amendment 81 and again seeks to require the Secretary of State to issue guidance. We have already debated government Amendment 106, which will enable the Secretary of State, Scottish Ministers and the Northern Ireland Justice Department to issue statutory guidance on certain parts of the Bill, including those dealing with offences of remote sale and delivery of knives. We intend that there should be guidance to retailers on what items are prohibited from dispatch to residential premises or a locker under Clause 18. I think the government amendment is adequate to cover this.

Lord Paddick: I apologise for persisting but the Minister referred to table knives being excluded from this prohibition. The table knife that I was given to eat my roast beef with in a restaurant yesterday could cause serious harm to an individual by cutting. Is it or is it not therefore a table knife? This will inevitably lead to a decision by major retailers such as John Lewis not to deliver any knife of any description to residential premises for fear, as the Minister said, that if there is a prosecution the supplier will have to provide a defence in court to the offence. Not many suppliers will be prepared to take that risk.

Baroness Williams of Trafford: I do not think that John Lewis currently delivers table knives or any type of bladed products to residential premises. As it stands, John Lewis does not deliver knives; people have to pick them up or buy them in the shop.

I appreciate the noble Lord's point about table knives. That is why this legislation is difficult. In many ways it will be for the courts to determine in what context the knife is being used. I am not denying what the noble Lord says.

Lord Kennedy of Southwark: When this discussion is over I invite the Minister to read *Hansard* and to reflect on the debate—it is distressing. We are talking about table knives, steak knives and knives to shear sheep and so on when we have a serious problem on our hands in this country with knife crime. This Bill completely misses the point. People have been murdered over the weekend and it is frustrating that this legislation completely misses the point.

Baroness Williams of Trafford: My Lords, we are not missing the point: we are trying to get a balance between people selling products which can be used for perfectly legitimate purposes and those seeking to abuse these products in order to do harm to people. One of the attacks at the weekend took place round the corner from me. I fully have in mind the danger that knives can cause but we are trying to get the balance right.

Lord Lucas: I appreciate the difficulties the Government are having in trying to get this clause right. I go back to the first amendment we debated today and the concern of the noble Lord, Lord Kennedy, and I that we are disadvantaging British sellers relative to overseas sellers for no advantage to the peace of the realm. If someone wants to get a knife, all they have to do is order it from Holland and then it can be delivered to their house. It really matters whether we focus this prohibition on British sellers widely or narrowly, and the way the clause is drawn at the moment is capable of wide interpretation.

The guidance will have to be good and clear. I agree that it will not have the force of the law but it will have an effect on police officers, I hope, in deciding whether to launch a complaint or a prosecution. It will have an effect on the CPS, and it will certainly have an effect if it is reported in a newspaper that there has been a prosecution. It will be the prosecution that is laughed at, rather than the retailer condemned, if the guidance makes it clear that something should be allowed. It matters in relation to large items such as food processors; if they and all the rest of one's wedding gifts cannot be delivered to one's home address, people will go somewhere else, which would be abroad. It is a big enough item to make such a decision about and it is not obvious why it should be prohibited, whereas we can all accept that we should have to jump through a few hoops when obtaining a knife because they are dangerous and we must behave ourselves. I hope that the Government will draft the guidance with the interests of British traders at heart.

[LORD LUCAS]

I am grateful for my noble friend's reply and beg leave to withdraw the amendment.

Amendment 81 withdrawn.

Amendments 82 to 86 not moved.

Clause 21: Delivery of bladed articles to persons under 18

Amendment 87 not moved.

Amendment 88

Moved by ***Lord Lucas***

88: After Clause 21, insert the following new Clause—

"Powers to confiscate bladed articles

If bladed articles are detected in transit from overseas to a UK residential address, other than under arrangements as described in section 21(1)(c), and without the requirement for age verification on delivery being clearly evident on the outside of the packaging, they may be handed in to the police for destruction without compensation."

Member's explanatory statement

This amendment is intended to address issues discussed in Committee as to how to deal with bladed articles coming in from abroad, using generic carriers such as Royal Mail, without arrangements as described in 21(1)(c).

Lord Lucas: My Lords, if we are going to have this arrangement whereby overseas sellers are advantaged, at least we need to make it effective. At the moment, if I was to go on to a foreign website and order a flick knife that was then dropped into the post, it could come straight to me. Such a prohibited weapon could come to me if I was 14 years old. Nothing in the process would allow it to be intercepted. There is an arrangement in the Bill for overseas sellers who choose to use a contracted delivery arrangement in the UK, which would presumably apply to Amazon fulfilment or a similar arrangement, whereby age verification would take place on the doorstep. However, we are allowing an enormous hole to appear: if someone uses a common carrier such as the Post Office, there is nothing to stop a product ordered overseas being delivered straight to a minor at a residential address. If there is to be this enormous disadvantage on British businesses, let us at least have effective controls on overseas websites.

When goods come into this country, they are, by and large, inspected. We are concerned about people shipping pistols into this country and keep an eye out for such packages. The same techniques will be effective against bladed products. However, if someone involved in that process discovers a bladed product in a standard, unmarked pack, it is currently unclear whether they have a right to do anything about it. If we are to allow knives to arrive in unmarked standard postal packages, it would defeat the whole purpose of a great chunk of the Bill. To stop that happening it should be clear that when something is identified as a bladed product, and the arrangements for making sure that it will be signed for by an adult on delivery have not been complied with, the authorities must be able to confiscate that product, or the Bill does not work. I beg to move.

The Earl of Erroll: My Lords, I support the amendment, which is eminently sensible. Why should one have something that does not work? This should be part of the armoury to stop bladed products getting into the wrong hands and I cannot see how else it could be done.

4.15 pm

Baroness Williams of Trafford: My Lords, I am grateful to my noble friend Lord Lucas for returning us to this difficult issue about what we do in relation to overseas sellers of knives. Noble Lords will recall that the issue is that while we can place requirements, such as those under Clause 18, on remote sellers based in the UK, we cannot do the same in relation to overseas sellers. This is because we cannot practically take extraterritorial jurisdiction over sellers based abroad. We have tried to address this through the provisions in Clause 21. These provisions make it an offence for delivery companies in the UK, which are operating under specific arrangements to deliver bladed articles on behalf of overseas sellers, to deliver those articles into the hands of a person under the age of 18.

We accept that this is not the complete answer to the problem because overseas sellers can simply send the items unmarked through the international mail. This is exactly the situation that my noble friend's amendment seeks to address. It would provide a power to confiscate bladed articles that are sent from overseas to a UK residential address and which are, first, not subject to specific arrangements between the delivery company in the UK and the overseas seller and, secondly, not labelled to show that age must be verified on delivery.

Although it is not clear from the amendment, the power is presumably to be exercised by Border Force because the amendments refer to detecting the articles in transit from overseas. The amendment would mean, in effect, that only bladed articles sold overseas which are subject to specific delivery arrangements in the UK would be allowed. I can therefore sympathise with the intention behind this amendment.

However, there are a number of problems with the amendment. At present, Border Force can seize two types of bladed articles. It can seize weapons prohibited under Section 141 of the Criminal Justice Act 1988, such as zombie knives and death stars, and Section 1 of the Restriction of Offensive Weapons Act 1959, which covers flick knives and gravity knives, because the importation of these weapons is banned. It can also seize any weapon which it believes is evidence in relation to a criminal offence.

This amendment would mean that Border Force would have a power to seize items which are not prohibited by law and where they are not evidence in relation to a criminal offence. This would mean that a wide range of items which are going to a residential address in the UK from overseas could be seized and handed to the police to be destroyed. The amendment is not limited to overseas sales, so it would mean that bladed articles sent from a relative overseas to someone in the UK could also be seized. It would mean that someone bringing back a bladed article from their holiday, such as a souvenir, could have it seized or that

a fencer returning from a competition overseas with their swords could have them confiscated by Border Force. It would mean that articles which have been legally sold overseas and legally bought by someone in the UK could be seized.

Secondly, the amendment assumes that there is some way of detecting such articles. Not all items coming into the UK are scanned, so unless Border Force happens to come across bladed articles as part of routine searches, they are unlikely to be detected. Even if such items were detected, Border Force would need to ascertain whether they were being sent to a residential address. For example, it would need to decide whether 12 High Street is a residential or business address. Finally, it would need to establish whether they were subject to specific arrangements between a delivery company and the overseas seller. It would then have to have arrangements for handing the articles to the police for destruction. This would all have significant resource implications for Border Force. It is for all these reasons that I am afraid I cannot support my noble friend's amendment. I hope that in these circumstances he will withdraw it.

Lord Paddick: Before the Minister sits down, will she explain why the Government cannot exert extraterritorial jurisdiction over foreign websites when they are doing exactly that when it comes to online pornography on overseas websites? In that case the BBFC, acting on behalf of the Government, gets in touch with the online pornography website and threatens them that unless and until they have approved age verification on their sites, BBFC will instruct UK internet service providers to block access to those websites from the UK. Why cannot a similar system be used to block overseas companies which are known to be selling prohibited weapons to the UK?

The Earl of Erroll: The noble Lord, Lord Paddick, is absolutely correct, as Part 3 of the Digital Economy Act provides. In her response, the Minister said that the sender would not know whether they were sending to a residential address. A UK business has exactly the same problem, yet she was using this to justify blocking UK sales. I do not see how she can apply one rule to UK companies and another to foreign companies. We need to be even-handed.

Baroness Williams of Trafford: My Lords, in an ideal world, we would have the same systems for overseas and domestic sales. We cannot exercise ETJ—

The Earl of Erroll: We can.

Baroness Williams of Trafford: As I understand it, we cannot. We have had the example of pornography. The system I am referring to relates to online sales. Am I right in thinking that the system referred to by the noble Lord, Lord Paddick, relates to streaming? He will correct me if I am wrong.

Lord Paddick: I am very grateful to the noble Baroness. These are paid-for websites. People are paying for a service—there is an exchange. There is another option—I am grateful to the Minister for reminding me. Most financial transactions involving foreign websites are processed by UK credit card companies and so forth. The other way of ensuring that these transactions do not take place even though the company is beyond the UK's jurisdiction is to ask UK card companies not to process payments to those particular companies. That is the second string to the BBFC bow in order to stop under-18s in the UK from, effectively, buying pornography from overseas websites. Similarly, the Government could put pressure on UK card companies to not process payments to overseas companies which are selling prohibited weapons to under-18s in the UK.

Baroness Williams of Trafford: The noble Lord will agree that not all their sales would be of prohibited items.

Lord Elton (Con): My Lords, surely that is not an answer. We want to stop the whole thing.

Baroness Williams of Trafford: My Lords, we have tried—

The Earl of Erroll: I will try to help the Minister. The Government or the regulator would be deciding whether a foreign supplier was breaching the terms before informing the credit card agency. You would not go and inform the credit card companies about a foreign supplier that was not selling weapons to underage buyers. It would be triggered by the Government deciding whether a foreign supplier was breaching the rules.

Baroness Williams of Trafford: My Lords, that would require a global trawl of every company in the world selling knives, prohibited or otherwise.

The Earl of Erroll: This has been covered widely in the pornography provisions of the Digital Economy Act, which the good online suppliers of adult content are helping to police. All the systems for online age verification and everything else are in there. Some co-operation and consultation with DCMS and BBFC could be very helpful to the Home Office, because there is an exact parallel. You could almost translate the whole thing over to offensive weapons, which is why we are discussing how this could be done in external groups.

Lord Pannick: I suggest to the Minister that the point is not about a trawl of all foreign sellers. If I understand the noble Lord, Lord Paddick, the point is that, if the Home Office realises that specific overseas sellers are breaching the principles in the Bill, the Secretary of State ought to enjoy some power to take action to prevent such a company continuing to supply into this country. Using the methods adopted in relation to pornography, either to prevent the website communicating or through the payment methods, seems a real possibility. Will the Minister and the Home Office give further thought to this important matter before Third Reading to see whether some progress can be made?

Lord Paddick: To assist the Minister further, I can assure her that there are more websites worldwide providing pornography than there are providing offensive weapons, yet that has not prevented the Government taking action.

Baroness Williams of Trafford: I thank the noble Lord, Lord Pannick, for his intervention. I was not making a glib comment about a trawl; regarding the examples of card companies and delivery companies, we are taking action where we can, but I acknowledge, as I have all the way through the Bill, that we are trying to find the right balance. It is not absolutely perfect, but we are using everything in our armoury to help us guard against the sale of knives to those aged under 18.

Lord Lucas: My Lords, I entirely accept the strictures that the Minister has discussed concerning the wording and theme of my amendment but, as has been shown in this discussion, its substance remains. If we allow the Bill through as it is, it will quickly become known that there are one or two sites, not far away, across a little bit of water, to which anyone with criminal intent can go in complete safety, buy any knife they want, and have it delivered to them at home. Therefore, anyone intent on getting a knife for criminal purposes will be able to do so with total disregard for the rest of the Bill. All we will have succeeded in doing is disadvantaging British sellers; the Bill will have no other effect.

We do not need to achieve perfection; we just need to make dangerous the process of illegally ordering a knife overseas, or of ordering a knife overseas and having it delivered to someone underage. We need to make it something that might well go wrong: either the knife might be confiscated, or the people involved in selling it—who presumably have a lot of legitimate business as well as supplying to criminals—might lose everything through being put on the Home Office blacklist. As has been suggested by several noble Lords, this is proving an effective system in pornography. Those we allow to dominate the market in the UK, because they do proper age-verification, want to keep others out, so they become an effective police force that we do not have to pay for. There are other routes to getting there, which make the whole business of buying from an overseas supplier more difficult and chancy.

If we want an effective Bill—I join the noble Lord, Lord Kennedy, in saying that we absolutely do—we must urge the Government to use the time between Report and Third Reading to talk to their colleagues in DCMS and look again at whether this is a loophole they can close. Without that, we will have a Bill that is much less effective at achieving what we want it to achieve. But I beg leave to withdraw my amendment.

Amendment 88 withdrawn.

4.30 pm

Clause 23: Prohibition on the possession of certain dangerous knives

Amendment 89

Moved by ***Lord Lucas***

89: Clause 23, page 22, leave out lines 39 to 43 and insert—

"(8) It shall be a defence for any person charged in respect of any conduct of that person relating to a weapon to which this section applies—

(a) with an offence under subsection (1) or (1A), or

(b) with an offence under section 50(2) or (3) of the Customs and Excise Management Act 1979 (improper importation),

to show that the conduct was only for the purposes of functions carried out on behalf of the Crown or of a visiting force.

(9) In this section "visiting force" means any body, contingent or detachment of the forces of a country—

(a) mentioned in subsection (1)(a) of section 1 of the Visiting Forces Act 1952, or

(b) designated for the purposes of any provision of that Act by Order in Council under subsection (2) of that section,

which is present in the United Kingdom (including United Kingdom territorial waters) or in any place to which subsection (10) below applies on the invitation of Her Majesty's Government.

(10) This subsection applies to any place on, under or above an installation in a designated area within the meaning of section 1(7) of the Continental Shelf Act 1964 or any waters within 500 metres of such an installation.

(11) It shall be a defence for a person charged in respect of conduct of that person relating to a weapon to which this section applies—

(a) with an offence under subsection (1) or (1A) above, or

(b) with an offence under section 50(2) or (3) of the Customs and Excise Management Act 1979,

to show that the conduct was only for the purposes of functions carried out as the operator of, or as a person acting for, a specialist licensed armoury company holding an authority to possess prohibited weapons granted by the Secretary of State under section 5 of the Firearms Act 1968 for one or more of the purposes specified in subsection (12) and subject to all the conditions in subsection (13).

(12) Those purposes are—

(a) the purposes of theatrical performances and of rehearsals for such performances,

(b) the production of films (within the meaning of Part 1 of the Copyright, Designs and Patents Act 1988 – see section 5B of that Act),

(c) the production of television programmes (within the meaning of the Communications Act 2003 – see section 405(1) of that Act).

(13) Those conditions are—

(a) the weapon is accompanied by a supervising armourer or handler in attendance throughout the production,

(b) disposal of the weapon by sale or gift is only permitted to another similar specialist licensed armoury company or a museum or by export to another state or country where the laws of that state or country permit import of the weapon.

(14) It is a defence for a person charged with an offence under subsection (1) or (1A) to show that the weapon in question is antique.

(15) For the purposes of subsection (14) a weapon is an antique if it was manufactured in or before 1945.

(16) For the purposes of this section a person shall be taken to have shown a matter specified in subsection (3), (4), (5), (8), (11) or (14) if—

(a) sufficient evidence of that matter is adduced to raise an issue with respect to it; and

(b) the contrary is not proved beyond a reasonable doubt."

Member's explanatory statement

This amendment would introduce a series of defences in respect of activities (1) of non-public museums operated by the Ministry of Defence or police forces, (2) of visiting forces, (3) of the film, theatre and television industries and (4) in relation to antiques.

Lord Lucas: My Lords, I shall speak at the same time to Amendment 90. I am very grateful to the Home Office for bringing a large and intelligent team to listen to representations concerning in particular the use of weapons in film and antique weapons. I am grateful for the time that we were given. I have not received any feedback since those meetings so I have tabled these amendments as a way of receiving that feedback.

There are three sections here. The first concerns an exemption for the Crown Forces. The Government have said they do not think it is required, but as a matter of routine overseas forces issue their personnel with gravity knives and flick-knives and it is said that our own Special Forces use them from time to time. Some members of our Armed Forces are being picked up and persecuted for crimes when they thought that they were acting in the line of duty, and we should not expose them to attack for having a weapon that was required and legal at the time. We should give them some protection.

Secondly, there is the question of film. We make a lot of money out of making films in this country. By and large, film directors want their close-up shots to be authentic in terms of the look, sound and heft of real weapons. Clearly, these things have to be used in secure conditions, but we allow heavy machine guns, assault rifles and similar items to be used in films made in this country under conditions of strict control. There are licensed armourers who supply such weapons for dramatic performances and films. It does not seem to me that people who are trusted with such weapons should not be trusted with the weapons prohibited under the Bill. To have a film of "Mack the Knife" without a flick-knife would seem a bit odd. I cannot see that by allowing an exemption for film and performance, we are doing anything more dangerous than we allow for other weapons at the moment. This is a direction in which we should feel comfortable about moving.

Thirdly, the same applies to antique weapons. At least in this House, many of our parents were heavily involved in the Second World War. There are many items used in that war that were issued to members of civil defence or captured from German troops that are very properly considered collectible and part of our national history, but are not so unique that the British Museum would want to end up with a large collection of them. We ought to allow these items, as we allow other weapons, to be part of collections. We allow old swords and other very dangerous weapons to be collected. Why not the weapons that we are prohibiting under the Bill, as long as they are antique?

I think 1945 is a convenient time to end the definition of "antique", mostly because shortly thereafter steel became contaminated with radioactive elements from the aerial atom bomb tests, so you can distinguish old steel from new. Also, designs changed a good deal after the war, and there was a long period when some countries did not produce. So 1945 is a convenient cut-off: you can tell what is pre-1945 and what is later, and that is also where the intense history ends. It would be sensible to allow us all to possess the mementos from the last great war and to prohibit weapons produced after it. Apart from anything else, these antique weapons go for a considerable price and are very unlikely to be bought by someone who just wants to use them in a crime and then throw them away.

I very much hope that my noble friends will be bearing me at least a semblance of an olive branch on this amendment, and that we will be able to look in a constructive way at these three potential exemptions. I am not holding out for any of the detailed wording in the amendments, but I hope this is an area that my noble friends will feel able to smile on. I beg to move.

Baroness Barran: I am grateful to my noble friend, Lord Lucas, for these amendments. As he mentioned, we had a very useful discussion on the issues covered by them on 13 February that went through in detail the concerns of collectors and theatrical suppliers.

These amendments would create new defences for the supply and possession of weapons covered by Section 1 of the Restriction of Offensive Weapons Act 1959, namely flick-knives and gravity knives. The amendments would provide defences for Crown functions and visiting armed forces, for theatrical, film and television production purposes, and for flick-knives and gravity knives made before 1945. As I set out in Committee, Section 1 of the 1959 Act makes it a criminal offence to manufacture, sell, hire or lend a flick-knife or gravity knife and prohibits their importation. Clause 23 extends that prohibition to cover the possession of flick-knives and gravity knives.

I turn first to the proposed defence for Crown functions and visiting armed forces. I am afraid we are not persuaded that a defence is needed in this area. The supply, including importation, of flick-knives and gravity knives has been prohibited for a long time and the Ministry of Defence has advised that there is no need to provide defences for this purpose. We are also not aware of any Crown function that would use flick-knives or gravity knives, unlike under Section 141 of the Criminal Justice Act where curved swords may be an issue. In any event, the general principle in law is that statutes do not bind the Crown unless by express provision or necessary implication. Where acting as agents or servants of the Crown, the military will benefit from the Crown exemption. The Government are therefore not persuaded that any defence for the Crown or visiting armed forces is needed.

On a defence for the purpose of theatrical performance or filming, it was clear at the meeting that the supply of flick-knives and gravity knives for such purposes has not been an issue in the past 60 years, despite their supply being banned. The supplier at the meeting suggested that most of the items used for these purposes are blunt, so it is doubtful they meet the knife definition in the 1959 Act. Given this, again, we are not persuaded that any defence is needed for flick-knives and gravity knives for theatre and film purposes.

[Baroness Barran]

I have more sympathy for the proposed defence for flick-knives and gravity knives made before 1945. We are aware that there are collectors of these weapons and we also know that families sometimes inherit them from relatives who fought in the war. Possession of the weapons will be banned under the Bill, so collectors and families will need to surrender any weapons they own and claim compensation, or gift them to a museum where they are of historic importance.

Our concern in accepting a defence for pre-1945 weapons is that it will be difficult to operate on the ground. In contrast to what my noble friend suggested, the police will not know with any certainty which knives had been made before 1945 and which are more modern. I appreciate this is not the answer that my noble friend would like to hear, but given that the supply of the weapons has been banned in this country since 1959 we remain of the view that there is no good reason why anyone should possess them.

The Duke of Montrose: Can the noble Baroness reassure me on a question that I raised at Second Reading? Does the Royal Company of Archers, the Queen's bodyguard in Scotland, qualify for the Crown's exemption on weapons? I also asked about a rather shady area, which the noble Earl, Lord Erroll, is probably more familiar with than I am. Are the Atholl Highlanders taken to be doing historical re-enactments, or are they likely at some point to take up weapons as a legal army?

The Earl of Erroll: Given that they are the only private army, but are sanctioned by Her Majesty, after Queen Victoria, I find it a very interesting question.

Baroness Barran: I can reassure the noble Lord on both questions, and I will write to him to clarify the details.

Lord Lucas: My Lords, naturally I am very saddened to hear my noble friend's answers, but I see no point in trying to pursue this further, so I beg leave to withdraw the amendment.

Amendment 89 withdrawn.

Amendment 90 not moved.

Amendment 91

Moved by ***Lord Kennedy of Southwark***

91: After Clause 26, insert the following new Clause—

"Kirpans

(1) The Criminal Justice Act 1988 is amended as follows.

(2) After section 141A, insert—

"141B Kirpans

For the purposes of section 139, 139A, 141 or 141A it shall be lawful for a person to possess a Kirpan for religious, ceremonial, sporting or historical reasons.""

Member's explanatory statement

This amendment would ensure that the Kirpan, a mandatory article of faith for a Sikh, possessed for religious, ceremonial, sporting or historical reasons is exempt from provisions relating to the possession of offensive weapons under the relevant sections of the Criminal Justice Act 1988.

Lord Kennedy of Southwark: My Lords, Amendment 91, tabled in my name and with the support of the noble Lord, Lord Paddick, seeks to place on the face of the Bill a provision to exempt the kirpan from the provisions relating to the possession of offences weapons under the Criminal Justice Act 1988. I raised this issue in Committee, and I am grateful to the noble Baroness, Lady Williams of Trafford, for meeting me and a number of other noble Lords from all sides of the House, along with representatives of the Sikh community, including the noble Lord, Lord Singh. It was very much appreciated by everybody present.

There is no question but that the Sikh community is fully behind the intention of the Bill to tighten the law on offensive weapons. We are all appalled by the toll that knife crime is taking on young lives; even today we are seeing more tragic events on the news. The Government have responded to the very reasonable requests of the Sikh community on an issue in the Commons, but my intention with this amendment is to go further. The noble Lord, Lord Singh, raised the issue at Second Reading, and I supported him. It came up again in Committee, and many noble Lords spoke then.

For practising Sikhs, observance of their faith requires adherence to the "five Ks", one of which is to wear a kirpan. Larger kirpans are used on many religious occasions, such as Sikh wedding ceremonies. I think it is fair to say that noble Lords in all parties, and on the Cross Benches, would be concerned if restrictions in this Bill had unintended consequences for the Sikh community as they observe and practise their faith, or caused upset or concern when a member of the community used a kirpan for ceremonial, sporting or historical reasons. The status quo is not adequate, as it provides a defence of religious reasons only if a person is charged with a criminal offence. It does not cover other reasons such as ceremonial, historical or sporting events, where kirpans are offered as gifts to dignitaries.

The status quo provides a defence only if a person is charged. My amendment will provide an exemption for the possession of a kirpan. It will provide a specific reference in the law, which Sikhs have been calling for. Sikhs are members of a law-abiding community that makes a wonderful contribution to the United Kingdom. The community still faces difficulties in workplaces, education and leisure with the issue of kirpans. This amendment will provide great assistance to Sikhs and will educate all of us about the kirpan. I beg to move.

Lord Paddick: My Lords, I have added my name to the amendment, which I fully support. One of the Minister's main arguments against granting exemption to the Sikh community was that the Government could not single out one particular community—the Sikhs—for an exemption. In that case, I ask the Minister: what other communities have made representations to the Home Office for exemption under the Act?

4.45 pm

Lord Singh of Wimbledon (CB): My Lords, Sikhs are asking for nothing more than respect for their religious and cultural practices and requirements.

The main majority of the community is catered for in this Bill—regarding sporting activities, films, television, historical enactments and so on.

Lord Suri (Con): My Lords, the description of the kirpan given by the noble Lord, Lord Kennedy, was absolutely correct: it is a religious requirement which has been known to British Governments and the British people since the two World Wars. In the Army, there was a Sikh batch of religious people who used to have a ceremonial sword in front of the holy book. There is nothing wrong with that; it is used purely for religious purposes and I think would be good if this amendment were accepted.

Baroness Williams of Trafford: My Lords, I am grateful to the noble Lord, Lord Kennedy, for his amendment. It deals with an issue which we discussed at length in Committee and which was the subject of a very productive round table on 13 February, attended by members of the Sikh community, the noble Lords, Lord Kennedy, Lord Paddick and Lord Singh, and my noble friend Lord Suri. I was also grateful to have a separate discussion with my noble friend Lady Verma. I have provided a fact sheet to noble Lords, setting out the current position under the offensive weapons legislation in relation to kirpans, and I would happily place a copy in the Library of the House.

The amendment from the noble Lord, Lord Kennedy, seeks to ensure that Sikhs are not prosecuted for possessing a kirpan and to allow the gifting of large kirpans by Sikhs to non-Sikhs. The amendment would therefore exempt kirpans from the offences of possessing a bladed or sharply pointed article in a public place or school and further education premises, and from the offence of possessing an offensive weapon under Section 141A of the Criminal Justice Act 1988. I believe that the intention is also to exempt kirpans from the offence of supplying an offensive weapon under Section 141 of the 1988 Act—albeit the current amendment only references possession. The exemption would apply where the kirpan is possessed for,

"religious, ceremonial, sporting or historical reasons".

My main issue with the amendment is that it refers to kirpans but does not define them. Kirpans vary considerably in size and shape, the only common factor being their association with the Sikh faith. This is why the existing defences of possession and supply for "religious reasons" work so well—they define by reference to purpose. It would not be workable to have an exemption for kirpans without saying what they are, otherwise everyone caught in possession of a knife or sword could claim that it was a kirpan and that they possessed it for,

"religious, ceremonial, sporting or historical reasons".

The police and the CPS would have to prove otherwise, in effect having to prove that the item was not a kirpan, the person was not a Sikh, or that the person was not possessing it for sporting, ceremonial or other reasons, rather than the defendant proving or showing that they have a defence for possessing the weapon.

I appreciate that the intent behind the amendment is to deal with the issue of the gifting of kirpans, because there is already a defence for religious reasons under Sections 139, 139A, 141 and 141A of the 1988 Act, and there is already a defence for sporting purposes under Sections 141 and 141A of that Act. The Government are sympathetic to the need to find a solution to the issue of the Sikh cultural practice of gifting a kirpan. Within government, we are continuing to look actively at this issue and to meet the noble Lord, Lord Singh, and others to make sure that we come to the right solution. I am very hopeful that something can be done in this area and that it will be possible to bring forward a suitable government-drafted amendment at Third Reading.

I also note that as drafted, the amendment of the noble Lord, Lord Kennedy, does not render the supply of a kirpan—that is, the act of gifting—lawful; it exempts only possession. This is one issue which we will need to consider further, ahead of the next stage. In the usual way, noble Lords will understand that I cannot give a cast-iron guarantee that the Government will be able to support a more targeted amendment at Third Reading. However, we will make our intentions clear in advance so that, if necessary, the noble Lord can bring back this amendment or some variant of it. But on the basis—

Lord Singh of Wimbledon: My Lords—

Baroness Williams of Trafford: May I just finish before the noble Lord comes in? On the basis that we want to work with noble Lords to find an equitable solution, I hope that the noble Lord will be able to withdraw his amendment at this stage. The answer to the question put by the noble Lord, Lord Paddick, about what other communities came forward, is: none.

Lord Singh of Wimbledon: My Lords, much is being made of the definition of a kirpan. It was said in a meeting with Home Office people that a kirpan is simply a Punjabi word for a sword, and that there is no other need for a definition as it is nothing very different. This has been said again and again, yet the definition is being used as a reason for delay and further consideration, which completely confuses me.

The Duke of Montrose: Before my noble friend the Minister sits down, can she give us any examples of how the current legislation allowing for religious reasons has worked out? Have there been cases where it has been cited, and was it effective?

Baroness Hamwee: My Lords, following exactly from that point, the Minister has relied on the wording "for religious reasons", which would be substituted in the Bill by "in religious ceremonies". By saying that the Government will continue to work on this, is she in fact suggesting that that is inadequate? While I understand the concerns, it seems to me that there is a lot in support of what she has been saying about the use of that phrase.

Baroness Williams of Trafford: I am trying to say that we are trying to come to a workable solution, particularly for the Sikh community. On the question of other legislation, what immediately springs to my mind is that there was of course the exemption for Sikhs on mopeds who were wearing a turban. So we are, I hope, trying to reach a solution that will work for the Sikh community.

Lord Kennedy of Southwark: My Lords, I thank the Minister very much for that response. All through this debate, she has always engaged positively with all sides of the House and with the Sikh community, whose members I know are very grateful for that. I am delighted at this stage to withdraw the amendment and I look forward to the solution which I hope will be brought back at Third Reading. I beg leave to withdraw the amendment.

Amendment 91 withdrawn.

Clause 28: Payments in respect of surrendered offensive weapons

Amendment 92

Moved by ***Baroness Barran***

92: Clause 28, page 30, line 38, leave out "such"

Member's explanatory statement

This amendment would remove a surplus word from Clause 28(11)(b).

Baroness Barran: My Lords, Clauses 28 and 37 to 39 make provision for payments to be made to owners of offensive weapons, firearms, bump stocks and ancillary equipment, who will be required to surrender these items to the police by virtue of them being prohibited by the Bill. The purpose of Amendments 93, 98, 100 and 102 is to widen the regulation-making powers as drafted in these clauses so as to allow the Secretary of State, Scottish Ministers and the Northern Ireland Department of Justice, as the case may be, to set the amount of compensation that will be paid to each claimant. This will be necessary for claims to be settled, given that the amount paid out will be based on the evidence of the value of the weapon provided by the claimant.

We believe that this is the right approach, given that the value of individual surrendered items will vary greatly and it would not, therefore, be equitable to the owners or in the interests of the public purse for the regulations to specify a fixed amount of compensation for each type of item made unlawful by the Bill. I remind noble Lords that the compensation regulations, which we have published in draft, are subject to the affirmative procedure. Accordingly, they will need to be debated and approved by both Houses before they can come into force. Amendments 92, 97, 99 and 101 are minor drafting amendments. I beg to move.

Baroness Hamwee: My Lords, I am sorry to prolong this a little. As the Minister said, the amendments allow for discretion, both as to whether to make a payment and as to the amount under the provisions relating to the surrender of weapons. The Secretary of State, Scottish Ministers and the Department of Justice in Northern Ireland must make regulations and may make regulations restricting eligibility and the procedure to be followed, which is understandable. So we have an overall mandatory context but a discretion both as to whether to make a payment and its amount. How can that operate justly and fairly?

The Minister said that the arrangements must be equitable, and I agree, but the draft regulations include provisions about eligibility for compensation and determining the amount of compensation, "taking account of the valuation evidence supplied". They also provide for no compensation if the Secretary of State is not satisfied that, under the regulations, compensation is payable. Is what I have just quoted a discretion? It does not seem so to me. The term "discretion" in the amendments suggests there is a distinction for people who surrender weapons in an arbitrary fashion. I cannot believe that is what the Government intend but, given that we already have provision for valuing the weapons, why is discretion needed on top of secondary legislation that provides for the valuation?

Baroness Barran: If I have followed the noble Baroness's question correctly, there are two elements to this. First, there is an element of discretion around the need for the individual who is surrendering weapons to show documentary evidence that they are the legal owner, and that the weapons have been lawfully acquired. Secondly, there is a range of valuations that could be provided, including from an auction house or for insurance. My understanding is that there is an element of discretion in judging the validity of those.

Baroness Hamwee: My Lords, I understand why the Secretary of State or whoever has the final say in that, but I do not think that that is the same as discretion. I will not pursue the matter any further now.

Amendment 92 agreed.

Amendment 93

Moved by ***Baroness Barran***

93: Clause 28, page 30, line 41, at end insert—

"(c) provision enabling a person to exercise a discretion in determining—

(i) whether to make a payment in response to a claim, and

(ii) the amount of such a payment."

Member's explanatory statement

This amendment would confirm that regulations under Clause 28 providing for compensation for surrendered offensive weapons may allow a person determining an amount of compensation to exercise a discretion in doing so.

Amendment 93 agreed.

5 pm

Clause 29: Offence of threatening with offensive weapon etc in a public place etc

Amendment 94

Moved by ***Lord Paddick***

94: Clause 29, leave out Clause 29 and insert the following new Clause—

"Penalty for affray

(1) Section 3 of the Public Order Act 1986 is amended as follows.

(2) Insert at the beginning of subsection (7) "Subject to subsection 8,".

(3) After subsection (7) insert—

"(8) A person guilty of affray in which a corrosive substance or a bladed article has been used is liable on conviction on indictment to imprisonment for a term not exceeding 4 years or a fine or both, or on

summary conviction to imprisonment for a term not exceeding 6 months or a fine not exceeding the statutory maximum or both.""

Member's explanatory statement

This amendment achieves the same end as the Government's approach by adding provisions relating to corrosives and bladed articles to the existing offence of affray.

Lord Paddick: My Lords, we return to the argument that the Bill is full of unnecessary new legislation that has clearly not been thought through and which is already adequately covered by existing legislation. The Bill is being used simply to send a message that the Government are taking the issues of knife crime and corrosive liquids seriously, instead of investing in those things that really make a difference, such as youth services and community policing.

In Committee I raised the fact that the offence of affray was almost identical to the proposed changes to the existing offences of threatening with an article with a blade, a pointed article or an offensive weapon. Section 1A(1) of the Prevention of Crime Act 1953 states that:

"A person is guilty of an offence if that person … has an offensive weapon with him or her in a public place … unlawfully and intentionally threatens another person with the weapon, and … does so in such a way that there is an immediate risk of serious physical harm to that other person".

Subsection (2) says:

"For the purposes of this section physical harm is serious if it amounts to grievous bodily harm for the purposes of the Offences against the Person Act 1861".

Section 139AA of the Criminal Justice Act 1988 states:

"A person is guilty of an offence if that person … has an article to which this section applies with him or her in a public place or on school premises … unlawfully and intentionally threatens another person with the article, and … does so in such a way that there is an immediate risk of serious physical harm to that other person".

Again, serious physical harm means grievous bodily harm under the Offences against the Person Act 1861.

The main differences proposed by the Bill concern the nature of the risk, which is changed from,

"immediate risk of serious physical harm"—

GBH—

to the person threatened, to a much wider definition of,

"a reasonable person ("B") who was exposed to the same threat as A",

that is, the person being threatened,

"would think that there was an immediate risk of physical harm to B",

that is, the reasonable person.

So we go from an immediate risk of GBH to the person being threatened to a much vaguer concept of a reasonable person—is that a reasonable martial arts expert or a reasonable old-age pensioner—thinking that there was an immediate risk of physical harm. Does that mean common assault, ABH or GBH?

In Committee, the Minister and I engaged in an intellectual and legalistic argument over the technical differences between the offence of affray—in Section 3 of the Public Order Act 1986—and the proposed new offences. That section states:

"A person is guilty of affray if he uses or threatens unlawful violence towards another and his conduct is such as would cause a person of reasonable firmness present at the scene to fear for his personal safety".

So in affray we have,

"uses or threatens unlawful violence towards another",

instead of,

"unlawfully and intentionally threatens another person".

In affray we have,

"his conduct is such as would cause a person of reasonable firmness present at the scene to fear for his personal safety",

instead of,

"a reasonable person ("B") who was exposed to the same threat as A would think there was an immediate risk of physical harm to B".

Can the Minister really tell the House that there is a practical difference between a "person of reasonable firmness" fearing for their personal safety and a "reasonable person" thinking there was an immediate risk of physical harm? I would be grateful for an example. Indeed, the affray definition does not rely on the extremely vague concept of a "reasonable person" but instead refers to,

"a person of reasonable firmness"—

not a reasonable martial arts expert or a reasonable old-age pensioner but what we are really talking about: a person of reasonable firmness.

This legislation also adds further education premises to school premises in the 1988 offence, but affray can be committed in private as well as in public, so all premises are covered. Therefore, the only substantive difference between affray and the new offences is the maximum sentence on indictment: three years for affray and four years for the 1988 offence. This amendment addresses the one outstanding issue by increasing the maximum penalty for affray to four years for an offence in which a corrosive substance or bladed article has been used. I beg to move.

Baroness Barran: My Lords, this amendment returns, as the noble Lord, Lord Paddick, just said, to an issue that he raised in Committee about the differences between the revised offence of threatening with an offensive weapon in public in Clause 29 of the Bill and the offence of affray under Section 3 of the Public Order Act 1986. I wrote to him on this matter on 21 February. I will try to clarify the difference to your Lordships' satisfaction and give an example of how it will work in practice. The difference between the two offences is not simply a matter of different maximum penalties, as Amendment 94 implies.

The offence of affray deals with circumstances where a bystander observes someone threatening another person and where the bystander feels threatened. The offences of threatening with an offensive weapon in public under Section 1A of the Prevention of Crime Act 1953 and of threatening with an article with a blade or point or offensive weapons under Section 139AA of the Criminal Justice Act 1998 deal with circumstances where a person is themselves being threatened. Indeed, in practice it is possible to commit both offences at the same time, as the noble Lord will be aware and as the CPS charging advice sets out. An example would be where someone is holding person A by the throat in

[Baroness Barran]
the road, screaming and shouting, but also waving a knife around in the air so that person B thinks that the defendant might also come for them—that would be an offence of affray—or someone might start a fight in a pub in such a way that people nearby think that the person might also start on them, as opposed to cases where there is not that perception that a bystander would be affected. Case law examples include driving a car at another occupied vehicle or setting dogs on the police with the words, "Go on! Go on!"—only in case law does such language get used.

Therefore, affray concerns a reasonable bystander who witnesses someone else being threatened and fears for their own personal safety. This is a different test from that under the offences amended by the Bill, which ask whether a reasonable person exposed to the same threat as the victim would think that there is an immediate risk of physical harm to that victim. Under the offences in the Bill it is therefore what a reasonable person in the victim's shoes would be likely to feel when threatened, rather than whether a person witnessing a threat against someone else also feels threatened. Amendment 94 therefore fails to address the fact that these offences deal with different things. As I have indicated, it is not just about penalties, although I fully accept that I highlighted this as a key difference in Committee. Affray is a public order offence and therefore focuses on the weapon and the threat to the wider public, rather than the impact on the victim. The offences of threatening in public deal with the victim being threatened.

I hope, in the light of this further explanation, that the noble Lord is persuaded that we are not creating unnecessary duplication in the criminal law and, on that basis, will be content to withdraw his amendment.

Lord Paddick: My Lords, I am grateful to the Minister for her explanation. I do not think that it does away with my general comments about the legislation as a whole but on this occasion, I beg leave to withdraw the amendment.

Amendment 94 withdrawn.

Clause 33: Prohibition of certain firearms etc: England and Wales and Scotland

Amendment 95

Moved by ***Lord Kennedy of Southwark***

95: Clause 33, leave out Clause 33 and insert the following new Clause—

"Prohibition of certain firearms etc: England and Wales and Scotland

(1) The Firearms Act 1968 is amended as follows.

(2) In section 5 (weapons subject to general prohibition), in subsection (1), after paragraph (af) insert—

"(ag) any rifle from which a shot, bullet or other missile, with kinetic energy of more than 13,600 joules at the muzzle of the weapon, can be discharged;

(ah) any rifle with a chamber from which empty cartridge cases are extracted using—

(i) energy from propellant gas, or

(ii) energy imparted to a spring or other energy storage device by propellant gas, other than a rifle which is chambered for .22 rim-fire cartridges;".

(3) In section 5(1), for the "and" at the end of paragraph (b) substitute—

"(ba) any device (commonly known as a bump stock) which is designed or adapted so that—

(i) it is capable of forming part of or being added to a self loading lethal barrelled weapon (as defined in section 57(1B) and (2A)), and

(ii) if it forms part of or is added to such a weapon, it increases the rate of fire of the weapon by using the recoil from the weapon to generate repeated pressure on the trigger; and".

(4) In section 5(2), after "including," insert "in the case of weapons, any devices falling within subsection (1)(ba) of this section and,".

(5) In section 5(2A)(a), after "weapon" insert ", device".

(6) In section 51A(1)(a) (minimum sentences for certain offences under section 5), in each of sub-paragraphs (i) and (iii), after "(af)" insert ", (ag), (ah), (ba)".

(7) In Schedule 6 (prosecution and punishment of offences), in Part 1 (table of punishments)—

(a) in the entry for section 5(1)(a), (ab), (aba), (ac), (ad), (ae), (af) or (c), in the first column, after "(af)" insert ", (ag), (ah), (ba)",

(b) in the entry for section 19, in the third column, for "or (af)" substitute ", (af), (ag), (ah) or (ba)", and

(c) in the entry for section 20(1), in the third column, for "or (af)" substitute ", (af), (ag), (ah) or (ba)".

(8) The amendments made by subsection (6) apply only in relation to—

(a) an offence under section 5(1)(ag), (ah) or (ba) of the Firearms Act 1968 which is committed after the coming into force of subsection (6), and

(b) an offence under a provision listed in section 51A(1A) of that Act in respect of a firearm specified in section 5(1)(ag), (ah) or (ba) of that Act which is committed after the coming into force of subsection (6)."

Member's explanatory statement

This new Clause would return the prohibition of high-powered firearms in England, Scotland and Wales to the Bill, which was removed during the Bill's passage through the Commons.

Lord Kennedy of Southwark: My Lords, in my nine years in your Lordships' House, I have never had to come to the Dispatch Box and speak to two amendments that were originally in the government Bill. I am proposing a government clause here. I suppose we all have to do new things at some point, but it is a strange situation when the opposition spokesperson moves to add two clauses on these matters that were in the Bill in the other place.

I shall read out a couple of quotes that may interest the House. First:

"There is concern about the availability of .50 calibre and rapid-fire Manually Actuated Release System (MARS) rifles being available to some civilian firearms licence holders. The range and penetrative power of .50 calibre rifles makes them more dangerous than other common firearms and were they to be used in criminal or terrorist activities would present a serious threat to the public and would be uniquely difficult for the police to control. Due to the rate of discharge MARS rifles pose a comparable risk to the public and police as other self-loading weapons already banned in the UK. The Government need to intervene to ensure the purchase, ownership or possession is illegal".

That is the opening statement of the Government's impact assessment.

Moving on, at Second Reading in the House of Commons, the Secretary of State said:

> "We based those measures on evidence that we received from intelligence sources, police and other security experts … According to the information that we have, weapons of this type have, sadly, been used in the troubles in Northern Ireland, and, according to intelligence provided by police and security services, have been possessed by criminals who have clearly intended to use them".—[*Official Report*, Commons, 27/6/18; cols. 918-19.]

What happened? What persuaded the Government to do a complete about-turn by Third Reading? I would be interested to hear the Minister's response. Apparently, these weapons can immobilise a truck or hit a person over a mile away. I am surprised by the about-turn between Second Reading and Third Reading. We raised this issue in Grand Committee and have still had no explanation. I seek to put two government clauses back into the Bill. I look forward to the debate and I beg to move.

Earl Attlee (Con): My Lords, I am grateful to the noble Lord, Lord Kennedy of Southwark, for returning us to the issue of high muzzle energy—HME—rifles with an explanation of his amendment. I want to point out that I have never opposed the proposed ban on MARS or lever-release rifles, as I am sure the noble Lord will recognise, although I have eased back on my opposition to the compensation arrangements for them.

Amendments 103A, 103B, 107A, 107B, 108A, 110A, 113A, 116 and 117 in this group are in my name. The first two are substantive; the rest are consequential. In Committee, my noble friend Lord Lucas and I suggested that we did not need to put these high muzzle energy, .50 calibre target rifles in Section 5 and thus prohibit them from general use. However, we need to make certain that they cannot fall into the wrong hands. We can achieve that by requiring the same levels of security currently applied to Section 5 firearms—those with no legitimate civilian use, such as self-loading rifles and automatic weapons, among others. My noble friend Lord Lucas mentioned level 3 security in his amendment while mine sought to give an order-making power to the Secretary of State to achieve much the same. In addition, my amendment provided for transport conditions.

5.15 pm

In Committee, the noble Lord, Lord Robertson, made a powerful intervention in support of the proposal of the noble Lord, Lord Kennedy, to ban high muzzle energy rifles. We can well understand the noble Lord's motivation, which is pure. In doing so, he suggested that we should always follow the advice of senior Ministers on matters of security. I have to say that I found that somewhat odd. The noble Lord will be well aware that Ministers are reliant on advice from officials. While that advice is often very good, it is not infallible. My noble friend Lord Howe had a brush with this difficulty when he was dealing with the noble Countess, Lady Mar, about organophosphates.

Our role is to be a revising Chamber, an additional check on the Executive, and a source of expertise. I think we do this very well. During the period when the noble Lord, Lord Robertson of Port Ellen, was serving with distinction as the Secretary-General of NATO, the then Prime Minister convinced us, as a matter of national security, that we had to invade Iraq to deal with weapons of mass destruction. Let us just say that for nearly all of us it was not our finest moment in a parliamentary democracy.

The other point that I will make gently to the noble Lord is that there will almost certainly be cross-fertilisation between the .50-calibre target shooting community and the UK military. However, we should be in no doubt that we are talking about exceptionally powerful and potentially accurate firearms. This is the case even when considering a standard ball round, let alone a military armour-piercing or incendiary round. On the other hand, HME rifles are heavy and clumsy, and there is no history of them being used illegally in the UK. Moreover, considerable skill is required to be able to exploit their potential. I certainly do not have that skill; I would not even dare fire one because I would be too worried about the recoil. Even today, the police are very cautious about to whom they will issue a firearms certificate for one of these rifles. Nevertheless, we should never forget what can go wrong if we do not get this right. The noble Lord, Lord Robertson, was right to draw our attention to the risks when he spoke in Committee and I suspect he will be even more eloquent in this debate.

In Committee, I was encouraged by the response of my noble friend the Minister and I felt that I could tempt the noble Lord, Lord Kennedy, with a better drafted amendment on Report. I am grateful to the officials in the Bill team who have given me detailed advice on how I could improve my amendment while ensuring that it would have largely the same effect. There is no need to worry about the definition of a rifle as there is no scope for misunderstanding. The amendment addresses the licensing system, not the enforcement system. Noble Lords will notice that there are requirements for consultation and a negative instrument to implement any changes that appear desirable as a result of the consultation.

I hope that the noble Lord, Lord Kennedy, will feel able to withdraw his amendment, on the understanding that I will move my amendments when they come up in their place on the Marshalled List.

Lord Robertson of Port Ellen (Lab): My Lords, I think we are all agreed that this is an important issue which needs to be debated. As my noble friend said, he is simply moving in his amendment what the Government put in their original legislation, so one would have thought that it would be uncontroversial. My noble friend has read out what the Home Secretary said in the debate at Second Reading in the other place. I think it is legitimate for us to ask the question and be given an answer as to why the Home Secretary has chosen to ignore the advice of the agencies concerned when he withdrew the amendment to the Bill. However, having said that, the Government have promised a consultation on this matter, which is an important statement on their part, and therefore it would be wise not to press the amendment to a vote today.

In the consultation that is to take place, I expect that the agencies quoted by the Home Secretary will want to tell Members of both Houses what their view is of the dangers of these weapons. As the noble Earl, Lord Attlee, has outlined, officials have given a view

[Lord Robertson of Port Ellen]
about these pretty dreadful weapons. A .50 calibre rifle sounds almost innocuous, but they are basically sniper rifles that can take out a vehicle and human beings at a mile's distance. These are formidable weapons in war. They are highly prized and valued in conflict given their accuracy and lethality.

I recall as Defence Secretary going to Bosnia and watching Operation Harvest involving members of the Royal Highland Fusiliers in Banja Luka. One of them, with a broad Glasgow accent, came back from one of the houses in the village with a sniper rifle. Since he did not have an interpreter with him, I wondered how he had managed to persuade the individual in the house to hand over such a prized instrument of the conflict. I think it was the nature of his accent that persuaded the inhabitant of the house that he was not a friendly force and they should therefore hand it over. It was regarded as enormously significant that day that he had managed to persuade them to hand over what was regarded as one of the key instruments of the conflict there.

It is quite legitimate for Members of the House to listen to the words of the Home Secretary read out by my noble friend. The Home Secretary said that he based these measures on,

"evidence that we received from intelligence sources, police and other security experts".—[*Official Report*, Commons, 27/6/18; col. 918.]

That is pretty all-embracing. This is not just a handful of individuals putting this forward. We are talking here about representatives of 43 police forces in the United Kingdom, the Secret Intelligence Service, the Security Service, GCHQ and the National Crime Agency. Their distilled view and wisdom was that if these weapons were to fall into the hands of criminals or others with malign intent, they would have particularly dangerous effects. The Home Secretary did not underestimate it. He said:

"According to the information that we have, weapons of this type have, sadly, been used in the troubles in Northern Ireland"—

the noble Earl said they had never been used in the United Kingdom, but we are told by the Home Secretary that they have—

"and, according to intelligence provided by police and security services, have been possessed by criminals who have clearly intended to use them".—[*Official Report*, Commons, 27/6/18; col. 919.]

We have had a discussion about knife crime, a huge issue affecting us at present. One can only imagine what would happen if the Home Secretary were right and criminal elements got their hands on .50 calibre rifles, and what damage they could do.

The noble Earl, Lord Erroll, poured scorn on advice given by officials. I was a Secretary of State and had officials who gave me advice in NATO as well. It is the role of Ministers to listen to advice and to make decisions, but the Home Secretary presumably would not come to Parliament not having given careful attention to the advice offered to him on that occasion. There must have been something pretty radical to change his mind—not just the assembled Members of Parliament who argued vociferously against it.

I went through the great debate about handguns in 1997-98, and I have heard all the arguments before. Yes, they will be safe if we have safeguards and the police are satisfied. I remember the number of people who had these handguns, some of them large numbers of handguns, and being assured that they were all safe—yet we saw the two major incidents in Hungerford and Dunblane caused by the private ownership of handguns.

I am not reassured by some of the statements that have been made. I would prefer to follow the course of action laid down by the Home Secretary in his opening speech at Second Reading. I hope that during the consultation we will be able to make that case and that the Home Secretary will return to his original view.

Lord Paddick: My Lords, I understand why the noble Lords, Lord Kennedy of Southwark and Lord Robertson of Port Ellen, are saying what they say. I am not as surprised as the noble Lords, in that my experience is that Governments argue until they are blue in the face that they could not possibly adopt an opposition amendment, only to adopt it at the next stage. Such a change of view is not without precedent when it comes to these matters.

I am more warmly disposed to the calls of the noble Earl, Lord Attlee, for a compromise, if you will, of increased security. However, I hope to be even more convinced by the Minister that the right way forward is further consultation.

The Earl of Caithness (Con): My Lords, I join this debate for a couple of reasons, having listened to it in Grand Committee in the Moses Room. I was disappointed that the noble Lord, Lord Robertson of Port Ellen, did not try to copy the accent of the HLI Jock. Your Lordships would have understood why the rifle was handed over.

I hope my noble friend on the Front Bench will solve an argument that I had at the weekend about how easy it is to modify a rifle that is constructed above 13,600 joules to below 13,600 joules. If that could be on the record it would be helpful. Also, could he not introduce the amendment proposed by my noble friend Lord Attlee under Section 63 of the 1968 Act?

Earl Attlee: My Lords, the answer to the noble Earl's question about the energy of the rifle is that there is a huge gap between the next lowest powered rifle and the .50 calibre rifle.

The Earl of Erroll: My Lords, people have spoken to me about this and, from what I understand, these weapons are only used now in international competition. If I am right, it would be sad if we were to lose our ability to take part in them. I cannot see what the problem is, given that these weapons have not been used in terrorist incidents. I also understand that it is hard to get hold of armour-piercing and dangerous ammunition, which is not used in international target competition. You have to find a terrorist source, effectively, to get that; a casual thief would not be able to handle it. The additional security proposed by the noble Earl, Lord Attlee, would be satisfactory and enable Britain to take part in international competition.

The Minister of State, Ministry of Defence (Earl Howe) (Con): My Lords, as the noble Lord, Lord Kennedy, has indicated, Amendments 95 and 96 would restore

the prohibition on civilian access to high muzzle energy rifles, which was a feature of the Bill on its first introduction in the House of Commons. These rifles are currently available for civilian use or ownership under general firearms licensing arrangements administered by the police.

We discussed these amendments in Grand Committee, and the question of whether these particular rifles should be prohibited also received much scrutiny in the House of Commons. I hope therefore it will not be necessary for me to repeat all that I said in Grand Committee but, in the light of the challenge of the noble Lord, Lord Kennedy, it may assist your Lordships if I briefly reiterate the Government's position.

5.30 pm

The Government originally included in the Bill the prohibition of high muzzle energy rifles because of the concerns raised by the police and the National Crime Agency about the potential for damage, serious injury or fatalities if these rifles were to fall into the hands of criminals or terrorists. They are larger and more powerful than the typical rifles that are licensed by the police for civilian use under our existing firearms legislation.

The noble Lord, Lord Kennedy, asked me: what has changed? There is a simple, one-word answer, which is democracy. There are differing views in Parliament and beyond about whether we need to go as far as prohibition, or whether, given the particular characteristics of these rifles—their weight and size, for example—enhanced security around their storage and transportation would sufficiently meet the risk of theft and misuse that has been articulated to the Government by the police and others. The Government wish to test this further through the public consultation that has already been announced to look in more detail at firearms safety issues following the Bill. This will provide an opportunity for all the experts and others to have their say on the issue of prohibition and security standards, and enable the Government to take a more informed view in the light of the consultation's responses. That is not to say that the Government are no longer concerned about the risks that these rifles pose; we do not row back from the clear statements made on the nature of these weapons.

That brings me neatly on to the amendments in the name of my noble friend Lord Attlee, which will help to address this issue. Amendments 103A and 103B concern the security conditions that the police place on the certificates of those who have access to the high muzzle energy rifles that we are concerned about here. These certificates are issued by the police under Section 1 of the Firearms Act 1968 or Article 3 of the Firearms (Northern Ireland) Order 2004. They allow the police to stipulate specific conditions that must be met by the certificate holder.

We discussed the issue of secure storage in Committee, where there was some debate on the need for so-called level 3 security. The different levels of security arrangements are set out in the Home Office *Firearms Security Handbook*, with level 3 being the highest level in the handbook. My noble friend's amendments do not, helpfully, reference level 3 explicitly. As I said in Committee, it would be an anomaly to specify in the Bill detailed security conditions for a particular rifle type, and it would not be appropriate to refer specifically in legislation to the guidance set out in the *Firearms Security Handbook* because the guidance carries no specific legal weight and can be amended administratively. Rather, the amendments now put forward by my noble friend address the issue of firearms security by placing a duty on the Secretary of State and the Northern Ireland Department of Justice to set out in rules made under the existing firearms legislation the security requirements for the storage and transit of high muzzle energy rifles.

This will enable the Secretary of State and Department of Justice to specify the security requirements by making them conditions subject to which the relevant firearms certificates are issued by the police. Just what those storage conditions will be is something the Government will include in the public consultation that has been committed to. This will give all those with an interest an opportunity to express their views on whether we should be mirroring level 3 in the intended secondary legislation or whether these specific firearms require something more. However, the overall effect of Amendments 103A and 103B, and the accompanying rules, will be to ensure that these dangerous firearms are kept and stored as securely as possible when held in the community, both when not in use and when being transported from place to place. For this reason, the Government are content to support my noble friend's amendments.

My noble friend Lord Caithness asked how easy it is to power down from 13,600 joules. Even if a rifle is converted to a lower power level, it would still be caught by the definition of a rifle capable of such pressures.

Having regard to everything I have said, to our debate on Amendments 95 and 96 and to our commitment to run a full public consultation on this issue, I hope the noble Lord, Lord Kennedy, will feel able to withdraw his amendment.

Lord Kennedy of Southwark: I thank the Minister for his contribution. This has been an interesting debate. I am proposing the position the Government took only a few months ago in the other place. They are now opposing that position. I suppose we live in interesting times.

I was very clear at Second Reading that I fully support the Home Secretary. I am just disappointed that the Government have changed their mind. I thank the noble Earl, Lord Attlee, for his amendments. They go some way towards allaying my fears. I am very pleased to learn from the Minister that the Government will support them. That is progress, and I thank the noble Lord for tabling the amendments today.

I also welcome the government consultation. I hope everyone involved and interested will contribute to it. My concern is that we will have the consultation and get the results many months after this Bill has passed into law. If the Government decide to ban these weapons, I will be asking how they are going do so and when there will be legislation. That has happened before. Noble Lords know that I am going to mention the rogue landlords database in the dreaded Housing and Planning Act. We wanted it to be made public, but the Government opposed us all the way. We won at least

[Lord Kennedy of Southwark]
two votes, but the Government would not have it, so the public cannot access the database. The Government have now changed their mind, but when I ask about it, they say, "You're absolutely right, Lord Kennedy, but we cannot find a bit of legislation to make it public yet". That is the frustration with these consultations. The Government look at things, change their mind, but we cannot get changes.

I am not going to test the opinion of the House. I am tempted to see whether the Government vote against their original position, but I shall not do that today. I beg leave to withdraw the amendment.

Amendment 95 withdrawn.

Clause 34: Prohibition of certain firearms etc: Northern Ireland

Amendment 95A
Moved by ***Lord Lucas***

95A: Clause 34, page 34, line 44, at beginning insert "and is thereby, in the opinion of the Secretary of State, enabled to fire at a substantially faster rate than a bolt-action rifle"

Lord Lucas: My Lords, in Grand Committee my noble friend and I had a discussion on this subject and he said that he would do his best to find me the evidence that the Government were working on that rifles that are targeted in this part of the Bill are capable of a higher rate of fire than ordinary target rifles. I have not received, as far as I can find out, anything from my noble friend.

My amendment is not intended to look at the process. After all, targeting only where the energy source is the gas from the firing of the previous cartridge leaves the possibility that a similar mechanism might be powered by electricity or clockwork. I think that the Government are saying that they do not want in common use rifles that are capable of a higher rate of fire than a standard bolt-action rifle. That seems reasonable, and if that is what the Government want to achieve, let us have legislation that achieves that and does not go at just the particular way a higher rate of fire—if there is indeed a higher rate of fire—is being achieved. That will allow us to develop a weapon that can be conveniently used by disabled people but which will be acceptable to the Government in the long term. That was very much why these weapons came into being. They were perfectly legally created but were adapted to the needs of particular shooters.

Let us have out in the clear, in legislation, that the basic thing that the Government want to avoid is fast-firing rifles. Let us ban them. Then something that does not have a higher rate of fire, in the Secretary of State's opinion, can be allowed and created to meet need of these particular target shooters.

Under this subsection we are looking at a compensation payment of around £15 million, as far as I can discover, which is not enormous on the Grayling scale but is nevertheless a serious amount of money for the Government to focus on whether this is a justified expenditure or not. I would like to be sure that the rifles are being banned because they exceed a rate of fire that the Government find acceptable. If we are going to do it by the mechanism in this Bill because we have not got time to change anything else, let us at least see the evidence. What measurement of the rate of fire of these rifles have the Government made to justify spending £15 million? If that evidence is not immediately forthcoming, let us refocus on the underlying concern—the rate of fire. Let us make that the prohibited thing. That way, we can adapt to changes in technology as they come along and make sure that this bit of the Bill continues to achieve its intended effect into the future, and not just until someone finds another technological workaround. I beg to move.

The Earl of Erroll: My Lords, I support this amendment. I find it very sad that we wish to discriminate in legislation against people who cannot handle certain equipment in general—that is a general principle in life—and in this case rifles for competition. Some of them develop great skill. It gives them something to achieve and excel at. It is highly discriminatory and very sad that we have to discriminate against disabled because of a few concerns and an inability to think this through properly. I therefore support the amendment and really think we should put something like it through.

Earl Attlee: My Lords, I am sorry to disappoint my noble friend, especially in light of my success with the amendments that I will be moving formally a little later. I am afraid that these MARS and lever-action rifles are self-loading. The mechanism inside them works in exactly the same way as the automatic rifles that I used in Her Majesty's service. I do not support these. I thought that we had banned them post Hungerford. At the time of Hungerford, I was surprised that you could privately own a self-loading rifle—a 7.62 military-specification rifle.

Going back to the point by the noble Lord, Lord Robertson, I did not realise that, post Dunblane, there was a so-called sporting discipline of combat shooting. Noble Lords will recall the noble Lord, Lord Howard, talking about those who don the trappings of combat. I was unhappy that people could do combat shooting—in other words, changing fire positions and, most importantly, changing magazines. That is the edge that the security forces have over a private person: they train to make sure that they do not pull the trigger and find that they have an empty magazine.

So I am afraid that I do not support retaining the civilian ownership of MARS or lever-action rifles. They are self-loading rifles, and I thought we had banned them a long time ago.

Earl Howe: My Lords, although this amendment refers to Clause 34, I have assumed for the purposes of my reply to my noble friend that he would like to apply the additional wording to Clause 33 as well, for consistency.

These clauses will prohibit civilian access to certain types of rapid-firing rifles, defined as,

"any rifle with a chamber from which empty cartridge cases are extracted using … energy from propellant gas, or … energy imparted to a spring or other energy storage device by propellant gas".

As has been made clear during previous stages of this Bill, the Government are concerned about the potential risk to public safety if these rifles were to fall into the hands of terrorists or criminals. At present, these rifles are available to target shooters who have obtained a

firearms certificate from the police, for which they have been vetted. However, the police and National Crime Agency are concerned about the rate of fire of these rifles and consider that stricter controls are needed.

5.45 pm

The Government recognise that the vast majority of people who own firearms use them safely and responsibly and that it is important to be proportionate when considering additional controls. However, it is also important to recognise the recent changes in the nature of gun crime and the threats to public safety from terrorist attacks. In his amendment, my noble friend proposes the addition of a statement to the effect that these rifles are, in the opinion of the Secretary of State, enabled to fire at a substantially faster rate than a bolt-action rifle. I have to say that, if we were not of this opinion, we would not be looking to introduce stricter controls.

I will pause here to describe the types of rifle we are talking about. There are two types that use the energy from the propellant gas in the way described. One is generally referred to as the MARS rifle, which uses a second pull of the trigger to assist in swift reloading. The other uses a lever release system that makes use of a lever operated by the user's thumb to release the bolt and chamber a fresh round. I will pause further to reflect on the fact that Parliament has seen fit over the years to prohibit automatic and self-loading rifles, for the very reason that their rapid rates of fire are unacceptable for civilian use. While it is true that the rifles we are seeking to prohibit in this Bill are fitted with what might be termed "interrupter devices", requiring a second pull of the trigger or the flick of a lever, they are still akin in the way they operate to the self-loading rifles that have been previously banned.

My noble friend has asked me to clarify the basis on which the Government reached their policy position. The simple answer is that the advice we have had from law enforcement agencies is crystal clear: these rifles can fire at a rate that is significantly faster than a bolt-action rifle. I accept that some disabled shooters may choose to use these rifles because of the benefit they bring in terms of ease of reloading. I also accept that there a few shooters who can manipulate the bolt on a conventional rifle to fire off a number of rounds more quickly than most shooters. In answer to the noble Earl, Lord Erroll, we have given careful thought to the position of disabled shooters. The point was raised in discussion on the Bill in the other place. The view we came to is that there was a decision to be made about whether to ban these weapons outright, and our view was that we should. It is therefore important for those who provide shooting facilities to consider what alternative assistance might be provided to disabled shooters—whether by adapting other rifles or the places where disabled people shoot, or by providing other forms of assistance.

The Earl of Erroll: My Lords, I would like to suggest something to the Minister that has just occurred to me: how about including them with the rifles covered by the amendments of the noble Earl, Lord Attlee?

Earl Howe: We received only a very few representations about these weapons as opposed to those covered by my noble friend Lord Attlee's amendments, where there was a distinct division of opinion about what we should do.

Earl Attlee: My Lords, is another possibility for disabled shooters to use .22 self-loading rifles, which are still available?

Earl Howe: I am grateful to my noble friend. I am sure that that point will be taken on board by the clubs concerned and those who assist disabled shooters.

I do not think we can escape the fact that, were they to get hold of them, criminals or terrorists could cause more harm with this type of rifle than they ever could with a conventional one—acknowledging, of course, that all firearms are lethal and should be controlled. The Government are already satisfied, for the reasons that I have given, that these rapid-firing rifles meet the criteria that the amendment seeks to impose. For that reason, we think the additional wording is not required. I hope that on that basis my noble friend will feel able to withdraw his amendment.

Lord Lucas: My Lords, yes, of course I am going to withdraw my amendment but before I do, I again urge the Government to look at the harm that they are focused on rather than the mechanism by which that harm is delivered. If, as I think is entirely reasonable, the Government do not want rapid-firing rifles, why does the Bill not say that? Just because the energy from firing the previous shot is conveniently available—that is the way that these rifles work at present—does not mean that you could not create a rifle that worked off previously stored compressed gas, batteries, a wind-up clockwork mechanism or some other means of storing energy that would allow a round to be automatically loaded, or loaded with an interrupt mechanism, after the previous round had been fired.

In this legislation we seem to be dealing with the mechanism rather than the underlying problem. Surely, if we deal with the underlying problem, we will not get the situation arising again where a couple of designs of rifle have been allowed to be created—they have not grown up without permission—and have been sold, when, fundamentally, as my noble friend Lord Attlee has pointed out, we feel uncomfortable about self-loading rifles. We are not banning self-loading rifles here; we are banning one particular mechanism of self-loading. That seems short-sighted and not the best way of tackling the problem.

I would be really grateful if my noble friend the Minister could share the evidence that these particular rifles are in fact faster-loading than a bolt-action rifle, not so much because I am concerned about this particular case but because I would like to know that when it comes to making this sort of judgment in future we can look at and understand the basis on which the decision has been taken.

Earl Howe: My Lords, my understanding is that the evidence provided to the Government by the National Crime Agency is already in the public domain.

Lord Lucas: My Lords, I would be immensely grateful if my noble friend could point it out to me because no one else has been able to. That would certainly be helpful. As my noble friend has requested, I beg leave to withdraw the amendment.

Amendment 95A withdrawn.

Amendment 96 not moved.

Clause 37: Payments in respect of surrendered firearms other than bump stock

Amendments 97 and 98

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

97: Clause 37, page 36, line 38, leave out "such"

Member's explanatory statement

This amendment would remove a surplus word from Clause 37(8)(b).

98: Clause 37, page 36, line 38, at end insert—

"(c) provision enabling a person to exercise a discretion in determining—

(i) whether to make a payment in response to a claim, and

(ii) the amount of such a payment."

Member's explanatory statement

This amendment would confirm that regulations under Clause 37 providing for compensation for surrendered firearms may allow a person determining an amount of compensation to exercise a discretion in doing so.

Amendments 97 and 98 agreed.

Clause 38: Payments in respect of prohibited firearms which are bump stocks

Amendments 99 and 100

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

99: Clause 38, page 37, line 26, leave out "such"

Member's explanatory statement

This amendment would remove a surplus word from Clause 38(9)(b).

100: Clause 38, page 37, line 26, at end insert—

"(c) provision enabling a person to exercise a discretion in determining—

(i) whether to make a payment in response to a claim, and

(ii) the amount of such a payment."

Member's explanatory statement

This amendment would confirm that regulations under Clause 38 providing for compensation for surrendered bump stocks may allow a person determining an amount of compensation to exercise a discretion in doing so.

Amendments 99 and 100 agreed.

Clause 39: Payments in respect of ancillary equipment

Amendments 101 and 102

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

101: Clause 39, page 38, line 23, leave out "such"

Member's explanatory statement

This amendment would remove a surplus word from Clause 39(7)(b).

102: Clause 39, page 38, line 23, at end insert—

"(c) provision enabling a person to exercise a discretion in determining—

(i) whether to make a payment in response to a claim, and

(ii) the amount of such a payment."

Member's explanatory statement

This amendment would confirm that regulations under Clause 39 providing for compensation for ancillary equipment which has been surrendered or disposed of may allow a person determining an amount of compensation to exercise a discretion in doing so.

Amendments 101 and 102 agreed.

Amendment 103

Moved by ***The Earl of Shrewsbury***

103: After Clause 39, insert the following new Clause—

"Statutory firearms licensing guidance

(1) The Secretary of State must, within the period of three months beginning with the day on which this Act is passed, publish a policy statement setting out proposals for the introduction of statutory firearms licensing guidance under section 55A of the Firearms Act 1968.

(2) The Secretary of State must, within the period of three months beginning with the day on which this Act is passed, open a public consultation on the proposals set out in subsection (1)."

Member's explanatory statement

This new Clause would place a duty on the Secretary of State to open a public consultation on proposals for the introduction of statutory firearms licensing guidance within three months of the passing of this Act.

The Earl of Shrewsbury (Con): My Lords, I refer noble Lords to my entry in the register. The purpose of Amendment 103 is to place a duty on the Secretary of State to open a public discussion on proposals for the introduction of statutory firearms licensing guidance within three months of the Bill becoming an Act. I spoke about this matter at length at Second Reading and in Grand Committee, where I found considerable sympathy with my proposals, in particular the medical aspects of firearms licensing guidance. I do not intend to repeat those arguments, save to say that my proposals have widespread support from the police, the British Shooting Sports Council and the APPG for Shooting and Conservation. I understand that the suggestions agreed with the Home Office by these bodies some two years ago also have the Home Office's support.

However noble its intentions, the Home Office is the cause of much frustration in the ranks of various stakeholders through its constant delaying—the answer to the introduction of the promised consultation varying between "soon", "shortly", and, indeed, "as soon as possible", as stated in my noble friend's response to me in Grand Committee:

"I have a partial answer for my noble friend. The consultation will be launched after Royal Assent, but I am sure that the spirit of that undertaking is as soon as possible after Royal Assent".—[*Official Report*, 6/2/19; col. GC 418.]

I and many in the shooting organisations believe that the continuing delay is because the Home Office simply has yet to get its ducks in a row. Further delay is neither fair nor good enough. The amendment serves to enhance the safety of the public. I believe I have cross-party support on it. I look forward to hearing the Minister's response. I beg to move.

The Earl of Caithness: My Lords, I put my name to this amendment in Committee, but when I came to put my name to it on Report I found that three others had already done so. I hope my noble friend is impressed that support for the amendment is from not only the Cross Benches but the Back Benches of the Labour Party.

This is a hugely important amendment. I will not repeat what I said in Grand Committee, but I hope my noble friend will understand that the amendment is designed to enhance public safety. If it had been enacted before Dunblane I think some of the problems there would not have happened. Anybody who has access to the shotgun or rifle cabinet must be properly scrutinised. As my noble friend Lord Shrewsbury said, the Home Office is dragging its feet on this. We want it to hurry up. I hope my noble friend will ensure that my former department gets a move on and does this consultation extremely quickly.

Earl Attlee: My Lords, while I support my noble friend's amendment, which I am sure is a good idea, I return to the issue of the old Firearms Consultative Committee, which fell into disuse. If that was still in operation, we would not have had the MARS lever action release problem and we would have saved £15 million in compensation, because I am sure that that committee would have nipped its development in the bud and saved an awful lot of money.

Earl Howe: My Lords, I am grateful to my noble friend for raising this issue and for the opportunity to discuss it with him at a meeting last week. As he explained, his amendment would place a duty on the Secretary of State to open a public consultation on statutory firearms licensing guidance within three months of Royal Assent.

The Policing and Crime Act 2017 introduced a power, contained in Section 55A of the Firearms Act 1968, for the Secretary of State to issue statutory guidance to chief officers that will apply to issues such as background checks, medical suitability, and other criteria to protect public safety. This will help ensure high standards and consistency of approach for police firearms licensing. We have said that there will be a public consultation on the draft guidance before it is promulgated.

My noble friend has indicated that he is particularly interested in the medical aspects of the guidance, for understandable reasons. He and other noble Lords wish to see the consultation launched as soon as possible, as a further step towards improving the operation of the medical arrangements. There is a need for strong information-sharing arrangements between GPs and police, to ensure that those in possession of a firearm or shotgun certificate are medically fit and do not pose a risk to themselves or others. But the Government recognise that there is variation in how GPs are responding to police requests for information, and in the fees being charged to applicants, and that following this, the police are not always responding in a consistent way if they do not receive the medical information they require. In addition to holding a public consultation on the introduction of the statutory guidance, the Government will continue to engage with shooting representatives, the police and the medical profession to ensure that the system operates as effectively as possible.

6 pm

As to the timing of the consultation, my noble friend's amendment seeks to have the consultation go live within three months of Royal Assent. This is not an unreasonable timetable. My only hesitation is the unknown date of Royal Assent. To allow for this variable, the Government are ready to give a commitment to open the consultation by the Summer Recess. This could even be ahead of the timetable proposed by my noble friend. I hope that in the light of this clear undertaking, my noble friend is content to withdraw his amendment.

The Earl of Shrewsbury: My Lords, I am most grateful to my noble friend the Minister for his words. I am quite happy to withdraw the amendment, on his undertaking. Would he be prepared to put that in a letter in the Library?

Earl Howe: I would hope that, on reflection, my noble friend will accept that as my words will be printed in large letters in *Hansard*, the undertaking very definitely stands.

The Earl of Shrewsbury: Ten points for trying again, my Lords. With that, I beg leave to withdraw.

Amendment 103 withdrawn.

Amendments 103A and 103B

Moved by ***Earl Attlee***

103A: After Clause 39, insert the following new Clause—

"Conditions applying to certain firearms: England and Wales and Scotland

(1) The Firearms Act 1968 is amended as follows.

(2) After section 27 insert—

"27A Conditions for storage etc of certain firearms

(1) This section applies to a firearm if it is a rifle from which a shot, bullet or other missile, with kinetic energy of more than 13,600 joules at the muzzle of the weapon, can be discharged.

(2) The Secretary of State must by rules under section 53 prescribe conditions—

(a) subject to which a firearm certificate relating to a firearm to which this section applies must be granted or renewed, and

(b) which impose requirements as to the storage of a firearm to which this section applies and as to the security measures to be taken when such a firearm is in transit.

(3) Before making rules under section 53 which prescribe conditions of the kind mentioned in subsection (2) the Secretary of State must consult such persons likely to be affected by the rules as the Secretary of State considers appropriate."

(3) In section 53 (rules for implementing the Act)—

(a) the existing text becomes subsection (1), and

(b) at the end of that subsection insert—

"(2) A statutory instrument containing (whether alone or with other provision) rules under this section which prescribe conditions of the kind mentioned in

section 27A(2) (conditions for storage etc of certain firearms) is subject to annulment in pursuance of a resolution of either House of Parliament.""

Member's explanatory statement

This amendment would require the Secretary of State to prescribe conditions which must apply to firearm certificates relating to certain high muzzle energy rifles and which relate to the storage and secure transit of such rifles.

103B: After Clause 39, insert the following new Clause—

"Conditions applying to certain firearms: Northern Ireland

(1) The Firearms (Northern Ireland) Order 2004 (SI 2004/702 (NI 3)) is amended as follows.

(2) In Article 6 (conditions), after paragraph (3) insert—

"(3A) Paragraphs (1) and (2) are subject to Article 6A (conditions for storage etc of certain firearms) and regulations under that Article."

(3) After Article 6 insert—

"6A Conditions for storage etc of certain firearms

(1) This Article applies to a firearm if it is a rifle from which a shot, bullet or other missile, with kinetic energy of more than 13,600 joules at the muzzle of the weapon, can be discharged.

(2) The Department of Justice must by regulations prescribe conditions—

(a) subject to which a firearm certificate relating to a firearm to which this Article applies must be granted, and

(b) which impose requirements as to the storage of a firearm to which this Article applies and as to the security measures to be taken when such a firearm is in transit.

(3) If a firearm certificate is granted subject to conditions prescribed under paragraph (2), that certificate may not be varied so as to vary or revoke those conditions.

(4) Before making regulations under paragraph (2) the Department of Justice must consult such persons likely to be affected by the regulations as the Department considers appropriate."

(4) In Article 11 (variation of firearm certificate), after paragraph (1) insert—

"(1A) Paragraph (1) is subject to Article 6A (conditions for storage etc of certain firearms) and regulations under that Article.""

Member's explanatory statement

This amendment would require the Department of Justice in Northern Ireland to prescribe conditions which must apply to firearm certificates relating to certain high muzzle energy rifles and which relate to the storage and secure transit of such rifles.

Amendments 103A and 103B agreed.

Clause 40: Interpretation of sections 33 to 39

Amendments 104 and 105

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

104: Clause 40, page 38, line 25, leave out from first "in" to third "in" and insert "this Part as it applies"

Member's explanatory statement

This amendment and the Minister's amendment at page 38, line 28 would convert references to certain Clauses of the Bill relating to firearms into references to a Part of the Bill.

105: Clause 40, page 38, line 28, leave out from first "in" to third "in" and insert "this Part as it applies"

Member's explanatory statement

See the explanation of the Minister's amendment at page 38, line 25.

Amendments 104 and 105 agreed.

Amendment 106

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

106: Before Clause 43, insert the following new Clause—

"Guidance on offences relating to offensive weapons etc

(1) The Secretary of State may from time to time issue guidance about—

(a) section 1 of the Prevention of Crime Act 1953 (prohibition of the carrying of offensive weapons without lawful authority or reasonable excuse),

(b) section 1 of the Restriction of Offensive Weapons Act 1959 (penalties for offences in connection with dangerous weapons) as it has effect in relation to—

(i) England and Wales, or

(ii) the importation of a knife to which that section applies into any other part of the United Kingdom,

(c) section 139 of the Criminal Justice Act 1988 (offence of having article with blade or point in public place) as it has effect in relation to England and Wales,

(d) section 139A of that Act (offence of having article with blade or point (or offensive weapon) on educational premises) as it has effect in relation to England and Wales,

(e) section 141 of that Act (offensive weapons) as it has effect in relation to England and Wales,

(f) section 141A of that Act (sale of bladed articles to persons under 18) as it has effect in relation to England and Wales,

(g) section 141B of that Act (limitations on defence to offence under section 141A: England and Wales),

(h) any of sections 1 to 4 of this Act (sale and delivery of corrosive products) as they have effect in relation to England and Wales or Scotland,

(i) section 6 of this Act (offence of having a corrosive substance in a public place) as it has effect in relation to England and Wales, or

(j) any of sections 18 to 21 of this Act (sale and delivery of knives etc) as they have effect in relation to England and Wales.

(2) The Scottish Ministers may from time to time issue guidance about—

(a) section 1 of the Restriction of Offensive Weapons Act 1959 as it has effect in relation to Scotland and other than in relation to the importation of a knife to which that section applies,

(b) section 141 of the Criminal Justice Act 1988 as it has effect in relation to Scotland,

(c) section 141A of that Act as it has effect in relation to Scotland,

(d) section 141C of that Act (defence to offence under section 141A where remote sale or letting on hire: Scotland),

(e) section 6 of this Act as it has effect in relation to Scotland, or

(f) any of sections 18 to 21 of this Act as they have effect in relation to Scotland.

(3) The Department of Justice in Northern Ireland may from time to time issue guidance about—

(a) Article 22 of the Public Order (Northern Ireland) Order 1987 (SI 1987/463 (NI 7)) (carrying of offensive weapon in public place),

(b) section 139 of the Criminal Justice Act 1988 as it has effect in relation to Northern Ireland,

(c) section 139A of that Act as it has effect in relation to Northern Ireland,

(d) section 141 of that Act as it has effect in relation to Northern Ireland,

(e) Article 53 of the Criminal Justice (Northern Ireland) Order 1996 (SI 1996/3160 (NI 24)) (manufacture or sale of certain knives),

(f) Article 54 or 54A of that Order (sale of bladed articles to persons under 18),

(g) any of sections 1 to 4 of this Act as they have effect in relation to Northern Ireland,

(h) section 6 of this Act as it has effect in relation to Northern Ireland, or

(i) any of sections 18 to 21 of this Act as they have effect in relation to Northern Ireland.

(4) A national authority who issues guidance under this section may from time to time revise it.

(5) Subsection (6) applies if a national authority proposes to issue guidance under this section—

(a) on a matter on which the authority has not previously issued such guidance, or

(b) which the authority considers to be substantially different from guidance previously issued under this section.

(6) Before the national authority issues the guidance, the authority must consult such persons likely to be affected by it as the authority considers appropriate.

(7) A national authority must arrange for any guidance issued by the authority under this section to be published in such manner as the authority thinks appropriate.

(8) This section does not permit a national authority to give guidance to a court or tribunal.

(9) In this section "national authority" means—

(a) the Secretary of State,

(b) the Scottish Ministers, or

(c) the Department of Justice in Northern Ireland.

(10) Until the coming into force of the repeal of section 141(4) of the Criminal Justice Act 1988 (ban on importation of weapons) by paragraph 119(2) of Schedule 7 to the Policing and Crime Act 2009, this section has effect as if—

(a) subsection (1)(e) referred to section 141 of the Criminal Justice Act 1988 as it has effect in relation to—

(i) England and Wales, or

(ii) the importation of a weapon to which that section applies into any other part of the United Kingdom;

(b) subsection (2)(b) referred to that section as it has effect in relation to Scotland and other than in relation to the importation of a weapon to which that section applies, and

(c) subsection (3)(d) referred to that section as it has effect in relation to Northern Ireland and other than in relation to the importation of a weapon to which that section applies."

Member's explanatory statement

This amendment would permit the Secretary of State, the Scottish Ministers or the Department of Justice in Northern Ireland to issue guidance about the operation of offences relating to offensive weapons.

Amendment 106 agreed.

Clause 44: Regulations

Amendment 107 not moved.

Clause 45: Extent

Amendments 107A and 107B

Moved by ***Earl Attlee***

107A: Clause 45, page 41, line 10, leave out "40" and insert "39"

Member's explanatory statement

This amendment is consequential on the amendments to insert new Clauses after Clause 39.

107B: Clause 45, page 41, line 10, at end insert—

"(ja) section 40;"

Member's explanatory statement

This amendment is consequential on the amendments to insert new Clauses after Clause 39.

Amendments 107A and 107B agreed.

Amendment 108

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

108: Clause 45, page 41, line 12, at end insert—

"(la) section (Guidance on offences relating to offensive weapons etc);"

Member's explanatory statement

This amendment is consequential on the Minister's amendment to insert a new Clause before Clause 43.

Amendment 108 agreed.

Amendment 108A

Moved by ***Earl Attlee***

108A: Clause 45, page 41, line 28, at end insert—

"(da) section (Conditions applying to certain firearms: England and Wales and Scotland);"

Member's explanatory statement

This amendment is consequential on the amendment to insert the first of two new Clauses after Clause 39.

Amendment 108A agreed.

Amendments 109 and 110

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

109: Clause 45, page 41, line 44, at end insert—

"(ba) Part 1A;"

Member's explanatory statement

This amendment is consequential on the Minister's amendment to insert a series of new Clauses after Clause 13.

110: Clause 45, page 41, line 46, leave out "sections 29 to 32" and insert "Part 4"

Member's explanatory statement

This amendment would convert references to the Clauses of the Bill relating to threatening with an offensive weapon into a reference to Part 4 of the Bill.

Amendments 109 and 110 agreed.

Amendment 110A

Moved by ***Earl Attlee***

110A: Clause 45, page 42, line 20, at end insert—

"(ha) section (Conditions applying to certain firearms: Northern Ireland);"

Member's explanatory statement

This amendment is consequential on the amendment to insert the second of two new Clauses after Clause 39.

Amendment 110A agreed.

Clause 46: Commencement

Amendments 111 to 113

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

111: Clause 46, page 42, line 36, after "to" insert "section (Piloting) and"

Member's explanatory statement

This amendment is consequential on the Minister's amendment to insert a new Clause on piloting relating to knife crime prevention orders etc as one of a series of new Clauses to appear after Clause 13.

112: Clause 46, page 43, line 4, at end insert—

"(i) section (Guidance on offences relating to offensive weapons etc) so far as it confers functions on the Scottish Ministers."

Member's explanatory statement

This amendment is consequential on the Minister's amendment to insert a new Clause before Clause 43.

113: Clause 46, page 43, line 15, at end insert—

"(ha) section (Guidance on offences relating to offensive weapons etc) so far as it confers functions on the Department of Justice in Northern Ireland."

Member's explanatory statement

This amendment is consequential on the Minister's amendment to insert a new Clause before Clause 43.

Amendments 111 to 113 agreed.

Amendment 113A

Moved by ***Earl Attlee***

113A: Clause 46, page 43, line 15, at end insert—

"(hb) section (Conditions applying to certain firearms: Northern Ireland);"

Member's explanatory statement

This amendment is consequential on the amendment to insert the second of two new Clauses after Clause 39.

Amendment 113A agreed.

Amendments 114 and 115

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

114: Clause 46, page 43, line 20, at end insert—

"(za) section (Guidance);"

Member's explanatory statement

This amendment is consequential on the Minister's amendment to insert a new Clause on guidance relating to knife crime prevention orders etc as one of a series of new Clauses to appear after Clause 13.

115: Clause 46, page 43, line 20, at end insert—

"(zb) section (Piloting);"

Member's explanatory statement

This amendment is consequential on the Minister's amendment to insert a new Clause on piloting relating to knife crime prevention orders etc as one of a series of new Clauses to appear after Clause 13.

Amendments 114 and 115 agreed.

Amendments 116 and 117

Moved by ***Earl Attlee***

116: Clause 46, page 43, line 45, leave out "40" and insert "(Conditions applying to certain firearms: England and Wales and Scotland)"

Member's explanatory statement

This amendment is consequential on the amendment to insert new Clauses after Clause 39.

117: Clause 46, page 43, line 45, at end insert—

"(ka) section 40;"

Member's explanatory statement

This amendment is consequential on the amendments to insert new Clauses after Clause 39.

Amendments 116 and 117 agreed.

Knife Crime

Statement

6.06 pm

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

"Mr Speaker, this weekend, two teenagers—Jodie Chesney and Yousef Makki—were stabbed to death. I am sure I speak for the whole House when I express my deepest condolences to their families and loved ones—two young lives tragically lost. They are the latest victims in a cycle of senseless violence that is robbing young people of their lives right across this country. There is no hiding from this issue: serious violence is on the rise, communities are being torn apart and families are losing their children. Last year, 726 people were murdered in the UK, 285 with a knife or bladed weapon, the highest level since records began.

After the horror of this weekend, I welcome the chance to come to this House and address this issue. We all wish that there was one thing—just one—that we could do to stop the violence, but there are no shortcuts; there is no single solution. Tackling serious violence requires co-ordinated action on multiple fronts.

First, we need a strong law enforcement response. This includes the Offensive Weapons Bill, currently before Parliament, that will introduce new offences to help tackle knife crime. We also need to give police the confidence to use existing laws, such as stop and search.

Secondly, we must intervene early to stop young people becoming involved in crime. We have amended the Bill to introduce knife crime prevention orders, which will help prevent young people from carrying knives.

And, alongside our £200 million youth endowment fund, the £22 million early intervention youth fund has already funded 29 projects endorsed by police and crime commissioners.

Thirdly, we must ensure that the police have the resources to combat serious violence. I am raising police funding to record levels next year—up to £970 million more, including council tax. On Wednesday, I will meet with chief constables to listen to their experiences and requirements.

Fourthly, we must be clear on how changing patterns of drug misuse are fuelling the rise in violent crime. I launched the independent drugs misuse review, under Dame Carol Black, in response to this.

Fifthly, we need all parts of the public sector to prioritise tackling serious violence. That is why I will very shortly be launching a consultation on a statutory public health duty to combat violent crime and help protect young people.

We must all acknowledge that this is an issue that transcends party lines. Politics can be divisive, but if there was ever an issue to unite our efforts and inspire us to stand together, then surely this is it".

6.09 pm

Lord Kennedy of Southwark (Lab Co-op): My Lords, I thank the Minister for repeating the Answer to the Urgent Question given by her right honourable friend the Home Secretary in the other place earlier today. I agree there is no single solution and there are no shortcuts. What is missing from the Statement is an unequivocal link to ensure that youth services and other provisions across government to support families and young people receive the attention they deserve. Nothing in this Statement gives me confidence in that respect, so can the Minister comment on that and set out how the Home Secretary will ensure we deal with this matter across government—as she says, completely across the piece—and provide me with some reassurance on this?

Baroness Williams of Trafford: I thank the noble Lord for his question, because there is a disproportionate number of young people as both victims and perpetrators of knife crime. The young chap who was killed on Saturday night in my neighbourhood is just one example. I have talked about the £22 million early intervention youth fund to support communities on early intervention and prevention with young people. There will also be the £200 million youth endowment fund over 10 years, which the Home Secretary has announced and which will enhance that, along with a consultation on the new legal duty to underpin a public health approach to tackling serious violence. The notion that any one department or measure is the answer to this is not true at all, as the noble Lord will absolutely know. This issue is more complex and it transcends government departments. We all need to work together on it, but he is absolutely right to start with young people.

Lord Paddick (LD): My Lords, I too thank the Minister for repeating the Statement. It talks about early intervention with young people, yet since 2010 there has been a 26% reduction in government support to local authorities. It talks about the police having the resources to tackle serious violence, yet compared to 2010 there are 20,000 fewer police officers in front-line roles. It talks about a statutory public health duty, but there is no mention of additional resources to support that duty. This Government are responsible for creating the environment where this knife epidemic has been able to take hold, and they should take responsibility for funding solutions. For example, why will the Government not adopt the suggestion of the noble Lord, Lord Hogan-Howe, to have centrally funded, ring-fenced money for community police officers? We need visible policing in high-risk areas to reassure communities and to build trust and confidence, so that the police and communities can work together to take knives off the streets.

Baroness Williams of Trafford: The noble Lord is absolutely right to point to early intervention, and I mentioned some of the funding streams that either have gone forward or will be going forward to that end. He also talks about the police; both I and the Home Secretary have absolutely acknowledged the pressure that the police have been under, particularly over the last couple of years. As the Home Secretary said, he will be making up to £970 million available next year. It is a shame that the noble Lord, Lord Hogan-Howe, is not in his place, but I pay tribute to him and the work that he did while he was Metropolitan Police Commissioner on reducing some of the problems of knife crime in communities in London. I am sure that my right honourable friend the Home Secretary and my honourable friend Vicky Atkins will be in discussion with the noble Lord on some of the learning points from his tenure for how we can address this really terrible growing issue.

Lord Carlile of Berriew (CB): Those of us in your Lordships' House who have policed, conducted or judged murder cases can attest to how little force it takes to kill someone with a single blow from a knife. As part of the Government's strategy, will they ensure that education is provided in schools by people who understand, and can provide sound education on, the danger of carrying a knife for any purpose whatever, which can so easily turn someone into a murderer?

Baroness Williams of Trafford: The noble Lord points out the stark simplicity with which somebody can kill somebody else—by a single blow of a knife. In talking about the public health response to knife crime, the Department for Education has a critical role to play in the lives of these young people, certainly some of those who are excluded from school, and on how to keep them engaged and out of trouble, not only when they are in school but when they are excluded too.

Lord Cormack (Con): My Lords, if anyone had suggested that the visible police presence around this building should be reduced or withdrawn, there would be universal condemnation of the suggestion. The point made by the noble Lord, Lord Paddick, is relevant in this context. If we have, in our towns and cities, a more prevalent, visible presence on the streets, it will surely be the best single thing we can do to combat this appalling scourge of our society.

Baroness Williams of Trafford: I have to say to my noble friend that the type of police presence on the street is a matter for PCCs. I am also in agreement with him that we need the police resource necessary to tackle the problems we are facing but, as I said earlier, it is not just the police's job; it is the job of departments across government to try to tackle this terrible problem together.

Baroness Newlove (Con): My Lords, first, I apologise to my noble friend, as I rushed in as quickly as possible when she began this Statement, after watching the screen. I think they need to make it more focus friendly, because it is so tiny—it is my age. Joking apart, this is a serious issue, so I have been doing lots of media and radio this morning.

After this weekend and seeing the young girl—and I give my deepest sympathy to the families—I have been thinking of what happened to her and many others. I have been a victim of crime and know what hands and feet can do, never mind what a knife can do, but I stand here with anger and disappointment. While I greatly respect what the Government are trying to do with money, finances and departments, I have to say to my noble friend that, in all of this, we are missing a piece about young people. There is nothing about humans in all of these statements.

I was disappointed to hear the Home Secretary's Statement today, and it does not make me feel good to stand here and say that, but I have spoken today about how we have to get real about these children. We have to get real as, actually, what you perceive to be a child is a six-foot-two young man or woman—because my husband was beaten by young women. We have to be honest about what we want to deliver here to make it a safe environment. Policies are one thing and will take many years, but in the meantime we are losing many lives.

As I was community champion in my previous role, I am willing to go back into communities to roll up my sleeves and talk to them. Yesterday, I listened to somebody calling the radio who goes out to gangs, who has attended Home Office meetings over the last 10 years. He said that nothing changes unless you bring these young people in and speak to them and their parents. This is not just down to government; it is down to society to stop being so desensitised.

I would welcome a conversation with my noble friend and the Home Secretary, who I am seeing next week, but I feel that we are losing the human beings behind this and the families who are being ripped apart. We have to send the message that we are serious, but we also have to get there early to talk to them, because they are creative people. Let us get them into jobs, intervention and education because, if they are creative with their hands, they will no longer carry a knife and create the havoc that we are seeing as a national crisis today.

Baroness Williams of Trafford: My Lords, once again I pay tribute to my noble friend for all her work in this area. She must have heard the earlier discussion when my noble friend Lady Barran talked about exactly that—listening to young people. I have had discussions with the noble Baroness, Lady Lawrence, about the same thing. We cannot just tackle it from a policy point of view; there are humans in all this. As my noble friend said, they may be six feet two, but they are still children and capable of much good as well as much damage. I will take her points on board. We must work in this way in future.

Privatised Probation System

Statement

6.20 pm

Baroness Vere of Norbiton (Con): My Lords, with the leave of the House, I shall repeat in the form of a Statement an Answer given in the other place by my honourable friend the Minister of State at the Ministry of Justice. The Statement is as follows.

"I am pleased to be called to address this Urgent Question, and fully understand why the honourable Member has raised it. As the House will be aware, we have been looking very carefully at the future of probation services, and this gives me the opportunity to briefly set out what the transforming rehabilitation reforms were, some of the challenges, and our response.

As the House will be aware, transforming rehabilitation was strongly influenced by a Labour pilot—the Peterborough pilot—which demonstrated that by bringing in non-state providers, concentrating on a cohort of short-sentence prisoners who had not previously been supervised, and paying providers for reducing reoffending, it was possible to achieve significant improvements. Transforming rehabilitation was a coalition government commitment built on these principles, by contracting the private sector and others—for example in Durham Tees Valley this included the local authority—and undertook to pay the providers significant sums if they were able to reduce reoffending. The contracts were left flexible to encourage innovation. This private model was applied only to low-risk offenders; high-risk offenders continued to be supervised in the usual way by the state. The new model has delivered in some ways. But, as the National Audit Office has pointed out, it has not delivered in others.

There has been a reduction in the binary rate of reoffending, although there has been an increase in the separate frequency measures; 40,000 additional offenders are currently being supervised, who were not previously supervised under the old system. Some innovation has come into the system and it has saved the taxpayer money. So even though the honourable Member opposite would point out that through changes to the contracts, more money has gone in, we are still forecast to spend significantly less than we originally anticipated—perhaps as much as £700 million less. But the programme was challenged by external factors, some of which were difficult to model and predict. For example, societal changes, and different sentencing decisions by judges, meant the case load given to the CRCs—the community rehabilitation companies—shifted and some of the accredited programmes allocated were fewer than expected. This meant that the income streams of these companies were less than anticipated. Broader issues, such as drugs, and issues around housing and treatment programmes, meant that it was difficult for providers to control all the factors in reoffending. This led to some of the companies losing significant sums of money.

We have therefore taken a new approach, which seeks to address all these problems. We have just conducted a consultation and are carefully studying the responses. Our intention is, first, to remove the dependence in the new probation system on unpredictable case loads, and to improve co-ordination with the National Probation Service. We are emphasising overall quality of service, not just the reoffending rate; we will be ending the existing contracts early; we will be setting minimum conditions for offender supervision; and we have invested over £20 million in through-the-gate services.

Our objective—while retaining the benefits of flexibility and innovation—is to create a much higher-quality probation service that focuses on good-quality delivery and protects the public".

6.24 pm

Baroness Chakrabarti (Lab): My Lords, I am grateful to the Minister for repeating that Answer. I admire her for doing it so well; it is not an easy gig. There has been cross-party authorship and ancestry to privatisation of probation and, indeed, other vital services at the core of the state's principal duty to protect people. So I do not want to make partisan points but to say what we have learned and what we want to do differently in future. It seems to me that there is a constitutional problem with privatising services at the very core of keeping people safe, whether it is the military, policing, prisons or—if we are serious about reducing offending in the future, as we heard so eloquently from the noble Baroness, Lady Newlove—probation, too.

In that spirit, I ask the Minister, and all noble Lords here, to consider whether it is time to say that probation should not be for profit, so that we can have the greater ministerial accountability that our people deserve and we can put this at the core of everything we are about, in Parliament and in government—not contract it out or do it on the cheap, but take responsibility. Do the Minister and other noble Lords agree that we should do this? I say this to put private contractors, whether they are succeeding or failing, on notice that this is something that we on this side of the House are very concerned about.

Baroness Vere of Norbiton: The noble Baroness, Lady Chakrabarti, is correct that this is not an easy gig, but I believe that probation can have a positive future. In the past we have opened up probation to a diverse range of providers. This was supported by Labour when it was in government; clearly, no longer. We need to learn lessons from the first generation of these contracts and we certainly have. We believe that public, private and voluntary providers all have an important role to play and we would like to see better integration, under new arrangements, so that they can all work together to protect the public and tackle reoffending.

Lord Dholakia (LD): My Lords, I thank the Minister for repeating the Answer to the Urgent Question, but it does not reflect the shocking indictment of the probation changes in the report of the National Audit Office. During his time as Secretary of State for Justice, Chris Grayling introduced a number of reforms to the probation service that have ultimately resulted in its near decimation. It is estimated that ending private contracts will cost at least £171 million. Reoffending, recall to prison and short sentences have soared. The number of offences has increased by 22%. The National Audit Office chief stated that the Ministry of Justice set itself up to fail in how it approached probation reforms. Will the Minister publish a cross-government strategy to explain how it will work with other bodies to reduce reoffending and develop a plan to manage the winding-up of existing contracts?

Baroness Vere of Norbiton: I thank the noble Lord, Lord Dholakia, for his comments. The NAO report made a number of very long-standing criticisms, of which we were, of course, already aware. We have taken action to respond to those criticisms, many of which I hope to come to in other answers. The noble Lord asked specifically about reoffending. As I mentioned in my opening statement, it is a very complex and difficult issue to solve; certainly, we are approaching it from a cross-government perspective. The Chancellor of the Duchy of Lancaster recently established the cross-government Reducing Reoffending Board, which brings together senior Ministers from all relevant departments to tackle the impact of reoffending on society as a whole. The core member of this group is the MoJ, but it also includes health, education—which is so important—the DWP, the Ministry of Housing, Communities and Local Government and, of course, the Home Office. By working together we can reduce reoffending. Nobody would suggest that it is easy, but I believe that with a cross-government approach we will be able to do it.

Lord Cormack (Con): My Lords, in both Houses and with Governments of both parties, I have consistently made the point that it is wrong for the state to opt out of crime and punishment. I believe that now even more strongly. Will my noble friend the Minister and her colleagues at least consider this alternative? None of us would advocate a private police force and I do not believe that any of us should advocate or support a private probation service or private prisons. That has been my consistent view throughout. I urge my noble friend to say that this matter will at least be reconsidered.

Baroness Vere of Norbiton: I thank my noble friend Lord Cormack for his comments. He will be unsurprised to learn that I disagree with him. I do not see this as an opting-out of crime and punishment. Certainly, people in the private, third and voluntary sectors have lots of experience in this area. It is important for us to use that and work with them. However, at this moment we are looking at the responses to the consultation that closed on 21 September. We will look closely at what people have said and the way that this should be planned going forward. We will bring further plans to Parliament before the end of the year.

Lord Beith (LD): My Lords, the failings listed in the Statement and found by the National Audit Office were foreseen in the 2014 report of the House of Commons Justice Committee, which I chaired at the time. Does this experience not demonstrate that when Ministers and departments receive carefully researched,

[Lord Beith]
evidence-based Select Committee reports from either House, they should not move into a defensive posture but look at the risks identified and for ways to ensure that policy changes are made before the policy goes ahead?

Baroness Vere of Norbiton: I will take the noble Lord's comment on the chin. It is important that we look at prepared reports, then compare policy and future policy in putting into effect the recommendations that we feel able to. We have taken action, which I have not been able so far to describe. We have been in touch with the CRCs and ended their contracts early. We are making sure that there are contractual variations to secure performance improvement and operational stability for the whole system, which is important. We have also provided an additional £22 million per year for through-the-gate services, which will add another 500 staff, and all providers must now offer monthly face-to-face meetings in the first 12 months.

Lord Birt (CB): My Lords, I declare an interest. My spouse is the founding director-general of the National Probation Service. I also declare a conviction. I have long supported producer-provider relationships. In the right place and at the right time, they can be highly effective, but they do not provide an answer to every question. In this instance, there is a matter of both principle—as other noble Lords have commented on—and competence. Nobody has said yet that the NAO report is a truly shocking read. This was a botched reform. We will discuss later the £33 million payment to Eurotunnel. Does the Minister accept that this raises a question about basic government competence on procurement?

Baroness Vere of Norbiton: I do not accept that. The situation was complex. We set the scheme up and we have learned lessons from the first-generation contracts. It would not be right to prejudge the outcome of the consultation. To go back, noble Lords will recall that prior to setting up the CRCs, which look after three-quarters of offenders, 40,000 offenders had no support whatever when they left prison. We have come some way. Using CRCs to look after these offenders has had its positives and negatives. We are learning and will come back with proposals forthwith.

Eurotunnel
Statement

6.34 pm

The Earl of Courtown (Con): My Lords, with the leave of the House, I shall now repeat in the form of a Statement the Answer given by my right honourable friend to an Urgent Question in the other place. The Statement is as follows:

"I would like to update the House on the agreement the Government have reached with Eurotunnel which will help to deliver an unhindered supply of vital medicines and medical devices under any Brexit scenario. The best way to ensure a smooth and orderly exit both for the NHS and the wider economy is to support the deal that the Prime Minister has proposed to the House, as amended by the negotiations being conducted by the Attorney-General. Anyone in this House who cares about the unhindered supply of medicines should vote for that deal.

But leaving the EU without a deal remains the default position under the law and it is incumbent on us to keep people safe. It is therefore vital that adequate contingency measures are in place for any Brexit scenario. Preparing for a no-deal exit has required significant effort from the NHS, the pharmaceutical industry and the whole medical supply chain. I want to pay tribute to their work and thank them for their efforts on these contingency measures. The settlement struck between the Government and Eurotunnel last week is an important part of these measures. Because of the legal action taken by Eurotunnel and the legal risks of the court case, it became clear that without this settlement, we could no longer be confident of the unhindered supply of medicines. Without the settlement, the ferry capacity needed to be confident of supply was at risk. As a Government we could not take that risk and I doubt that anyone in this House would have accepted that risk either.

With this settlement we can be confident, as long as everybody does what they need to do, that supply will continue. While we are disappointed that Eurotunnel took this action in the first place, the House will understand why we acted, so businesses and the NHS could plan with confidence. Under the settlement, Eurotunnel has to spend the money to improve resilience, security and traffic flow at the border, benefiting both passengers and business.

The Department for Transport, on behalf of the whole Government, entered into these contracts in good faith. Our duty is to keep people safe, whatever the complications thrown up by legal process, and while we continue to plan for all eventualities, it is clear that the best way to reduce these risks is to vote for the deal in the days to come".

6.36 pm

Lord Tunnicliffe (Lab): My Lords, I thank the Minister for repeating the Answer, but perhaps I may start by repeating the Question: to ask the Secretary of State for Transport if he will make a Statement on the payment of £33 million to Eurotunnel over no-deal ferry contracts. We make no criticism of the National Health Service or anyone else in the supply chain. This Question is directed at the Department for Transport, in particular its leader, Chris Grayling. His catastrophic handling of the DfT's no-deal preparations is what we are discussing.

Can the Minister spell out in detail why the Government have to pay out £33 million of taxpayers' money? What were the specific mistakes? What are the detailed improvements that Eurotunnel has agreed to make? Will the entire £33 million be spent on improvements and when will they be ready?

Everything the Secretary of State touches seems to go wrong: from 800 trains per day cancelled as a result of the botched timetable introduction, to the east coast main line being brought back into public control. What action is the Secretary of State planning to improve the performance of his department—or is he going to take the advice of my honourable friend in the other place and resign?

The Earl of Courtown: My Lords, the noble Lord, Lord Tunnicliffe, has asked a number of questions. He asked what the payment of £33 million was based on. It followed detailed negotiations, fully informed by legal advice. The figure represents the financial impact of us not having the critical capacity we need if the contracts are cancelled. The noble Lord also asked what this money will be spent on. Under the agreement, the money will be spent on measures that will improve security and traffic flow at the border, benefiting both passengers and businesses. This will include improved access to the UK terminal, increased security protection within the terminal and improved traffic flow. There is a binding obligation to spend the money in these areas.

Baroness Randerson (LD): My Lords, the truth is that the Secretary of State is now regarded as so incompetent by his colleagues that they did not dare let him answer his own questions. I regret the pathetic attempt to dress this up as a Health question, but I am sure the Minister will be more than able to answer my Transport questions.

On 21 January I asked the noble Baroness the Minister:

"What assessment have the Government undertaken of the impact on the Channel Tunnel of additional ferry services which, unlike existing ferry services, will be subsidised by the Government?".

The Minister replied:

"We consider the contracts to be entirely consistent with the Government's agreement with Eurotunnel".—[*Official Report*, 21/1/19; col. 501.]

This started as a piece of post-Christmas pantomime and has descended into Whitehall farce. The Minister stressed to us in earlier answers that the Department for Transport took legal advice from prominent, well-known advisers Slaughter and May, Deloitte and Mott MacDonald. Not only did they apparently fail to notice that Seaborne Freight had no ships and was offering pizzas on its website; they also apparently failed to notice that giving £100 million to subsidise ferries would distort the market, to the obvious disadvantage of Eurotunnel.

I have two questions: can the Government confirm that all three of the Department for Transport's expert advisers were satisfied with this scheme, its probity and its practicality? Can the Minister confirm how much the Government paid for this apparently faulty advice on the ferry contracts that have led to the taxpayer having to dish out a further £33 million?

The Earl of Courtown: My Lords, I thank the noble Baroness, Lady Randerson, for her questions. Her last question was specifically about the cost that was paid. I do not have that figure, but if it is not commercially confidential I will ensure she gets it. The noble Baroness also referred to the Seaborne matter. As she said, due diligence was carried out not only by senior officials at the Department for Transport but by third-party organisations with sufficient experience and expertise in this area, including Deloitte, Mott MacDonald and Slaughter and May. Due diligence was carried out throughout this process, and the fact is that we took careful note of our legal advice on this matter as well.

Baroness Chisholm of Owlpen (Con): My Lords, as a very old nurse I will take this back to health. A lot of people in this country are on long-term medication. Can my noble friend the Minister tell me what conversations the Department of Health and Social Care is having with pharmaceutical companies to make sure there are sufficient medicines in the UK when we leave the EU?

The Earl of Courtown: My Lords, my noble friend asks about sufficient supplies of medicines. I can confirm that we are working closely with pharmaceutical companies to ensure that patients can continue to receive the medicines they need. As I said before, we are confident that the supply of medicines will be uninterrupted in the event of no deal. In addition to extra warehouse space, as a first line of defence industries have been asked to ensure a minimum of six weeks' additional supply in the UK for prescription-only and pharmacy medicines—over and above existing, business-as-usual buffer stocks—by 29 March 2019.

Lord Birt (CB): My Lords, does the Minister accept that the clear implication of this settlement with Eurotunnel is that the original procurement was unlawful? What legal advice on the conduct of the procurement was sought at the time? Was that legal advice ignored?

The Earl of Courtown: No, the legal advice was not ignored. As I said earlier, the legal advice we were given was in line with the expedited form of contract competition that we entered into.

Lord Berkeley (Lab): My Lords, this £33 million to Eurotunnel is nothing more than hush money to shut it up and to avoid the disclosure of something like 1,500 pages of probable rubbish that demonstrates just how bad the procurement process has been. Can the Minister explain how Eurotunnel can possibly spend £33 million in four weeks to improve the movement of medicines across the channel when there is no evidence that there will be a shortage of capacity on any of the ferries or the Channel Tunnel? There will probably be a reduction in demand because of business going down. Surely what the Government need to have arranged in Calais is an enormous car park, with many more people checking the goods going backwards and forwards: it has nothing to do with the capacity on the ferries.

The Earl of Courtown: My Lords, this is all about guaranteeing capacity. As I said before, there are measures to improve security and traffic flow at the border, benefiting both passengers and businesses. This will include improved access to the UK tunnel. This will happen whether there is no deal or we get a deal. So the money will be well spent and this will go on for longer than the next four weeks.

Lord Sherbourne of Didsbury (Con): My Lords, does my noble friend agree that, while this payment to Eurotunnel is highly controversial, for most people in the country the most important point is for the Government to ensure that, in the event of a no-deal Brexit, we have supplies of pharmaceutical and medical products that come into the country effectively and on time?

The Earl of Courtown: My Lords, my noble friend is right. Patients can have confidence in the Government's contingency plans to work with suppliers who provide

[The Earl of Courtown]
medicines and other medical supplies to the UK to ensure the continuity of supply. We have selected the best way of ensuring that patients continue to receive the medicines, devices and medical supplies they need.

Lord Browne of Ladyton (Lab): My Lords, no one believes that this £33 million was paid to Eurotunnel to secure medicines post Brexit. Anyone who knows anything about the legal process knows that, at the door of the court, the Government's lawyers told them, "We need to settle this case"—and they settled it for £33 million to Eurotunnel. The question, which has been posed to the noble Earl twice now, is: did or did not Chris Grayling, when he personally signed these contracts, sign them against any advice that the process that had been undertaken and was challenged in court was anticompetitive and could not be protected against a legal challenge? If all the legal advice was that the process could be protected, are the Government ever going to use these lawyers again?

The Earl of Courtown: We are not publishing our legal advice, but we did not go against it. We had to enter into these contracts—the expedited form of competitive tendering—because the planning assumptions changed and the maritime market was not responding to the risk. As a responsible Government we had to react to ensure the supply of important medicines if we ended up in a no-deal scenario.

Feed-in Tariffs (Closure, etc.) Order 2018

Motion to Regret

6.48 pm

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

That this House regrets, in the light of the worsening climate emergency, that the Feed-in Tariffs (Closure, etc.) Order 2018 will end the export tariff for small-scale renewable energy without any replacement scheme in place; will result in new installations having to export their electricity to the National Grid for free; and will harm jobs and investment in the renewable energy industry (SI 2018/1380).

Relevant document: 12th Report from the Secondary Legislation Scrutiny Committee (Sub-Committee A)

Baroness Jones of Moulsecoomb (GP): My Lords, my regret Motion is against the Government's decision to scrap the feed-in and export tariffs for people who install small-scale renewable energy systems in their homes. I should declare that I have already installed solar panels on my house and am therefore not affected by this measure.

I feel so strongly that it is a bad thing to do that I wanted to table a humble address, but the clerks advised me that I would create a constitutional crisis—and we probably have enough of those going on already. I want to emphasise that the word "regret" does not come anywhere close to my feelings on this issue. The Government have behaved with economic illiteracy and I hope that, towards the end of the debate, I will hear from the Minister that they will pause in the scrapping of the tariff until they have at least determined the level and the timing on the export tariff.

The Feed-in Tariffs (Closure, etc.) Order, currently before this House, will cause enormous damage to our fledgling green economy and wreck our already too slow attempts to deal with climate change. Over the past decade, solar panels have steadily been installed on rooftops around the country. People have saved huge amounts of money on their energy bills and made a significant reduction in their personal impact on the planet. Some local authorities, following the lead of Kirklees Green councillor Andrew Cooper, have been able to use the stability of the feed-in tariff to finance mass deployment of solar panels for some of the poorest residents in their boroughs. In the process, they have created thousands of jobs in a high-skilled, well-paid industry.

It is now undeniable that the world is in a state of climate emergency. Scientists have made it clear that we now have less than 12 years to make massive changes if we are to have any hope of avoiding runaway climate change. The switch away from fossil fuels to renewables is one of the essential changes that we have to make.

The Government's response is that they have steadily cut away at the feed-in tariff scheme and have now finally scrapped it altogether. This is, according to the Government's impact assessment, so that we can reduce people's energy bills by £1 per year—I repeat, £1 per year. The Government suggest that this was the plan all along, and that this is just another step towards a market-based system of renewable energy that must compete cost-for-cost with other sources of energy. That sounds perfectly reasonable—except that it is a fallacy that requires us to pretend that other forms of energy do not receive huge subsidies from the taxpayer, society and the environment. The European Commission has recently published research that shows that the UK has the highest level of fossil fuel subsidies in the EU, and more subsidies for fossil fuels than for renewables. That is shameful and certainly not fair—as well as poor economics.

Coal and oil are not new sources of energy, but they still receive enormous tax breaks to keep them in business. Nuclear energy is being paid double the going rate with government price guarantees, despite the fact that it will take decades for new nuclear power stations to be built, and despite the fact that nuclear has lost all credibility with a large proportion of the nation. Fracking, a whole new source of carbon emissions, seems to be granted new tax breaks in every Budget Statement made by the Government.

There is not a single source of energy that is not heavily subsidised—apart from renewables. Why are renewables held to a higher standard as the only energy source that needs to become financially self-sufficient, in a way that would cripple fossil fuels and nuclear power? If the Government want subsidy-free energy, at least create a level playing field and remove the nuclear and fossil fuel subsidies. Perhaps the Minister will explain to the House why renewables are singled out while the Government continue to create favourable tax incentives, easy planning rules and a strong policy commitment for the polluting energy

sources. The distortionary effect of all this is enormous—a government-backed guarantee that we will be tied into fossil fuels for decades longer than the planet can handle.

Coming back to the statutory instrument and its justification, the Government are suggesting that this is just a stepping stone between the old system of support and a new system, a "smart export guarantee", which will be based around new technology and market innovation. Again, it sounds sensible, but none of that new system exists and there is not yet a market for domestically produced green energy. The Government are doing absolutely nothing to ensure that this changes.

The stark reality is that the Government are throwing the domestic renewable industry off a cliff, with the vague promise that an ambitious new system might appear in time to save it. Plus we have no idea of the rate at which this energy will be valued. Can the Minister let us know whether there is any conclusion on that? Why have the Government decided that for an indeterminate amount of time new domestic renewable installations will have no option but to export the energy they produce to the national grid absolutely free? How that can be considered acceptable to anyone is beyond me. It is state theft and cannot be justified.

If the Government had a policy that resulted in the oil and gas industry producing for free, people would complain that we had turned into a communist country. For some reason, the exact same thing is happening with solar and wind power and it is just fine.

It is true that the renewables industry has made incredible progress in bringing down its costs and that we are approaching a point where it will be able to outcompete fossil fuels on its own. However, it is plain wrong to single renewables out as being the only energy source that should not get any subsidies or tax breaks. We need to do the opposite of this; we should be spending billions of pounds on a green new deal to create a million climate jobs and transform our economy.

Will the Minister explain to this House why the Government are not doing all they can to take climate change seriously? I ask her please not to do a Claire Perry and say how we are world leaders, that we are doing on best on emissions and that sort of thing, when we do not even count all our emissions—for example, we do not count aviation and shipping. For all these reasons, I beg to move.

Lord Teverson (LD): My Lords, I thank the noble Baroness, Lady Jones, for raising this issue and bringing it to the Floor of the House. I commend her passion about the subject; it is completely justified. We should remember that feed-in tariffs have been amazingly successful. As we see from the Explanatory Memorandum and the commentary from the Secondary Legislation Scrutiny Committee, some 800,000 feed-in tariffs have been applied over the period in which they have been in force. One of the great things about them is that they democratise the fight against climate change. Whether they are microschemes or smaller schemes, they allow households, communities, small groups and small businesses to participate in providing renewable energy to the energy system and decarbonising our economy.

I am proud to say that FiTs came in in 2010 and were implemented by the coalition Government as part of the work of the previous Labour Government. The announcement that they would end came in 2015—a dreadful year for climate change—when the Conservative majority Government took over and we had announcements about this, the end of carbon capture and storage experiments, the end of zero-carbon homes and many other examples of decarbonisation and "all that green crap" disappearing from our legislation and our climate change targets.

As was shown during the coalition period, Liberal Democrats agree as much as anybody else that renewables and the public money put into them need to provide value for money. I have no problem with tariffs being brought down to reflect cost levels, as long as that is done in a smooth way that industry can predict, whereby the rate of return remains sensible for investors, whether they are firms or households.

What we have here is the stopping of the system altogether. Once again, it is an example of the green vandalism we have seen so much of in renewables, affecting jobs and green industry. There has been a failure to provide continuity of employment and skills, and no growth of private-sector green businesses. This secondary legislation is an example of that. We have taken away one of the ways in which communities, households and small businesses can participate, resulting in another body blow to the small-scale renewables industry.

The noble Baroness referred to the export tariff. I find it unfathomable. Claire Perry, the Minister for climate change, said that there will be export payments, but there was a major gap between that and the original announcement of this government policy. That meant the industry had a major shock, and only later was that repaired by some very vague references. The consultation period has not ended. We come to the end of FiTs on 31 March, and we are bound to have a gap during which the industry will not know what is happening. I do not know what went through BEIS's mind as a department. From 1 April—very appropriately—consumers were going to give free energy to major energy companies. This was one of the greatest ironies and a huge political mistake. Yes, the department has decided to change that, but very late and leaving a gap. We still do not know what the change is.

7 pm

Turning to another government policy failure, I would like to ask the Minister about smart meters. Monitoring what is exported by customers through smart meters is the only way I can see the export tariff being repaired and brought in. That seems the way the Government are likely to go. Will SMETS 1 meters, which are often installed when people change electricity supplier, be able to cope with future export tariffs? Can the Minister tell us when the communications issues that almost completely stopped SMETS 2 meters being used in the north of the UK will be solved? Only after that is done can I see any future form of export tariff working in practice.

The issue comes back to the Government's inability to carry out its smart meter rollout program. How do they get SMETS 1 meters to actually communicate

[LORD TEVERSON]
with the DCC? How quickly will that happen? When will we sort out the communication problems with SMETS 2 meters that affect half the UK?

The Lord Bishop of Salisbury: My Lords, I support the noble Baroness's Motion of regret. It is almost inevitable that a debate such as this will range more widely than the specific issues that the noble Baroness is focused on. I hope your Lordships will forgive me for beginning in Salisbury, my cathedral city, on a day when there has been a considerable amount of reflection about events there a year ago and their significance for the city and internationally.

We were grateful for the Prime Minister's visit earlier today. I particularly thank the council, Wiltshire Police and the fire and ambulance services, as well as the district hospital, Porton Down and the military, for their commitment through the year. Wiltshire Council has led a programme of recovery. Although business is still badly affected, we are making progress. We are grateful for the involvement of the noble Lord, Lord Henley.

From those ghastly events that began to unfold a year ago, we have learned not just about the need to recover but about using a crisis as an opportunity to rethink what sort of city Salisbury can be. The same is true of the environmental crisis we face. Wiltshire Council recognised last week that this climate emergency is such that it committed to make Wiltshire carbon neutral by 2030. There is a real sense of urgency locally about what this means. For the Lords spiritual, this is about the care of God's creation and living out of reverence for life with a spirituality that addresses the issues of the day. Species depletion, pollution, soil degradation and climate change are all strongly caused by us—human beings.

The UK gave strong leadership at the Paris summit in 2015. There are areas where we have led strongly. There are huge business opportunities as we develop new technology to support a carbon-neutral future. Rather than seeing this as a burden, it is a much more attractive possibility to see that we are doing this for the love of creation and life. There are opportunities for development and growth within this. A different sort of future is being glimpsed. The urgency is such that we do not know whether we are too late. However, the implications are severe. We therefore sense the urgency of those who talk about extinction rebellion and the more apocalyptic scenarios presented to us on a regular basis.

The purpose of biblical apocalyptic is not to paralyse but to encourage a radical change of life. It draws on past experience to understand present circumstance, and reveals truth in such a way as to change behaviour: to encourage good action with faith, strong values and creative purpose. We need both vision and purpose. A task without a vision is a drudge, and a vision without a task is an illusion; but a vision with a task is the hope of the world. The task of this House is both to help envision the future and to work out practical policy, in reality. What steps do we need to take to move from where we are to where we need to be?

There is a huge amount happening. At the climate change summit in San Francisco in September, Christiana Figueres, who chaired the Paris summit, said that the response to climate change is happening at a pace that few of us could have hoped for 10 years ago. She said that we are making progress through good climate leadership, market forces and the digital revolution. At that summit the glass was very much half-full, but there are days when it feels less positive. By the Government's own admission, the very sharp decline in feed-in tariffs last year removed 18,000 jobs from the economy. There is a very subtle balance between supporting new technology, enabling public engagement and creating a fair marketplace in which people who want to do the right thing are enabled to do so with some ease.

Energy is subsidised in a variety of ways. The noble Baroness said in her opening remarks that all energy sources are subsidised. We need to develop a range of resources, but we need to focus now on developing carbon-neutral, sustainable energy supplies in which solar, wind and tidal will play an increasing part. The development of solar energy still has some way to go.

The climate change committee is doing some work on what is needed for the UK to contribute to the global target of no more than 1.5 degrees centigrade warming on pre-industrial levels. A lot of quick wins need to be made. New houses should be built to the highest environmental standards; retrofitting them is more expensive and less satisfactory than building really energy-efficient homes with good insulation. Similarly, we need to develop micro solar projects: the sorts of things that have been developed on many houses. They depend on a simple relationship between consumption and production, and the feed-in tariffs recognised this. The gap that has opened between people producing solar energy in their homes and contributing to the national grid but not being paid for it seems quite extraordinary. We need to encourage people to do the right things with their own homes, and to develop good local micro-projects.

The purpose of this debate must be to point out the inconsistency of government approach between vision and reality. I am grateful to the noble Baroness for securing the debate. I add my voice to those who ask the Government to review their actions so as to connect vison and reality in ways that will encourage all of us to do the right thing at a local level.

Lord Grantchester (Lab): I thank the noble Baroness, Lady Jones of Moulsecoomb, for bringing the attention of the House to this negative SI. I have always found the designation of instruments as affirmative or negative rather arcane, and either can be the case following substantial changes in government policy. I thank your Lordships' Secondary Legislation Scrutiny Committee for recommending that the order be brought to the public interest; otherwise, it would have become operable without comment or scrutiny under the negative procedure. It certainly follows the Conservative Government's pattern of behaviour to cut, curtail, restrain and restrict sensible, positive climate change policies.

In 2015 the new Conservative Government announced that they were going to scrap green taxes and levies in general, and in particular that the tariff for the generation of renewable energy to new entrants under the FIT

scheme would end in March 2019. With so many policy swings, the result is that the UK is no longer on course to meet the fourth and fifth carbon budgets recommended by the Committee on Climate Change; wind and solar deployment have been severely curtailed, resulting in a severe recession in the industry; and policy reversals have shattered investor confidence. Many important projects, such as CCS, have also been cancelled and scrapped. All this is at a time when the Intergovernmental Panel on Climate Change has come forward with updated warnings about global temperatures by 2050.

The order takes advantage of the timed scrapping of the tariff for the generation of renewable energy under the FiT scheme and adds to it by scrapping the export tariff on surplus small-scale generated electricity to the grid, so that both coincide. The Government knew there would be serious concerns about this decision because they consulted on it, with the result that a massive 91% of responses opposed the plans, but they carried on anyway. That such a large proportion of representations against the change were ignored raises the question of why industry and the public should bother engaging with the Government. What can the Minister say to convince the public that it is worth their while to engage in consultations in future? Will their expertise be listened to?

As the Motion points out, future entrants to small-scale generation will have to provide surplus electricity to the grid for free. Respondents to the consultation are correct that this change of policy is incompatible with the Government's climate change targets and responsibilities. It can have only a destabilising effect on the renewables sector and jobs. It denies a route to market for small-scale generators that encourages everyone to do their bit to alleviate climate change. Of course, as technology develops the costs of low-carbon generation decline and over time there will be less of a need for support, but it must also be pointed out that this is consumer support, not government support. Of course costs on households must be kept to a minimum, but what are these costs? The impact assessment points to an estimated cost saving from scrapping this scheme of £45 million a year from 2021—a whole £1 per year to the average household. Is that material for this disruption?

Yet the Government admit that there is still a need for a scheme to encourage small-scale generation. It is indeed still necessary. The Minister for Energy and Clean Growth, Claire Perry, recently said that,

"nobody should be providing energy to the grid for free".—[*Official Report*, Commons, 8/1/19; col. 159.]

The Government agree that new entrants will still be needed but they have no replacement. They are consulting on their new scheme—the smart exports guarantee, or SEG—in recognition that the small-scale low-carbon generation electricity market is not yet fully developed and support is still required. It is still a fledgling market and a scheme is still needed but the Government admit that they have not got it ready, so why scrap the existing scheme prematurely? The scheme could continue with less disruption, still with value for money, while the consultation was completed and a new scheme drawn up. How long do the Government expect to take between the end of this consultation and having a smart exports guarantee scheme ready?

The order includes an element of levelisation—charges on suppliers for costs—and the Government would wish to build on suppliers providing remuneration to small-scale low-carbon generators under their new SEG scheme. However, the Solar Trade Association is lobbying for a minimum floor price set at a fair market rate. What guarantee can the Minister give that small-scale generators will not be left in a vulnerable position under these government plans and will be provided with a fair and competitive price? Why not gain experience of this levelisation scheme, continue with the current policies to prevent a clear gap opening up in the market and withdraw the order? Why rush to close the FiT scheme?

The consultation has been damaging to the reputation of the Minister's department. Yes, cost-control measures need to be developed to be effective and proportionate from an administrative perspective, but the scheme has not run its course. The simple question to the Government is: why do you want to do this now?

The noble Lord, Lord Teverson, reminded the House of the Smart Meters Act, which highlighted the Government's turmoil on that matter. We offered the Government more time to get it right. He will remember that the Government foolishly rejected that offer. The turmoil continues.

7.15 pm

Baroness Vere of Norbiton (Con): My Lords, I thank the noble Baroness, Lady Jones of Moulsecoomb, for securing this timely and important debate on the future of small-scale low-carbon generation. I also thank the right reverend Prelate the Bishop of Salisbury for his measured, thought-provoking and sometimes hopeful speech. It was certainly a very welcome contribution.

By way of context, the UK is a world leader in cutting emissions while creating wealth. Between 1990 and 2017, the UK reduced its emissions by over 40% while growing the economy by more than two-thirds—the best performance in the G7 on a per-person basis. According to PwC, the UK has decarbonised its economy at the fastest rate of any G20 country since 2000.

The feed-in tariffs scheme, introduced in 2010, alongside other government schemes, has been instrumental in enabling the UK to build a successful renewables industry in support of this rapid decarbonisation effort. Indeed, renewables accounted for 33.1% of generation in Q3 2018—the highest ever share—and the UK achieved a record 76 hours of continuous coal-free electricity generation in April 2018. Through partnerships with business, we are both tackling climate change and moving to a smart, low-carbon energy system.

We are working with industry to develop an ambitious sector deal for offshore wind, which could result in 10 gigawatts of new capacity, with the opportunity for additional deployment, if this is cost-effective, being built in the 2020s. We have also supported the deployment of new renewable technologies by investing up to £557 million in contracts for difference. Alongside this, and irrespective of the closure of the FiT scheme to new entrants, which was announced in 2015 and comes into force on 1 April 2019, installations already on the scheme will continue to receive support in accordance with the terms they received on joining.

[Baroness Vere of Norbiton]
We recognise the need to go further, building on our remarkable progress in cutting emissions from electricity. The *Clean Growth Strategy* sets out our plans through to 2032, including ambitious proposals on smart systems, housing, business, transport, the natural environment and green finance.

We are delivering a smart and resilient energy system fit for the 21st century that will benefit every home and business. Small-scale generation and battery storage can play a crucial role in cutting carbon emissions as part of this smart, flexible and efficient system, both reducing local demand and providing clean power into the grid when it is needed. But, as the Secretary of State for Business, Energy and Industrial Strategy set out in his lecture "After the trilemma—4 principles for the power sector", consumers of all types should pay a fair share of system costs. While government must be prepared to intervene to provide insurance and optionality, wherever possible we must use market mechanisms to take full advantage of innovation and competition.

In this context, it is worth reflecting on the success of the feed-in tariffs scheme and the reasons it is no longer aligned with the Government's vision for a smarter, flexible energy system that minimises support costs to consumers. The scheme has made an important contribution to renewable generation and it outstripped predictions. It generates enough electricity to power 2 million homes. Since 2010, the scheme has supported over 830,000 installations and been instrumental in helping to grow the small-scale low-carbon sector. Our support has contributed to lowering the cost of renewable energy significantly. However, to date over £5.9 billion has been spent through FiTs to support small-scale renewables, and over £30 billion is expected to be spent in continuing to support the existing installations over the scheme's lifetime. All bill payers share these costs, and the FiT scheme currently adds £14 a year to the average household energy bill, at a time when the focus is also on reducing average bills.

This consumer-funded subsidy model does not align with the wider government approach to minimising support costs on consumers. Take solar as an example: 99% of FiT schemes are solar PV. The support these installations receive comes directly from consumer bills; as hardware costs fall, it is vital that we control the impact on bills and move towards subsidy-free solar deployment.

Furthermore, looking specifically at the FiT export tariff, it is a flat-rate tariff that does not reflect the actual value of the electricity at the time of export, and is mainly issued on estimated exports to the grid, rather than actual measured values. It may be that payments are being made for electricity that has not been generated and fed into the grid. This stifles innovation in export tariff design and in technical solutions to track or shift time of export in a way that would provide whole-system benefits. Therefore, as this successful scheme closes to new entrants—new, not existing—we need to develop a market that sends the right signals to incentivise investment in local generation and storage, in a way that makes sense for a smarter system.

The Government have recognised that green power will likely be the cheapest power by the mid-2020s, and the prospect of subsidy-free solar PV is becoming increasingly realistic for developers. Two such sites have already deployed in the UK and the planned construction of two more large-scale subsidy-free solar projects has recently been announced. Alongside this, a range of emerging technologies, including electric vehicles, smart appliances and battery storage, are being developed that can work alongside solar and help to decarbonise our economy. For example, while the cost of solar cells has fallen by 80% since 2008, the cost of lithium-ion batteries has also fallen by over 70% since 2010 and is expected to halve again by 2030, according to industry experts. Companies in the UK, such as Moixa, are taking advantage of this reduction in costs and installing their battery systems in homes and businesses in the UK and abroad.

Increasingly, business investment in renewable projects and smart energy technologies will unlock growth in the UK solar industry. This market-led innovation in energy is absolutely key to our modern industrial strategy and our clean growth strategy. If we deploy smart, flexible technologies, we could save the UK between £17 billion and £40 billion by 2050, and this would benefit both consumers and the environment.

Turning to the smart export guarantee, we recognise the need to ensure that while these smart innovations are developed, consumers do not give away the power they have generated for free simply because suppliers are not yet ready to provide payment for their export. That is why we are consulting on a smart export guarantee. It provides a guaranteed route to market for small-scale low-carbon generation. We expect to see suppliers bidding competitively for electricity to give exporters the best market price, while providing the local grid with more clean, green energy.

I am sure noble Lords will appreciate a little more detail on the smart export guarantee. The Government are proposing to mandate that larger electricity suppliers—those with over 250,000 customers—offer small-scale generators a price per kilowatt hour which is exported to the grid. The remuneration will be available to all the technologies currently eligible for the FiT scheme—up to 5 megawatts. Suppliers will be obligated to provide at least one tariff. The consultation proposed five possible options for tariff design, and when we see the results of the consultation we will be able to bring forward further details. We are also guaranteeing that remuneration must be greater than zero, even at times when negative pricing would be in effect.

The noble Lord, Lord Grantchester, asked about the timing of this and, as I am sure he knows, the consultation closes tomorrow. We will analyse the responses to the consultation very quickly. We propose to bring forward proposals in this area as soon as possible; we do not want to see a significant hiatus between the closure of the FiT scheme and the SEG scheme coming into force. Of course, after any installation of capacity between the two schemes, that capacity would then be able to sign up for the SEG scheme when it is operational.

On the point about £1 a year made by the noble Baroness, Lady Jones, and the noble Lord, Lord Grantchester, it is true that that is for the export tariff, but I have already discussed this and why it does not represent good value for money for anybody. I also mentioned that it is £14 a year for consumers—that is all consumers, including the most vulnerable. That is a really important point that we sometimes forget: often, the people benefiting most from the FiT scheme are those who have the capacity and the agency to get solar panels fitted on to their very large houses, which is not necessarily the case for those who live in slightly smaller houses.

The noble Lord, Lord Teverson, asked about smart meters, a topic close to his heart, and indeed mine because we debated that Bill earlier. We are not aware of any technological reasons why smart meters cannot be installed in premises with generating facilities. Certainly, I will investigate further and respond to him because he asked for more detail about SMETS 1 and SMETS 2, so I will have to find some more information about that.

The right reverend Prelate the Bishop of Salisbury expressed concerns about jobs in this sector. Certainly, this is a highly skilled sector. While we expect that some people will have to shift jobs—it is very difficult to quantify the impact across the different technologies, capacity sizes and regions—we have not been able to quantify the job losses, if any.

The noble Baroness, Lady Jones, talked about a wide range of issues, going far beyond the FiT scheme we are discussing today. It is a topic worthy of a much longer debate. It is the Government's position that we do not provide subsidies for the production of fossil fuels—the noble Baroness is looking at me aghast. We would never be able to do the issue justice in the very short time we have today, drilling down into the necessary detail.

Building on the considerable success of the feed-in tariff scheme, the smart export guarantee will ensure that small-scale, low-carbon generators do not export their electricity to the grid for free while also protecting consumers from unfair cost burdens. The SEG would provide space for innovative market solutions to come forward, reinforcing our vision for smarter, cleaner and more flexible energy systems. As a reminder, the consultation on these proposals remains open until tomorrow and I encourage all noble Lords to engage in the wider conversation around delivering this vision.

Lord Teverson: My Lords, may I be clear on what the Minister is saying? I thought she was quite positive in some areas. Was she saying that the Government intend that there will not be a gap when the exports finish—not a guarantee, but an intention? If there was a gap, would there be a reimbursement during that time? That is what I heard.

Baroness Vere of Norbiton: I am afraid that the noble Lord heard incorrectly and I apologise if that was what was understood from my description of what will happen. The consultation closes tomorrow; we will look at the consultation responses as soon as we possibly can. It is our intention to bring forward the new scheme as soon as possible, but we recognise that there will be a hiatus between the two schemes. However, anybody installing generating capacity between the two schemes will, of course, be able to sign up to the SEG when it becomes available. Installing generating capacity also means that they can take advantage of their own home-generated energy, so it has many advantages.

Baroness Jones of Moulsecoomb: My Lords, I thank all noble Lords who have contributed to this debate. I am always impressed by the ability of the noble Lord, Lord Teverson, to speak without notes, which I am afraid I can never do for that long. It was very good to hear from the right reverend Prelate the Bishop of Salisbury, who expanded on the climate change aspect, which I tend not to do in this Chamber because I think people will get bored by my saying it, so I am delighted that he did. I thank the noble Lord, Lord Grantchester, who talked about a sensible climate change policy, which clearly this Government do not have.

7.30 pm

With all respect, I listened very attentively to the Minister's response and the first eight minutes of her speech bore absolutely no relation to what I had said. She said that renewables work; yes, we know they work. She said that the FiT works; yes we know that it works. There were phrases such as "the consumer should pay a fair share". Does she not think that energy companies ought to pay a fair share as well, rather than getting energy from domestic suppliers for free? The Minister referred to market mechanisms, but the Government are not using them. If they were, I would understand a little better—but these are not market mechanisms. This is about taking something for nothing and giving it away, which is totally unfair. If the Government were able to say either that the gap will be closed or that people who export during a gap will get paid retrospectively for what they have exported, I would be, if not perfectly happy, then at least much happier.

On the Minister's point about affluent people, I do not know who wrote her speech and I realise that she is very constrained in what she can say. But I say to whoever wrote her speech that I dealt with the affluence issue. This is not about only affluent people; some councils have installed solar panels on the houses on the poorest in their boroughs. Those people have benefited hugely, so it is not just the affluent, and I resent that argument being made when it is clearly not true.

What is the point of having a consultation if the Government do not listen to the results? That did not happen, as the noble Lord, Lord Grantchester, pointed out. I can say only that, while the debate has been a good one, the response from the Government was very poor. It makes me wonder what the point of this sort of debate is if the Government do not listen—if they do not understand that it is unacceptable for them not to accept that there could be not just a few jobs lost but thousands of jobs lost, as there were last time when the FiT was reduced. The Government are

[Baroness Jones of Moulsecoomb]
encouraging job losses and encouraging people to lose money by giving away their energy free to companies. Quite frankly, I am incredibly disappointed. I do not know what to say next, but I will withdraw the Motion.

Motion withdrawn.

House adjourned at 7.33 pm.

Grand Committee

Monday 4 March 2019

Arrangement of Business

Announcement

3.30 pm

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

Intellectual Property (Copyright and Related Rights) (Amendment) (EU Exit) Regulations 2018

Considered in Grand Committee

3.30 pm

Moved by ***Lord Henley***

That the Grand Committee do consider the Intellectual Property (Copyright and Related Rights) (Amendment) (EU Exit) Regulations 2018.

Relevant document: 12th Report from the Secondary Legislation Scrutiny Committee (Sub-Committee B)

The Parliamentary Under-Secretary of State, Department for Business, Energy and Industrial Strategy (Lord Henley) (Con): My Lords, the regulations were laid before the House on 19 December 2018.

Copyright law is largely harmonised internationally by a series of multilateral treaties, to which the UK and most other countries are party. Our membership of these treaties does not depend on our relationship with the EU and ensures that, in all scenarios after exit, UK copyright works will continue to receive protection around the world. Conversely, foreign works will continue to receive protection in the UK. However, there is a body of EU law on copyright that goes beyond the provisions of these international agreements. This has introduced EU-only rights—such as the sui generis database right, which provides EU-wide protection for EU database creators—and arrangements that facilitate the use of copyright content in cross-border services, such as the copyright country-of-origin principle, under which satellite broadcasters transmitting films and other copyright-protected works across the EU need permission from the copyright owner only for the state in which a broadcast originates, rather than in every state in which it is received.

A significant portion of UK copyright legislation derives from the EU copyright acquis and therefore includes references to the EU and member states. Without amendment, many of these references would become inappropriate after exit, either because they presuppose the UK's membership of the EU and will not make sense once we are no longer a member state, or because they implement EU cross-border copyright mechanisms that, in a no-deal scenario, will become inoperable.

For those reasons we are introducing this instrument. In broad terms, it will preserve, where possible and appropriate, existing arrangements in UK copyright legislation by making minor, correcting amendments. The only exceptions to this principle of continuity arise in our implementation of some of the EU cross-border copyright mechanisms. It is unavoidable that the reciprocal element of these mechanisms between the EU and UK will become inoperable in a no-deal scenario, because they depend on reciprocal provisions that apply only between member states. This SI therefore amends our implementation of these mechanisms.

In some cases, it is appropriate to continue to extend a cross-border provision to the EU on a unilateral basis, because providing continuity in this way benefits UK consumers or businesses. This is the case for the country-of-origin principle in satellite broadcasting, where maintaining the effect of existing law will support UK consumers' continued access to foreign television programming. For other mechanisms, providing continuity would be detrimental to those in the UK: for example, to continue to provide database rights for EU creators without reciprocal action by the EU would put UK businesses at a competitive disadvantage. This instrument will restrict those mechanisms to operate on a purely domestic basis, or bring them to an end, as appropriate.

We know that there are concerns over lack of consultation, and I would like to offer assurances that we engaged with affected stakeholders as far as possible within the constraints. There is no question that formal consultations are an important part of the process of engagement, but they are not the only part. We have regularly engaged with and listened to the concerns of stakeholders from across the creative and digital industries on an informal basis since the referendum. This engagement has given us a sound basis from which to prepare these regulations, and we are grateful to all those who have shared their views on copyright and EU exit.

In support of this instrument, we have published three impact assessments, each of which has been green-rated by the independent Regulatory Policy Committee. Those correspond to three of the most significant cross-border mechanisms: sui generis database rights; the copyright country-of-origin principle; and cross-border portability of online content services, which allows EU consumers to access their online streaming or rental services as if they are at home when they visit another member state.

Both the Secondary Legislation Scrutiny Committee and the European Statutory Instruments Committee commented that those assessments did not provide sufficient detail on the impacts of no deal on UK stakeholders. The reason is the same in each case: impacts on UK consumers, rights holders and broadcasters will result from the UK being treated as a third country in a no-deal scenario—not from these regulations, which amend the UK's implementation of the cross-border provisions and will primarily affect EU rights holders, consumers and broadcasters.

In line with the better regulation framework, the impact assessments consider the effects of this instrument, and not the impacts that arise from the legislation of other countries and which we cannot avoid in a no-deal situation. However, we recognise that these impacts exist and that UK stakeholders will need to be aware

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of them. That is why the Government published in November 2018 a long-term economic analysis of the impacts of leaving the EU, and detailed guidance on what a no-deal Brexit would mean for copyright and related rights. That gives consumers, rights holders, businesses and other organisations the information that they need, in plain English, to make informed preparations for all outcomes.

These regulations will provide certainty, clarity and, as far as possible, continuity for UK businesses, rights holders and consumers as we leave the EU. I commend them to the Committee.

Baroness McIntosh of Pickering (Con): My Lords, I am delighted that this statutory instrument is being considered as an affirmative one, which is probably all my fault as I wrote to the relevant committee on 1 November setting out my interest in the subject and why I believed that it should be discussed. My interest dates back to having been an MEP and MP, and I spent time as a stagiaire in DG IV—as it then was—of the EU Commission, although I was concerned more with anti-trust at that time than intellectual property.

I would like to press the Minister on three separate issues, although he will be pleased to know that I am not against the statutory instrument in any shape or form. We are obviously helped by the findings of the two committees, for which I think that this Committee will be grateful. The report of the Secondary Legislation Scrutiny Committee mentions, as one reason why it was critical and thought that the House would benefit from such discussion, the assessment of the impact of the loss of the reciprocities. The Minister referred to that. As UK consumers while in another member state, we were going to lose the right to benefit from Netflix—if we only knew how to do it, of course—but visitors from another member state to this country would continue to benefit.

I understand the conclusion that the Government have drawn. However, given the extensive range of copyright issues covered in this instrument and that it seeks to establish reciprocity in relation to the loss of free access to portable online content services for consumers, how did the department reach that decision without having made an assessment of the impact of that loss on UK consumers?

We have heard from the Minister this afternoon that there has been a broad and general paper, from which I am sure that we will all benefit, but what was the basis for reaching the decision? Has he had any discussions with Ministers of other member states to see whether, having given up reciprocity, there is any way we might revert to it in future when we are negotiating a deal? Is that lost for ever, or is it only in the context of the no-deal statutory instrument before us today?

How wide an impact assessment has the department done in preparing for this statutory instrument? Do we know either how many UK-based broadcasters will be affected, how the loss of portability of online content may impact on UK consumers or how much the facility has been used in the past? From my experience, if you are visiting Brussels in the capacity of an MEP or as a lawyer, I frankly do not think that you would have much time to watch Netflix—I see that the shadow Minister disagrees. However, if you are there on holiday, it would obviously have a greater impact. The conclusion reached by the Secondary Legislation Scrutiny Committee Sub-Committee B is that it would have been helpful to provide more information, if the department has it, on the potential impact of EU exit on both UK businesses and consumers in this area.

We are apparently seeking to preserve the UK's compliance with the requirements of the Marrakesh treaty—where these treaties are drafted and signed seems ever more exotic. I understand that we are seeking to ratify the treaty in our own right. Does my noble friend have a proposed timetable for that? We have learnt from other departments that ratifications of treaties and deals are not quite as straightforward as we might believe. I should be grateful for a response to those questions as well as to my overall question as to whether we are seeking reciprocity in the long term through a deal.

Lord Clement-Jones (LD): My Lords, the noble Baroness, Lady McIntosh, has asked some very pertinent questions which I certainly want to reinforce, and I look forward to what the Minister has to say in response. This is a deceptively short SI, but it deals with a rather large number of important rights, both for business and for the consumer. Even though I agree with the committee that it would have been helpful to provide more information on the potential impact of EU exit on UK businesses and consumers in these areas, at least the impact assessment set out the general impact in broad terms. The Minister used the word "unavoidable". Sadly, I do not think that there are any alternative solutions to the issues set out in the statutory instrument.

What does the Minister consider to be the actual impact? As with all the SI impact statements, the assessment for this one says that, pretty much, the only impacts are a result not of the SI but of leaving the EU, becoming a third country and so on. However, there are substantial impacts as a result of consumers not having such rights and broadcast businesses not having the rights under the cable and satellite directive. Indeed, business has a double whammy because, as was discussed on 6 February, under the AVMS directive—as my noble friend Lord Foster pointed out, it deals not so much with copyright as with regulation—broadcasters will have a real problem in terms of the country of origin and regulation. So it is not just copyright and clearance issues that will add to the burden of cost; it is the certainty of regulation. It is no wonder that, already, a large number of broadcasters that broadcast into the European Union and have relied on the country-of-origin principle are upping sticks and moving to places such as Amsterdam.

At least for the AVMS directive there is some consolation in the Council of Europe regulations, but for a more limited range of material. Unless the Minister can correct me, I do not believe that there are any consolations on copyright clearance for broadcasters. This really is damaging.

3.45 pm

I noted what the Minister said on consultation, and we have had endless discussions about the level of consultation. He said that the IPO had engaged with

affected stakeholders, but I am very interested to know who he has managed to talk to, especially on the consumer side.

The portability aspect is a new right. It was rather treasured by many consumers, I think, and now it is being taken away. The noble Baroness, Lady McIntosh, was absolutely right to ask the question she did. Perhaps I am looking for unicorns but, if we were negotiating with the EU post Brexit, would we be seeking to reinstate portability? As I said, it is a treasured right that was introduced after a large number of years by a very effective EU Commissioner.

I also support the noble Baroness, Lady McIntosh, in wondering when the Marrakesh treaty will be ratified. Obviously that is of considerable importance for that particular right. Again, it was hard-fought for and is very important for those who are disadvantaged. Perhaps the Minister could give us a timescale within which it is proposed to do that.

I hope I have covered all the points, but perhaps the Minister can give some indication as to what he thinks the real cost is. I do not know whether the overarching impact assessment given by the Government gets into that kind of detail—I doubt it very much. No doubt the Minister has all the facts at his disposal.

Lord McNicol of West Kilbride (Lab): My Lords, I thank the Minister for his introduction. We broadly accept the position of the department. However, as the noble Baroness, Lady McIntosh, and the noble Lord, Lord Clement-Jones, have touched on, a number of issues are staring at us, both in the impact assessment and in the SI itself. I will not go through all these, because most of the main points have been picked up. However, the Minister touched on the issue of no deal and the problems associated with it. Obviously, if we were to rule out a no-deal scenario, many of the issues would be dealt with and we would not be having these conversations.

Following on from the final point of the noble Lord, Lord Clement-Jones, he will find that the answers are not within the impact assessment, especially on cost and finances. Page 2 of the first two of the three impact assessments, under the heading "Full Economic Assessment", looks at both the costs and the benefits. In both, the first line states:

"It has not been possible to monetise the costs due to a lack of available data".

Unfortunately, I do not think there will be detailed answers on the costs, whether to the consumers or to the industry, because of the lack of available data.

That feeds into the Secondary Legislation Scrutiny Committee's points, which, because the Minister obviously knew they were coming, I am addressing head-on. I do not think there has been a clear enough answer to them. The committee is of the view that it would have been helpful to provide more information on the potential impact of EU exit to UK businesses and consumers in these areas. That is an indictment not of the department, but of the work that has gone into finding out the impact of this.

Lord Clement-Jones: Does the noble Lord not agree that, if consultation had been carried out with the right people, we might have discovered what those costs are?

Lord McNicol of West Kilbride: Well, my next point is on lack of consultation. The Minister touched on this because, again, he obviously saw this coming down the line. There was no detail in the statement about the stakeholders. In fact, there was a comment—unfortunately I have not written it down—on how consultation has been ongoing since the decision was taken on Brexit. That may well the case, but the specifics of the issues around this area are really important. It would have been nice, and still would be, to get a little more detail on who the consulted stakeholders are, when they were consulted and what that consultation looked like.

I will pick up on another of the Minister's comments. To paraphrase, he said that the general public will know about this because we have this information about the loss of reciprocity on our website. Until picking up this SI and coming here to respond on behalf of the Opposition, I was not aware—which was obviously my fault—that reciprocity would be lost following no deal or the UK's going into a third-country situation. The idea that it is widely known that individuals will lose access to online content—whether it be Netflix, iTunes or other aspects of it—is just not correct. If we are going to end up in this situation, some information from the department to the wider British public, whether through the businesses or the organisations, would be a good thing. It would make the public aware of what was coming down the line if we ended up with no deal.

I will not pick up on all the other issues; they were covered very well by the noble Baroness and the noble Lord. I am sure the Minister will pick up on the points about the Marrakesh treaty, so I will leave it there.

Lord Henley: I thank all noble Lords for their contributions. I will start off with consultation. At the time we were developing these regulations, we were in the early stage of negotiations. Revealing our continuity of approach through a public consultation might have risked our negotiating position, so it was not possible to conduct that full formal public consultation of the sort one would normally like. Within those constraints, the Government engaged with stakeholders in the creative and digital industries as far as possible: in August last year, officials in the department held a whole series of industry round tables to discuss no-deal planning with publishers, collective management organisations, broadcasters, technology firms, museums, archives and educational establishments. I could undoubtedly write to noble Lords and give them greater detail—for example, on the alliance for IP and the British Copyright Council, both of which are representative bodies that cover a broad range of copyright needs. I believe we engaged as far as was right and proper.

However, as the noble Lord, Lord Clement-Jones, and my noble friend Lady McIntosh, stressed, there is an impact from no deal. We did an impact assessment on these regulations and the impact is minimal, but the wider impact of leaving without a deal will be greater. We recognise that leaving the EU without a deal will lead to disruption in the field of intellectual property for the UK's creative industries. However, in passing this instrument, we will provide continuity wherever possible and, where changes to existing arrangements are unavoidable, we will ensure that

[Lord Henley]
clear and appropriate legislation is in place. I believe that that will minimise, as far as possible, disruption to the creative and digital industries, whose work obviously depends on an effective intellectual property framework.

The noble Lord, Lord Clement-Jones, asked what the Government were doing to support UK broadcasters facing the loss of the AVMSD and the copyright country-of-origin principle. I assure him that it is still the Government's intention to secure an agreement with the EU on our future relationship, and we set that out in last year's White Paper. We want any deal to involve the best possible arrangements for the broadcasting sector. If we leave without a deal, broadcasters might face disruption due to the EU copyright country-of-origin principle ceasing to apply to the UK. Therefore, again, we sought to give broadcasters and others as much information as possible about the implications of no deal by publishing technical notices and detailed guidance on what that would mean for copyright. However, I make it clear that we will continue to seek a deal.

I also make it clear to the noble Lord and to my noble friend Lady McIntosh that we will continue to seek reciprocity. The political declaration provides a good basis on which to negotiate our future relationship with the EU on these matters. For copyright, this includes a commitment from both parties to maintain high levels of protection for database rights and artists' resale rights. The specifics of our future relationship with the EU will obviously be the subject of those negotiations. However, as set out in the political declaration, our aim will be to make sure that the agreement continues to stimulate innovation, creativity and economic activity.

Further on reciprocity, the EU portability regulation works through reciprocal application of the cross-border rules. The regulations that we are dealing with today will not cover UK/EU travel in the event of no deal, and the UK obviously cannot replicate the effect of existing arrangements on a unilateral basis. However, keeping the portability regulation in UK law after exit would not have the same effect as an agreement on mutual cross-border portability. Instead, it would place unreciprocated and inappropriate obligations on service providers operating in the UK. Whether we can continue to agree reciprocal portability with the EU will have to be a matter for detailed negotiations. At this stage, I cannot go any further than that.

My noble friend also asked how the IPO came to this decision without an assessment of the loss of service in the UK. UK consumers of online content services might see changes in their services when they visit the EU after exit. This could range from being offered different content to having their access restricted. Ultimately, this will depend on the licences that their service providers have in place and the terms of service. That is a direct result of the UK being considered a third country under the portability regulation. Again, I stress that it is not something that we can deal with unilaterally.

My noble friend also asked about the effect on UK broadcasters. Without a deal, member states may cease to apply the country-of-origin principle to broadcasts from the UK, which will mean that UK broadcasters that transmit across the EU may need to renegotiate their licences to acquire rightholder permissions for every member state in which their broadcast is received. The issue arrives out of EU legislation; again, it is not something that we can address unilaterally.

I turn to the question which all three noble Lords asked about the ratification of the Marrakesh treaty. We are committed to making sure that people with disabilities continue to benefit from improved access to copyright-protected works. We are on track to ensure that we are able to ratify the Marrakesh treaty in our own right as soon as possible after exit. Our ratification will then need to be accepted by the World Intellectual Property Organization before we are once again considered a member of the treaty. While there is likely to be a delay between exit and the acceptance of our ratification in a no-deal scenario, we are working hard to ensure that this will be as short as possible.

There were a few more questions. The noble Lord, Lord McNicol, asked for any further information from the department explaining no-deal issues. I go back to the October 2018 guidance, which sets out in pretty clear terms what no deal means for copyright. I have a little more detail about who we consulted, but I do not think it adds anything to what I said before. I assure noble Lords that this included representatives and trade bodies from commercial broadcasters, collective management organisations, libraries and archives, tech firms, publishers, authors and photographers. I do not think I need to write with any further points. I think that deals with most, if not all, of the points raised, but I see that the noble Lord, Lord Clement-Jones, would like to come in.

Lord Clement-Jones: Could the Minister confirm that nobody at any level of the Government has any clue about the full cost of clearing with all those EU countries, which will now be necessary for those broadcasters?

Lord Henley: My Lords, I am afraid I cannot give any figure of that sort to the noble Lord and I am not sure it will be possible to do so. If I can do better, I will certainly write to him,

Lord McNicol of West Kilbride: On the consultation, the Minister helpfully outlined a number of organisations. Were the SI and the issues around intellectual property that we are discussing today discussed as part of that round table?

Lord Henley: My Lords, I stress—I think I made this clear—that I used the words "round table" in the plural. There were a number of round tables and I am sure matters of the sort that are coming up today were discussed. If they were not, I will certainly write to the noble Lord, but I cannot believe that they were not discussed.

Lord McNicol of West Kilbride: It would be helpful to know with which organisations intellectual property was discussed.

Lord Henley: I commit to writing to both noble Lords on that issue. I beg to move.

Motion agreed.

Designs and International Trademarks (Amendment etc.) (EU Exit) Regulations 2019

Considered in Grand Committee

4.04 pm

Moved by ***Lord Henley***

That the Grand Committee do consider the Designs and International Trademarks (Amendment etc.) (EU Exit) Regulations 2019.

Relevant document: 16th Report from the Secondary Legislation Scrutiny Committee (Sub-Committee B)

The Parliamentary Under-Secretary of State, Department for Business, Energy and Industrial Strategy (Lord Henley) (Con): My Lords, the Intellectual Property Office has been preparing for a range of outcomes to our negotiation with the EU. The regulations form part of that preparation and are intended to ensure that the system governing intellectual property rights in the UK continues to function in the event of no deal being agreed when we leave the EU on 29 March.

For designs, much of our existing domestic legislation derives from EU directives, which are implemented through the Registered Designs Act 1949. Under the EU design regulation, the appearance of a product can be protected under a registered community design, granted by the EU Intellectual Property Office. This system runs in parallel to our domestic system, so protection in the UK can currently be obtained by registration under either or both the EU or UK systems.

Shape and appearance can also be protected under the unregistered community design. This is automatically established when a design is first shown to the public and is particularly valued by design-intensive sectors such as the fashion industry. Like registered design, the UK provides a parallel domestic system. However, the terms of UK unregistered design are different from those of EU unregistered design. After exit, protection in the UK for existing registered and unregistered designs under the EU regulation will be lost. The draft instrument uses the powers provided by the European Union (Withdrawal) Act 2018 to address deficiencies in UK design law that would arise upon exit and to ensure that such EU design rights are not lost.

In addition to the rights granted by the EU Intellectual Property Office, businesses can obtain EU-wide registered design and trademark protection through an international system administered by the World Intellectual Property Organization. This system enables businesses to protect their designs and trademarks in multiple territories via a single application, filed in one language. Both the EU and UK are contracting parties to this system. Like registered EU rights, international EU rights are protected through EU regulations, meaning that a failure to act will result in the protections afforded to these rights also being lost.

This instrument ensures that replacement rights will be provided to those who own registered EU designs on exit day in the form of a "re-registered" UK design. We will preserve UK protection through the "continuing unregistered design" for those who hold unregistered EU design rights at exit day. These new UK design rights will be fully independent of the corresponding EU right. However, they will retain the effective date of the EU design and, in the case of a reregistered design, any other relevant dates that were filed as part of the original EU application.

Because the terms of EU unregistered design right are broader than those provided by existing UK unregistered design, we are also introducing a new type of UK right called "supplementary unregistered design". In doing so, we will ensure that the full range of design protection provided in the UK prior to exit day will remain available after we leave the EU. This new right will function alongside existing UK unregistered design. An EU unregistered design that exists before exit day will continue to provide protection in the UK through the continuing unregistered design, while those who disclose new designs in the UK after exit day will enjoy continued access to the characteristics of EU unregistered design through the new supplementary unregistered design right.

The instrument also ensures that registered designs and trademarks which are protected in the UK through EU designations under the Hague agreement and the Madrid protocol will continue to be protected in the UK after we leave the EU. For international designs that designate the EU, we will create comparable reregistered UK designs just as we are with EU designs registered at the EU Intellectual Property Office. For international trademarks designating the EU, we will create a comparable UK trademark, taking an approach similar to that set out in the EU trademarks exit SI, recently approved by both Houses.

As with reregistered designs and comparable trademarks being created from registered EU designs and trademarks, these new rights will be fully independent of the corresponding international designs and trademarks, but they will inherit their effective dates and will be treated as if applied for and registered under UK law.

The instrument further explains the approach that will be taken for registered community design applications and international design and trademark applications which are pending on exit day. Those with such a pending application will be able to file a new application in the UK, claiming the earlier filing date of the EU application. To claim the earlier filing date, the application must be submitted to the IPO within nine months of exit day.

The instrument also sets out provisions to accommodate other particulars of EU and international design and trademark protection, including deferment of design publication and the use of subsequent designations to create multiple EU protections under a single international trademark registration. As these new UK rights can be challenged, assigned, licensed and renewed in their own right, the instrument also contains provisions to accommodate those procedures.

Finally, there are miscellaneous amendments to existing UK trademark and design law to reflect the fact that the UK will no longer be an EU member state or a member of the European Economic Area. Although this SI has not been subject to a formal consultation, the IPO has discussed options for preserving EU and international design and trademark rights

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with both UK stakeholders and the World Intellectual Property Organization. These regulations represent the culmination of those discussions. The IPO ensured that businesses and legal practitioners were made aware of these changes through technical notices published in September last year, and it will also provide full business guidance once the draft instruments are made.

The regulations are a small but vital part of ensuring that the intellectual property system continues to function if the no-deal outcome arises. I hope that noble Lords will support them and I commend them to the Committee.

Baroness McIntosh of Pickering (Con): My Lords, I thank my noble friend the Minister for setting out the scheme. I have just one or two questions so as to gain a greater understanding of the background.

The Explanatory Note, which forms part of the statutory instrument, states on page 69:

"An impact assessment has not been published for this instrument as no, or no significant, impact on the private, public and voluntary sectors is foreseen".

The Explanatory Memorandum then sets out precisely what the costs are. If the department has not conducted an impact assessment, how can it be sure that no significant costs will arise? If a design is not reregistered, will it lapse? In the view of my noble friend and the department, is a deadline of nine months following exit day for reregistering a design sufficient, given the sheer volume of designs that I understand are in play? There seem to be different figures for the costings, and it would be helpful to know what those costings are.

Paragraph 7.10 on page 5 of the Explanatory Memorandum, under the heading "Deferred publication", says:

"Rights holders with a deferred design at EUIPO that request deferment in the UK will not be able to defer publication for more than 30 months overall".

Therefore, there is a discrepancy, with one deadline being nine months and the other being 30 months. Does that mean that rights holders will have an extension between nine and 30 months? Presumably this would not be affected by something subsequently being negotiated in the event of a deal being agreed, as with earlier statutory instruments. Paragraph 7.10 goes on to say:

"As these designs will already be examined by the EUIPO, no formal examination … will take place at the UK IPO".

That seems sensible indeed.

4.15 pm

The 16th report of Sub-Committee B of the Secondary Legislation Scrutiny Committee concludes that a preliminary estimate of £375,000 is deemed to be the cost of converting some 700,000 RCDs owing to the comparable UK right. That is a major exercise. Clearly, this cost will not be a charge laid at the door of the IPO. The report goes on to state that it will be part of the fees. Does my noble friend or his department envisage a big increase in the level of the fees because of this? The figure of £375,000 was given as a preliminary estimate. However, on page 12 of the Explanatory Memorandum, an estimate of £63,000 a year is given for the average cost,

"in other fees associated with holding a registered design right".

I would like the Grand Committee to have an idea of what the overall fees will be. On page 11, at paragraph 12.3, it is repeated that:

"Holders of RCDs will face the additional cost of renewing the new comparable right in addition to the original RCD".

It goes on to say that, based on the UK renewal costs, the cost is estimated to be £500,000 a year.

We have two different costs: one of £375,000 and one of £500,000. It might be difficult for my noble friend to say what the projected costs will be. Is this something that should cause concern? Is it a one-off cost or an annual cost? Might it stifle future designs?

Lord Clement-Jones (LD): My Lords, as with the last SI, the noble Baroness has put her finger on a large number of issues. Although this SI does not compete with the 600-page one that is still to come, I am afraid that, even at 60 pages, its length demonstrates the number of rights that sadly are going to be lost and which are extremely valuable to designers, particularly fashion designers and particularly at events such as London Fashion Week.

I start by asking whether the Minister could expound the situation as far as the exhaustion of design rights of this nature is concerned. The situation was wonderfully simple for those who wished to exhibit new designs at London Fashion Week, for example, knowing that their designs would be protected on the continent—those who exhibited in Paris had them protected here, and those who exhibited on the catwalk here had them protected all over the EU. Perhaps the Minister will explain what the actual exhaustion situation will be, particularly with the new SUDRs.

The mechanisms are relatively straightforward. These are similar to those adopted for the equivalent of the EU trademark. As I read it, there is a level of automaticity about the registration of the new right. It would be churlish not to welcome the fact it will include the features that are characteristic of the European design right, in terms of lines, contours, colours, shapes, textures and so on. That is an extremely important aspect.

I assume that, although there is a level of automaticity—entirely as the noble Baroness said—the sting will come in the renewal at the end of the three years, or whenever it occurs. The Explanatory Memorandum talks about this costing a total of £500,000. It would be useful to know where that estimate derives from.

Again, we are told that relevant stakeholders were consulted. Can the Minister again unpack whatever round table it was that took place? It is rather like Colonel Mustard in the drawing room: where was the deed done on consultation? It is important that we know when examining these statutory instruments that the right people were consulted and are happy, as far as it is possible to be happy with a no-deal Brexit SI, with the proposals set out. I look forward to hearing what the Minister has to say.

Lord Stevenson of Balmacara (Lab): My Lords, I am very grateful for the comments of the noble Baroness, Lady McIntosh, and the noble Lord, Lord Clement-Jones, which have covered much of the ground that I was going to raise, so I shall not go back over it. As both of them have said, this is a complicated area. My feeling

from the comments made is that it is likely to become more complicated after a no-deal exit, not least because of an additional design right.

On that point, as the noble Lord, Lord Clement-Jones, pointed out, it has taken this rather odd set of circumstances to persuade the Government that there is a problem with our whole range of design rights. We have raised in the House before the question of why there is such a focus in the UK on registered design rights, as against the very much larger number of unregistered design rights used in fast-moving industries such as fashion and why those industries do not use the registration system at all. Bringing in another model just to try to fill a gap seems to overcomplicate the whole structure, although it provides additional cover, as the noble Lord said, and I welcome that.

Does the Minister recognise that an issue is looming here? Do we need another in-depth look at this whole area to try to unbottle some of the problems that we have caused in the past few years by bringing in additional layers of legislation and regulation and consider whether we need a new approach, because the industry has moved away from the current regulatory structures?

Having said that, a number of points raised need answers, and I look forward to hearing what the Minister will say. I have only a couple to mention. The noble Baroness mentioned paragraph 12 of the Explanatory Memorandum. I have two points on that. At paragraph 12.11, there is a rather odd piece of typography. It states:

"An Impact Assessment has not been prepared for this instrument because []."

There are just two square brackets, so we do not know why it was not prepared, although we can guess. Can the Minister confirm why we have not had an impact assessment and not leave us hanging? It is a bit like a missing third act.

I have a point about cost recovery, which was well argued by the noble Baroness. The resourcing issues of this are not small: they may be £500,000, they may be £375,000, but they are still substantial. On a cost-recovery model, who pays? Are we saying that designers currently registering designs—which is about 10% of the total design component of industry—are carrying the costs not only of the existing arrangements but the additional burden of having to produce another registered design system introduced because of the possibility of defects in the relationship of those registered on the European basis? It is all very well saying that this is a benefit to the designers, but it is at a cost. I should be grateful if the Minister would confirm my reading of the situation.

I asked this question on the previous statutory instrument, but I did not get a full answer. We seem again to be engaging in asymmetry. There would be an argument for saying that if we have to have a no-deal exit, when that happens, the arrangements for design protection must be limited to the UK because no reciprocity is promised from the EU, yet here we are saying that we in the UK will continue to recognise the registration process which takes place in EU countries after we leave but are unable to offer that right to those who register designs with the UK, even with the additional right. Why are we doing that? Is that an asymmetric approach, or is there something we do not know about the arrangements that have been made for that? I am not against what has been going on. However, if I am right, I think the consequences are that, while overseas or European designers may benefit from having their designs copyrighted—the catwalk example is a good one, in that you can have a fashion show in Paris and be confident that your designs will be covered in Britain—in Britain, we will not be able to do that because there is no necessary reciprocity. That seems unreasonable and I would be grateful to know who benefits from it when we hear from the Minister.

Lord Henley: My Lords, I will start with consultation and explain what we did. I will not repeat what I said on the previous SI, but the important thing is that, although we were not able to consult fully in the way one might have wished, the IPO has engaged with businesses on the implications of exit ever since the referendum result. We have sought to maximise continuity in the no-deal scenario and in the early stages of negotiation on the future partnership. As I said earlier, revealing the details of our continuity approach through public consultation might have risked that. The individuals who took part in the technical review did so in a personal capacity; we invited all sorts and I hope we had a representative group. They were chosen because of their past experience as representatives of various stakeholder bodies which usually engage in consultation with the IPO.

Lord Stevenson of Balmacara: I thank the Minister for giving way. We have been over this ground before and I do not want to prolong the debate. However, the essential difference that is now emerging across all the SIs that we have been considering is the question of whether consultation has been carried out under Cabinet Office rules or not. If it is done under Cabinet Office rules, there are procedures, processes and resulting consequences, including publication and the reporting of all evidence received. I think we all agree that this would probably have helped materially in the process of going through all these statutory instruments.

The second point is that the consultation has then got to be on an open and representative basis, rather than selecting people from organisations with which the department, quite rightly, has ongoing and continuing discussions. The problem with this approach is that it tends to give the impression that those who have been consulted are speaking in their official capacity, when the Minister is making the point quite clearly that that is not the case and that this is very much an informal, personal discussion, because the consultation is not happening under Cabinet Office rules. That is the point we are all making; I do not think we need to dwell on it, but we should accept that that is the situation so that we do not get mixed up between the two systems.

Lord Henley: I am glad that the noble Lord is prepared to accept that point. Obviously, we could not follow the Cabinet Office rules—I was trying to make that clear. They are not strict in that respect and there was no absolute necessity to follow them on this occasion. However, we wanted to make sure that we consulted enough and consulted appropriate people

[Lord Henley]
to make sure that we were not going into this blind—not that we would have been doing so even if we had not consulted.

I move on to the other hardy perennial—the impact assessment. We assessed the impact using the better regulation framework in line with the Treasury's Green Book guidance. The impact was deemed to be less than £5 million so a full impact assessment was not required. Analysis is focused on the direct impact of the relevant SI compared with the current legislation, and analysis of the wider impacts of the UK's exit from the EU has previously been published in the form of the long-term economic analysis, which was published in November 2018. My noble friend asked how we could be so sure of that. I want to make clear that our renewal fee estimates are based on the proportion of registered community designs currently held by UK businesses. That figure is 7% and the calculation was based on that.

My noble friend then gave the figure of 375,000 or roughly half a million and asked whether the fees would increase because of this. UK-registered design fees were subject to significant reductions in 2017. We have no plans to increase these fees to accommodate the cost of converting registered community designs. My noble friend also asked whether a design would be allowed to lapse if it were not reregistered. Creation of a reregistered design will be automatic—the holder will be granted the reregistered design if he or she holds a registered community design on exit day.

4.30 pm

Lord Clement-Jones: My Lords, I understand that there is provision for reregistration—as the Minister describes it—for European designs that are in the pipeline.

Lord Henley: I think the noble Lord is correct. If I have got that wrong I will write to him. He also asked about designers being able to disclose their unregistered designs in the UK and whether they would be protected from copying in the EU. A registered design will need to be disclosed in the EU first to be protected there should we leave without a deal. The statutory instrument provisions allow us to negotiate reciprocal arrangements on first disclosure with third countries—which may be the EU, individual countries within it or wider—but that has to be a subject for a future agreement.

My noble friend also asked about the discrepancy between the nine months' deadline for pending applications and 30 months for deferred publication. The UK will honour the EU deferment period. We will not allow designs to exceed 30 months in total. Applicants will be allowed to file an application claim for a 12-month UK deferment within the nine-month period. However, in some circumstances the full 30 months will fall short. Unless already subject to deferment, applicants will have only 21 months in total.

Baroness McIntosh of Pickering: Does the Minister think it is clear from the instrument that there is the 21-month discrepancy? He said in moving and introducing the regulations that it was nine months. I picked up from reading the statutory instrument that it was 30 months. He has now said that it will be 21 months. I am concerned that if I were a designer and not au fait with these instruments I would be confused about the period.

Lord Henley: As I said, 21 months is 30 months less nine months. I was trying to make clear that the EU deferment period will not allow designs to exceed 30 months in total. Within the nine-month period, applicants will be allowed to file a UK application claim for a 12-month deferment. However, in some circumstances the full 30 months will fall short, unless already subject to deferment and then applicants will have only 21 months in total. I think it is clear—if not, I might have to write to the noble Baroness, Lady McIntosh, on that matter.

I will move on to the question asked by the noble Lord, Lord Stevenson, about the qualification for holding a UK unregistered design right. Currently, the UK law says that someone who lives in or carries on a business in a member state can claim UK unregistered design protection. That is because of Section 217 of the Copyright, Designs and Patents Act, which says that any qualifying person—someone who lives in or runs a business in the qualifying country, which is defined to include a member state—can claim a UK unregistered design right. If we did not make any change to this, after exit day people and businesses in the EU would be able to claim new UK unregistered design rights while people and businesses in the UK would lose their equivalent rights in the European Union. That would create an imbalance between the UK rights holders and the EU rights holders. The UK law is therefore being amended to limit the geographical criteria for a qualifying person to claim unregistered design protection. That means that, after the UK's departure from the EU, a company based in a member state will not qualify for UK unregistered design.

Finally, I will address a point made by the noble Lord, Lord Clement-Jones, about what would happen if one had a registered community design application which was still pending in the EU Intellectual Property Office on exit day. Businesses with applications which are still pending on exit day must file new UK-registered design applications to obtain continued protection in the UK after exit. However, where a new UK application is filed within nine months of exit day, it will retain the earlier filing date recorded against the corresponding EU application. That will ensure that those with pending registered community design applications will not lose any rights in the UK.

I go back to the point raised by my noble friend, to try to make it a bit clearer, on the nine months provided for pending trademark and design EU applications. The time period was established following informal consultations, and stakeholders who were consulted were content in the main with those nine months. I appreciate it was not the full consultation the noble Lord would have liked.

I think I have answered most of the questions—

Lord Clement-Jones: Before the Minister sits down, could he answer my question on exhaustion of rights?

Lord Henley: I apologise to the noble Lord. Would he be happy to allow me to write to him on exhaustion of rights? I think that might make life easier.

Lord Clement-Jones: I thank the Minister. It is of course a very important aspect for the fashion industry.

Lord Henley: I fully accept that and will certainly write to the noble Lord as soon as possible. I beg to move.

Motion agreed.

Product Safety and Metrology etc. (Amendment etc.) (EU Exit) Regulations 2019

Considered in Grand Committee

4.38 pm

Moved by ***Lord Henley***

That the Grand Committee do consider the Product Safety and Metrology etc. (Amendment etc.) (EU Exit) Regulations 2019.

Relevant document: 17th Report from the Secondary Legislation Scrutiny Committee (Sub-Committee B)

The Parliamentary Under-Secretary of State, Department for Business, Energy and Industrial Strategy (Lord Henley) (Con): My Lords, these regulations were laid before the House on 7 February 2019.

The protection of consumers from unsafe products is at the heart of the legislation before us today. It has a single yet crucial objective—to ensure that, in the event of no deal, the UK continues to have a robust and highly effective product safety and legal metrology regime. It ensures continued protection for consumers across the UK and provides certainty and clarity for businesses.

The UK product safety and legal metrology regime is among the strongest in the world. It is vital that we continue to retain such a robust system, even if the UK leaves the EU without a deal in place. The legislation will not change the existing system or approach taken, which I know is supported by stakeholders. The changes are limited to those necessary to ensure that the 38 product safety and metrology laws it covers will still work effectively on exit.

Before I say more, I would like to explain the approach we have taken, because I appreciate that some noble Lords may have concerns that such a large instrument may be difficult to navigate.

Lord Stevenson of Balmacara (Lab): My Lords, it is not the navigation but the strain on our hands.

Lord Henley: I make no comment.

I assure the Committee that this approach has been designed to increase understanding and reduce the number of similar instruments that would otherwise be needed. Many cross-cutting issues are the same for different products. These have similar definitions, obligations and requirements. As a result they require similar amendments, which it makes sense to group together into one instrument rather than to separate out into many different instruments. Another reason for the size of this instrument is the lengthy technical schedules. These are used widely by industry, and incorporating them here from retained EU law makes it easier for businesses to see and understand the legislation as a whole.

During development of this instrument, we have been mindful of the impact on business of changes to processes as a result of the UK's exit from the EU. Where possible, we have given businesses time to adjust, including an 18-month transition period for importers for any labelling changes and a 90-day transition period for companies notifying key safety information for cosmetic products already on the market. We have also engaged with businesses on the drafting. Drafts of the schedules were shared with stakeholders and feedback obtained. Stakeholders, including trade associations, industry experts and enforcement agencies, took part and welcomed this approach. As a result we have a better understanding of the main requirements and concerns of stakeholders, including businesses, and have been able to reflect these in the legislation that is before us today. In addition, and given the importance of this area of law, we have completed and published a full impact assessment to ensure complete transparency—despite the impact being below the threshold at which an impact assessment is required.

On the detail of the instrument, it is important to repeat that it will not change the UK's approach to product safety. It keeps important elements; for example, it retains the requirement for conformity assessment to ensure that products meet the essential requirements set out in the legislation, including the need for assessment by third-party organisations where that is currently required. It retains the use of standards that give rise to presumptions of conformity with the legislative requirements, making it easier for businesses to ensure that their products are safe by following a designated standard.

Taking action to protect consumers from unsafe products remains vital, and this legislation ensures that the UK's market surveillance system will continue to work to limit the number of unsafe and non-compliant goods available to UK consumers and businesses. It also gives ongoing recognition of existing authorised representatives in the European Economic Area for any appointed before exit, while those after exit will need to be in the UK.

For cosmetic products, due to the risk they pose to human health, responsible persons—who play a key role in ensuring the safety of cosmetic products—will be required to be based in the UK from the point of exit. By addressing these issues we are able to give business certainty and—crucially—we will retain our ability to remove unsafe or non-compliant products from the market.

To conclude, I hope that the Committee will agree that maintaining a functioning product safety framework in the event of no deal is essential both for consumer safety and business confidence. Without this legislation in place, there would be major risks to the safety of consumers—the safety of the toys our children play with, the cosmetics we all use every day, and the electrical items which are found in abundance in our homes. Maintaining these protections is vital to people across the country. I beg to move.

Baroness Crawley (Lab): My Lords, I thank the noble Lord for setting out the Government's position on this SI. When I first lifted the SI, which I understand weighs 4.5 kilograms, my first thought—

Lord Henley: The figure that I have is 2.54 kilograms, but I am quite happy to be corrected.

4.45 pm

Baroness Crawley: Oh, 2.54. I was told that it was 4.5 kilograms, so the figure has doubled. My first thought was: thank goodness for the Explanatory Memorandum. I tried reading the instrument without the Explanatory Memorandum just to torture myself, but I did not get very far without a stiff drink.

When I read the House of Lords Secondary Legislation Scrutiny Committee's acknowledgement that the SI had to be corrected and relaid because of legal drafting errors in an earlier version, it did not fill me with great confidence. The scrutiny sub-committee voiced concern at the department's decision to combine so many different legislative measures in a single statutory instrument, and I certainly agree with that concern. I come to this as a vice-president of the Chartered Trading Standards Institute and as a guardian of hallmarking in the Birmingham Assay Office.

It is virtually impossible to scrutinise this instrument effectively with the crazily reduced time limit of 29 March. The scrutiny sub-committee expressed concern about uncertainty and the impact that leaving the EU's produce safety regime in a no-deal scenario could have on UK consumers and businesses. In that context, I should like to put some questions to the Minister.

On the category of cosmetics, for instance, paragraph 7.19 of the Explanatory Memorandum states that,

"this instrument will make further amendments to ensure the continued protection of UK consumers after exit. In a 'no deal' scenario it is likely that the UK will no longer have access to the EU Cosmetics Products Notification Portal which provides essential information to National Poison Centres to protect public health. Work has already begun on a UK replacement database".

Can the Minister guarantee that no British consumer of cosmetic products will be put at risk of being poisoned? The Explanatory Memorandum uses the phrase "Work has already begun". Will that really reassure British women—the principal consumers of cosmetics—that all cosmetics made at home and abroad will be safe? What will a functioning statute book actually look like in the cosmetics sector, and could rogue cosmetics firms set themselves up with the precise purpose of circumnavigating loose consumer protection in this area and making fast bucks from an overly trusting shopping sector, especially online? Is this the kind of no-deal consequence that we are facing in this sector? Also, what is the timescale for the completion of the UK's replacement cosmetics product portal?

Perhaps I may also ask the Minister a few questions about consultation. Paragraph 10.1 of the Explanatory Memorandum states:

"The Department did not undertake a public consultation".

At least that has the virtue of honesty and brevity. But further down the page we read, at paragraph 10.3:

"Informal consultation has taken place with a good cross-representation of stakeholders, including trade associations and other industry representative bodies across the product areas covered by this instrument".

Can the Minister give us his definition of "informal" and "good", as in,

"good cross-representation of stakeholders"?

How many meetings took place with the stakeholders? Did the cross-representation of stakeholders have the Explanatory Memorandum available when they looked at this SI? If they did not, I admire their superpowers. Did the informal consultation involve, say, trading standards, the Scottish Government or the CBI in all its regional forums, and were the meetings in situ or just a set of emails and phone calls? If we leave the EU without a deal, is this a good time to be "informal" about commercial regulation?

I have a few final questions. On the impact of this SI, paragraph 12.1 of the Explanatory Memorandum states:

"The impact on business has been looked at in an Impact Assessment … for this instrument",

and has been assessed as de minimis. That is all right, then. However, later in the Explanatory Memorandum there is a reference to how much this whole procedure will cost businesses, and it does not seem like small beer. Paragraph 12.3 informs us that some of the 241,000 businesses that are to be affected will try to familiarise themselves with the new inventory of regulations. The cost estimate is put at £19.6 million, which is a substantial sum in itself, on the assumption that the average business leader will need only three hours to build total operational familiarity with these new rules. That is ludicrously optimistic. To take the example of a managing director of a company in Birmingham—a city I know well—which trades across Europe and indeed the world, she can get to work on a Monday morning and will have absorbed the consequences for her business of a no-deal Brexit by lunchtime that day. Is that the Government's professional opinion? I would be grateful for the Minister's response.

Baroness McIntosh of Pickering (Con): My Lords, I am delighted to follow the noble Baroness, because we overlapped for at least five years as Members of the European Parliament. The noble Baroness referred to cosmetics; I think we will both remember the fevered exchange we had with constituents on animal testing. I echo her remarks.

I am sure my noble friend will be only too aware of the criticism that has been levelled at his department, and I feel for him most deeply, because this epic package is the surest cure for insomnia that any Minister could wish for. Could he put our minds at rest, and those of the members of the sub-committee? I am mindful of the problems we have already heard: this instrument had to be reissued because there were minor drafting errors in the original script, plus the fact that the impact assessment was published subsequently, which meant that the scrutiny committee was not able to perform its function because it did not have that document in front of it.

I do not detract from the fact that this is a very necessary piece of legislation, but I hope that this will not be the way forward. There will be instances where regulations fall naturally together, but the very number of pages here, and the fact that this has had to be repeated and that the impact assessment could not be packaged together with it, must surely be a cause of concern for the department. I do not want to go down this path again.

I have a number of questions. The sub-committee noted that there is considerable uncertainty, for reasons that have been well rehearsed, about the possible impact on

UK consumers and businesses of leaving the EU's product safety regime. Does the Minister share the concern of the scrutiny committee's Sub-Committee B about the impact that the loss of access to EU product safety databases could have on UK consumers? Even at this late date, might the department be able to provide that information in writing to the committee before the SI transfers from here to the Chamber? That concerns me, given that it relates to offshore installations, other major industries and explosives as well.

I want to share one anecdote with my noble friend. In a previous ministry—it was the Department of Trade and Industry, under a Conservative Government, I think—it was decreed that second-hand toys could no longer be sold in charity shops because of the danger that the eyes and other pieces might be displaced and be a great safety risk to small children. What I was not prepared for was the amount of correspondence—in those days, they were hard-copy letters; people printed out a standard letter and we received multiples of it because we had thousands of constituents. That was an unintended consequence of the toy safety directive as it was implemented in UK law at that time. One might say that it was gold-plating, so it would be nice to know that nothing is being gold-plated here and that we are just transferring what is already in UK law. If my understanding is correct and we lose access to EU product safety databases, it must surely set alarm bells ringing.

With so many regulations or schedules to regulations bundled together here—and following on from what was itemised by the noble Baroness, Lady Crawley—is my noble friend convinced that we are not missing a matter of public policy here? This is our one opportunity to discuss it before we pass the regulations in the Committee and subsequently in the House.

Baroness Donaghy (Lab): My Lords, I am a member of the statutory instruments Sub-Committee B, along with my noble friend Lord Rooker, who is in his place. I want first to thank the Minister for arranging the briefing meeting that took place last week. It is quite an unusual event for a full-scale briefing invitation to go to all Peers. I think it was at the request of the sub-committee, but it is recognition that this is quite an unusual statutory instrument.

I shall not go over the points raised about the sub-committee's comments. My only question is in reference to the Health and Safety Executive, which is referred to in paragraph 10.2 of the Explanatory Memorandum as one of the organisations that has given technical input. I commented at the briefing and repeat today that this is not the first statutory instrument for which extra resources will be required by the Health and Safety Executive. It should be noted officially that it will be under some strain in completing its responsibilities in this area, particularly as I understand that it has been without a chief executive for at least six months. Can the Minister assure us that some inquiries will be made about why that is and that somebody will be in post as soon as possible?

5pm

The Earl of Lindsay (Con): My Lords, like the noble Baroness, Lady Crawley, I am a vice-president of the Chartered Trading Standards Institute. The other interest I declare—as it is pertinent to the remarks I want to make—is my chairmanship of the government-appointed national accreditation body, the United Kingdom Accreditation Service, or UKAS. In that role, I welcome the work that has gone into this statutory instrument in respect to the transposition of the EU regulation on accreditation. I also welcome the consultative approach taken by BEIS and the Office for Product Safety and Standards with UKAS and other relevant stakeholders and the engagement surrounding that consultation. Like the noble Baroness, Lady Donaghy, I thank the Minister and his officials for the briefing we were offered on this statutory instrument.

I recognise that transposing EU regulations to make them operable under UK law necessitates some changes. None the less, the reassurance that there has been no change to government policy is important. Therefore, UKAS is generally supportive of the way that the accreditation regulations have been transposed. We are reassured by the Government's continuing commitment to maintaining the United Kingdom's regulatory standards for product safety and the conformity assessment activities required for demonstrating compliance. We welcome the fact that UKAS's position as the sole national accreditation body has been retained.

However, there are one or two potentially negative impacts from the amendments to EU Regulation 765/2008, the accreditation and market surveillance regulation amendment. My one question today relates to what measures are in place to prevent a competitive and possibly profit-driven rather than a not-for-profit accreditation market developing for United Kingdom-based conformity assessment bodies. Have the Government considered what else they might do to safeguard UKAS's position as a not-for-profit national accreditation body and to prevent other accreditation bodies offering accreditation in the United Kingdom?

Baroness Burt of Solihull (LD): My Lords, I add my thanks to the Minister for conducting a consultation on this "minor" piece of legislation last week and for his explanatory letter to the noble Lord, Lord Fox, which has been passed on to me. However, after the meeting last week I have rather more questions now than I had in the first place.

In the event of a no-deal Brexit, this SI creates a new independent regime for checking product conformity, initially mirroring EU product-safety standards. The Government have combined 38 measures into one, creating a piece of legislation over 600 pages long. The concerns that I outlined at the meeting—which were subsequently outlined by the noble Baroness, Lady Crawley, as well—regarding the breadth of industries and the number of sectors covered by this instrument remain. It makes it difficult for Parliament to read and scrutinise let alone those organisations to which it actually applies. Any company, small or otherwise, looking at this piece of legislation would be daunted, and I do not accept the argument that the repetition over all the different sectors covered will be reassuring and ensure consistency of treatment between different areas, as was mentioned at the meeting last week.

I also do not think that the 241,000 businesses which will be covered by this instrument will thank the Government for making them wade through so much

[Baroness Burt of Solihull]
paperwork to find what they need. Surely one of the fundamental principles of a democratic society is that people should be able to know what the law is and easily understand how it applies to them. Today's SI has the potential to undermine that principle.

We know that there is a premium on time before 29 March, and we certainly have plenty of SIs to get through, but the Government could have laid each of the measures separately and then grouped them together in smaller debates. Companies, and consumers, will not thank them for this tombstone of an SI.

At the meeting last week, I also raised the costs of implementation, which have been calculated at a total of £25 million. The analysis and evidence summary talks of a corporate manager or director taking an average of three hours to familiarise themselves with the new legislation. The £25 million is supposed to cover an estimated £54 billion-worth of GVA and £63 billion-worth of goods from our exporters to other EU countries, with about £104 billion imported from EU countries.

The impact assessment does not include the wider impact caused by the separation of the UK and EU product safety regimes. It is surely here where the biggest costs to businesses of a damaging no-deal Brexit would lie. No assessment that I can see is made of the cost of relabelling products—removing the old CE marker and substituting the new UKCA one. The manufacturers' organisation Make UK told the BBC that,

"thousands of companies are going to have to spend millions of pounds collectively on changing all their markings to comply with the new mark".

It does not include the cost to British exporters of having to seek approval from two notifying bodies: one based in the UK and one based on the EU.

My first question is: what assessment have the Government made of those costs to UK businesses and what knock-on effect will they have on consumer prices? Is this not another reason why the UK would be foolish to leave on 29 March without a deal? That is a rhetorical question: the Minister and I both know the answer to it.

My second question, to which I would appreciate an answer, regards the impact of a no-deal Brexit on our 176 notified bodies operating in the UK which provide more than 4,000 jobs between them. If the EU does not allow UKCA-marked products to be sold in the EU, there will be no incentive for foreign manufacturers to have their products certified in the UK. They will go to an EU-notified body to receive the CE mark and then import the products into the UK. Does the Minister agree with that assessment? In the light of it, are the Government seeking assurances from the European Commission that it would accept UKCA products in a no-deal scenario?

On the subject of the CE mark, I should like to ask a question on behalf of the charity Electrical Safety First. It is concerned that although the UK Government have created their own mark, it will not be a consumer mark widely recognised by the public. What plans do the Government have to raise awareness of the new mark among consumers? What are the timings and what transition plans are there? Electrical Safety First would like the Government to work with it and industry to raise awareness of the UKCA. That sounds like a fair offer to me. How does the Minister respond?

Next, I should appreciate some clarification on the expiry of the CE mark. The Government have decided that they will continue to allow products imported from the EU that bear the CE mark to be sold on the UK market and that this will happen unilaterally, regardless of whether the EU agrees to allow UKCA-marked products to be sold to the EU. At the meeting with the Minister, he referred to a transition period of 18 months using the existing marks for importers, and to one of 90 days for cosmetic product imports. We discussed that earlier today. But there appears to be no sunset clause on the SI. I presume the Government will have to change the law to ban CE marked-products from being sold in the UK should they ever wish to do so. Can the Minister clarify whether that is correct?

Finally, I will mention market surveillance. The UK will lose access to RAPEX—the EU's rapid alert system—and ICSMS, the Information and Communication System on Market Surveillance, which we will replace with our own databases for market surveillance and public protection to help remove unsafe or non-compliant products from the UK market. The charity Electrical Safety First is unsurprisingly exercised about counterfeit goods as well, particularly those sold online. What plans are there to prevent more counterfeit and substandard electrical goods from being sold, particularly online, after Brexit?

I am sorry for the length of my remarks and promise to make it up to the Minister in the next SI, but this is, as I have mentioned, an inordinately long one. I appreciate that I have asked a lot of questions, so will the Minister undertake to write to me on any he may not manage to answer today?

Lord Stevenson of Balmacara: My Lords, I join other noble Lords in thanking the Minister for organising the meeting held last week on this SI—as has been said, it was very useful in covering a lot of the ground that otherwise would have needed to be raised today. It is interesting to have had the experience of going through such an extraordinarily large tome with so many details; it took me into areas of public policy where I did not think I would ever have to go. I particularly enjoyed, and of course immediately read first, the intoxicating liquor order 1988, which was closely followed by the strawberry regulations. Both were of immense interest and, for those who have not yet managed to get that far through the document, worth the journey.

I will not raise many of the points which have been made, but I will come back to a point raised during the meeting which has not yet been properly answered. There is substantial additional work implicit in the change in regulations, which has already been mentioned by the noble Earl, Lord Lindsay, and my noble friend Lady Donaghy, for the United Kingdom Accreditation Service and the Health and Safety Executive. It is not yet clear that the additional resources that may be required will be funded and that support will be offered. Could the Minister confirm that that will be the case?

Additional work will clearly be required; it may be of a short-term and temporary nature, but I suspect that it will be continuing. Assurances need to be given that the additional work will be properly covered, or we will lose.

On that same theme, the Minister said as he introduced this that it was really all about consumer confidence and product safety. Of course, that will be only as good as the body and individuals which have to police it. That will largely fall to trading standards—we have already discussed some of the issues that are raised in this. I asked at the meeting, and ask again: what will the financial arrangement be for this? Clearly we want good product safety and consumer confidence, but will get them only if we pay for them. In the past it has been assumed that the additional work can be picked up by those responsible for trading standards, which are largely local authorities. When primary legislation has gone through this House in the past, we have also asked these questions and had assurances that substantive new additional work applying from primary legislation—such as the recent Bills going through this House—would be funded. Indeed, mechanisms for that have already been described and put in place. Can we again have some confirmation that the additionality implied in these regulations will also be funded?

Lord Henley: My Lords, I forget who it was who said, "Never apologise, never explain", but I will start with an apology for the sheer size of this SI, which has received some comment—not just at this meeting, but at the meeting I held last week. I am grateful for the comments made by all those who came to that meeting and more widely by others, particularly the concerns of the Secondary Legislation Scrutiny Committee, on which the noble Baroness, Lady Donaghy, and the noble Lord, Lord Rooker, sit. I also discussed that with the chairman of that committee, the noble Lord, Lord Cunningham. I know he has also had correspondence with my honourable friend Kelly Tolhurst, who has ministerial responsibility for these matters within the department, and with my right honourable friend the Secretary of State.

5.15 pm

I hope that we have made some progress in explaining why we thought it necessary to have such a large SI, with the measures being dealt with together rather than being laid separately, as the noble Baroness, Lady Burt, suggested. One can argue it both ways. I think that it helps. It might have created something of a joke for those dealing with the vast number of no-deal SIs, and I am the unfortunate person who happens to be in the department with the largest number. However, the noble Baroness, Lady Burt, emphasises that she too is unfortunate, and that is true also of those on the committee who had to scrutinise the SI. However, I think that in the end it was the right decision. The noble Baroness, Lady Burt, talked about organisations being daunted by the sheer size of it. I hope that setting out all the legal requirements makes it easier for them, and we are working on a very extensive package of guidance, which will provide clarity for businesses, market surveillance authorities and consumers.

The noble Baroness, Lady Crawley, said that she would have liked to see a little more about consultation. I appreciate that we produced a draft SI and then had to produce another one as there were some small changes, but they were small changes in a very large SI. We invited stakeholders to review the draft SI and shared it with them via reading rooms and in face-to-face meetings. I think that stakeholders were supportive of being engaged with in this way and felt reassured by that approach. In addition, their feedback enabled us to make some drafting amendments where appropriate.

We have continued to keep in touch with stakeholders and have updated them via email or in one-to-one meetings. We have attended a number of industry events to discuss the implications of no deal, including an event with the cosmetics association, the British Toy & Hobby Association and the British Retail Consortium, and there will be upcoming events with techUK. Therefore, we have had contact with as many organisations as possible and I hope that that regular contact has been of use to them. Certainly, we have not had any complaints from the various bodies involved.

Baroness Crawley: Will the Minister be kind enough to send me the list of organisations, businesses, market surveillance authorisations and consumer organisations involved in the consultation?

Lord Henley: I will certainly write to the noble Baroness on that and I hope that we can give further and better particulars, as they say in the law. She will then know exactly whom we have spoken to and I hope that she will feel content that we have gone out largely to the right people.

The impact on business was raised by a number of noble Lords. I explained what was behind the impact assessment, which was published on GOV.UK. We found the impacts as being de minimis; they are largely costs of familiarisation. I dare say that, because we are trying to replicate what already exists, familiarisation should not be too much of a problem. As is always right and proper, the impact assessment was shared with the Regulatory Policy Committee. I hope that the smooth arrangements we have put in place will help businesses in understanding that some of the new administrative requirements will make life easier and ease the impact of exiting the EU.

The noble Baroness, Lady Crawley, asked about the cosmetics database and whether I could guarantee that no consumer would be put at risk. She is right to emphasise the importance of this, because cosmetics can have a detrimental effect if not properly policed and supervised in the right way. The SI includes a requirement that all cosmetic products must be safe for human health. Each cosmetic product has a responsible person to ensure that it is safe before it is placed on the market. I assure her that preparations for the UK database are well advanced and trading standards has the power to take action against unsafe products.

Baroness Burt of Solihull: Can I take the Minister back to the costs of labelling and of having to register with two separate bodies? Has any assessment been made of the cost of that? It is an issue that was raised by others who know a lot more about this than I do.

Lord Henley: That is not a direct cost of the SI; it is a cost of leaving the EU. That is why it was not part of the impact assessment. I will, as I am planning to do

[Lord Henley]
for one or two other questions she raised, write to the noble Baroness on what the extra costs are likely to be for registering both here and in the EU.

My noble friend Lady McIntosh asked about the uncertainty of the loss of access to the product safety database and what effect it will have on consumers. The new product safety database will be available to all market surveillance scientists from exit day. The new service will give the UK national capability to collate information on unsafe and non-compliant products, share information and rapidly alert market surveillance authorities. In addition—as was raised by the noble Baroness, Lady Burt, who talked about RAPEX—the UK will retain access to any publicly available information on RAPEX.

Baroness McIntosh of Pickering: RAPEX is very similar to the food alert, which I think is called RASFF—the noble Lord, Lord Rooker, knows it by heart. My noble friend just mentioned information that will be publicly available, but it sounds as though we are not going to be part of it. This raises the question: if there was a rapid alert about a product in this country which we wished to share, would we have a reciprocal arrangement? Will that be part of the deal we hope to negotiate?

Lord Henley: That will be a matter for the deal. I was talking about what was publicly available from RAPEX. What we will make available and other such matters go beyond what we are debating at the moment, as we are discussing no deal, but they are matters which we should consider as part of the deal.

I move on to trading standard resources; the noble Baroness, Lady Donaghy, asked whether they were sufficient. I have to make it clear that I believe there are no new duties placed on trading standards. The Office for Product Safety and Standards has been working with trading standards to ensure that it has the capability to discharge its responsibilities, including working with the Chartered Trading Standards Institute on EU exit plans. She asked about the appointment of the new chief executive of the HSE. I am afraid I do not have any information on that, but I will add that to the many letters I will be sending out and will write to her.

My noble friend Lord Lindsay asked about the position of UKAS and whether it might be undermined by profit-seeking bodies coming in to take over its job. I make it absolutely clear that there will continue to be just one national accreditation body and that body only will be able to issue accreditation certificates demonstrating that organisations meet the approved requirements. We have it on the record now, but if my noble friend would like me to write to UKAS, I would be more than happy to do so.

The noble Baroness, Lady Burt, asked about the cost of changing to the UKCA mark and the new notified body. The SI means that most manufacturing companies will not have to use the UKCA mark. If a business needs to change to an EU body as a result of the EU's position on the no-deal scenario, that will be a result of the EU's position and it is something that would be part of any future negotiations. I also give her an assurance that we will need further legislation should we want to end CE marking recognition, so that will not come through as a result of this.

The noble Baroness asked about Electrical Safety First. Again, I will have to write to her on that. My noble friend asked for an assurance that we were not gold-plating, just as there were accusations when we were taking these things on board the other way many years ago. No gold-plating is going on here; we do not have the powers to gold-plate under the EU withdrawal Act. I hope all we are doing is providing a degree of certainty to the industries concerned and the public that things will continue as before.

Motion agreed.

National Minimum Wage (Amendment) Regulations 2019

Considered in Grand Committee

5.29 pm

Moved by ***Lord Henley***

That the Grand Committee do consider the National Minimum Wage (Amendment) Regulations 2019.

The Parliamentary Under-Secretary of State, Department for Business, Energy and Industrial Strategy (Lord Henley) (Con): My Lords, the regulations were laid before the House on 28 January 2019. Their purpose is to increase the national living wage and all the national minimum wage rates from 1 April 2019. The regulations also include an increase in the accommodation offset rate, which is the only benefit in kind that counts towards minimum wage pay.

The national living wage has had a positive impact on the earnings of the lowest-paid. Between April 2015 and April 2018, those at the fifth percentile of the earnings distribution saw their wages grow by almost 8% above inflation. That is faster than at any other point in the earnings distribution.

The labour market has continued to perform well. The employment rate is at a record high of 75.8% and the unemployment rate is at 4%, the lowest since the 1970s. Increasing the minimum wage is one more way in which the Government's industrial strategy is boosting people's earnings power and seeking to raise productivity throughout the UK.

From April, the national living wage for those aged 25 and over will increase by 38p to £8.21, which is a 4.9% increase. The 38p increase in April will mean that a full-time worker on the national living wage will see their pay increase by more than £690 over the year. The national living wage is on course to reach the Government's target of 60% of median earnings in 2020. The annual earnings of a full-time minimum wage worker will have increased by more than £2,750 since the introduction of the national living wage in April 2016.

The 21 to 24 year-old rate will increase by 32p, meaning that those in that age group will be entitled to a minimum of £7.70, an annual increase of 4.3%. Those aged between 18 and 20 will be entitled to a

minimum of £6.15, an annual increase of 4.2%. Those aged 16 and 17 will be entitled to a minimum of £4.35, an annual increase of 3.6%. Finally, apprentices aged under 19, or those aged 19 and over in the first year of their apprenticeship, will be entitled to £3.90. This is a 5.4% increase and is the largest increase of all the rates that we are debating today. All these above-inflation increases represent real pay rises for the lowest-paid workers in the UK.

The Government's green-rated impact assessment estimates that more than 2.1 million people will benefit directly from the regulations. All the rates in the regulations have been recommended by the independent and expert Low Pay Commission. The LPC brings together employer and worker representatives to reach a consensus when making its recommendations. The Government asked the Low Pay Commission to recommend the rate of the national living wage such that it reaches 60% of median earnings in 2020, subject to sustained economic growth.

For the national minimum wage, the LPC has recommended rates that increase the earnings of the lowest-paid young workers without damaging their employment prospects by setting it too high. I thank the LPC for the extensive research and consultation that has informed these rates recommendations, all of which is set out in its 2018 report published in November. At Budget 2019, the Chancellor will announce the LPC's remit in the years after 2020. The Government have an aspiration to end low pay. This year, we will engage with the LPC, workers and businesses to balance this ambition with the need to protect employment for lower-paid workers.

The Government recognise that as the minimum wage rises, there is a higher risk of non-compliance as a larger share of the workforce is covered by the minimum wage. The Government are committed to cracking down on employers who fail to pay the national minimum wage, and we are clear that anyone entitled to be paid the minimum wage should receive it. Consequently, the Department for Business, Energy and Industrial Strategy has almost doubled the budget for enforcing the national minimum wage and national living wage. Funding reached £26.3 million this year, up from £13.2 million in 2015-16.

HMRC follows up on every complaint it receives, even those which are anonymous; these include those made to the ACAS helpline, via the online complaint form or from other sources. Increasing the budget allows HMRC to focus on tackling the most serious cases of wilful non-compliance. It also increases the number of compliance officers available to investigate national minimum wage complaints and conduct risk-based enforcement in sectors where non-compliance is most likely. In 2017-18, HMRC recovered pay arrears in excess of £15.6 million for over 200,000 workers.

Sustainable increases in minimum wage rates depend on strong economic fundamentals—and those of the UK are strong. The economy has now grown for 24 quarters in a row—the longest streak in the G7. Evidence has also long told us that investment in human capital is crucial for the long-term productivity of the workforce. The industrial strategy sets out our long-term vision for increasing productivity, including through raising the minimum wage, and so boosting the earnings power of the lowest-paid workers. Through these regulations, the Government are building an economy that works for everyone. I commend them to the Committee and I beg to move.

Baroness Donaghy (Lab): My Lords, I welcome this statutory instrument and the increases outlined by the Minister. As he knows, next month will be the 20th anniversary of the introduction of the national minimum wage, and I had the honour of being one of the founding members of the Low Pay Commission at the time. The recommendations we made impacted on and benefited 1 million women—and, incidentally, the world did not come to an end, which some forecasts had said would happen.

I am pleased that successive Governments have upheld the principles laid down by the original committee, and I hope that that will continue. Obviously, this was before the national living wage was introduced. However, one omission from our very first report in 1998, before the implementation, was the issue of accommodation offset. We were asked as a committee to look at that again, because we had not seen the significance of it.

I well remember being taken with the committee down to a convent in the middle of the Devon countryside to be gently lobbied by the Mother Superior and a number of nuns about the importance of having an accommodation offset. The Minister will know that it might have been gentle lobbying, but, my goodness, we were in absolutely no doubt whatever about the strength of feeling involved. The experience we had on the committee is a memory I will take with me for a long time. We were conscious that we were creating history, and I am very glad indeed that this is still here for us to admire.

Baroness Burt of Solihull (LD): My Lords, I will fulfil the promise I made to the Minister on the previous statutory instrument and be brief. It is also a great relief from Brexit to be discussing something that is current and not contingent on anything else happening.

The statutory instrument talks about the national minimum wage amendment regulations, but the table refers to the national living wage. It does not take much to confuse me. I just want to explore that difference for a minute or two. The uplift of 4.9% for over-25s to £8.21 is very welcome and I accept and welcome the comments from the Minister on the progress that the Government are making to get to 60% of median earnings by 2020.

The concept of the national living wage was introduced by the Government in 2015. I appreciate the Minister's comments on how the amount has increased but my understanding is that it is not a national living wage because it is not based on actual living costs. The Living Wage Foundation currently calculates it—although presumably it is due for an uplift as well—at £9 per hour and £10.55 in London. It says that the living wage is what people need to earn to live. Citizens UK says that there is a moral imperative on employers to pay that if they can and 4,700 businesses and 104 local authorities do.

[Baroness Burt of Solihull]

We know that 20% of all low-paid workers are in the public sector. Can the Minister say what percentage of public sector workers are in receipt of the living wage? It was very good to hear the Minister's comments on enforcement. Can he tell me how many companies have been found to be paying below the minimum wage and how many of these have actually been prosecuted?

In conclusion, I hope that we will be moving towards the living wage very soon. It is proven to be good for business because it improves staff morale and retention. It is good for society and for the Government's coffers too, because 35% of those earnings will go to the Treasury.

Lord Stevenson of Balmacara (Lab): My Lords, I declare an interest as one of my children is an apprentice aged over 19. He is in the first year of the apprenticeship and so would benefit from the figures that we have in front of us today. I have not discussed it with him but I am sure he will be delighted to hear that there is more money on its way.

My noble friend Lady Donaghy's comments were well made and it is astonishing that we are 20 years into what was seen at the time as quite a revolutionary policy and which is now, in the words of the Minister who introduced the order, settled between all parties as a feature of our working environment. It is a good thing as it works for all sections of society, particularly those at the lower end of the pay spectrum.

This is the fourth consecutive year that I have been reviewing this order, so I took the change of looking back to last year's Statement, when the Minister was also responding, although that was only his first time. I will repeat some of the things that were said then because I think that the issues are still relevant. There are two important points to put on record. The document in front of us is an excellent piece of work. Again, I congratulate the team responsible for it. It reads very well indeed. It is a bit scary to go back to what we learned at university about the economics of wage policy and the impact of living and national wages but, nevertheless, it is important to see it all there. The document itself is good but also it plays back to the work done by the Low Pay Commission, in place for 20 years now, but doing fantastic work. It is very good to see its ability to move from the national minimum wage conditions when it was set up in 1998 to now, with the national living wage, which progressively moves the lower paid on full rates up to 60% of the median wage. The commission has adapted and continues to do its work in a way that is important and effective for society as whole.

Three points were made last year which I think have been picked up in the current document. One concerned whether the approach that has been taken to calculate the impact of the national minimum wage has stood the test of time. It was good that the department decided to take external advice from an expert body, and it is good to read the report and evaluation, which goes some way to answer some of the points I raised last time. That gives us a good basis on which to go forward.

5.45 pm

My substantial second point concerns whether the straight line bite path—a rather curious phrase—will be on target to hit the position of 60% of median earnings in October 2020, which is not very far away. Echoing the noble Baroness, Lady Burt, it is not clear in the document before us whether we will hit the target on that date and, if not, what the issues are. It is clearly conditional and contingent on economic growth, but I think I heard the Minister say that he was confident that the essentials of the economy were sound, so that does not need to be a factor.

It is then simply a question of how one tracks what is obviously a moving target—the median wage—how it will move and how changes made annually in the current form can do that effectively. I do not think there is any problem, but if the Minister wants to say anything more about it, I should be grateful to receive it.

My final point is one raised by my noble friend Lady Donaghy. The only figure that sticks out from the table on page 1 of the Explanatory Memorandum as being out of sync is the accommodation offset rate, which has been set at 7.9%. Everything else has percentages beside it; this one does not, so I have had to make my own calculation; I hope it is approximately right. The rate of 7.9% is a bit different from all the others, which are between 4.9% and 5.4%.

I understand the logic behind that, which was explained well by my noble friend, but I do not understand the differential approach. There must be figures which support it, which may be in documents to which I have not had access, but will the Minister explain why it is necessary to raise it at the rate of 7.9%, which seems to be adverse in terms of remuneration—taken-home pay—when the rest of the percentage increases are at a more modest level? Is there a particular reason? Do rents in the areas we are talking about particularly differ from the rest of the country? Is there a particular reason or has a general approach been taken? I should be grateful for further information on that.

Lord Henley: My Lords, I join both the noble Baroness, Lady Donaghy, and the noble Lord, Lord Stevenson, in offering my thanks to the Low Pay Commission. I had not realised that the noble Baroness was a founder member of it 20 years ago, and I offer congratulations on its 20th anniversary. Unlike her, I have never been lobbied by a Mother Superior from a Devon convent, but one looks forward to all new experiences in life. I will just say that I can imagine what it is like.

We are very grateful to the Low Pay Commission for the work it does. It is a good body that understands that it has to make difficult decisions in trying to come to the right figure for the different rates, representing the interests of those in work, those out of work, employers and the effect on employment. We are grateful to it for its advice.

The Government, as noble Lords will note, set an annual remit for it asking it to recommend the highest possible national minimum wage rates such that it does not increase unemployment. Again, we have that target, referred to in my opening marks and by the noble Lord, of getting to 60% of median earnings by 2020, subject to sustained economic growth. I hope we can do that; we are on track for it at the moment. As I made clear, my right honourable friend the Chancellor will set out further guidance in the Budget Statement

for life beyond 2020. The duty of the Low Pay Commission is to advise us. It is then for the Government to produce a figure and put it into the regulations. That is what we are debating today.

The noble Baroness, Lady Burt, asked about the difference between the national minimum wage and the national living wage. The latter is just another phrase for the statutory minimum wage that applies to those aged 25 or over. It was brought in in 2016 and we are aiming to get that statutory minimum wage to that 60%. She asked why we could not follow what the Living Wage Foundation suggested. It is possibly better to follow the advice of the body that we have sought advice from—the Low Pay Commission—rather than another external body. I believe that setting the national living wage too high or increasing it too quickly could in the end lead to higher unemployment and harm the very people whom the policy is intended to help. That is why we look to the Low Pay Commission to set those rates; it will draw on economic, labour market and pay analysis, independent research and stakeholder evidence, as well as its own experience from trade unionists, business representatives and economists. I commend the work of the Living Wage Foundation, but the key distinction of the rates recommended by the LPC is that that body has to consider the impact on business.

The noble Baroness also asked about levels of non-compliance and about how many were underpaying. In 2017, 1,000 businesses were found by HMRC to have underpaid the national minimum wage. The cases resulted in £15 million of pay arrears being identified for more than 200,000 workers. There have been 14 successful prosecutions since 2007, but the important thing is to identify the businesses that are non-compliant and get them to comply. She also asked about the percentages of public sector workers receiving the living wage. I will write to her with any exact figures on that.

Finally, the noble Lord, Lord Stevenson, asked about the large increase in the accommodation off-set. The LPC seeks to raise the accommodation off-set to reach the level of the 21 to 24 year-old rate. A high rate for the off-set better reflects the cost of provision and enables investment in higher standards of accommodation by business. I hope that that deals with that point.

I think that that covers all the points that have been raised. I beg to move.

Motion agreed.

European Union (Withdrawal) Act 2018 (Consequential Modifications and Repeals and Revocations) (EU Exit) Regulations 2019

Considered in Grand Committee

5.55 pm

Moved by ***Lord Callanan***

That the Grand Committee do consider the European Union (Withdrawal) Act 2018 (Consequential Modifications and Repeals and Revocations) (EU Exit) Regulations 2019.

The Minister of State, Department for Exiting the European Union (Lord Callanan) (Con): My Lords, I am grateful for the opportunity to be here today to discuss these regulations. They are part of the Government's wider programme of secondary legislation before exit day to ensure that the UK's legal system continues to function effectively when we leave the European Union.

This instrument is being made using the consequential and correcting powers in the European Union (Withdrawal) Act 2018. The changes proposed are of a technical nature and do not represent substantive policy changes. They are part of the ongoing work of my department in laying the groundwork for the UK's withdrawal.

The regulations were initially laid in draft before the sifting committees as a proposed negative instrument. Indeed, the Secondary Legislation Scrutiny Committee of your Lordships' House agreed with my department's assessment that the negative procedure was appropriate in this case. However, the European Statutory Instruments Committee in the other place recommended that the regulations should be debated under the affirmative procedure. It concluded that,

"the cumulative impact of the amendments is such that the additional safeguard of affirmative resolution is appropriate".

As is usual, my department was content to accept the recommendation of the committee, and accordingly we are gathered here today to debate the regulations under the affirmative procedure.

These draft regulations have three primary objectives. The first is to make provision for how certain cross-references in UK law to European Union legislation are to be read following exit day. The regulations also make consequential amendments to domestic interpretation legislation to ensure that the rules and definitions within them apply, as appropriate, to the new category of law that will be created on exit day—namely, retained EU law. Finally, they repeal and revoke various pieces of primary and secondary legislation which were made to enable the UK to fulfil its EU obligations. These will become redundant on exit day as a result of the repeal of the European Communities Act 1972 and the UK's withdrawal from the EU. I shall now give noble Lords more detail on these three objectives.

First, I shall address the provisions on cross-references to EU legislation. This is quite a technical area, so I will take a moment to go through it carefully and in detail. UK legislation which implements EU law, and EU instruments which will become part of retained EU law, contain many cross-references to EU instruments. There are two types of cross-references to EU instruments: ambulatory and non-ambulatory.

An ambulatory reference is a reference to an EU instrument as amended from time to time, which means that the reference will automatically update when the EU instrument is amended. The EU (Withdrawal) Act 2018 sets out what happens with existing ambulatory references after exit. A non-ambulatory reference is a reference to the EU instrument in the form that it was in when the reference was made. It does not automatically update when the legislation to which it refers is amended and therefore it would need to be manually updated later.

The European Union (Withdrawal) Act 2018 does not make provision for how non-ambulatory references to EU legislation made up to the point immediately

[Lord Callanan]

before exit day are to be read. This is being done through these regulations. This issue is quite technical and the regulations need to cover several different scenarios. For example, they need to make sure that references to EU instruments that will be onshored on exit day are read as the domestic version where appropriate. However, this is only if they are up to date. If the reference is not up to date on exit day, it will remain a reference to the version of the EU instrument that was in place when the reference was originally made. It would therefore not reflect amendments made by the EU since the reference was made.

6 pm

The other complicating factor is that some references are to EU instruments that will be onshored—that is to say will form part of domestic law on exit day—and some are references to EU instruments, such as directives, that will not be onshored. They need to be treated differently. These regulations also provide that cross-references to EU legislation, which forms part of retained direct EU legislation, created on or after exit day are to be read as references to the retained version of the EU legislation. This requires changes to the Interpretation Act 1978, as well as to the corresponding interpretation legislation for Scotland and Northern Ireland.

As I have already mentioned, the second objective of these regulations is to ensure that the rules and definitions within domestic interpretation legislation apply, as appropriate, to that retained EU law. This is the new body of domestic law created by the European Union (Withdrawal) Act 2018, which we had so much fun debating. This requires consequential amendments to the interpretation legislation for Scotland and Northern Ireland in line with the changes made to the Interpretation Act 1978 by the European Union (Withdrawal) Act 2018. For example, Part 3 of these regulations amends the Interpretation and Legislative Reform (Scotland) Act 2010 by inserting the new EU-exit related definitions, which stem from the European Union (Withdrawal) Act 2018. It also amends the definition of "enactment" to include retained direct EU legislation so that the interpretation rules will work post exit.

Part 4 makes similar provision for Northern Ireland through amending the Interpretation Act (Northern Ireland) 1954. It inserts the definitions relating to EU exit and updates the definition of "statutory provision" to include retained direct EU legislation. These regulations also ensure that the normal rules on laying documents before the Northern Ireland Assembly apply where a duty to lay documents is contained in a piece of retained direct EU legislation.

The third objective of these regulations is to repeal and revoke redundant pieces of, and provisions within, domestic primary and secondary legislation which implement EU law obligations. These pieces of legislation will become redundant as a result of the repeal of the European Communities Act 1972 and the UK's withdrawal. The precise nature of the repeals and revocations is explained in detail in the Explanatory Memorandum to these regulations in paragraphs 7.11 to 7.27. I hope that these explanations assure noble Lords that these repeals and revocations are necessary to ensure that the UK's statute book remains coherent and the UK's legal system continues to function effectively. However, I shall provide some further explanation of particular repeals and revocations in the hope that it is helpful.

A number of Acts which gave effect in UK law to the accession treaties concerning member states' accession to the EU are now being repealed. This is because these Acts will become redundant upon the UK's withdrawal from the EU. Without these repeals, these pieces of legislation would sit meaninglessly on our statute book. We are repealing them, so that the statute book remains clear and effective. Another aspect of the repeals that might be of interest to noble Lords is the repeal of the European Communities (Amendments) Act 1993. In particular, the repeal of Section 6 of that Act requires consequential amendments to be made to other pieces of legislation. Section 6 determines who is eligible to be a member of the UK's delegation to the European Committee of the Regions, an advisory body representing Europe's regional and local authorities.

When the UK ceases to be a member state, it will no longer be entitled to send a delegation to represent the UK at the Committee of the Regions. Section 6 of the 1993 Act therefore becomes redundant on exit day and so is being repealed. Section 6 of the 1993 Act has been amended multiple times through primary and secondary legislation in order to reflect changes that have occurred to devolution and local government arrangements. Legislation that has amended Section 6 will of course also become redundant and so is being repealed or revoked. Let me give an example. An amending provision is contained in Schedule 8 to the Scotland Act 1998, which simply added the words,

"a member of the Scottish Parliament",

to Section 6 of the 1993 Act to show that a member of the Scottish Parliament could form part of the UK's delegation to the Committee of the Regions.

Finally, I draw noble Lords' attention to the transitional and savings provisions contained in the regulations in relation to the repeals. Under the European Parliamentary Elections Acts 1978 and 2002, treaties that increase the powers of the European Parliament cannot be ratified unless approved by an Act of Parliament. An example can be found in the European Communities (Amendment) Act 1986, which approved the Single European Act. The transitional and savings provisions make clear that the repeal of provisions containing such approvals have no effect on the validity of the treaties or on anything done in relation to those treaties.

The Government have engaged with the Scottish Government, the Welsh Government and the Northern Irish Civil Service on the amendments proposed in the regulations, and no concerns were raised about the proposed amendments. Following the recommendation of the European Statutory Instruments Committee that the regulations should be debated, my department considered it appropriate to present these regulations for noble Lords to scrutinise today. I hope that your Lordships will agree that the draft regulations are an important part of the UK Government's preparations for withdrawal from the EU. The principal purpose is to provide a functioning statute book on the day the UK leaves the EU.

Lord Hope of Craighead (CB): I am extremely grateful to the Minister for his very careful introduction to the background of the regulations. I should make clear that I have no criticism of the detail of the regulations themselves; I fully understand the reason for them and the explanation he has given has reassured me on all those points.

I have, however, two points on the provisions relating to Scotland. I am delighted to see the noble Baroness, Lady Goldie, here, because she will recall our discussions relating to what is now Section 8 of the Act, when I argued that consent of the Scottish Parliament should be required in the exercise of powers relating to Scotland in any way. As I recall it, she gave me an assurance that the Scottish Government would be consulted on any such amendments and, in the end, I was content with that. It is not in the legislation itself but, rather like the Sewel convention, it is part of the background to the exercise of the power to make regulations under the Act.

My first question is short and technical and relates to the provision in Part 1 of the schedule to which the Minister referred—the reference to the Scotland Act 1998 and the repeal of paragraph 28 of Schedule 8. The reason I refer to it is that it is laid down in Section 8(7) of the European Union (Withdrawal) Act 2018 that regulations under Section 8 may not do various things, among which is to,

"amend or repeal the Scotland Act".

What is happening here is an amendment to the Scotland Act. That provision is qualified by stating that it does not apply if,

"the regulations are made by virtue of paragraph 21(b) of Schedule 7 to this Act".

I notice that in the preamble to the regulations, reference is made to that paragraph.

My point is very short. I seek confirmation from the Minister that what we see in Part 1 of the schedule is an exercise of the power under paragraph 21(b) of the schedule and not under Section 8, because if it is under Section 8 standing alone, it would seem to be contrary to the prohibition in subsection (7). I think that is a relatively straightforward point, and I do not imagine that it will cause the Minister any concern.

The second point relates to Part 3 of these regulations which, as the noble Lord has pointed out, amends the Interpretation and Legislative Reform (Scotland) Act 2010. At first sight, it seems very odd that a UK Minister should be amending an Act of the Scottish Parliament; this very important Act was drafted with great care in Edinburgh. There is no doubt whatever that power to do this was given to Scottish Ministers under Schedule 2 of the withdrawal Act, because this is a devolved matter and there is no inhibition on their powers to deal with devolved legislation as they think fit. It seems that the Scottish Parliament is the natural place to make these amendments. One can understand that the position in Northern Ireland is different, because the Assembly is not sitting; it is obviously necessary to make provision by legislative means and this would seem the appropriate way to do it.

That is really a preamble to what we find set out in paragraph 10.2 of the Explanatory Memorandum, which says:

"We have consulted the Scottish Government, the Welsh Government and the Northern Irish Civil Service".

It is the next sentence which troubles me. It says:

"In particular, we have consulted them on the amendments to the Interpretation Act (Northern Ireland) 1954 and the ILRA 2010; these amendments are made in Part 3 and 4 respectively of the instrument".

That sentence is wrong, because the amendment in Part 3 is nothing to do with the Interpretation Act (Northern Ireland) 1954 or the IRLA 201; it is an amendment to the interpretation Act made by the Scottish Parliament. Therefore, that sentence does not make sense. The last sentence deals with something different: consultation relating to the technical and consequential repeals to the Scotland Act, which is what we saw in Part 1 of Schedule 2. My question really is this: what is the position in relation to the amendment of the Interpretation and Legislative Reform (Scotland) Act 2010 which we find in Part 3?

Following our long debates on the whole structure of the withdrawal Act, the noble Baroness, Lady Goldie, will understand my concern that the Scottish Parliament should be properly consulted on matters of this kind. I have to say that paragraph 10.2 of the Explanatory Memorandum does not make it clear. The second sentence is plainly incorrect and there is a gap, because it does not mention that Part 3 is an amendment of the Interpretation and Legislative Reform (Scotland) Act 2010. I ask the Minister for clarification as to what exactly is going on here and whether the consultation, which is fundamental to the exercise of the powers in relation to Scotland, has been properly carried out.

Baroness Neville-Rolfe (Con): My Lords, unlike the distinguished noble and learned Lord, Lord Hope, I am not a lawyer and am unable to go into the detail that he has. I look forward to hearing the answers to his excellent questions. However, I have three simple questions that I would like to address to the Minister.

The first question is about impact. When this instrument was referred to us for debate, making it an affirmative instrument, the ESIC commented on the cumulative impact, saying that this meant that it should be debated here. As a consequence, we are all here today. There is no impact assessment and there is a statement from the Government saying that there is no need for one. Given the scale of the changes and the consequential effects, it seems that there could well be more than £5 million-worth of work for all the professional services and from companies in all four countries of the UK. I would be interested to hear more on that.

I also make the comment that, after EU exit, it will be much more difficult to find out what is going on in the EU, which is a problem when we are continuing to take European Union changes on board. We cannot even send representatives to the Committee of the Regions any longer, let alone the Council.

How will we keep business and citizens informed of what is going on in the EU? This is an issue which I hope the EU Select Committee, which I serve on, will look at as part of its report on the future bilateral institutional arrangements with the EU 27. This troubles me a bit because I am looking forward to post Brexit and how we will work alongside our friends in the EU 27, allow our citizens to continue to visit them, and our businesses to continue to operate.

[Baroness Neville-Rolfe]

My second question is a simple one. There has been no consultation except with the devolved Administrations. How do we know that the quite extensive changes that are being made in this Order are safe?

Finally, as my noble friend knows, I strongly support the Government's approach to providing a new legal base for the post-Brexit world and for doing that in the orderly way he is pursuing. However, I would be interested in an update on the gaps that there may be on Brexit day, particularly in the not very likely event of no deal. It seems that this Order helps to deal with some of the gaps, but I would be interested to know how many more there may be that we should be worrying about.

6.15 pm

Baroness McIntosh of Pickering (Con): My Lords, I add my thanks to my noble friend for bringing this statutory instrument before us today. I associate myself entirely with the comments of the noble and learned Lord, Lord Hope of Craighead, particularly on Part 3. I am minded to ask whether adopting this is not really the preserve of the Scottish Parliament. I remember only too well the long hours we spent discussing Section 8 and I hope that that is not something that will be repeated in later statutory instruments when it should be the preserve of the devolved Parliaments. The noble and learned Lord entirely concentrated his comments on the fact that the Northern Ireland Assembly is not sitting, and I wonder whether that is an issue which it is appropriate to bring before the Committee.

Page 1 of the Explanatory Memorandum refers to "non-ambulatory references", a rather curious expression repeated by the Minister which I do not recall from the Act itself. They are references which are not automatically updated. The memorandum goes on to state in paragraph 2.5:

"These repeals and revocations are needed to remove redundant provisions of domestic legislation".

This was identified when it was discussed in the equivalent Committee in the other place by our honourable friend Chris Heaton-Harris, the Parliamentary Under-Secretary of State who responded to questions raised by Matthew Pennycook from the Opposition Benches. The second question asked why no references are in fact made to non-ambulatory references in the European Union (Withdrawal) Act itself or indeed in the debate. What my honourable friend Chris Heaton-Harris, as the Parliamentary Under-Secretary of State, said in reply was quite astounding. I should like to quote him:

"I honestly do not know what my Department might have been thinking at that time. However, I believe that we have tried to go through this process in the best possible way, so I guess we are heading towards the second of the hon. Gentleman's suggested answers to his own question, rather than the first. We have gone through a quite legitimate tidying-up exercise". "—[Official Report, *Commons*, Delegated Legislation Committee, 21/2/19; col. 6.]

The question to my noble friend the Minister is: was "non-ambulatory references" omitted from the debate by accident or by design? Can he assure the House that this will not recur, that we might not expect any other omissions in the short time available before Brexit day?

Baroness Hayter of Kentish Town (Lab): I do not know if it was the Minister's own expression or whether "we are gathered together" was written for him, but I was expecting something a little more exciting after that. I congratulate him for getting through yet another speech, given that his voice is not quite back to its normal timbre. He is also employing what for me is another new phrase, "onshored". Maybe the people behind him can give us a little clue afterwards about the difference between retained, repatriated and onshored and whether there are any more new expressions coming.

Like other noble Lords, I thank the Minister for trying to make sense of something quite complicated but I am afraid that I have a few questions nevertheless. First, the 2018 Act ends the supremacy of EU law over on UK law on exit day. It was there by virtue of the 1972 Act—as paragraph 6.2 of the Explanatory Memorandum reminds us. It ends because of the repeal of, I think, Clause 1 of the 1972 Act. However, assuming that we get a deal, and that this includes a transition period, some of this supremacy might have to continue through the transition period as we will continue to abide by EU rules then. How and when will the 2018 Act be amended to allow for this?

Secondly, paragraph 7.19 of the Explanatory Memorandum refers to the regulations amending Section 6 of the 1993 Act—to which the Minister referred—the provisions as to who is eligible to participate in the Committee of the Regions. Can the Minister let me know whether that is the only statutory change that will be required for us no longer to be on the committee? I have not noticed any reference to the committee elsewhere and as this refers only to eligibility and not, for example, selection, role, time limits or anything else about our membership, in domestic law or anywhere else. Can the Minister confirm whether anything else needs amending to make sure nothing else is left that would send people to that committee? Although not mentioned in these regulations, can the Minister also let us know whether any legislative changes about appointment, eligibility or anything else are needed with regard to our membership of what in my day was called the Economic and Social Committee, but which I know has a different name now?

My third question concerns the fact that the regulations now make good the absence, as we have just heard, from the 2018 Act of consideration of non-ambulatory EU regulations. This question may fall to the Minister's noble friend Lady Goldie, because I think she dealt with this when we took the Bill through. There was quite a discussion about clinical trials at one point. We were concerned that, while the EU rules about clinical trials have been changed, they will not be operative—I think that is the word—on exit day. We were very worried, therefore, that because we would be taking over what was in operation on exit day, these new rules would apply across the rest of the EU after exit day but we would be stuck with the old ones, with enormous implications for whether we could participate in clinical trials that particularly affect orphan drugs and childhood illnesses. That lack of carryover was of concern. I am worried, although I think that particular issue got sorted by some clever intervention, about whether the introduction of these regulations covering non-ambulatory regulations addresses issues where things change over

time and are different after exit day in the way we would want them to. Certainly the feeling was that we wanted to stay absolutely in line with EU regulations. I could not quite understand the difference between ambulatory and non-ambulatory sufficiently to know the answer to that.

My fourth question was raised by the noble Baroness, Lady McIntosh, and is about what happened when these regulations were dealt with in the Commons, where the Under-Secretary of State admitted that he did not know what his department might have been thinking. He has a good excuse: he did not do the Bill, because he was not there at the time, but this Minister, of course, did, so he might have a little more knowledge and has had advance notice since 21 February about why such references were overlooked. The noble Baroness, Lady McIntosh, asked whether it was by accident or design, and it would be useful to know. If it was by accident, we understand that, but it would be good to know whether there are similar examples. If it was by design, it would be interesting to know why it did not happen at the time.

Finally, I have a question which is not specifically on these regulations. To date we note that the Prime Minister's spokesperson, instead of saying, "We will leave on 29 March" said only, "We want to leave on that day and we will work to try to achieve that". Of course, as we know, the Prime Minister confirmed last week that, should MPs mandate her to seek an extension to Article 50 next week, legislation will be brought forward to amend the EU withdrawal Act's definition of exit day. Any such regulation to amend exit day would be subject to an affirmative procedure and therefore require pretty swift consideration in both Houses. Can the Minister give us a little advance notice, as I am sure they are already preparing for that, about when an instrument would be laid, given the requirement on the length of time between being laid and being debated? Since it is already 4 March, I think he will understand why I pose this question.

Lord Callanan: First, I thank all noble Lords for their contributions. I shall deal first with the last question of the noble Baroness, Lady Hayter, and commend her for her ingenuity in bringing the subject up in this Committee. As she knows, under the EU withdrawal Act there is a provision for the Government to amend exit day by use of secondary legislation powers. There has been no decision to do that yet. We await details of the various votes that will happen next week, but we remain confident that we will be able to deliver a withdrawal agreement that the House of Commons can vote for with enthusiasm and therefore we will not need to table any references or any further secondary legislation, but if it is required, the ability is there. That is set out in the EU withdrawal Act. That is as far as I want to go with that at the moment in this forum.

6.30 pm

As I set out, this SI makes amendments to legislation using the consequential and correcting powers in the European Union (Withdrawal) Act 2018 to prepare the UK for withdrawal from the EU. The purpose of the instrument is to ensure that the statute book accommodates retained EU law. The instrument will make clear how certain cross-references to EU legislation are to be read after exit day and make amendments to the interpretation legislation for Scotland and Northern Ireland to ensure that it adequately references and incorporates retained EU law.

The instrument will also repeal and revoke pieces of primary and secondary legislation that were made domestically to enable the UK to fulfil its EU obligations, but that will become redundant as a consequence of the repeal of the European Communities Act and the UK's withdrawal from the EU.

Let me deal with a number of the questions raised. The noble Baroness, Lady Hayter, asked about the Committee of the Regions and whether this will be the only statutory instrument-making legislative amendment relating to the UK's participation in the committee. As I have already mentioned, these regulations repeal the provision which determines who is eligible to be sent to participate on the UK's behalf at the committee. When the UK withdraws from the EU, it will no longer be entitled to send a delegation to represent the UK at the committee. My department laid the European Institutions and Consular Protection (Amendment etc.) (EU Exit) Regulations 2018, which made amendments and revocations to address deficiencies in respect of retained direct EU legislation that relates to the functioning of institutions and bodies of the EU and the application of its rules in EU legislation. Seven of the decisions that were revoked by those regulations relate in part to the Committee of the Regions. That is because the decisions are deficient because the UK will not form a part of the institutions to which the provisions relate after exit.

Was one of those institutions the Economic and Social Committee? The noble Baroness, Lady Neville-Rolfe, asked about the Committee of the Regions and I think I have responded to her point. She also asked about how we will ensure representation and consultation on issues going forward. That is a live discussion. We are also discussing with the devolved Administrations how they can feed in to EU and UK policy-making during the implementation period because during the implementation period we will not have direct representation in any of the institutions that we have been talking about, the European Parliament or the Council, and we will have no UK Commissioner. As she is aware, in the withdrawal Act there is provision for governance arrangements. It is a joint committee that will comprise a number of committees and sub-committees. We are talking further to the EU about how that will work in practice. There are live discussions with UKRep about how it can continue to influence the legislative process in Europe because it will have to switch from being a body that directly represents us in the various fora to being one which seeks to influence by other methods. There is a great deal of policy-making work going on about how we can do that and how Parliament will continue to be consulted and represented in decisions. As I said earlier, we are discussing this further with the devolved Administrations, which are very interested in these considerations, as you would imagine.

[Lord Callanan]

The legacy arrangements following the end of the UK's participation in the Committee of the Regions are being considered further by the Ministry of Housing, Communities and Local Government. I have received representations from members of the Committee of the Regions, who want some sort of ongoing body. Personally, I am not convinced of the necessity for such a thing, because we already consult plenty of other local government fora and there is no need for a separate one, but I know that the Ministry of Housing, Communities and Local Government is taking these discussions forward with existing members of the Committee of the Regions. Discussions are constructive, both with them and the various local government associations, about how the consultative rights and responsibilities that local government currently has at European level through that committee might be replicated domestically in a non-statutory way when the UK has left the EU.

The noble Baroness, Lady Hayter, also asked about the clinical trials regulation. As I am sure she remembers, we debated this at great length during the passage of the EU withdrawal Act, and it is an important issue. These regulations will not affect whether the CTR would come into force in the UK if implemented by the EU during the implementation period. The clinical trials regulation is expected to be implemented in 2020 and would therefore apply to the UK under the terms of the implementation period. We think that the clinical trials regulation is good legislation and we fully support it, but the noble Baroness will remember that one issue we had with it is access to various EU databases. Of course, access to those databases is a subject of live discussion and negotiation with the EU, which we hope to take forward when we enter the implementation period and discuss the ongoing relationship. We gave assurances at the time that we are committed to taking part in the regulations as much as possible under the negotiations. So it is not just a question of implementing the legislation, which we may do anyway if it occurs during the implementation period; it is also about ongoing participation in the various databases.

The Government have confirmed that UK law will remain aligned with parts of the EU's CTR legislation, but within the UK's control in all circumstances, so that researchers conducting clinical trials can plan with greater certainty. As I said, commitments were made in this House in April during the passage of the EU withdrawal Act, and have since been restated in the Government's no-deal technical guidance issued to stakeholders in August. Any legislative requirements to deliver this commitment will be announced in the usual way.

Regardless of the outcome of the negotiations, the UK is committed to offering a competitive service for clinical trial assessment. This covers regulatory approval from the Medicines and Healthcare products Regulatory Agency, as well as services from the Health Research Authority's Research ethics service, the National Institute for Health Research and the NHS. If UK legislation makes references to the clinical trials regulation, normal rules will apply to those references, as set out in the EU withdrawal Act and these regulations.

I deal next with the question raised by the noble and learned Lord, Lord Hope. The restriction on using the correcting power in Section 8 to amend or repeal a devolution Act does not apply to the Government of Wales Act 1998, as this is not a protected Act. It is under Section 8, but the amendments to the Scotland Act 1998 fall within both exceptions under Section 8(7)(g). It is consequential from the repeal of Section 6 of the European Communities (Amendment) Act and the provisions within which it is being repealed, which modify another enactment. I can tell the noble Lord that we have consulted with the Scottish and Welsh Governments; we have written to Ministers about this directly and they have raised no concerns about our proposed course of action. As I said, the SI was drafted in consultation with the devolved Administrations, with particular regard to these consultation amendments. The technical consequential amendments to the Scotland Act 1998 and the Government of Wales Act 1988 were explicitly agreed with the devolved Administrations. As I said, we wrote to them; no concerns have been raised by Ministers either.

Lord Hope of Craighead: I am grateful to the Minister. Has he answered both of my points? I had a question about Part 1 of the Schedule, which he has indeed answered, but my other point was on what in Part 3 of the regulations themselves relates to the Interpretation and Legislative Reform (Scotland) Act 2010. I was pointing out a defect in Paragraph 10.2 of the Explanatory Memorandum. From what the Minister has said so far, I am not clear whether he accepts that there is a defect in the wording of that paragraph. However, if there is, would the Minister accept that it should be more clearly worded, to make it clear that the Act referred to in Part 3 was the subject of express consultation as well? Furthermore, although I think one cannot now alter the Explanatory Memorandum, could he undertake, when this measure is introduced to the House, to make it absolutely plain that that particular step was taken, just so that we do not have to go over this ground again in the House itself?

Lord Callanan: The noble and learned Lord makes a valid point. It could have been clearer. I will look at it again with lawyers and officials, and we will come back to it in the House. On the Scotland interpretation legislation, some amendments were made in the EU withdrawal Act; these regulations make the consequential provision that the Minister considers appropriate in consequence of this Act. This includes further amendments to the Interpretation and Legislative Reform (Scotland) Act 2010, drafted together with the Scottish Government. But I take his point about the Explanatory Memorandum; we will have a look at it, and perhaps I can write to him and come back to it when we consider it further in the House.

My noble friend Lady McIntosh and the noble Baroness, Lady Hayter, raised the comments by my honourable friend Chris Heaton-Harris, and the question of why we do not deal with the non-ambulatory references and/or retrospective deficiencies in the devolved interpretation legislation. The principal purpose of the Act is to provide a functioning statute book. However, the Government and Parliament recognised at the time that it would not be possible to make all the necessary legislative changes in a single piece of legislation. That is why the Act conferred on Ministers temporary powers to make secondary

legislation to enable corrections to be made to laws which would otherwise no longer operate appropriately once the UK has left, so that the domestic legal system would continue to function correctly outside the EU. I remember at the time we had extensive discussions about it. The noble Lord, Lord Beith, in particular was exercised about ambulatory references. There was discussion about the issue at the time.

Baroness McIntosh of Pickering: No one is arguing that ambulatory provisions were referenced. The whole thrust of the debate this afternoon is that non-ambulatory provisions were not discussed. This was the sole purpose of the discussion in the other place and is what we would like to understand. The noble and learned Lord, Lord Hope of Craighead, has already indicated that the Explanatory Memorandum is deficient in relation to Scotland, and I would argue that it is deficient in another regard. In paragraph 2.5, it says that we are repealing, revoking and removing redundant provisions. That is not the case; the department is actually adding in an omission. Non-ambulatory provisions were simply not referred to in the debate or the original Act. That is an omission. To correct the record, it was an omission which is quite rightly being addressed. We would like to know whether it was by accident. I know my noble friend is reading a prepared speech, but we have now raised the issue this afternoon of non-ambulatory provisions. Was it by omission? Was it meant to be omitted? Between now and our leaving the European Union, can we expect any other omissions that need to be tidied up?

Lord Callanan: I am not sure that I accept my noble friend's statement that there was an omission. However, as this is quite a technical matter, perhaps it would be better if we went away and looked at it in detail, and I will write to her about it.

My noble friend Lady Neville-Rolfe asked me about the total figures for statutory instruments so far. The laying of SIs allows Parliament to fulfil its essential scrutiny role and to go through the various steps required. We remain confident that the necessary legislation to fulfil a functioning statute book will be passed by exit day. The current totals are as follows. More than 470 EU exit SIs have been laid to date. They account for over 75% of the SIs that we anticipate will be required by exit day, and over 260 of them have now gone through the various processes and have been made. Good progress has been made and we remain confident that the required SIs will be laid in time for exit day. I think that I have dealt with all the queries that were raised.

Baroness Neville-Rolfe: I am very grateful for the helpful reply that my noble friend gave on the subject of the Joint Committee and the institutional arrangements. It is good news that thought is being given to how to make these work well after exit day. Perhaps, at leisure, he could look at the questions that I asked about consultation and impact assessments. I do not think that he quite replied to them and it would be helpful to know where the Government stand.

Lord Callanan: I shall of course be very happy to do that. I know that my noble friend, quite rightly, takes a close interest in these matters, so I shall be very happy to look at that further and to write to her about it.

Motion agreed.

Committee adjourned at 6.47 pm.