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PARLIAMENTARY DEBATES
(HANSARD)

HOUSE OF LORDS
OFFICIAL REPORT

ORDER OF BUSINESS

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

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

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

House of Lords

Thursday 21 March 2019

11 am

Prayers—read by the Lord Bishop of Chester.

Death of a Former Member: Baroness Warnock

Announcement

11.06 am

The Lord Speaker (Lord Fowler): My Lords, I regret to inform the House of the death of the noble Baroness, Lady Warnock, on Wednesday 20 March. On behalf of the House, I extend our very sincere condolences to the noble Baroness's family and friends.

War Criminals: International Mechanisms for Prosecution

Question

11.06 am

Tabled by ***Lord Hylton***

To ask Her Majesty's Government whether they will make proposals for international mechanisms to identify and prosecute suspected war criminals, in particular in the Middle East, in consultation with the United Nations High Commissioner for Refugees and other relevant parties.

Lord Alton of Liverpool (CB): My Lords, on behalf of my noble friend Lord Hylton, and with his permission, I beg leave to ask the Question standing in his name on the Order Paper.

The Minister of State, Foreign and Commonwealth Office (Lord Ahmad of Wimbledon) (Con): My Lords, the United Kingdom helped to secure a Security Council resolution in December 2017 to establish a UN investigative team to support domestic efforts by Iraq to hold Daesh accountable by collecting, preserving and storing evidence of Daesh crimes. The UK also co-sponsored the United Nations General Assembly resolution in December 2016 that established the international, impartial and independent mechanism for Syria, a step forward in ensuring accountability for atrocities committed in that country.

Lord Alton of Liverpool: My Lords, I am grateful to the Minister. With the fall of ISIS at Baghuz, and as the investigative team established by the United Nations Security Council Resolution 2379 begins its first mass grave excavation in Sinjar, will the Minister say how the evidence of genocide will be used? What consideration is being given to establishing an international or regional criminal tribunal to ensure that the trials are conducted with due process? Will he reflect that it is inevitable that the removal of citizenship from perpetrators will make it even harder to bring those responsible for genocide to justice?

Lord Ahmad of Wimbledon: My Lords, the noble Lord raised the issue of the first mass graves. Some noble Lords may have seen the many images; I have read the reports. It is poignant that those graves have been found where Nadia Murad used to live. She had to go through many tragic circumstances and won the Nobel Peace Prize.

I agree with the noble Lord about the importance of ensuring that, through the passing of Resolution 2379, the first step is collection and preservation. In many cases, prosecutions will be best left to national authorities, and we continue to work with Iraq. I know that the noble Lord is particularly keen to ensure that local or regional justice is served. It may be that in future some form of international hybrid justice mechanism is used to try those most responsible for crimes of international concern. It is too early at this stage to suggest where each crime will be tried, but we are looking at all options.

On the issue of the prosecution of perpetrators of genocide where the removal of citizenship has occurred, I am sure that the noble Lord would agree that we all share the Government's priority of the safety and security of our own citizens. Those who joined Daesh will face justice, whether in Iraq, once mechanisms are set up, or through international tribunals. If foreign fighters return here, that will be a matter for the CPS and police to judge.

Lord Anderson of Swansea (Lab): My Lords, under the recently passed Magnitsky law, the Government have the powers to prevent impunity of those guilty of grave human rights abuses by imposing visa bans and asset freezes. Will the murderers of Khashoggi be put on the Government's list?

Lord Ahmad of Wimbledon: My Lords, in that case, as the noble Lord will be aware, there are ongoing legal proceedings taking place in the Kingdom of Saudi Arabia. I note the concerns—they are concerns that we share—about anyone who is being tried or is then convicted of crimes. I note the noble Lord's concerns, but it would be inappropriate for me to comment further on an ongoing case.

Baroness Nicholson of Winterbourne (Con): Does the Minister agree that the work of the British Council in Iraq is exceptional and it should be further supported in its determination to support the Bar associations under the KRG, the Kurdish Regional Government, and in Baghdad itself, under the Federal Republic of Iraq, given that in most instances local trials swiftly carried out are considerably better than international trials which, however wonderful, may take 25 years? This is particularly so since most criminals in these instances—not just in Iraq but in the Middle East and elsewhere—are nearly always local people.

Lord Ahmad of Wimbledon: My noble friend speaks with great insight about Iraq, and I pay tribute to her work. When I visited Iraq, one of the notable features was that we saw some very good co-ordination starting to occur between the KRG and the Government in Baghdad. As I have already said, I share my noble friend's view that justice is best served locally. If we look at other occurrences of genocides elsewhere in the world, Rwanda is a good living example of how justice was served locally: accountability for the perpetrators was held locally and that country, notwithstanding the many challenges that remain, is moving forward.

Baroness Northover (LD): My Lords, in a week when international law showed its reach once againin Bosnia, is the Government's commitment to the International Criminal Court as strong as it always was? I hope it is, given the reluctance of the United States, China and others to support the ICC. In light of that, how long does the Minister think it will take, with either an international or a hybrid court, to bring to justice those who have committed alleged atrocities in this region?

Lord Ahmad of Wimbledon: My Lords, taking the noble Baroness's second question first, I think we have seen the first steps with the passing of Resolution 2379 and the budget of £90 million for the preservation and the work that is being undertaken in finding evidence against those people who are currently being held. It remains to be seen, but I assure the noble Baroness that we are working with the Iraqi Government to see how local justice mechanisms can be strengthened. As for the ICC, it needs reform and there are challenges, but we remain absolutely committed to the ICC.

Lord Hannay of Chiswick (CB): Does the Minister agree that, with the discovery of these mass graves, it is surely time that the Government said that they have prima facie evidence that genocide was committed? Secondly, would it not be helpful if the Government were to say that they would support whichever choice the Government of Iraq prefer—either local trials or a hybrid international tribunal? That would surely be a helpful move; we do not have to say anything about the International Criminal Court, because that will take place depending on whether its jurisdiction exists in Iraq.

Lord Ahmad of Wimbledon: On the issue of genocide, the noble Lord knows that it is very much a matter for judicial authorities to make that case. It is very clear that mass graves are being exhumed and I point out that the UN special representative in that regard is Karim Khan, a British QC, so I assure the noble Lord that we are working very closely with the Government of Iraq to ensure that justice is primary in everyone's mind. Where local justice can be strengthened, we will do so and we are working very closely to ensure that objective.

Sibling Couples

Question

11.14 am

Asked by ***Lord Lexden***

To ask Her Majesty's Government what plans they have to extend fiscal and legal protection to close family members, particularly siblings, who live together long-term in jointly owned property.

The Minister of State, Department for International Development (Lord Bates) (Con): My Lords, as the nature of relationships between married couples and those in civil partnerships is different from that of cohabiting siblings, the same legal and fiscal protections do not extend to the latter. The Government do not therefore intend to make changes at this time.

Lord Lexden (Con): Why do the Government refuse to accept that those who live together permanently in platonic relationships, such as sibling couples, are no less deserving and in need of fiscal and legal safeguards than those who marry or become civil partners? Is it just or right that, among other hardships, many platonic family couples should have to endure the terrible anxiety created by the potential loss of the much loved and jointly owned family home because inheritance tax has to be paid when the first member of the couple dies and cannot be deferred until the death of the second? Did the Conservative manifesto not promise to take the family home out of tax?

Lord Bates: My noble friend makes a persuasive case. I appreciate the meeting we had in December, to which he also brought Catherine Utley. It persuaded me that this needed to be looked at again, and I therefore went to the Financial Secretary to the Treasury and asked him to do so. He looked at it again, and pointed out in his letter to my noble friend on 6 February, along with the Answer I gave to my noble friend's Question, that if siblings order their affairs such that they jointly hold the asset, the charge would effectively become liable only on properties exceeding £650,000 in value. If they had difficulty in making that payment, inheritance tax could be made payable over 10 years. That was set against the fact that the average property price in the UK is £225,000. Those were the arguments put forward for retaining the position.

Lord Marks of Henley-on-Thames (LD): My Lords, the noble Lord, Lord Lexden, has a strong point and he has long campaigned on it with great energy and skill. He highlights much unfairness to siblings and other blood relatives who share households. It is not only inheritance tax; there are fiscal disadvantages in a number of areas, and disadvantages in landlord and tenant intestacy. Do the Government agree that while there is not a case—and we agree with this—for equating siblings and other blood relatives with civil partners, there is nevertheless a strong case for a number of reforms? Will the Government agree to establish a cross-departmental working party to look at these issues and consider what specific measures are necessary to address these disadvantages?

Lord Bates: I am happy to do that. The standard response of all Treasury Ministers is to say that government policy in this area of tax is constantly under review. That has a particular meaning at the moment, because the Office of Tax Simplification is undertaking a review of inheritance tax. The issue of siblings will be within the scope of that. It is due to report in the spring, and we will take its findings seriously, but our position is clear—that this reflects an impact on a very small number of estates for which, with careful tax planning, much of the liability can be mitigated.

Baroness Deech (CB): Does the Minister accept that there would be no loss to the Treasury because it would be only a question of rolling over the inheritance tax? Can he also explain exactly what it is about a short marriage or partnership of two years that would give its participants tax advantages not given to siblings living together for 50 or 60 years?

Lord Bates: There would be a tax consequence, because the spousal transfer in inheritance tax costs the Treasury some £2.5 billion per year. To extend the scope of that would involve a charge, and our judgment is that this case does not merit that.

Lord Forsyth of Drumlean (Con): My Lords, given that the Financial Secretary to the Treasury has refused on four occasions to come to the Economic Affairs Committee and its sub-committee on the loan charge and shown himself unwilling to look at the evidence of hardship being caused, might my noble friend try lobbying the Chancellor on this matter instead? Could my noble friend acknowledge that this is not about avoiding inheritance tax? This is about people being able to continue to live in the family home. It is unjust. Is the Liberal Democrat policy not absurd—that the ability to live in the family home should depend on having a sexual relationship rather than a caring one?

Lord Bates: My noble friend makes his point. His point on the loan charge was debated here last night, when he and his representations were mentioned in dispatches by my noble friend Lord Wakeham. However, the point remains that we feel that there is a small number of cases. If a property is worth £1 million, and you divide it and take into account the personal thresholds of £325,000 times two, the liability on the death of one sibling will amount to some £70,000 in tax, which can be spread over 10 years.

Lord Davies of Oldham (Lab): My Lords, I agree with a great deal of what the Minister has said. It is right that the Treasury should be concerned about the protection of inheritance tax. After all, avoidance of inheritance tax is basically a middle-class pastime in this country; any lawyer is likely to recommend that people should think about setting up a trust fund to avoid the consequences of certain aspects of the tax. We all have sympathy for the original Question and problem, but it is now, properly, with the Treasury, and I am glad that the Minister is taking the position that he is.

Lord Bates: I am grateful for the noble Lord's support on this.

The Lord Bishop of Chester: My Lords, over the years, speakers from these Benches have completely supported the thrust behind the Question from the noble Lord, Lord Lexden. It is not only a matter for the Treasury and tax, but a matter of justice. If another party gets into power, perhaps the inheritance tax thresholds might even come down in due course—who knows? This does not seem a strong argument for denying an obvious need for justice in these cases.

Lord Bates: On the point of justice, that was tested, rightly, in the courts. The Burden sisters took their case to the European Court of Human Rights in 2008, and it did not find that there was discrimination against them in contrast to married couples when it came to inheritance tax. That was a clear decision. It is open to anybody else to challenge it through the courts, but our position is clear.

Yoga

Question

11.22 am

Asked by ***Lord Brooke of Alverthorpe***

To ask Her Majesty's Government whether they will draw up a strategy and campaign for the expansion, particularly in the National Health Service, of access to yoga and its associated health benefits.

The Earl of Courtown (Con): My Lords, there is evidence that yoga helps to build strength in healthy adults and can improve health conditions such as high blood pressure. The UK Chief Medical Officers recommend muscle-strengthening activities on at least two days a week, and yoga is one of many activities recommended in their report, *Start Active, Stay Active*.

Lord Brooke of Alverthorpe (Lab): I am very grateful indeed to the noble Earl for such a positive response. I am sure that he will agree with the Secretary of State's statement last autumn that, if the NHS is to survive, we need more social prescribing by GPs, which will help with the financial position. Given what the noble Earl just said, I am sure he will agree that yoga helps people with mental health problems and back pains, those tackling addictions, and people with obesity—a whole range of subjects. Is he willing to meet a group of representatives to discuss how we might take this forward, particularly in the context of the 10-year programme being drawn up to try to offer people greater movements towards better health while saving the NHS money? I declare an interest as the co-secretary of the All-Party Group on Yoga.

The Earl of Courtown: My Lords, the noble Lord is quite right about the importance of social prescribing—it can be felt right across the population, particularly in relation to mental health. I agree with my right honourable friend the Secretary of State about social prescribing; that is one of his top priorities. The noble Lord asked whether a meeting could be arranged with me, him and other interested parties. I will pass that request on to the Minister responsible so that they can have a useful conversation.

Lord Kirkhope of Harrogate (Con): My Lords, it is acknowledged that yoga is very beneficial for mental health: it provides mindfulness, an ability to make better judgments, to relax, and to take decisions in a sensible and responsible way. In light of that, does my noble friend agree that yoga should now be made obligatory for Members of the House of Commons?

The Earl of Courtown: My Lords, my noble friend makes a very important point about the importance of yoga and the great benefits that it gives to everybody. I have unrolled my yoga mat in my office and am waiting for a lesson from my noble friend Lady Barran, who is a teacher of yoga.

Baroness Walmsley (LD): My Lords, there appear to be particular benefits of yoga for older people in improving balance and muscle tone, NICE estimates that falls cost the NHS more than £2.3 billion a year, and we know that older people often become lonely,

[Baroness Walmsley]
so the mental health and social benefits of going to classes also apply. Given those facts, will the Government encourage yoga for older people?

The Earl of Courtown: Yes, the noble Baroness is quite right. The only proviso as far as that is concerned is that more frail elder people should take great care—the noble Baroness makes a hand movement which I think describes her exercise.

Noble Lords: Oh!

The Earl of Courtown: Anyway, deep breath! The noble Baroness is quite right about the importance of social prescribing and yoga being of great advantage to the population.

Baroness Meacher (CB): My Lords, is the Minister aware that East London NHS mental health trust has for seven years been running and evaluating sports programmes—including yoga, but also many other activities—for people with severe mental health problems? I shall give an example: 100% of those involved in its boxing programme for forensic patients—those with severe mental health problems and a criminal history—have achieved a significant improvement in their mental health and well-being. Will he make NHS England aware of the work in East London and issue guidance to mental health trusts across the country that they should all run a range of sports programmes for people with severe mental health problems?

The Earl of Courtown: The noble Baroness is quite right: the importance of those various forms of activity is well felt. I do not know the event that she described, but I know that Haringey CCG has created a better care fund to improve health and social care services for older people, particularly those with long-term health conditions. Strength and balance is one of the programmes funded by that partnership; that goes back to the question of the noble Baroness, Lady Walmsley. I will of course make that point to the department, but more and more areas are getting involved in social prescribing, which is promoted by my right honourable friend the Secretary of State and is without doubt doing a great job.

Lord Stone of Blackheath (Lab): My Lords, I have just discovered that you can do downward dog on these Benches: I invite noble Lords to join me. With the evidence showing that yoga and mindfulness can be good for preventing and curing illnesses, both physical and mental, what progress has been made with the establishment of a national academy for social prescribing? Will representatives of yoga and mindfulness practice be on it?

The Earl of Courtown: Yes, my Lords, engagement with stakeholders on the national academy for social prescribing has already begun and they are being consulted. The academy is under development. I have asked the department and NHS England whether representatives of yoga and mindfulness will be engaged in its development.

Baroness Thornton (Lab): My Lords, I can bear witness to the efficacy of workplace yoga, as I attended many of the lunchtime sessions organised by my noble friend for seated yoga before the Christmas break. I enjoyed them very much and commend them to all Members of the House. Noble Lords will be very relieved to know that MPs, Peers and other staff were not required to don their Lycra during lunchtime. Is the Minister aware of the amount of workplace yoga being encouraged for NHS staff for not only their mental but their physical well-being, for those who have to lift heavy weights and so on? That programme should be rolled out across the whole NHS.

The Earl of Courtown: The noble Baroness makes a good point. What she did not mention is how good yoga is for stress, and how to reduce one's stress levels with movement, breathing and meditation. I know that yoga classes are available in various workplaces, but I was not aware of the NHS programme. I will, of course, bring it to the attention of the department.

Housing: Future Homes Standard

Question

11.30 am

Asked by ***Baroness Thomas of Winchester***

To ask Her Majesty's Government whether the Future Homes Standard announced in the Spring Statement will include measures to ensure accessible and adaptable standards are met.

The Parliamentary Under-Secretary of State, Ministry of Housing, Communities and Local Government and Wales Office (Lord Bourne of Aberystwyth) (Con): The Government will consult later this year on our plans to introduce the future homes standard for new-build homes to be future-proofed with low-carbon heating and world-leading levels of energy efficiency. Separately, the Government are currently working on a review of accessibility standards for new homes.

Baroness Thomas of Winchester (LD): I thank the Minister for that Answer. This is so important, because only 7% of our housing stock is accessible and adaptable. Will the Government use this opportunity to ensure that developers are required to build to the more inclusive, accessible and adaptable category 2 standard?

Lord Bourne of Aberystwyth: My Lords, I pay tribute to the noble Baroness for her continued—and quite right—tenacity in this area. Document M, which relates to the accessibility standards, will be reviewed this year as part of a review of all building regulations, consequent on the Government's policy and the Hackitt review.

Baroness Andrews (Lab): First, does the Minister agree with the Building Research Establishment that the six years it will take to introduce the future homes standard is an exceptionally long time? Can he tell us why it cannot be done sooner? Secondly, this is an extraordinary opportunity to introduce an integrated set of lifetime homes standards into a set of standards that will hold for ever. This is surely what we need for an ageing population. If our ageing population could stay in their own homes while they grow old and frail,

that would help the health service and the care services enormously in terms of costs and benefits. Does the Minister agree that we must not miss this opportunity?

Lord Bourne of Aberystwyth: My Lords, as the noble Baroness knows, document L relates to carbon standards in relation to heating and environmental standards. Document M, as she also knows, relates to accessibility. They are part of a suite of documents, and each has to be reviewed separately, consequent on Hackitt, to ensure that we get the programme right. The noble Baroness is right to say that six years is a considerable time. The target is, of course, "by 2025", so I can offer her the reassurance that it could be achieved within that time, earlier than 2025. But we want to get it right, and it is important to have a thorough consultation.

Lord Shipley (LD): My Lords, my noble friend Lady Thomas of Winchester mentioned the category 2 standard. Building homes to that standard is currently optional, but it has been adopted in some places. That is the standard that reflects the lifetime homes standard, so does the Minister agree that it should be made compulsory?

Lord Bourne of Aberystwyth: My Lords, I am very much in favour of the review, but I do not want to prejudge it; it is important that it be left to take its own course. Picking up a point made by the noble Baroness, Lady Andrews, it is certainly important to examine the durability of the standards with a view to not only people who are disabled but people who are ageing. We have an ageing population, and the Government are very much committed to the industrial strategy grand challenge mission on ageing. That is quite a mouthful, but it means aiming for people to live five extra years in good health by 2035, so it plays into this agenda. However, I do not think that we should prejudge the consultation.

Lord Best (CB): My Lords, I declare an interest as president of the Sustainable Energy Association. We greatly welcome the Chancellor's move to require housebuilders to up their standards of energy efficiency and carbon-neutral housebuilding. The technique of using building regulations to make housebuilders do things they otherwise would not must apply also to accessible housing. Exhorting housebuilders to do the right thing and produce more accessible homes does not get us anywhere. They are doing very well as it is, thank you. We need those building regulations changed in a compulsory way, as the noble Lord, Lord Shipley, stated, to do the great things the noble Baroness, Lady Thomas of Winchester, has advocated for so long.

Lord Bourne of Aberystwyth: My Lords, the noble Lord does much good work in this area, for which I thank him. He makes a powerful case but it is for those reasons that we had the Hackitt review, are holding a review of building regulations and will act as a consequence. Things are moving in that direction. Those are not the only things happening, of course—for example, the ECO places an obligation on energy companies so that energy bills are lower and less carbon energy is used—but they are central. Again, I speak to the importance of document M on accessible housing. The requirement to take account of the interests of people with disabilities and an ageing population is provided for in the NPPF—the planning framework—and the Neighbourhood Planning Act. It is all moving in that direction.

Lord Kennedy of Southwark (Lab Co-op): My Lords, I refer the House to my relevant interests in the register. The Chancellor of the Exchequer told us that he fully supports the need for future-proofed new homes but does not think we should wait until 2025 to tackle energy efficiency and carbon reduction. In that case, can the Minister explain why the Government scrapped the zero-carbon homes plan in 2015, and in 2016, during the passage of the dreaded Housing and Planning Act, opposed the introduction of carbon compliance standards for new homes, which would have helped reduce carbon emissions and given people lower fuel bills?

Lord Bourne of Aberystwyth: My Lords, first, it is important to note that the energy standard for new homes has improved by more than 30% since 2010, reducing energy bills by £200 per annum per household on average. That is indicative of the progress made. The noble Lord referred to previous policies; to some extent, they depended on offsetting, which did not have a direct impact. This measure will: it will look at things such as heat pumps, solar panels and the replacement of old gas boilers. That will have a direct impact, unlike the old offsetting principle. To that extent, it is very much to be welcomed.

Materials and Articles in Contact with Food (Amendment) (EU Exit) Regulations 2019

Genetically Modified Food and Feed (Amendment etc.) (EU Exit) Regulations 2019

Animal Feed (Amendment) (EU Exit) Regulations 2019

Novel Food (Amendment) (EU Exit) Regulations 2019

Motions to Approve

11.37 am

Moved by ***Baroness Manzoor***

That the draft Regulations laid before the House on 4 and 5 February be approved. *Considered in Grand Committee on 19 March.*

Motions agreed.

Aviation Safety (Amendment etc.) (EU Exit) Regulations 2019

Aviation Noise (Amendment) (EU Exit) Regulations 2019

Aviation Statistics (Amendment etc.) (EU Exit) Regulations 2019

Motions to Approve

11.37 am

Moved by ***Baroness Sugg***

That the draft Regulations laid before the House on 11 February be approved.

Relevant document: 18th Report from the Secondary Legislation Scrutiny Committee (Sub-Committee B). Considered in Grand Committee on 12 March.

Motions agreed.

European Union (Withdrawal) Act 2018 (Consequential Modifications and Repeals and Revocations) (EU Exit) Regulations 2019

Motion to Approve

11.38 am

Moved by ***Lord Callanan***

That the draft Regulations laid before the House on 29 January be approved. *Considered in Grand Committee on 4 March.*

The Minister of State, Department for Exiting the European Union (Lord Callanan) (Con): My Lords, I would like to address a point made by the noble and learned Lord, Lord Hope, during the debate on this SI on 4 March. I am happy to confirm that my department consulted the Scottish Government, and sought and secured their agreement to make the proposed amendments to the Interpretation and Legislative Reform (Scotland) Act 2010, as set out in Part 3 of the regulations. My department also consulted the Northern Ireland Civil Service in the absence of an Executive, securing its agreement on the proposed amendment to the Interpretation Act (Northern Ireland) 1954, as set out in Part 4 of the regulations. Officials in the Scottish Government agreed that the regulations do not require the formal consent of the Scottish Parliament. In November 2018, my colleague, Chris Heaton-Harris MP, the Parliamentary Under-Secretary of State for Exiting the European Union, wrote to Michael Russell MSP, the Cabinet Secretary for Government Business and Constitutional Relations in the Scottish Government, regarding the proposed amendments. No concerns were raised. I beg to move.

Lord Hope of Craighead (CB): My Lords, I thank the Minister for clarifying a point which was left unclear in the Explanatory Memorandum. It is very important that these matters, in dealings with the devolved Administrations, are properly set out and clarified. I am extremely grateful.

Lord Foulkes of Cumnock (Lab Co-op): My Lords, I agree with the noble and learned Lord, Lord Hope, on the specific point relating to Scotland. However, I wonder if the noble Lord, Lord Callanan, really wants to proceed with this SI today, given that yesterday, after the Prime Minister made her astonishing statement from Downing Street, an additional 200,000 people immediately signed up to the petition to revoke Article 50. Now more than half a million people have signed that petition. In fact, so many wanted to sign it that the website collapsed and is now being repaired so that more people can sign. In the light of that and all the other surrounding circumstances, does the Minister think it is wise to proceed yet again with this particular statutory instrument?

Lord Callanan: Unsurprisingly, the Minister does think that we should proceed with this particular statutory instrument and I am sorry that the noble Lord was not able to come along to the committee where we discussed it. If it is helpful to him, I shall set out what it actually does. Perhaps many people do believe that Article 50 should be revoked. That is not the policy of my party and as far as I know it is not the policy of his party. Were that eventuality to come to pass, although I do not think that it will, of course none of these amendments will take effect because we would not then have a leaving date. They come into effect only when we leave.

For the noble Lord's information, let me summarise briefly what the statutory instrument does. It sets out what happens to non-ambulatory cross-references after exit day and how references made to EU legislation after exit day are to be read. The SI also amends domestic interpretation legislation to ensure that it is adequately referenced and incorporates retained EU law; that is, the new body of domestic law created by the European Union (Withdrawal) Act. Finally, this SI repeals and revokes various pieces of EU-derived domestic legislation that will become redundant on exit day. The noble Lord will notice the references to "exit day" in the regulations.

Baroness McIntosh of Pickering (Con): My Lords, I am most grateful to my noble friend for writing to me on the concern I expressed, which was addressed in the House of Commons when MPs considered the statutory instrument, on the fact that non-ambulatory provisions had been omitted from the original European Union (Withdrawal) Act. However, his response actually missed the point that I raised with him in my letter that was expressed by the Parliamentary Under-Secretary of State, my honourable friend Christopher Heaton-Harris, in the other place. It is a very simple question: if this was omitted from the original Act, are there any other omissions of which he and his department are aware that may have to come back to the House in the short time available before 29 March?

Lord Callanan: No.

Motion agreed.

Common Agricultural Policy and Agriculture and Horticulture Development Board (Amendment etc.) (EU Exit) Regulations 2019

Common Agricultural Policy (Financing, Management and Monitoring Supplementary Provisions) (Miscellaneous Amendments) (EU Exit) Regulations 2019

Common Agricultural Policy (Financing, Management and Monitoring) (Miscellaneous Amendments) (EU Exit) Regulations 2019

Agriculture (Legislative Functions) (EU Exit) Regulations 2019

State Aid (Agriculture and Fisheries) (Amendment) (EU Exit) Regulations 2019

Motions to Approve

11.43 am

Tabled by ***Lord Gardiner of Kimble***

That the draft Regulations laid before the House on 21 January, 13 February and 4 and 11 March be approved.

Relevant document: 18th Report from the Secondary Legislation Scrutiny Committee (Sub-Committee A). Considered in Grand Committee on 20 March.

Baroness Vere of Norbiton (Con): My Lords, in the absence of my noble friend and with the leave of the House, I beg to move the five Motions standing in his name on the Order Paper.

Motions agreed.

Food and Drink, Veterinary Medicines and Residues (Amendment etc.) (EU Exit) Regulations 2019

Zoonotic Disease Eradication and Control (Amendment) (EU Exit) Regulations 2019

Motions to Approve

11.43 am

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

That the draft Regulations laid before the House on 13 and 14 February be approved.

Relevant document: 19th Report from the Secondary Legislation Scrutiny Committee (Sub-Committee B). Considered in Grand Committee on 20 March.

Motions agreed.

Railway (Licensing of Railway Undertakings) (Amendment etc.) (EU Exit) Regulations 2019

Motion to Approve

11.44 am

Moved by ***Baroness Sugg***

That the draft Regulations laid before the House on 25 February be approved.

Relevant document: 17th Report from the Secondary Legislation Scrutiny Committee (Sub-Committee A).

The Parliamentary Under-Secretary of State, Department for Transport (Baroness Sugg) (Con): My Lords, in moving the regulations I will also speak to the Train Driving Licences and Certificates (Amendment) (EU Exit) Regulations 2019. These regulations are being made under the powers conferred by the European Union (Withdrawal) Act 2018 and will be needed in the event that the UK leaves the EU without a deal. The regulations fix deficiencies in two sets of domestic railway regulations and EU implementing legislation: the Train Driving Licences and Certificates Regulations 2010, the TDL regulations; and the Railway (Licensing of Railway Undertakings) Regulations 2005, the operator regulations.

As part of the measures aimed at liberalising rail markets, the EU introduced standard documentation for train driving licences and rail operator licences. These documents are valid across the European Economic Area. The Office of Rail and Road—the ORR—is responsible for issuing train driving and operator licences in the UK. Subject to meeting certain criteria, such as medical and competence requirements, the ORR will issue a train driving licence valid for up to 10 years. Train drivers also need a certificate, issued by the operator, confirming that the driver is competent to drive a certain type of train on the infrastructure. Operator licences are issued subject to the operator meeting certain conditions, including financial fitness and having necessary insurance cover. In Northern Ireland the Department for Infrastructure is the licensing authority.

The Train Driving Licences and Certificates (Amendment) (EU Exit) Regulations amend the TDL regulations and three pieces of EU implementing legislation. The regulations will ensure that the train driving legislation will continue to function after exit day by making a number of technical changes. They remove reporting requirements to the Commission, references to member states and functions reserved for the EU Commission and the European Union Agency for Railways. The regulations also amend the definition of a "train driving licence" so it refers only to ORR-issued train driving licences. In addition, changes are needed to ensure that licences issued in Northern Ireland are valid for use in Great Britain and to make corrections to the EU implementing legislation that applies to both GB and NI.

The Railway (Licensing of Railway Undertakings) (Amendment etc.) (EU Exit) Regulations make similar technical corrections, removing references to member states and replacing references to EU legislation with

[Baroness Sugg]
references to domestic legislation. The most significant amendment is to rename the "European licence" as a "railway undertaking licence", though the cost, criteria and processes for obtaining a licence will not change. The draft regulations also revoke implementing regulation 2015/171. This EU regulation sets out a standard template for the form of an operator licence and details on the procedure of applying for a licence. These will not be required post exit as this detail is already incorporated into the ORR's procedures, which are published on its website in accordance with the operator regulations.

Both sets of regulations also make transitional provisions that recognise existing European documentation, issued in EEA states, for a maximum of two years after exit day or until it expires, whichever is the sooner. In short, existing train drivers and operators providing services in Great Britain will not have to take any immediate action if the UK leaves the EU without a deal, regardless of where their documents were issued. There are a small number of drivers in the EU using ORR-issued licences, which will not be automatically recognised in a no-deal scenario. Departmental officials have worked with the regulator and operators to ensure that these drivers are aware of the need to obtain an EU licence. There are also UK operators providing services in the EU. All these operators already have licences issued in the country they are providing services in, so will be unaffected.

These draft regulations support the smooth continuation of cross-border services, such as Eurostar, by ensuring that EU-licensed train drivers engaged in cross-border services will continue to be able to operate in the UK. The Government are actively engaging with a range of European counterparts, including relevant member states, to secure bilateral agreements for cross-border rail services. These discussions include arrangements for longer-term recognition of train driver licences and operator licences. Bilateral discussions are progressing well, and we are confident of having measures in place in time for exit day.

By removing certain administrative requirements, the draft operator regulations technically widen the scope of who can be charged an application fee by the ORR for an operator licence and of who could be captured by the existing criminal offence of driving or operating on the railway without an appropriate licence. Consequently, these draft regulations are subject to the affirmative procedure. In Northern Ireland, the role of issuing these licences falls to the Department for Infrastructure and a separate instrument is being taken forward on behalf of Northern Ireland.

We have worked closely with the ORR and have engaged with industry to provide as much certainty as possible. The regulations are an important part of our no deal preparations, providing clarity for business and certainty for drivers. I beg to move.

Lord Berkeley (Lab): My Lords, I am grateful to the Minister for bringing these regulations to the attention of the House. We have only got a week to go, and if we do not pass them today there may not be any trains running after 29 March—so well done the Department for Transport for leaving it to the last minute.

I have a couple of questions on both SIs. On the licensing of railway undertakings regulations—this is not clear to me and maybe this is not part of these regulations—I was talking to a train operator, from a UK company which has a licence in this country and also operates railway services in other member states, who explained that the company was having trouble in finding out whether its UK licence, in other words its licence to operate in the UK, would be valid in other member states after Brexit. Such companies try hard, often in competition with other incumbents, and it is a strain on their business and management set-ups if they still do not know whether they will be able to operate, either under a new franchise or in continuation of an existing one, after next week. I note that in paragraph 7.3 of the Explanatory Memorandum, as the Minister said in her introduction, there is a two-year window for these licences to continue. However, I am not sure whether that occurs in the other direction, and I would be grateful if she could respond to that.

I have two issues on the train driving licences and certificates regulations. Will UK drivers operating in France, the Channel Tunnel or other member states need to take driving tests in France and, if so, when? Is there a two-year window or when will it happen? This concerns not only Eurostar because in the future there might be other companies operating services through the tunnel, as well as rail freight. I declare an interest as having been chairman of the Rail Freight Group. These regulations add a great deal of bureaucracy, and I would be glad to hear what arrangements will be required for drivers with licences from other member states to come here. Is there a two-year window there?

My second comment relates to paragraph 7.8 of the Explanatory Memorandum. This SI removes the duty to inform the Commission on licences and safety matters and, presumably, vice versa. The statement that we do not need to tell the Commission anymore and it does not need to tell us is putting our head in the sand about anything to do with railway safety. Railways are rule-based operations and the more common rules we have the easier it goes. The transfer of information on safety, accidents, driver qualifications and so on, in the widest possible sense, is surely good for the safe operation of our railways. The text of paragraph 7.8 and elsewhere is drafted in a very negative way. Even if there is not a requirement—I think there should be—to exchange data, I hope the Minister will say that the ORR and the European Railway Agency should be encouraged to exchange data and participate in putting it together in common, European co-ordinated, long-term information about the safety performance of railways over the years. I look forward to the Minister's response.

Lord Snape (Lab): My Lords, the House will be grateful to my noble friend for tabling this Motion to Regret—

Baroness Sugg: We have not quite got to the Motion to Regret yet. We are starting with the two SIs.

Lord Liddle (Lab): My Lords, I strongly support what my noble friend Lord Berkeley said. I feel very passionately on this subject. First, one of the great

things we have seen in the past two decades is the expansion of cross-border rail services. It is important for freight, where in the long term we want to try to take as much lorry traffic off the roads as possible, and it is also very important for expanding passenger networks across Europe and providing a real alternative to air travel, which has damaging effects on climate. I understand my noble friend's concerns about why we are not promoting the maximum exchange of information and co-operation with our European partners in the event of Brexit.

Secondly, I would like assurances about rail services on the island of Ireland. This is very important to good relations between Britain and Ireland. The development of railways on the island of Ireland is a way of encouraging tourism in north and south. I would like to hear from the Minister that nothing is being done that will in any way be a barrier to the development of that co-operation.

Lord Snape: My Lords, having left the station before the right of way signal, perhaps I can start again and apologise to the House for—mixing my metaphors—jumping the gun. On this occasion, I shall confine my remarks to the train driving regulations and will discuss the other matter later. I presume I will be in order, which will stop my noble friend on the Front Bench again waving at me in a somewhat frantic fashion.

As my noble friend Lord Berkeley says, I do not think we are getting clarification on these matters. I suspect confusion is likely to arise, depending on how these regulations are implemented. Irish railways have been mentioned. Can the Minister say whether the new licences to be issued for Northern Ireland will be specific to that part of the United Kingdom or be valid throughout the United Kingdom and whether they will be recognised on, for example, the Enterprise service between Belfast and Dublin? What discussions have taken place between our Government and the Irish Government about the future of that service?

How long will the new licences last? My noble friend mentioned a two-year interim period, but what happens after that? A lot of discussions need to take place as a result of this wretched decision that the Prime Minister is apparently going to insist upon. Whether she gets it through the other place remains to be seen.

How much discussion has there been about the long-term effect of this change? After all, train drivers are no longer required to retire by law, but they normally stop train driving in their 60s and many of them will have been driving for a considerable period. Will these licences need to be renewed on a regular basis?

Overall, this is another example of the bureaucracy that will be created as a result of this decision. Perhaps the Minister can tell us how many people in her department will have to be employed to issue the licences and check their validity. Perhaps she can also tell us whether the standards that are now commonplace across Europe will continue to be commonplace in the United Kingdom or whether, at the whim of this or some other Secretary of State, the conditions under which the licences are issued will be altered? These are all matters that result directly from the, in my view, disastrous decision that we are about to take.

I will return to the other regulations at a proper time. They will possibly be even more likely to dislocate the railway industry than these regulations. However, there are still some outstanding questions about the licences, and I would be grateful if the Minister could at least take on board our fears and reassure us.

Noon

Lord Foulkes of Cumnock (Lab Co-op): My Lords, I have sat through a number of transport statutory instruments which have been brought forward in the event that there is no deal—something that none of us wants or expects to happen. There have been dozens and dozens of them in Grand Committee and on the Floor of the House. The noble Baroness, Lady Sugg, has spent a lot of her valuable time on them, and we have five officials in the Box—excellent, qualified people—who have been working hard on them. This total waste of time and effort has been caused by the Prime Minister. One of my noble friends said to me earlier that it is not the men in grey suits that need to turn up to deal with what is happening in 10 Downing Street but the men in white coats. I am grateful to him for suggesting that to me. Can the Minister give us an estimate of the time and cost involved in dealing with all these unnecessary statutory instruments?

Baroness Altmann (Con): My Lords, I would like to register the concern and disappointment that is also felt on these Benches at people having to apply to drive trains, cars, buses or whatever else across the EU when the UK has led the charge in unifying standards and bringing the countries together. Perhaps I may ask one question. My noble friend mentioned that a small number of drivers have not yet achieved the qualification to drive in the EU if we leave with no deal. Can she tell the House how many drivers are in that situation and what efforts are being made in that regard? She noted that some efforts are being made to inform them about what to do and what the implications might be for those who do not have those qualifications.

Baroness Randerson (LD): My Lords, I will start with the licensing of railway undertakings regulations. This SI is slightly more like the type of arrangement that we were promised at the start of this gruelling marathon. It is intended to ensure the minimum change.

Currently, there are two sorts of licence in Britain. One is issued by the ORR to a small number of operators, such as Merseyrail, that are separate from the main network, and it is based on 1993 rules. The rest of the operators have a European licence based on 2005 regulations. If you hold one of those, you can provide services in any EEA member state. This is all part of the European programme to establish a single European railway area. That is a very sensible approach that will be a basis for equal access, competition and common rules on safety, which is very important.

This SI allows operators with a licence not issued by ORR to continue for two years after exit day, whenever that may be. Will the Minister clarify that this is a rolling feast—that it will be two years after an exit day on, for example, 22 June? That would be sensible, but I am concerned that the rules on continuity

[Baroness Randerson]
in these SIs are so haphazard: some things finish in September, some finish in December, some continue for two years from whenever we leave, and so on.

After two years, under this SI, operators will need to revert to an ORR licence. The Explanatory Memorandum helpfully notes that only one operator is currently caught by that rule. Importantly, the SI does not provide for long-term mutual recognition of operator licences issued by the EEA and held by cross-border service operators—that is, the Channel Tunnel. Mutual recognition will depend on future bilateral agreements. Can the Minister update us on negotiations on this aspect?

Eventually, after two years, the only type of licence that will be valid in Britain will be issued by ORR. Existing European licences will cease to be valid and operators will instead need railway undertakings licences. Once again, this is a long, tortuous, bureaucratic process to change the name of the licence.

Finally on this SI, I express my delight that there has been a full consultation, which has been reported back to this House in detail, as consultations should be. It was comprehensive in that it included passengers, freight operators, devolved Administrations and so on, and a draft instrument was produced. It is ironic that this SI will involve minor disruption for a relatively small number of large organisations which to some extent are equipped to cope with it. While we have had a full consultation for this SI, in the case of others that involve major changes for people who are not equipped to deal with them, we were told that they did not get a consultation because the changes were not considered significant or to pose a risk. The truth is that this Government are getting away with a massive distortion of the normal rules followed by Governments; ignoring the consultation process is one aspect of that.

I turn now to the train driving licences and certificates SI, which affects thousands of train drivers, as opposed to a handful of companies. While a full consultation has been done on the previous SI, this one apparently is not important enough to warrant one. In the Explanatory Memorandum there is a list of organisations that attended a workshop, but there is no mention of trade unions. Trade unions are very strong and active in the rail industry and a very important group of people. Were they consulted and, if so, what did they think about these changes? If they were not, do the Government have any intention of having discussions with them?

In 2010, the EU regulations established a standardised regime for the licensing and certification of train drivers, with a standardised layout of licences and certificates, which of course is important to avoid confusion about what documents can be accepted. It includes, for example, what rolling stock they are qualified to drive. I cannot stress enough how important it is that there is clarity on qualifications and certification. That is really important for safety. I have a good friend who is a train driver, and he has explained to me at some length the difference between the levels of qualification and how important those differences are for our safety. Standardised criteria for training and examinations are obviously as important as, if not more important than, in many other professions.

In 2015 the regulations created a new standard for language and eyesight tests. Everyone can realise the importance of that. Facility with the language is as important for train drivers as it is for the medical profession, for example, and eyesight is extremely important.

Sensibly, this SI includes a transitional provision for the recognition of European licences in Britain for up to two years. Can the Minister clarify why the phrase "up to two years" is repeatedly used in the Explanatory Memorandum? Is that because the two years is measured from the end of March and we may not leave then? Or is it because the Government have not fully decided what the end of this story is going to be? I am sure that the Minister will understand that knowing exactly how long your licence is going to last is pretty important for those engaged in the profession—and indeed for the people who employ them.

Paragraph 2.11 of the EM says that only,

"a small number of train drivers",

use European licences. Perhaps the Minister could clarify how many "a small number" is.

I have a real concern about paragraph 2.13, on the removal of requirements to inform the EEA safety authorities if a driver is not meeting the conditions of a licence. There is a discretionary power included for passing information for a transitional two-year period, but there is no obligation. This is something that I have raised time and again: the transfer and sharing of information are at the core of safety procedures, and yet again this Government are playing politics with the safety of our transport system.

Lord Tunnicliffe (Lab): My Lords, this is about my 60th SI, so I am into some SI fatigue. Previously I have started by saying how much I regret being here because of the Government's failure to rule out a no-deal Brexit. Unfortunately, the world has changed. If nobody blinks, our no-deal exit is next Saturday and these rules will come in. I therefore have to disagree with my noble friend Lord Foulkes: I think we do have to do this work, for the worst possible reason—because we are in the worst possible place. Brexit itself is bad enough, but the Brexit that is going to be thrust upon us unless sanity reigns—

Lord Foulkes of Cumnock: Will my noble friend give way? I am going to agree with him: we have to do this. I just regret that we are having to do it because the Prime Minister has taken such a stubborn attitude. If she had understood the position and realised the strength of feeling earlier, we would not now be in the situation of facing the possibility of no deal at the end of next week. I hope that we do not have no deal, but I understand why we are having to do this. I just think that it is a terrible waste of the Minister's time and staff time, and it would have been completely unnecessary if the Prime Minister had made a sensible decision.

Lord Tunnicliffe: I am glad the noble Lord agrees with me that, unfortunately, it is now a necessity.

Turning to the two instruments, first, I agree with virtually everybody who has spoken—including my noble friends Lord Berkeley and Lord Snape, and the

noble Baroness, Lady Randerson—that the ongoing exchange of information should be a long-term aspiration, even in the silliest position we might find ourselves in. Can the Government come out and say that it will be a long-term aspiration in the rail industry? Exchange of information in the transport sector is one of the key factors necessary to achieve the levels of safety we have come to expect.

12.15 pm

I went through the Explanatory Memorandum in some detail. On the first SI, I have a detailed question that I am quite happy to receive a letter on. In paragraph 7.7, it says that:

"The instrument intentionally does not make the necessary consequential amendments",

to a number of regulations, which it then goes on to describe. Could the Minister explain why the instrument does not make the consequential amendments? When will they be made, and by whom?

There are other references, but the area I would like the Minister to expand on in some detail is the whole situation of the Channel Tunnel. How will it be legal for UK drivers to drive through the tunnel and then on to Brussels, Paris and, I hope, other destinations in Europe, as my noble friend Lord Berkeley pointed out? Is that flexibility already allowed for through other treaties, or will it require further bilateral agreements?

Baroness Sugg: I thank noble Lords for their consideration of these draft regulations. I agree with all noble Lords that sharing information is very important, not least because of safety. There will still be a power, rather than a duty, to share information on train driving licences with other member states. That will enable mutual sharing arrangements to be put in place. It is our long-term aspiration to continue to share that information.

On numbers of driving licences, the vast majority of people driving trains in the UK have an ORR-issued licence. There are around 250 drivers in the UK who have licences issued under the EEA. Those licences will be recognised for up to two years. In answer to the point from the noble Baroness, Lady Randerson, it is up to two years because they may expire before then. If they do, they will need to be replaced. That two years is from exit day, which is currently defined as 29 March, but if that definition changes, it will be two years on from that.

Lord Berkeley: Going back to the Minister's last comment about sharing information, paragraph 7.8 of the Explanatory Memorandum on train driving licences says:

"The duty to inform EEA safety authorities will be replaced by a discretionary power to provide such information for the two-year period during which European licences continue to be recognised, and then will cease altogether".

That is not quite the same. I understand what she says about wanting to continue to share information, but that does not appear to be the intent of this document.

Baroness Sugg: I presume that that is the case because we have the two-year implementation period and our future relationship will be subject to negotiations. As I said, our long-term aspiration is to share that information. We think a legal duty is inappropriate, because another authority might refuse to receive information or co-operate, so we would not be able to fulfil that duty.

Lord Deben (Con): Can my noble friend imagine any circumstances whatever in which the British Government would not want to share such information with our neighbours? Why on earth are we talking about negotiation? Of course we will do that and of course they will want to do that with us. What are we talking about?

Baroness Sugg: As I said previously, it is absolutely our intention to continue to share information. It is important that we do so, not least because of safety. We will continue to have a very close relationship with our European neighbours, and we very much hope to share the information with them. Obviously, they will have to accept that information from us, but our long-term aspiration is to continue to share it.

Baroness Altmann: I know my noble friend is in a difficult position, but it is rather difficult for the House when the SI we are considering says that the exchange of information will cease altogether after the two-year period. I share the concerns expressed by my noble friend Lord Deben.

Baroness Sugg: I hope that I am able to provide further reassurance that we wish to continue to share information with our neighbours. Obviously, the exact format of that and how we do it will be subject to our future relationship.

On the number of licensed operators, there are 250 drivers in the UK. We are confident that they will relicense with the ORR within the next two years. We notified the industry of this requirement in 2017. Train operators would normally do this on behalf of their drivers in almost every case.

A small number of drivers are using ORR-issued licences in the EU. These will not be recognised in a no-deal scenario, but we have worked with the regulator and operators to ensure that those drivers are aware of the need to obtain an EU licence. I am sorry that the driver who the noble Lord, Lord Berkeley, spoke to was not aware of that. If I can get some more information on that, perhaps we can get in contact with them and make sure they are aware.

Following engagement with operators, we are confident that they are aware of everything that they need to do. The technical notices that we published back in October set out the position. We are confident that all relevant operators will have relicensed their train drivers before exit.

A number of noble Lords mentioned the Channel Tunnel. Under EU law, Eurotunnel, as an operator of the shuttle service, is not required to hold and operate a licence. It is a unique cross-border operation and is therefore unaffected by the operator licensing provisions. Eurotunnel engages both UK and French-licensed train drivers to operate its shuttle services. Its ORR-licensed train drivers will be unaffected by these regulations. The Government are working closely with European counterparts, including France, on bilateral arrangements for train drivers operating the freight

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service and the shuttle service through the Channel Tunnel. The intention is to ensure that the current licensing arrangements are maintained, meaning that Eurotunnel can continue to engage both UK and EU-licensed train drivers in its shuttle operation.

We are also supporting operators with contingency plans. We strongly support the EU's proposed contingency measures on rail, which will help mitigate any disruption to Eurotunnel shuttle services regarding train driving licences and provide more time for the bilateral arrangements which we expect to be put in place.

The draft regulations from the EU cover UK-issued licences, certificates and authorisations, remaining valid for cross-border rail services for nine months from the date of exit. That will cover both Channel Tunnel services and cross-border services on the island of Ireland. COREPER endorsed this on 20 March. The proposal is expected to be adopted by written procedure tomorrow by the Council of Ministers, and we expect it to take effect early next week. We strongly support those contingency measures. Our future arrangements may well be bilateral, but that nine-month period gives us enough time to get them into place.

Lord Tunnicliffe: I am sure everything the Minister says is accurate and that if I understood the treaty I would understand what she said, but can we translate it into practical terms? By Eurostar services, I assume that she means those to Brussels and Paris—and some intermediate stops which I cannot remember. I think she is telling the House that, on Saturday week, those services will be able to run; and I think she said that the shuttle service would be able to run. But say somebody wants to start a service—as people do aspire to—from London to Milan; is there a bilateral agreement that will allow that to happen or is it one of the many that would have to be negotiated? What if we start running a wider variety of services through the tunnel, such as London to Milan or London to Lyons, through France and into a third country?

Baroness Sugg: The regulation refers to services that are currently running, which will not be affected on day one or after. New services will be subject to separate authorisation and agreements. We hope that our future bilateral arrangements with member states would allow those new services to function, but, at the moment, the proposed regulations cover existing ones.

On the island of Ireland, the draft regulations make provision for licensing arrangements in Great Britain, with the exception of technical corrections to EU-implemented legislation with effect in Great Britain and Northern Ireland. A separate instrument is being taken forward on behalf of Northern Ireland. As with Channel Tunnel services, the UK is engaging very closely with Irish authorities, as well as with the operators of the Enterprise service, to make sure that appropriate arrangements are in place to see the continued smooth function of that service in the event of no deal. Licences issued by Northern Ireland will be valid in the UK and the draft EU regulation will support the smooth running of cross-border services, so that there will be no disruption there.

The Government are, of course, committed to maintaining high safety standards on our railways. We will probably come on to this in our next debate, on future divergence, but we are clear that we will continue to fully engage with industry to look at the impacts—particularly the safety, commercial and cost impacts—of future changes in our railways.

There was a full consultation on operator licences, as part of the consultation on implementing the market pillar directive of the fourth railway package in the UK. The noble Baroness, Lady Randerson, rightly pointed out that we had a workshop on train driving licences. Unions were invited to attend, but I do not believe that they did. However, there has been extensive engagement between cross-border operators and the unions on arrangements for the licensing of their drivers in the event of no deal. As I have said before, the vast majority of drivers in the UK will be unaffected by this. The Secretary of State has also written to the general secretary of the ASLEF union, outlining our preparations and the actions that industry should be taking in advance of 29 March.

There will be no substantive increase in the ORR's workload as a consequence of this. On exit day there will be no change to the validity of any existing licences being used. Currently, only one operator providing train services in Great Britain is using a licence issued by an EU member state. After two years, that operator will need to apply to the ORR, but there is no further burden on their resources.

I hope that I have answered noble Lords' questions—

Lord Tunnicliffe: The noble Baroness has accepted that bilateral negotiations will be necessary in order to extend services through the tunnel to other destinations. Have these started? Is there clarity on who to talk to? Have there been any informal discussions to give us some optimism that there will be favourable outcomes?

Baroness Sugg: Bilateral conversations have indeed started. They have not yet been finalised; we would have been able to finalise an agreement in time for exit day had the EU regulations not come into force. I am not entirely sure whether future services are part of those conversations, but we very much hope we can ensure they can happen after we leave the European Union. We are working very closely with all our European counterparts, including France, regarding bilateral arrangements on licensing and certification, the existing international rail freight services, and passenger services. Given the EU regulations, we are confident of mitigating the disruption to those services. As I say, we are also working very closely with the rail operators to make sure they are prepared and hold valid EU licences where they need them and certificates to continue operating in the EU in the event of no deal.

12.30 pm

Lord Foulkes of Cumnock: My Lords, I was hoping that the Minister would answer my question and give me some indication of how much of her very valuable time she spent dealing with what my noble friend has now disclosed was 90 statutory instruments, and how many officials in the department have been occupied in this task, which might well not have been necessary.

Baroness Sugg: I fear that I have done only nearly 40 statutory instruments in this Chamber or in the Moses Room. The noble Lord has the happy responsibility of covering more than one department, unlike myself. But I agree with the noble Lord that it has taken up a significant amount of my time, my department's time and officials' time. I am not able to quantify exactly how many hours that has been. We are hopeful of reaching agreement with the EU, so that we will not need these no-deal SIs. However, until it is agreed by the European Union and the date of our exit is changed by both Houses of Parliament, we will need to continue to put these in place—they are necessary.

These draft regulations will ensure that our train driver and operator licensing system continues to function effectively when we leave the EU. Maintaining the status quo as regards the requirements and duties placed on train drivers and operators is necessary to ensure that the licensing regime remains robust. These SIs deliver the Government's objective of maintaining the status quo, avoiding uncertainty for train drivers and operators in respect of train driving licensing and certification and operator licensing. I think I have answered most questions, and I will write to the noble Lord on paragraph 7.7. I commend the regulations to the House.

Motion agreed.

Train Driving Licences and Certificates (Amendment) (EU Exit) Regulations 2019

Motion to Approve

12.31 pm

Moved by ***Baroness Sugg***

That the draft Regulations laid before the House on 11 February be approved.

Relevant document: 19th Report from the Secondary Legislation Scrutiny Committee (Sub-Committee B).

Motion agreed.

Northern Ireland (Executive Formation and Exercise of Functions) Act 2018

Statement

12.32 pm

Viscount Younger of Leckie (Con): My Lords, with the leave of the House, I will repeat the Answer to an Urgent Question given by my right honourable friend the Secretary of State for Northern Ireland in the other place. Before I begin, I would like to express sincere sorrow at the news from the weekend that three young people died in Cookstown following a celebration of St Patrick's Day. Our thoughts and prayers continue to be with their families.

The Answer to the Urgent Question is as follows:

"Mr Speaker, I am grateful for the opportunity to update the House on my progress towards restoring the Northern Ireland Executive and the other institutions established under the Belfast agreement. In recent weeks I have met the Northern Ireland parties and the Irish Government on a number of occasions. In those discussions, all five parties reaffirmed their commitment to restoring a power-sharing Executive and the other political institutions set out in the Belfast agreement. While we have not yet been able to start a formal talks process, I believe that the five main parties and the Irish Government would be in favour of taking forward a short, focused set of round-table talks to restore devolution at the earliest opportunity. Any such talks process will involve the UK Government, the five main parties and the Irish Government, taking place in full accordance with the well-established three-stranded approach.

As you know, Mr Speaker, the period for Executive formation was extended by the Northern Ireland (Executive Formation and Exercise of Functions) Act 2018, which lasts until 26 March this year. I am incredibly reluctant to extend that period. The people of Northern Ireland deserve strong political leadership from a locally elected, accountable devolved Government and I am absolutely focused on achieving this outcome. But as we stand here today, there are only three options before the legislation expires next week.

The first is an Assembly election—a costly exercise which would be highly unlikely to change the political dynamics. The second is an alternative approach to decision-making in Northern Ireland, such as direct rule—something that I do not believe is in the interests of the people of Northern Ireland. Certainly, they tell me that it is not what they want.

The third option is to extend the Act. This gives the political parties more space to come back together in the best interests of the people of Northern Ireland. It also provides the Northern Ireland Civil Service with the certainty and clarity it needs to continue to deliver public services in the absence of Ministers.

So I have today laid before Parliament a statutory instrument to extend the period for Executive formation from 26 March 2019 to 25 August 2019. This means that from 26 August this year I will fall under the duty to propose a date for an Assembly election. Both Houses will have the opportunity to debate the instrument in the usual way, and the instrument cannot remain in force unless actively approved by both Houses".

12.35 pm

Lord Murphy of Torfaen (Lab): My Lords, I join the Minister in extending my sympathies to the families of the three young people who tragically died at Cookstown.

I see the point of the secondary legislation that the Minister described, but I deplore the need for it. Northern Ireland has been without its institutions of government for more than two years. The failure to restore them must rest with the Government, whatever the different views of the political parties in Northern Ireland. It has been one long saga of inertia and inactivity.

I know from personal experience how difficult it can be in Northern Ireland, but I see no evidence that energy and commitment have been effectively applied. Frankly, the Prime Minister has shown little interest;

[LORD MURPHY OF TORFAEN]
no attempt has been made to appoint an independent chair; there has been no structure to the talks; and suggestions regarding a possible restoration of the Assembly on its own have been ignored. This has to change, since the absence of devolution is a massive threat to the Good Friday agreement and everything it stands for.

Viscount Younger of Leckie: I share the noble Lord's huge concern that we have had to take this step. We were very much hoping that the Assembly would now be up and running again—so I agree with him to that extent. However, it should be made clear that this Government and the Secretary of State have worked tirelessly to get to this point, where we now have a chink of light. We have a chink of light because there has been much engagement with the five main parties. Indeed, in February there was a very hopeful and helpful round table, and there have been several bilaterals since. As the House will know, the Prime Minister has visited Northern Ireland on several occasions in recent months and keeps in touch with all the parties on a regular basis.

Lord Bruce of Bennachie (LD): My Lords, on behalf of these Benches I extend our sympathies to the families of those young people who lost their lives in that tragic incident in Cookstown.

This Statement is sadly predictable and could have been foreseen. In spite of the Minister's reply to the Labour Benches, the reality is that the past five months have not been used to accelerate and move towards a solution. If he is right that there is now a willingness to do so, we have only five months, after more than two years, to get to a practical outcome. It should not be left to the argument that any one of the parties—for whatever political reason—is prepared to sacrifice the interests of the people of Northern Ireland because of wider interests. Is it not time, first, to look for practical measures to get the politicians working together even before the Assembly is fully re-established, and, secondly, to appoint a facilitator who can perhaps achieve what the Secretary of State sadly has not managed to achieve—to knock heads together and make people understand that the people of Northern Ireland deserve better from their politicians? Direct rule cannot be applied if it means that decisions are accountable to this Parliament, where most of the parties of Northern Ireland are not represented and where their voices are sadly missing.

Viscount Younger of Leckie: The House will be fully aware of the challenging circumstances that continue to be the status quo in Northern Ireland. The noble Lord will know that these matters are not easy. But I will say again that the Secretary of State and the Government have been looking at all possible practical measures to try to get the Assembly up and running again. That continues, and will continue, despite the Northern Ireland elections. We absolutely do not want to get to the point where there might be direct rule. It is absolutely not the agenda and it is essential that we keep the momentum going. As I said, there is a chink of light and it is very good news that the parties are talking—but we need to get to a point, well within the five months, where formal talks are in the offing.

Lord Eames (CB): My Lords, will the Minister accept from me that, while those of us from Northern Ireland fully accept the reason for the Answer that he has made public this morning, there is a growing cynicism among the ordinary people of Northern Ireland, who see their health service, schools and social amenities—a wide field of activity in Northern Ireland—suffering day by day and night by night? That cynicism is largely based on bland statements that efforts are being made to fill the vacuum. I know that there is intent in the Government to be seen to be doing everything possible to fill the vacuum, and I accept that there are difficulties with the local parties. However, I urge the Minister to convey what many of us are saying in the Chamber: the frustration in the community at large is extremely dangerous at this time given the unrest leading up to Brexit.

Viscount Younger of Leckie: I can understand the frustration expressed by the noble and right reverend Lord, and I am sure that he expresses it on behalf of the whole of Northern Ireland and indeed this side of the Irish Sea. We all want to make progress. However, as I say, today there is a chink of light. The Secretary of State has been clear with the political parties and the House that she has decided to extend the period for Executive formation only because she has seen some clear progress towards restoring devolution. So the willingness is there, and the Secretary of State's engagement with the parties over the last weeks have given her enough reassurance that we can see productive talks going forward.

Lord Hain (Lab): My Lords, I associate myself with every word that my noble friend Lord Murphy of Torfaen said, and with the comments of the noble and right reverend Lord, Lord Eames. This is a dire and serious situation, from the very serious problem of waiting lists for children in the National Health Service in Northern Ireland, right the way through to the lack of a functioning Assembly and Executive, at a time of great crisis in Northern Ireland. It is probably the most serious crisis it has faced in many a long year—and that is saying something.

I want to ask specifically about the date of 25 August that I think the Minister mentioned. Parliament will not be sitting, so I find it an odd date. I stress to the Minister, and through him to the Government and the Prime Minister, that, as many of us have said, including my noble friend Lord Murphy of Torfaen, this problem will not be cracked without the Prime Minister's personal engagement, not just flying in for an odd hour here or there but convening people together in a conference—if necessary, going overnight, and again—until the problem is cracked. There are solutions to these issues of the Irish language and other questions; attention needs to be focused in a concentrated and personal way, and I am afraid that it is not.

Viscount Younger of Leckie: I know that the Secretary of State and the Government are very aware of the date of 25 August, which the noble Lord raised. We want to give the fullest possible time for the talks to have the best chance of success. The Secretary of State is aware of that time, and it is during the Recess, but

there will be every chance for the next stages to happen well in advance of that, so that is fine. On the Prime Minister's role, it must be made absolutely clear again that she is keeping in very close contact with what is going on and, as I said earlier, she has been talking regularly to all five main parties.

Lord McCrea of Magherafelt and Cookstown (DUP): My Lords, I thank the Minister for his expression of sympathy for the families of Lauren, Morgan and Connor, the young people who tragically died in Cookstown. It is important that the PSNI fully investigates the circumstances, and we trust that those who have been injured will recover and that the young people impacted by this tragedy are given appropriate counselling. The present situation, in which major decisions impacting the lives of the people of Northern Ireland are not being taken, is totally unacceptable. Will the Minister therefore assure the House that every effort will be taken to restore devolved government, and that the Assembly will no longer be held to ransom because of unreasonable red lines set by one party—Sinn Féin?

Viscount Younger of Leckie: I can only repeat what I said earlier, which is that the Secretary of State and the Government, very much including the Prime Minister, want to see the Assembly up and running. That is an absolute priority and every effort is being made to achieve that. The noble Lord makes a very good point.

Railways (Interoperability) (Amendment) (EU Exit) Regulations 2019

Motion to Regret

12.45 pm

Moved by ***Lord Berkeley***

That this House regrets that the Railways (Interoperability) (Amendment) (EU Exit) Regulations 2019 (SI 2019/345), laid before the House on 26 February, will cost United Kingdom businesses excessively in operating a potentially diverging range of safety and other railway standards from those of the United Kingdom's largest market, and regrets the failure of Her Majesty's Government to demonstrate any significant benefits; and calls on Her Majesty's Government to lay new regulations that would enable continued compliance with the activities of the European Agency for Rail to provide the best ongoing business opportunities for manufacturers, rail passengers and freight customers in the United Kingdom; continued and consistent safety improvements; and reduced manufacturing costs as a result of one common set of standards across Europe.

Relevant document: 20th Report from the Secondary Legislation Scrutiny Committee (Sub-Committee A).

Lord Berkeley (Lab): My Lords, the previous two SIs that we debated caused a lot of interest—I am grateful to so many noble Lords for their contributions—but they are to some extent the hors d'oeuvre, because this one is the main course. I wanted to table it as a fatal Motion because I feel so strongly about it, but the timing does not really help and I was told it might be several weeks before parliamentary time was found, which would be after the Brexit date that we had—I do not know whether we still do; that is for discussion.

This is a really serious problem: transferring all responsibility for railway safety and standards from the European railway agency to the Secretary of State in the event of a no-deal Brexit. It is very complex, as noble Lords said earlier, but in this case it is also unnecessary: there is a much simpler solution. My impression is that the reason that so many of these pieces of railway legislation, and those on air travel, are presented as a major change is because somebody in government does not like the word "Europe" in the title. We debated this last week when we were discussing the noise regulations in respect of airports, and I suggested to the Minister that there was a serious conflict of interest here, because if the Secretary of State—I am not being personal: any Secretary of State—is responsible for noise regulation at airports but is also pushing for all he or she is worth the third runway at Heathrow, it is in the Secretary of State's interest that the noise regulations are as lax as possible. The lack of consultation was discussed then, and I fear the same is happening here.

There is a solution, which I shall come to. The European railway agency goes back a long time: I have been involved in it for probably more than 10 years. It means that there is one set of standards for the manufacture, export, testing and everything in the railway sector across Europe. There is the common requirement for safety, accident and other data, which the House also discussed this morning. It is extraordinary that the Government are introducing this massive change for what I call dogmatic reasons.

I give noble Lords an example of what happened about 10 years ago, which was one reason why the ERA was created. A rail freight wagon was developed in this country to take trucks piggybacked on it—mostly cement trucks. It worked very well. It was developed by a company called WH Davis, and it was so successful that it had an export order to operate in France. When it tried to get approval from the French regulatory authority to operate in France, the changes necessary—which were not that big but were significant—would not allow it to operate in this country. So there could not be a wagon that complied with both countries' standards at the same time. That is a small example of why it was so important to make a European agency responsible for such things, which would also allow manufacturers in one country to apply to the ERA for approval if they thought that approval in one particular member state was being withheld for reasons that might be political.

There is, I am afraid, another more recent example of the Secretary of State's involvement, involving station platform heights; I am sure that noble Lords are great experts on that subject. One of the reasons why the Government apparently do not like anything to do with the ERA is that it told them they could not have a certain station platform height for HS2, because it was different from the platform heights on similar high-speed lines on the continent. I am told that that caused a certain amount of anger: how dare Europe interfere? This is interesting, because the station platform height

[LORD BERKELEY]
regulation applies to only four stations on HS2. All the other stations that HS2 trains will go into have Network Rail platforms, whose heights are all different anyway.

If the Government think that they are very good at such things, let us consider Crossrail station platforms. The Crossrail stations in the central section allow level boarding between the platform and the train—but unfortunately that height is different from all the other stations that Crossrail trains will go into at each end of the route, at Reading, Shenfield and wherever else. That means that someone in a wheelchair will need help at every station outside the centre: they will need not only a portable ramp, but a staff member to help them on and off the train. When I asked why we could not have one common station platform height for the centre sections and the outside sections, I was told that the European railway agency thought about the plan and questioned it, but because this is a metro service it does not have the wherewithal to challenge the Government. This is what the Government have achieved, which is unclear and will cost everybody a lot of money for a very long time.

It may be surprising, but the whole railway industry is I think in favour of the status quo with the European railway agency. Whether it be Network Rail, the Rail Delivery Group, the Railway Industry Association, the Rail Freight Group—I have already declared an interest as a former chairman of that—or the Chartered Institute of Logistics and Transport, they all want the status quo to continue. I have talked to them all, and if they have not gone public on this too much it is because many of them have had to sign ridiculous non-disclosure agreements. Let us hope that that will stop as soon as the Brexit debate finishes.

There are strong arguments for staying with the European railway agency. My preference would be to suggest an associate membership, such as the Swiss Government have. I have talked to people in Switzerland, both in railways and in government, and they say that it works fine. They are not on the boards, but they still get things done by talking to people. They mentioned the European Court of Justice. The Swiss do not like it, any more than our Government do. But when I asked whether that was a problem, they said, "No, we just carry on talking about it—but it works". So I suggest that the solution is something like associate membership of the European railway agency. We should abandon this ridiculously complicated SI—which may get abandoned anyway if we do not bale out.

I hope that in her response the Minister can give me two assurances. One is that, assuming that this SI does not come into force, the Government will consider alternatives to the present idea when they look at it again—which they probably will unless we stay in the EU. The second is that they will discuss with the Swiss Government, the European Union and the European railway agency whether there is an arrangement that could enable the continuation of compliance and information sharing. I repeat: that is what the industry wants. It will save money and provide more export opportunities. It seems to me that there is no downside, apart from the fact that the European railway agency has "Europe" in its name. I beg to move.

Lord Snape (Lab): My Lords, I endorse everything my noble friend said. This SI represents a significant change, not just in our relationship with Europe, but as far as our industrial potential is concerned.

For too long, this country has given away to, or allowed takeovers of its major industrial production by, foreign Governments. At the time of nationalisation, back in 1948, there were more than 150 railway workshops in this country. Those of us of a certain age are familiar with seeing that "Made in Britain" sign in railway industries in other parts of the world—for example, on locomotives, rolling stock and signalling systems. I was in Hong Kong in the 1970s. The new rapid transit system there depended on the expertise of GEC Alsthom, which built the first trains for that system in Birmingham. Yet we have thrown away all that expertise and allowed foreign companies to take over our industrial production.

This SI will make matters worse. If we are to have different standards from EU—that will happen over the years—the ever-smaller market of the United Kingdom will continue to shrink. Even as we speak, the signalling systems in Europe are being unified. The French and German Governments have just refused—temporarily, I suspect—the amalgamation of two major signalling production companies to create, in effect, a European monopoly on signalling. Again, if this SI goes through, our prospects of competing in these areas will be diminished. That is what it means.

We are moving away from the European railway agency—the ERA—and placing these decisions in the hands of the Department for Transport and the Secretary of State. The Minister will be relieved to know that I will not indulge in any knockabout about the current Secretary of State; after all, even with his powers of survival, I cannot see him being in the department much longer. We are moving away from European standards and allowing him, or some other Secretary of State, to decide standards for rolling stock and railway materials more generally in this country. That is what we are doing. That is how significant this SI is.

I indicated earlier that there were more than 150 workshops in this country at the time of nationalisation. There were 52 at the time of privatisation. There is a small handful of them now, all of which are foreign-owned. People do not invest in this country because they love the British; they do so for various financial reasons. If we are to reduce our market in the way that this SI will, those companies could decide that it is not worth investing in the United Kingdom in the long term and move elsewhere. That is how significant this SI is. I do not know what the Minister can do other than adopt the associate membership my noble friend Lord Berkeley talked about, but I regret that this Motion is not fatal. Unless the Minister can satisfy us and assuage our very real fears, this barmy piece of legislation ought to be resisted.

1 pm

Lord Liddle (Lab): My Lords, I support my noble friends Lord Berkeley and Lord Snape in their opposition to this measure and add my regrets that we are not pursuing a fatal Motion on this issue. My interest in this is personal. I am a railway clerk's son from Carlisle

and I have always been passionate about the railways. My first job in national politics was as special adviser to the noble Lord, Lord Rodgers of Quarry Bank, when he was Secretary of State for Transport, so I have a personal connection. Also, I happened to learn quite a lot about the detail of this SI from being a member of your Lordships' EU Sub-Committee on the Internal Market, chaired so wonderfully by my noble friend Lord Whitty. The Secretary of State appeared as a witness before us on these questions and it was absolutely plain that the reason he wanted to withdraw from the European agency was nothing more than ideology. He could not stand the fact that standards would be set by Europe. That is what we face all the time from Ministers in this Government. There is no pragmatism about Brexit, so why do noble Lords think we are in trouble? It is because of that absolute absence of any pragmatism.

When we had that hour-long disquisition by the Secretary of State, I raised the issue of the manufacturing plants, which, as my noble friend Lord Snape said, are now foreign-owned but based in Britain. My noble friend Lord Adonis is not in his place but I know that a remarkable achievement of his—one of many, by the way—when he was Secretary of State for Transport was to get Hitachi to establish a plant in Durham that would manufacture trains.

Lord Snape: I hate to interrupt my noble friend in full flow, but may I point out to him that that plant in Durham is not a manufacturing plant, it is an assembly plant? That is the great weakness of British industry these days. We put together materials and trains that are built elsewhere. That is what we are going to do in Durham.

Lord Liddle: I quite accept the point made by my noble friend but it is better than nothing and it provides hundreds of jobs in Durham. While my noble friend says it is just an assembly plant, how could such a plant operate in Britain if we decided to have different technical standards from those on the continent? That would completely destroy the business model on which that inward investment had been made.

Lord Berkeley: I am grateful to my noble friend for his words. Is he aware that Hitachi recently bought a firm in Italy that manufactures trains and signalling equipment? Can he imagine what would happen if it had to manufacture in all these places using different standards for the European markets and the UK?

Lord Liddle: As always, my noble friend Lord Berkeley makes an excellent point. I think that the Government have to come up with a better explanation for why we should be leaving these arrangements than the simple, "Why should we bother to be part of some European agency when we have left the European Union?"

Baroness Altmann (Con): My Lords, I rise to speak with some trepidation. I am not as expert in these matters as the noble Lords, Lord Berkeley, Lord Snape and Lord Liddle. However, I share their concerns about what the Government are doing by extricating us from years of integration in Europe in important areas of our national life. This is a perfect example of the dangers of the obsessive ideology which seems to believe that we must leave the European agencies which we helped to establish. Leaving them will impose much greater costs on our country, much more regulation rather than less, and indeed doing so will probably take us back around 10 years in the progress we have made across Europe in these vital areas of our national life.

I support fully the call by the noble Lord, Lord Berkeley, for us to remain at least an associate member of the European rail agency as well as the signalling agency. The transfer of responsibility from these agencies, which have enormous expertise and experience, to the Secretary of State fills one with some trepidation, to put it mildly. It may be that my noble friend the Minister, who I am sure shares some of my concerns even though she is in a difficult position, can provide some assurances that the Government will consider alternative plans that allow us to remain part of these agencies whether or not we leave the EU with a deal. Obviously, I hope that we have no chance of leaving with no deal, but so far the Government have refused to consider the idea of revocation if that is the only way to avoid it.

We need to continue the important activities of compliance and information sharing that are a part of these agencies. Just because there is some link to the ECJ, for example, is not a good enough reason to leave agencies that are so important to many areas of our national way of life, prosperity, security and safety. I urge my noble friend to respond positively with some of the assurances that the noble Lord is seeking.

Baroness Randerson (LD): My Lords, I start by thanking the noble Lord, Lord Berkeley, for bringing forward this Motion, and state that had he had chosen to table a fatal Motion, I would have supported him all the way. It is a supreme irony that Britain, the country that brought the railways to the world, is now insulating itself from world progress on the technology.

As we work through these SIs, they produce a range of solutions to the problems that the transport sector faces. Some of the solutions are relatively neat, while others are pretty clumsy. Then there is this one, which is simply downright stupid. That stupidity has been recognised by all the key railway industry organisations, which are seriously worried about the future. I also draw attention to the fact that the SLSC sub-committee which looked at this SI has expressed its view that an important policy issue is being raised here.

Interoperability means the application of EU-wide technical and operational standards. That applies to the rail infrastructure, the vehicles and the component parts. It is based on technical specifications, known as TSIs, devised by the European rail agency. It is important to note that the UK is very well represented at that agency by its technical experts. We have been a leading member and we have a vote, which of course we are going to give up. TSIs automatically apply to the UK, so we have not had to create our own regulations, but that does not stop us creating our own additional standards. These are proposed by the Rail Industry Safety and Standards Board.

There are a number of key issues about this SI. It is made under powers in the Transport Act 2000, and so would normally be done by the negative procedure. As all of this is very controversial, as I shall set out later, I

[Baroness Randerson]
am concerned that future SIs on this subject should be passed by the affirmative procedure. Can the Minister give us that reassurance today?

This SI cuts us off from the European rail agency, as the noble Lord has explained, and transfers powers to the Secretary of State. I am with the noble Baroness in saying that this does not fill me with confidence, because the European rail agency was set up to harmonise standards to enable the rail industry to better compete with other forms of transport. It effectively shadowed the systems in place for aviation and the maritime industry, and the Government have decided to remain members of those international organisations.

At the heart of the European rail agency is the sharing of data. As I have said many times, data is the key to safety. By leaving the agency we are cutting ourselves off from that data. As I have pointed out, even if you continue to share the data on a good will basis, you tend to get out of step, because standardised methods of collection of that data are a key aspect in it being robust. Once you are on the outside of the system, you can no longer rely on that data. It does not have to be like this. As the noble Lord, Lord Berkeley, pointed out, the Swiss are an associate member. Although they do not have a vote, they participate fully in other ways.

The replacement of the agency as the setter of standards by the Secretary of State is extremely worrying. There is a specific intention in this SI, unlike in others, to diverge over time from EU standards. In other circumstances, in other SIs, the Government have explained that they want to carry on shadowing what exists, but not so for railways. This is a clear politicisation of the railways issue, simply because the current Secretary of State has a bee in his bonnet and wants to diverge whenever possible from EU standards and organisations. We have a very important rail manufacturing industry, supplying a buoyant export market to the EU. It is certainly not in its interest to have to manufacture to two different sets of standards, which would obviously cost more.

The SI talks about consultation with the industry. In my view, that is an empty offer and completely meaningless; the industry has already been consulted and has made it clear that it does not want the divergence. The DfT is already under attack for failing to co-ordinate and lead the rail industry effectively, and here we are heaping more and more powers on the Secretary of State in a series of SIs. That will not improve matters. There is no transparency here, in contrast to the EU processes for the railway industry—there is not even a role for a statutory adviser. We have an inept Government, whose response to the chaos they face is simply to take more and more powers for themselves.

The noble Lord, Lord Liddle, referred to the visit by the Secretary of State to EU Sub-Committee B. We asked him about his wish to diverge from EU standards, because we had already heard evidence from the rail industry organisations that they did not want that. The only benefit he could come up with was that we could build our platforms to a different height, as the noble Lord, Lord Berkeley, has explained. There are two problems with this: first, we already have a derogation on this; and, secondly, it seems we already build platforms to a number of different heights. For example, as the noble Lord said, for Crossrail there will be step-free access in the tunnels from the platform to the train, but not on the existing Network Rail platforms. Someone has come up with the idea of actually building trains with lower floors, so you do not need to worry about the platform heights; I give the example of Merseyrail. Where there is divergence in standards, any new product will be assessed against the UK standard by a UK-approved body. As the secondary legislation sub-committee pointed out:

"As a result, there may be situations where new products already holding conformity assessment documents issued against",

EU,

"TSIs will need to be reassessed",

for the UK market. That is stupid. That bureaucracy will cost a lot of money for those purchasing in Britain.

1.15 pm

These regulations require,

"rail vehicles first authorised in the EU to undergo … additional authorisation for use in the UK".

The impact assessment says that this,

"is not expected to impose an additional cost or administrative burden on rail operators".

So they will go through the whole process twice, yet it is not an additional cost. That is simply incredible, in the true sense of that word: of course it imposes additional costs.

The impact assessment itself is quite extraordinary. It is a narrative assessment; it has no costings. Yet in 2011, when the original regulations were introduced, the Government had no trouble coming up with a total cost for the period 2012-22—a total cost of £35.8 million, with total benefits of £111 million. So they could assess it then, but we cannot assess it now, after several years of experience. Despite not being able to provide costings, they have been able to provide some additional costs—but not some additional benefits. Is that really true? I find it absolutely incredible.

I refer anyone who wants to see what I am talking about to paragraphs 11.3 to 11.7 on page 7 of the impact assessment. This is a painful attempt to stretch the argument. It even refers to allowing HS2 to build higher platforms, which it could do anyway. It entirely overlooks the fact that most HS2 trains will stop at existing stations and platforms, coping with existing standards and heights.

The fingerprints of the Secretary of State are all over this SI. I therefore have no confidence that it will do anything other than undermine our rail industry.

Lord Tunnicliffe (Lab): I first declare an interest as a founding chairman of the RSSB and its chairman for five years. Many of the transport SIs have assigned duties to the Secretary of State, and on each occasion I have asked who will advise the Secretary of State and whether it is a statutory or necessary process. As far as I can see, in this case it is not clear who would advise the Secretary of State, and I think that is deficient. I will not make a long speech, because, broadly speaking,

I agree with my noble friend Lord Berkeley—not something I do that often, but on this occasion he has got it absolutely right.

One reason for the affluence we all enjoy today—this has been a truth since the beginning of the Industrial Revolution—is the impact of volume. When you think of it, a small family car costs less than one year's labour costs for a car worker. Imagine standing there with a heap of coal and a heap of iron ore, and you have to build a car in a year by yourself. How do people achieve these things? It is through volume, research, mechanisation and complexity. Complexity is constantly brought into our lives at very little cost, because of volume. This law of volume means that the £13.50 watch on my wrist, as a one-off, would probably cost several hundred million pounds to develop from scratch. Volume is king, and the curse of the railway industry is that it does not, in general, have volume production. Therefore, it is unable to amortise production costs in the same way as industries such as the automotive industry. The ERA was the basis of allowing volume to be created. This is particularly important with the signalling revolution that is under way in Europe and this country.

I therefore agree with the general approach taken by my noble friend Lord Berkeley. I hope the Minister will produce some warm words about future aspirations. It would be madness not to become an associate member of the ERA, if we are able to negotiate that. I doubt whether this is the right instrument to require that, and therefore I do not support this regret Motion in the absolute sense of how it is written, but I support the general philosophy behind it.

The Parliamentary Under-Secretary of State, Department for Transport (Baroness Sugg) (Con): My Lords, I thank the noble Lord, Lord Berkeley, for securing this debate and other noble Lords for their contributions. I greatly respect the depth of knowledge and experience that the noble Lord and many other noble Lords have in this area, and I am sorry that there is a strong difference of opinion.

The technical notice published in October set out the Government's position in the event of no deal and the UK no longer being a member state, and that is that we will not seek formal participation in the European Union Agency for Railways. The reason for that is that this will provide scope in the future for potential convergence should we consider that to be beneficial for passengers and industry. It is likely that associate participation in the agency by third countries will be conditional on their adopting and applying full Union law for railway safety and interoperability, and the Government's position is that if we leave the EU with no deal it would not be appropriate for us to continue to be compelled to accept rules that we would not be able to vote on. That is the position of the Government on the European Union railway industry.

These exit regulations specifically make the changes that are necessary to ensure that the rail vehicle and infrastructure authorisation regime continues to function correctly. They put in place a domestic rail standards framework that will replicate the technical requirements —the TSIs—in force on exit day. These changes are needed because we will no longer be a member state and those deficiencies will be there if they are not corrected. Therefore, I am pleased that the noble Lord downgraded his fatal Motion to a regret Motion.

The noble Lord's Motion states that divergence from the EU standards will cause excessive costs to UK businesses, but I can reassure noble Lords that any decisions about potential divergence will not be taken lightly. This SI does not imply that there will be divergence but allows the possibility of divergence to happen. The flexibility to align or diverge will not necessarily increase costs; in some cases, it could decrease costs. The post-implementation review of the railways interoperability regulations found that the inability to diverge is causing excessive costs in some cases. For example, the Private Wagon Federation noted that EU standards prevent the UK from using older freight wagon types that are allowed in some other member states. It is concerned that that is increasing costs for the freight industry. Network Rail has also raised concerns that the costs associated with a rigid approach to the application of EU standards could sometimes outweigh the benefits.

Many noble Lords cited the concerns of the industry on this position. The concern is around future divergence rather than the position itself, and I agree that it is important to get it right. Decisions on divergence will always be made on the basis of consultation with industry and stakeholders, taking into account UK interests, and we would not choose to diverge if this process identified excessive costs to the UK or safety concerns.

I disagree that we have an aversion to the word "Europe". As the noble Baroness, Lady Randerson, pointed out, we are seeking continued participation in many European organisations. In this area, we will continue to play a leading role in European standards organisations. The BSI will continue to play an active role in the European Committee for Standardization and the European Committee for Electrotechnical Standardization, for which membership is not an obligation after we leave the EU. We will also continue to be an active member of the Convention concerning International Carriage by Rail, COTIF, which will help us to shape international rail technical standards. This would also allow us to share information when we are no longer a member state. As I said in the previous debate, we are committed to sharing information.

There were a couple of questions in the previous debate on why we would cease to share information. To clarify that, we would cease to share information about non-ORR issued licences from the UK. After two years, we would not have any of those and so we would continue to share information about our ORR-issued licences. We are committed to continuing to share information, and there are plenty ways we can do that outside the European Union rail agency.

We want to continue to work closely with the agency in the development of rail standards. We of course understand the importance and the advantage of working closely with our European neighbours, both for our manufacturers and the infrastructure here in the UK. We understand from the Rail Safety and Standards Board, the RSSB, that there has already been some discussion with the agency on the ways the

[Baroness Sugg]
two organisations will continue working together after exit to share best practice on the development of standards and rail safety. That might take the form of a memorandum of understanding between the two organisations, and we would encourage a close working relationship. However, the exact nature of our relationship with the agency should we leave with a deal will be subject to wider discussions with the EU on a future partnership. This is a statutory instrument in the event that we leave with no deal.

I appreciate that there are concerns about the process for developing these new NTSNs after exit and how we make decisions about the appropriate technical contact. I assure noble Lords that the Department for Transport will work closely with the RSSB as the main UK industry body for the development of the rail technical standards to inform NTSN decision-making. The RSSB has agreed to run consultations on proposed new NTSNs in response to new EU standards. These will be run in parallel with the European consultations as the standards are developed. Those TSIs are published online and there will not be a hold-up in decision-making here so that we can step with the standards. The RSSB will report any identified impacts of divergence from or alignment with the EU standards and make a formal recommendation to the Secretary of State so that the final decision will be made taking into account those views.

I agree with the noble Baroness, Lady Randerson, on the importance of parliamentary scrutiny. This SI in itself does not give rise to further delegated powers but covers the publication of NTSNs. Future SIs in this area would be subject to the negative procedure because they will be made under the Transport Act. However, there is always the ability to debate them on the Floor of the House, as we are doing with this one.

If divergence is being considered—which, of course, is the main, understandable concern of industry—we will first notify Parliament through making a Written Ministerial Statement before any final decisions are made. That Statement will refer to the report from the RSSB consultation process and outline the nature of the proposed divergence, the rationale for it and set out the potential costs and benefits. As I say, this SI in itself does not lead to further divergence. However, if it is decided that divergence would be to the benefit of the UK industry and passengers, that would be consulted on and clearly set out to Parliament.

The noble Baroness, Lady Randerson, mentioned the impact assessment. It provides a narrative analysis rather than a quantified assessment of net costs and benefits to businesses. That is purely because we do not yet know what any future divergence might look like. On day one, we are replicating standards in the EU word for word. We are simply publishing them through the new NTSN process. We do not yet know what, if any, future divergence there will be, so it is not possible to understand what the costs may be. Future divergence would be subject to a full impact assessment, and at that point we will be able to understand the costs and benefits.

1.30 pm

These regulations ensure that we have a functioning rail interoperability regime and that the authorisation process for vehicles and infrastructure continues to function if we leave the EU without a deal. It is important for the rail industry, passengers and the freight sector that the regulations are in place for exit day to provide clarity about the application of technical standards. We developed these regulations in close collaboration with the UK rail industry and safety authorities to ensure that they provide the clarity and flexibility that they need. The regulations have broad support from the rail industry, and stakeholders have said it is a high priority that they are in place for exit day.

This SI is needed if we leave without a deal. The future relationship with the European agency will be subject to future discussions.

Lord Berkeley: Will the Minister say something about what would happen in the event of the Prime Minister's deal—in other words, not the cliff edge—and whether this SI would no longer apply? Would the Government bring back a similar SI or would they carry on as we are at the moment? What options are open?

Baroness Sugg: If the exit day is changed as agreed, the exit day in this SI would change as agreed. I do not want to predict what is going to happen over the next couple of days or the length of an extension, if there is one. Our position is still that we do not want to seek membership of the European Union Agency for Railways.

I understand noble Lords' concerns in this area. I will take them back to the department and inform the Secretary of State of the strength of feeling on this. I hope I have provided reassurances on the consultation, the impact assessment and parliamentary scrutiny of any future divergence, which is the main and understandable concern of industry, whether manufacturers, importers, exporters or whatever.

The noble Lord, Lord Tunnicliffe, made a key point about volume. This is not an attempt to diverge from standards; it is simply that if we are no longer a member state, we will not have a vote in the European Union Agency for Railways, so these regulations remove the obligation to take its rules. If we decide to diverge, we will have full consultation and a full impact assessment and we will ensure that we inform Parliament. While this is a no-deal exit SI, the future relationship is always subject to conversation with the Commission and member states, should we get to an implementation period. We will have close conversations with them on this agency and other European agencies in the future partnership agreement.

I am not able to go any further on our future position with the European Union Agency for Railways at this stage, but the noble Lord's position on it is clear and I will ensure I take it back and discuss it with the department. Given the assurances that there are no set plans to diverge, that we will consult, publish an impact assessment and inform Parliament, I hope that the noble Lord feels able to withdraw his Motion.

Lord Berkeley: I am grateful to the Minister. She has tried very hard to justify something which is probably impossible to justify. She talked about divergence, as did many noble Lords. Unfortunately, when people

say there is going to be no divergence, it happens for political reasons. That is not just under this Government; it has been around since time immemorial. It helps to have an agency which is completely separate from the political process. As the noble Baroness, Lady Randerson, said, if it can work for air and sea, why can it not work for rail?

It may not matter, but I can see cost, bureaucracy and a loss of business coming from this SI. I very much hope that we do not leave the European Union in the manner that requires this SI to be implemented, but I have not heard what would happen in the event of our agreeing with the European Union another way out or even staying in—that is a different matter because we would stay in the ERA. I also have not heard a good argument for us not staying with the European Union Agency for Railways under associate membership. If Switzerland can do so, why not us? Switzerland has very good railways. We all have a process for derogations. We have been having derogations from the ERA for a long time. I am told that it has stopped giving us derogations, probably because it is so fed up with us at the moment, but that will not go on for ever.

I thank all noble Lords who have spoken in this debate. There seems to be solid support for stating in the European Union Agency for Railways, with the exception of the Minister and my noble friend on the Front Bench—he and I do not always agree on everything, and that is fine. I wish to test the opinion of the House.

1.36 pm

Division on Lord Berkeley's Motion

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Lord Berkeley's Motion disagreed.

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Common Rules for Access to the International Market for Coach and Bus Services (Amendment etc.) (EU Exit) Regulations 2019

Motion to Approve

1.48 pm

Moved by ***Baroness Sugg***

That the draft Regulations laid before the House on 26 February be approved.

Relevant document: 20th Report from the Secondary Legislation Scrutiny Committee (Sub-Committee B).

The Parliamentary Under-Secretary of State, Department for Transport (Baroness Sugg) (Con): My Lords, the regulations that we are considering will be made under powers in the European Union (Withdrawal) Act 2018 and will be needed in the event of no deal. This instrument amends the retained EU legislation governing access to the international passenger transport market

[Baroness Sugg]
and associated domestic implementing legislation to deal with deficiencies that would otherwise exist when the UK leaves the EU.

EU regulation 1073/2009 establishes the conditions for the international carriage of passengers by coach and bus within the EU and cabotage within member states by non-resident EU operators. It covers regular timetabled services and occasional services such as holidays and tours. It establishes for this purpose a system of Community licences, which act as the international bus and coach licences used within the EU, and enables these licences to be issued by the competent authorities of member states.

Section 3 of the withdrawal Act will preserve EU regulation 1073/2009 in domestic law, and Section 2 will preserve implementing domestic legislation, including the Public Passenger Vehicles Act 1981 and the Road Transport (International Passenger Services) Regulations 2018. This SI adjusts the language and references in those pieces of retained legislation, and five other pieces of legislation, to recognise that the UK is no longer a member state.

The SI also amends the retained UK version of regulation 1073/2009 to allow EU-based operators to continue to access the UK market in a no-deal scenario on a unilateral basis by means of the recognition of Community licences and control documents—other than new authorisations for regular services—issued by EU authorities under EU legislation. Existing authorisations for international regular services into the UK will continue to be recognised to avoid any additional administrative burden for operators.

This SI also covers Northern Ireland in its territorial extent. The devolved Administration have to make some consequential changes to their devolved legislation, and that is subject to a separate instrument.

The retained regulation 1073/2011 will apply only to EU-based operators. In the event of no deal, UK operators will be able to continue to access the EU market through accession to the Interbus agreement. This is an EU multilateral agreement that allows bus and coach operators to carry out occasional services between the participating countries—currently, the EU and seven other contracting parties in eastern Europe. At present, the UK is party to the agreement through its EU membership. Although the agreement currently covers only occasional services it is being extended to cover regular services, but this process has not yet concluded.

As part of contingency planning for no deal, the Government have deposited their instrument of accession to the Interbus agreement. This means that the UK will become a contracting party to the agreement in its own right. Due to the way the rules of the Interbus agreement apply, this will happen on 1 April. The Government are currently working closely with the European Commission to agree a way to close the two-day gap if we leave without a deal on 29 March.

In acknowledgment of the fact that the extension of the Interbus agreement to regular services will not be in place by exit day, the European Commission has extended the scope of its measure for an EU regulation on common rules ensuring basic road freight connectivity to include regular passenger services. This regulation was formally adopted by EU Ministers on Tuesday and will apply to UK passenger transport operators running regular services to and from the EU for the first nine months after exit, if we should leave without a deal. The Commission's proposal is based on the UK reciprocating, and the draft regulations that we are considering today will reciprocate those conditions for EU operators in the UK.

Coach travel provides a low-cost, safe and environmentally friendly way to travel. Coaches from continental Europe bring in some 1.6 million visitors each year, and in Northern Ireland travel across the border is a commonplace daily activity, with 900,000 journeys per annum. These regulations allow for the continuation of EU bus and coach services in the UK and reciprocate the EU regulation so that UK regular services can continue to operate to and from the EU.

These regulations are essential to support our tourism industry and to ensure that international services can continue to run. I beg to move.

Lord Berkeley (Lab): My Lords, I am grateful to the Minister for bringing this SI and for her introduction. She has probably answered my question, but from reading paragraph 7.3 of the Explanatory Memorandum it looked as if UK operators would not be able to operate on the continent from 30 March. I think she has confirmed that that is no longer the case because of these more recent agreements. I hope we will be able to see a continuation of this important traffic without any interruption. What the French customs and immigration people do is of course a different matter, but let us hope that at least the services can run. I hope this will continue and that therefore the services that go to many member states across Europe can continue without getting bogged down in too much bureaucracy. As the Minister has said, it is a very important market.

Baroness Randerson (LD): My Lords, here is an SI that does not replicate what exists now, yet, astonishingly, there has been no formal consultation on it. The Explanatory Memorandum claims that it makes just technical amendments, but really it does much more than that. We must remember how important this industry is to us. Every year there are 3.6 million journeys to and from Britain by coach and 1.6 million overseas visitors coming to Britain by coach. That is 4% of all foreign tourists who come to Britain, and 83% of that 4% are from the EU. On the return leg, 1.1 million British residents go abroad by coach, of which 99% go to the EU. Looking at Northern Ireland, which is very important as well, there are 900,000 border crossings from Northern Ireland to the Republic and vice versa in a year.

The EU regulation allows reciprocal access for regular scheduled services and for occasional services—we would call them coach holidays. This SI provides unilateral access for current EU operators after Brexit in the hope that there will be reciprocal arrangements. I will turn to that later. The SI was originally recommended for the negative procedure. I was disturbed to see that, because I believe it is sufficiently important to be worthy of the affirmative procedure. Anyway, we are discussing it now.

I have some questions for the Minister. In future, EU coach operators will have to apply to the International Road Freight Office, when previously they received authorisation for coming to the UK from their home state. The DfT estimates that there could be up to 600 applications for authorisation for regular services at a cost to the Government of up to £95,500. Will the Government be charging an extra amount for this service? It did not need to exist before, so any charge would be additional. Is the IRFO being given sufficient additional resources? The Explanatory Memorandum also refers to a separate SI coming through for Northern Ireland. When will that be? Can we expect to see it in the next few days?

Obviously, things will be more complex and bureaucratic for EU operators. What will the Government do to make them aware of what they will have to conform to? What work are the Government doing with coach operators on the continent of Europe to make sure that the industry is fully aware of the change to the processes?

The Government hope to solve this problem in the long term by joining the Interbus agreement. The problem is, first, that the agreement does not allow cabotage and, secondly, that it applies at the moment only to occasional services. This will of course impact specifically on National Express and Translink in Northern Ireland, because they are the companies that provide the bulk of the regular services. Translink provides a lot of cabotage services as well.

In any event, the UK first has to join the Interbus agreement. I gather that the Government ratified it on 30 January. Will the final accession date that we were given of 1 April still apply if Brexit is deferred? Is it the case that we cannot accede until Brexit, or is 1 April a fixed date? At the moment, if we were to leave at the end of next week, there would be a two-day gap when services could not run. That might not seem like the end of the world, but it could be inconvenient and a real problem for the companies concerned. If they tried to run services without that specific authorisation there would obviously be insurance implications for them.

2 pm

The Government believe that a protocol to the Interbus agreement will be signed in the near future to allow regular and special regular services to be included as well, but I gather that that could take at least three months to come into effect. Maybe the Minister could update us on whether the signatures on the protocol are progressing well. As I understood it, it was going rather slowly at first, and I believe that we need at least four signatures for it to come into force.

Lord Berkeley: Would the noble Baroness care to speculate as to whether progress would have been so fast if this had been called European Interbus?

Baroness Randerson: I think we have a complete rewriting of the dictionary in Britain at the moment. We are not allowed to use the word "European" in any technical or official sense.

The EU is proposing a regulation to maintain basic road connectivity, which the Minister referred to. Does she share my concern that this is for a very limited period? Part of it applies until December, but only until September in Northern Ireland for cabotage and so on. It is all very messy, and therefore very complex for those operating in that industry. Do the Government intend to publicise this on GOV.UK? I am seriously concerned that while this will not apply to big companies, small coach operators in particular—there are quite a few of them in the industry—will find it difficult to keep pace with the very complex changes that the EU and the Government between them are proposing as short-term solutions. What about progress with the bilateral agreements that the Government are proposing to sign? How many countries have signed up so far to those?

On the publicity to the general public for all this, we are coming up to peak coach holiday season at this moment. Easter will be the beginning of high season for coach operators. Are passengers fully aware that they are in a situation of some uncertainty in relation to the ability of UK coach operators to ply their trade in Europe?

Lord Eames (CB): My Lords, I welcome the explanation given to us about the complicated nature of this SI. I shall speak particularly about the local situation in Northern Ireland. Once more, this is an example of how that part of the UK will feel the full force of Brexit, not only for Translink and the regular services that it provides across the border, which was once simply the border with the other part of Ireland but will now become the frontier with the EU. There is genuine anxiety in the industry about, first, the complicated nature of running regular services across the border and, secondly, the many local employers of small coach services that are frequently—especially, as the noble Baroness, Lady Randerson, said, as we come into this season—crossing the border, going into the Republic and vice versa.

As the Minister reminded us, there will be a separate SI, but I suggest that there is bound to be an overlap between what this SI covers and the individual SI for Northern Ireland. If Northern Ireland is part of the United Kingdom there is bound to be that overlap. Can the Minister reassure the House that special attention will be paid to Northern Ireland's difficulties in this respect, since we will feel the full force of Brexit when it comes?

Lord Tunnicliffe (Lab): My Lords, this SI is a little complex. It seems to be about timing. One gets an uncomfortable feeling that the Government had tackled aviation, marine and road haulage when suddenly someone woke up and said, "We'd better do coaches". As you read through the Explanatory Memorandum, initially it seems to be an asymmetric situation where EU operators get all the provisions that they have now but UK operators do not, and then you turn to paragraph 7.3, which says:

> "The EU have proposed a legislative change that will extend many of the provisions of the existing market access Regulations till 31 December 2019".

Extending "many" means that it does not extend all. Could the Minister spell out which provisions of the existing market access are not allowed under this agreement? Has the agreement become EU law? I believe the

[Lord Tunnicliffe]
answer is yes, but I would like her to spell that out in simple language. If it is the law that I am thinking of, it declines and then expires on 31 December 2019.

Having not declared any interests in coach operations, I confess that I know nothing about the Interbus deal. Could the Minister spell out what it will mean if it is fully ratified, as is implied in the Explanatory Memorandum? Will it give UK operators the same freedoms as they have now? If not, could she spell out the freedoms that they will not have? Will the Interbus agreement supersede the necessity for the special arrangements that I believe the EU has introduced?

Baroness Sugg: I thank noble Lords for their contributions. Turning to the questions on consultation from the noble Baroness, Lady Randerson, I say that the aim of this legislation is to maintain the status quo as far as possible through technical amendments to the existing regime. We have engaged with the Confederation of Passenger Transport, as the main industry representative, and the Federation of Passenger Transport Northern Ireland, the FPTNI. The industry has been supportive of the application to join Interbus, as this will give liberalised, unlimited access to run occasional services in the EU, which covers the vast majority of activity by GB operators. There is little use of cabotage on occasional services, because UK carriers are normally taking the same group of passengers to a destination in the EU, then bringing them back.

We have been working closely with industry to make sure it is informed. While this SI makes technical changes, this SI, the EU regulation and the accession to the Interbus agreement together give maintenance of the status quo. Letters are going out to every operator which holds an international licence, to inform them about future processes. The trade association, the Confederation of Passenger Transport, is making members aware via social media, newsletters and email, and the information on GOV.UK which the noble Baroness referred to.

The noble Baroness asked about the effect on the International Road Freight Office. Relatively few authorisations are required by EU operators. We expect there to be about 150, rather than 600—600 is the top end of the estimation. There is a simple process; operators have to pay only for postage and, possibly, translation. Some operators already apply directly through the IRFO rather than their home member state, so we do not expect there to be a huge effect.

There is an issue with this two-day gap. It might be helpful if I explain why we have it. The Interbus agreement can come into effect only on the first of the month. If we had laid the SI earlier, the agreement would still have come into effect on the first of the month, as the agreement itself specifies that. We cannot become a contracting party until we leave the European Union. We are working closely with the European Commission to find a solution to overcome that gap in provision—

Baroness Randerson: Have I understood this correctly? Suppose we were to leave the European Union on the 15th of the month—I am plucking a date out of the air—we could not access the Interbus agreement until the first day of the following month. Therefore, we should be grateful that it is only a two-day gap, because it could be a gap of about 28 days, if things work out wrongly.

Baroness Sugg: The noble Baroness is right: we are grateful that it is only a two-day gap. Should we not leave on 29 March, we may have a longer gap to contend with. However, we are working closely with the Commission and are very optimistic about getting a solution. Our preferred approach is to deposit a note verbale with the General Secretariat of the Council, stating that we propose that our accession be treated as coming into effect on the first day of exit. Once we have resolved that, we hope that we will be covered regardless of the length of the gap. That is particularly important for Northern Ireland, as I believe there are some major sporting events going on which will require lots of cross-border travel.

The Interbus agreement provides for liberalised occasional coach services—holidays, school trips and private tours between contracting parties. As I mentioned in my opening speech, those parties are the European Union and seven eastern European members. We intend to accede to the protocol of the agreement in our right regarding the international regular and special regular carriage of passengers by coach and bus. The protocol to expand the service to regular services is in progress.

The noble Baroness points out that the process has been quite slow. It opened on 16 July 2018. As of 13 March, no contracting parties had signed the protocol. We need only four contracting parties; obviously we will be able to sign it once we become a contracting party. We think we will see other signatories join but, if it is not in place by 31 December, we could either negotiate an extension for regular and special regular passenger services with the EU, which are covered under the current EU regulation, or seek to put bilateral agreements in place. At the moment, we think Interbus is the best solution to provide regular services, but we have options if that is not the case.

2.15 pm

On Northern Ireland, the noble and right reverend Lord, Lord Eames, asked about overlap. There is overlap in this. Regulations 4 to 8, which amend the European legislation, extend to the UK, and Regulations 2 and 3, which amend the domestic legislation, extend to Great Britain. The necessary changes to the domestic legislation in Northern Ireland are being introduced through a separate instrument, which is currently being considered by the scrutiny committees. This SI, taken together with the consequential SI for Northern Ireland, will effectively ensure that services can continue to operate. The noble Lord clearly states that they are incredibly important and we must ensure that they continue. That regulation provides a time-limited solution on the basis that we offer reciprocal rights to the EU, which is what this regulation does; taken together, they will allow services to continue. The EU regulation includes the ability for UK operators of regular services to undertake cabotage in the border counties until 30 September 2019. Of course, Northern Ireland operators will be able to operate occasional services into the Republic of Ireland once our membership of Interbus comes into effect.

Lord Tunnicliffe: On 1 January 2020, by which time the EU regulation will have expired, and assuming there are a satisfactory number of signatures to the Interbus agreement, to what extent will the situation for UK operators be different from the situation today?

Baroness Sugg: On 1 January 2020, assuming that we have all the signatories that we need and the Interbus agreement is in place, the main issue will be cabotage, as the Interbus agreement does not cover cabotage. UK operators will not be able to provide cabotage in the EU. There would be a separate arrangement for that for Ireland, but UK operators will not be able to do it. There is very limited UK-operator cabotage in the EU; as I said, most journeys go out and come back. However, that is the main implication and the main difference.

Lord Berkeley: Following up on that, I would have thought cabotage was pretty important for coach operators. Does this restriction apply in the other direction for continental operators coming here?

Baroness Sugg: This SI allows EU operators to continue cabotage operations. We do not have figures on how much cabotage takes place. The new EU unilateral regulations allow cabotage for regular and special regular services in the Irish border regions until 30 September 2019, when we will have something else in place. However, other cabotage is not permitted and, as I said, the Interbus agreement does not allow cabotage.

There is little exercise of cabotage from UK operators, because services are usually hired for a group of passengers who return to the UK, such as for a school trip or tour. Regular services allow cabotage as part of an international journey, but all current UK-to-mainland-Europe timetabled services, such as Eurolines, are operated by non-UK companies, so they will not be affected by Brexit.

As we have said, cabotage forms an integral part of cross-border bus journeys on the island of Ireland. Such services are incredibly important for remote communities. We recognise that the provision within the legislation proposed by the EU offers a solution, but that solution is based on reciprocity, which is what we are doing through these SIs.

I suppose that one could say that this is an asymmetric agreement at the moment. We are allowing cabotage within the UK, but these things are of a temporary nature. When we join the Interbus agreement and have future discussions with the EU on our relationship—

Lord Lea of Crondall (Lab): I am sorry to ask this, because I have not been following the debate, but I am interested in the principle just enunciated. There is asymmetry but there is reciprocity. Is one way different from the other?

Baroness Sugg: I am not sure that the noble Lord was here for my opening statement where I set that out.

Lord Lea of Crondall: I am afraid that I was not. Does that mean that I should not intervene?

Noble Lords: Order.

A noble Lord: No, you are not to intervene.

Lord Lea of Crondall: All right. I am sorry. I was interested in what has just been said; that is all.

Baroness Sugg: I am very happy to explain again that this SI sets out our position in relation to EU operators coming into the UK; there is no restriction on cabotage in that regard. However, the EU regulations restrict cabotage, which is why they are asymmetric. We still need to reciprocate the access, which is what this SI does.

I hope that I have answered most of the questions raised. If I have missed any, I shall follow up in writing. This instrument is needed to allow the continued operation of international bus and coach services in the event of no deal until such time as fully reciprocal arrangements are in place.

Motion agreed.

Financial Services (Miscellaneous) (Amendment) (EU Exit) Regulations 2019

Motion to Approve

2.21 pm

Moved by ***Lord Bates***

That the draft Regulations laid before the House on 25 February be approved.

Relevant document: 19th Report from the Secondary Legislation Scrutiny Committee (Sub-Committee A).

The Minister of State, Department for International Development (Lord Bates) (Con): My Lords, as this instrument is grouped, with the leave of the House, I shall speak also to the draft Electronic Commerce and Solvency 2 (Amendment etc.) (EU Exit) Regulations 2019.

These two instruments are part of the same legislative programme that we have discussed previously in the House to ensure that, if the UK were to leave the EU without a deal or an implementation period, there continued to be a functioning legislative and regulatory regime for financial services in the UK. Both SIs have already been debated in the House of Commons.

The Financial Services (Miscellaneous) (Amendment) (EU Exit) Regulations 2019 revoke a number of pieces of UK domestic law and retained EU law which it would not be appropriate to keep on the statute book after exit. The instrument also makes amendments to a number of financial services EU exit SIs to reflect other instruments that have been laid as part of the wider legislative programme, corrects minor errors identified in legislation, and makes amendments to ensure consistency between EU exit instruments.

The SI has five main components. First, it amends UK domestic law to ensure continuity with other legislation amended under the European Union (Withdrawal) Act. Specifically, it makes amendments to primary and secondary legislation that do not fall within the remit of changes made by other instruments. Specifically, the SI will remove references to EU institutions

[LORD BATES]
and regimes in four Acts of Parliament; namely, the Insolvency Act 1986, the Financial Services and Markets Act 2000, the Income Tax Act 2007 and the Corporation Tax Act 2009. These amendments will ensure that provisions that are irrelevant in a UK-only context are not retained on the UK statute book.

Secondly, the SI makes minor technical amendments to 19 statutory instruments, including 12 other financial services EU exit instruments that have previously been debated in this House. A number of those amendments are made in this instrument because they are consequential on other instruments that have been made only recently, such as the Equivalence Determinations for Financial Services and Miscellaneous Provisions (Amendment etc) (EU Exit) Regulations 2019. A minority of the amendments correct drafting errors and improve the clarity of drafting. For example, a duplicate provision is omitted from the Bank of England (Amendment) (EU Exit) Regulations 2018, as the same amendment is made by the Deposit Guarantee Scheme and Miscellaneous Provisions (Amendment) (EU Exit) Regulations 2018.

Thirdly, this SI revokes three UK statutory instruments that relate to EU regimes that will not be applicable to the UK in the event of a no-deal exit given that they implement EU law being revoked at exit day under separate instruments. Fourthly, the SI makes amendments to, or revokes, retained EU law to ensure consistency with other EU exit instruments that have been made and to remove references to EU institutions that will no longer be relevant post-exit. Fifthly, the SI makes transitional and saving provisions to address deficiencies that arise from the UK's withdrawal from the EU and to limit disruption to the financial services industry if the UK leaves the EU without a deal.

On the substance of the second instrument, at present there exists a regime within the EEA to facilitate greater cross-border e-commerce activity, implemented by the e-commerce directive 2000—or ECD for short. E-commerce refers to commercial activity that takes place online only. This regime allows an EEA firm to undertake online-only activity in an EEA state other than its home state without being subject to regulation in that EEA country. This is on the basis that such firms will be subject to relevant regulation in their home state. In the field of financial services, this means that an EEA firm, excluding Solvency 2 insurers, can undertake online-only activity in the UK without needing authorisation from the Financial Conduct Authority.

In a no-deal scenario, the UK would be outside the EEA and not subject to the e-commerce directive. As a result, the reciprocal arrangement that permitted EEA e-commerce financial services providers to operate in the UK without being regulated in the UK will no longer be valid. The exclusion in the regulated activities order will therefore be revoked to prevent EEA e-commerce financial services providers being able to undertake online-only financial services activity in the UK without the appropriate authorisation from the FCA. With regard to the e-commerce directive, these draft regulations therefore revoke Article 72A of the regulated activities order, where the exclusion from UK regulation for EEA e-commerce financial services providers currently lies.

In addition, this SI revokes the bulk of the regulations in the Electronic Commerce Directive (Financial Services and Markets) Regulations 2002, which gave the FCA rule-making powers pertaining to incoming EEA e-commerce financial services providers. These will no longer be relevant post exit. To help protect the interests of UK customers of EEA financial services firms, and those firms themselves, it is necessary to implement a regime that allows contracts taken out under the current exclusion to continue to be legally serviceable. This instrument will therefore implement a run-off regime to allow EEA e-commerce firms to legally service financial services contracts that were taken out before commencement of the instrument, and which utilised the exclusion in the regulated activities order, for a limited time. Pre-existing financial services contracts taken out under the e-commerce exclusion will continue to be excluded from the scope of regulated financial services activities under the Financial Services and Markets Act 2000. This will enable EEA providers of e-commerce activity of a financial services nature to wind down their UK operations in an orderly manner. This will provide certainty and fairness to both providers and users of financial services, and demonstrate that the UK remains open for business and takes seriously legal certainty and business continuity.

These draft regulations also make minor changes to a Commission delegated regulation related to the EU Solvency 2 directive and EU securitisation regulation. This delegated regulation sets out the requirements for investments in securitisations that no longer comply with the risk-retention and qualitative requirements. Specifically, these regulations amend the delegated regulation to correct a cross-reference and add references to the UK regulators. These changes are necessary to reflect the UK's position outside the EU.

In summary, the Government believe that these instruments are necessary to ensure that the UK has a coherent and functioning financial services regulatory regime once the UK leaves the EU, and that the legislation will continue to function appropriately if the UK leaves the EU without a deal or an implementation period. I hope noble Lords will join me in supporting these regulations. I beg to move.

2.30 pm

Baroness Kramer (LD): My Lords, I have no issues with the first of these SIs. It is another that deals with errors and omissions; I suspect we will see quite a number of them. I do have serious concerns about the second SI, but not with its content or the fact that we need it if we are to take the step of leaving with no deal. I want to understand what happens to the financial services industry as a consequence. Perhaps the Minister can help me with this. He will know that I have been involved, from the earliest days, with the development of fintechs in the UK. An example is crowdfunders, whether they are US ones that have created a core European subsidiary in the UK, or home-grown ones, of which we have quite a few. We have been a magnet particularly for young people across Europe with a tech and finance interest to come here and start their companies. Those companies have, essentially, been pan-European from the first breath that they took.

For example, under the e-commerce directive, a crowdfunder has been able to put up a project and seek investments through its online presence—the only way it exists—all across the UK plus the 27.

I understand from the SI that a crowdfunder based in the EEA will no longer be able to seek investments from UK investors unless it goes through the process of registering with the FCA and having its UK activities regulated by the FCA. I suspect that most will not bother. When you have 450 million people you can go to, going to an additional 65 million is probably not worth the effort. It is taking on the burden of an additional regulator just for a small part of the investor base you will be catching on to. If you do, you have only one regulator to deal with, and I assume that this is reciprocal. So if I am a UK-based crowdfunder, do I now have to go to the regulators in every one of the 27 and seek to become registered, certified or whatever else it is, to be able to continue to raise those funds? It is unusual for a crowdfunder based in the UK to raise most of its money in the UK. As I said, these have been pan-European from the day they took their first breath. They think that way, they are structured that way and their employees are designed in that way. Are we, in effect, hearing a death knell for crowdfunding and a whole series of related fintechs that are UK-based but have been reliant for building their investor or participant base from a pan-European, 500 million-person community? If there is this consequence then I am extremely concerned. Perhaps the Minister can explain; I may have it completely wrong.

After having some conversations I am quite concerned about a second point. Is the Minister clear that the UK companies that would find themselves trapped in this position are aware of it? Looking today at websites such as Seedrs or Crowdcube, there are hundreds of projects up on their systems seeking new investors. Those would presumably be grandfathered in this run-off programme, but dozens of new ones go up every single day. Do they understand that, in a week's time, they may have to stop putting projects up in a way that can be accessed by a pan-European community? If not, are they in a position where they may be in breach and there may be serious repercussions as a consequence?

We are looking at an industry which many hold up as part of the fundamental future of financial services, an area the UK always considered itself a crucial leader in, and which we see as underpinning so much of our future prosperity. Can the Minister help me understand the consequences of what is about to happen?

Lord Tunnicliffe (Lab): My Lords, I will speak mostly about the first SI, if only to moan a bit. Paragraph 3.6 of the Explanatory Memorandum says that the Secondary Legislation Scrutiny Committee,

"noted that the legislation proposed to be amended by the instrument includes: four Acts of Parliament; seven 'pre-EU Exit' statutory instruments; 12 'EU Exit' statutory instruments that have been considered by the House during the last six months; and several items of retained EU legislation".

As far as I can tell, there are 36 amendments in this SI which have no themes or interrelationship. To get a feel for how difficult it is to work on the SI, paragraph 2.6 of the Explanatory Memorandum gives up almost altogether and says:

"Part 3 also makes minor technical amendments to correct the following financial services EU exit instruments. Further information on these instruments can be found in the EMs accompanying the instruments on legislation.gov.uk".

If I threw all that in, it would take hours. Indeed, if one devoted just 10 minutes' attention to each amendment, it would take six hours to read the thing.

The Minister said, rather grandly, that this had been considered by the House of Commons. I too noted that fact and leapt at the *Official Report* to give me some help. It told me that the Commons committee sat at 6 pm —that is quite keen—but adjourned at 6.11 pm, having completed its work. Members devoted 11 minutes to this SI. I am sure that, due to their natural brilliance, they scrutinised it fully, but I am rather slower than that.

There is a real problem of how we get proper scrutiny. I sought help from the Civil Service, as one is invited to by the Explanatory Memorandum. As I understand it, the amendments fall into three groups. One group corrects errors; I would value knowing how many of the 36 are error corrections. Another group makes previous SIs compatible with those created subsequently by other departments. So we have one bit of government making SIs that create complications in another; it is a bit brave to consider creating complications in Treasury SIs.

The third group comes from a review of the previous legislation. One worries about that until turning again to the Explanatory Memorandum. The Treasury has been consistent and kept paragraphs 7.1 to 7.8 identical in all its 50 SIs. Paragraph 7.4 says that these SIs,

"are not intended to make policy changes, other than to reflect the UK's new position outside the EU, and to smooth the transition to the situation".

Therefore, I want a categorical assurance that in these 36 amendments there is no new policy. If there is new policy hidden among them, will the Minister tell me what that new policy is?

Turning to the second instrument, I found almost the opposite to the noble Baroness, Lady Kramer. Not that I am suggesting that what she said was not valid, but I thought this was a commendable Explanatory Memorandum. It is a stand-alone document that one could understand and it seemed that it was doing what the SI should do. In other words, it was dealing with inevitable consequences, so I am content with it. I think the essence of what the noble Baroness was saying is that here is yet another bad consequence of leaving the European Union, and to that extent I totally agree with her.

Lord Bates: I thank the noble Baroness and the noble Lord for their scrutiny and questions on these points. I shall do this in reverse order because I am waiting for a little further inspiration about fintech—it is arriving. The noble Lord, Lord Tunnicliffe, is always assiduous in these matters and drifts easily between bus operations in Northern Ireland and financial services across the European Union in his scrutiny of SIs. He raises a very serious point: the first of these documents runs to some 26 pages, and 26 pages of Explanatory Memorandum, while the second has 11 pages and 14 pages of Explanatory Memorandum, so there is an awful lot of detail.

During this process—we are now nearing the end of it—we have worked on some 52 statutory instruments and have been grateful for the way the noble Baroness

[Lord Bates]
and the noble Lord have engaged with us very constructively over the past four to five months. During that process, of course, there will be consequential amendments that were not foreseen, because some of the 48 affirmative statutory instruments that have gone through this House were laid after the previous ones were made, and therefore changes need to be made. We envisaged, when we began this, what we call an onshoring process to ensure seamless activity, so that there is no disruption for UK financial services. We always envisaged the need for some instrument such as this at the end that corrected any errors and dealt with consequential changes. All the amendments are being made to ensure a functioning financial services regulatory regime in the UK, in any scenario, when the UK leaves. These amendments ensure continuity and clarity.

The noble Lord asked me to make the very specific commitment that no policy changes are involved in these: that is certainly the case. To make policy changes would be in contravention of the letter and spirit of the withdrawal Act and we certainly would not do it. The approach has been consistent. He asked about the number of errors. Around eight drafting errors in previous EU exit financial services SIs are being corrected in this measure.

The noble Baroness raised some issues around fintech and I appreciate her expertise in this area. Fintech is very much a jewel in the crown of the UK. We have some of the most amazing financial services firms in fintech, including start-ups in places, such as Shoreditch, around the City of London: it is a quite incredible and burgeoning industry and certainly one that we want to see continuing to expand. UK providers of online services to the EEA countries will need to continue to comply with a range of EEA countries' individual legal requirements relating to online activities. The exclusion we are referring to here is limited to online-only activities. We expect that firms will use passporting rights rather than this exclusion; therefore, we estimate the number of fintech firms will be very small.

Baroness Kramer: Will the Minister, if he has the opportunity, look into this? I know that crowdfunders and many others—I have tried to tell the Treasury a million times—use the e-commerce directive, not passporting rights. It has played a key role. Whether they can transfer from using the e-commerce directive to passporting rights, I am not clear, but it seems at least an issue somebody should look at.

Lord Bates: I was just coming to that precise point, because the noble Baroness raises a serious point which is worthy and very important for us to look into further. I undertake to do that and to write to her, to copy in the noble Lord, Lord Tunnicliffe, and to place a copy in the Library. It is very important that we ensure that there is no unintended, deleterious impact on such an important sector of the UK financial services industry. With that, I commend the regulations to the House.

Motion agreed.

Electronic Commerce and Solvency 2 (Amendment etc.) (EU Exit) Regulations 2019

Motion to Approve

2.47 pm

Moved by ***Lord Bates***

That the draft Regulations laid before the House on 25 February be approved.

Motion agreed.

Nutrition (Amendment etc.) (EU Exit) Regulations 2019

Motion to Approve

2.47 pm

Moved by ***Baroness Manzoor***

That the draft Regulations laid before the House on 30 January be approved.

Baroness Manzoor (Con): My Lords, this statutory instrument has been laid to ensure that, following our exit from the European Union, the people of the United Kingdom can continue to benefit from the same world-leading standards of safety and quality for nutrition regulation as they do today. Primarily, successful passage of this SI will provide certainty for businesses and the public by ensuring a functioning statute book of nutrition legislation when the UK leaves the EU. It is no secret that both the Government and Parliament have shown a clear preference against a no-deal outcome. However, the Prime Minister has been clear that it will continue to be appropriate to prepare for a no-deal scenario, and this remains a priority for the Government. The EU is stepping up its preparations for no deal and it would be irresponsible for the UK not to do the same.

This SI provides all the necessary legislative building blocks to ensure readiness on exit day in all scenarios, guaranteeing that this aspect of nutrition legislation will continue to operate at the same high standard as it does now long after we exit the EU. The instrument covers the following aspects of nutrition legislation: the health or nutritional claims that food manufacturers can make for the foods they produce; the vitamin and mineral substances permitted for use in food supplements; the vitamins and minerals that can voluntarily be added to fortify foods, such as to breakfast cereals or soft drinks; the content of foods for specific groups, such as young children; foods that are used for special medical purposes, such as those for people recovering from illnesses; and total diet replacement foods for weight control.

Changes made through this instrument are largely technical in nature, amending EU-specific references in retained EU and domestic law which will no longer be applicable when the UK withdraws from the EU. Perhaps the most important change made by this SI is the transfer of powers currently held by the European

Commission to the Secretary of State, Scottish Ministers, Welsh Ministers and, in relation to Northern Ireland, the Department of Health as applicable, ensuring that the UK reclaims full legislative control in this area. The SI also ensures that all applicable registers, annexes and lists will apply effectively in UK law as they stand on exit day. This has the explicit aim of mirroring the existing regulatory system, ensuring minimal disruption to industry and delivering continuity for both businesses and consumers.

Crucially, this SI provides for the transfer of functions in nutrition and health claims applications from EFSA, the European Food Safety Authority, to an expert committee in the UK. To guarantee minimal disruption, my department has been working closely with Public Health England to establish the new United Kingdom Nutrition and Health Claims Committee. The UKNHCC would replace EFSA's Panel on Nutrition, Novel Foods and Food Allergens, and assume responsibility for providing independent scientific opinion on any new nutrition health claims submitted for use in the UK to the four UK Administrations. The committee would operate in a similar way to and to similar timescales as the current EFSA process, providing further continuity to business.

I am pleased to report to the House that, since the debate in the other place, excellent progress has been made in establishing the committee. Earlier this month, following the open and transparent recruitment exercise, appointment letters were issued to eight exceptional individuals selected from a number of high-calibre applicants. Further details of these appointments will be available in the public domain at the point the committee is required. With an excellent panel and chair in place, I can confirm that the committee is ready to come into effect if required.

Given the scope of the instrument, the House might ask why food for special medical purposes developed specifically to satisfy the nutritional needs of infants, such as infant follow-on formula, do not appear to be covered. While delegated legislation relating to infants and infant formula has indeed come into force under EU regulation 609/2013 to enable food business operators to adapt to the new requirements, those regulations do not apply until February 2020. As this SI covers only legislation in force and applicable at exit day, it was not appropriate to include them in this instrument. However, I reassure the House that it is the Government's full intention to bring forward domestic legislation mirroring this delegated legislation as closely as possible at the appropriate time. Until then, the existing compositional, labelling and advertising rules will continue to be enforced by statutory instruments already in place, and will not be affected by the UK's exit from the EU.

As I stated earlier, this instrument, respectful to devolution settlements, provides for the relevant Commission powers to be transferred to the four Administrations and includes a power for the Secretary of State to make legislation for the whole UK with the consent of the devolved Administrations, which have been involved with the drafting of these regulations at every stage. I am grateful to them for all their efforts to ensure that our high standards for nutrition are maintained after EU exit.

For the purposes of maintaining free trade across the UK and to retain continued consumer confidence, it is important that policy consistency remains where possible, but that the potential for necessary and appropriate divergence which does not disproportionately impact on the UK internal market also remains. This is to reflect or respond to country-specific needs where risk assessment shows this is both necessary and proportionate to protect consumers, such as on public health grounds. Officials have therefore been working collaboratively across the UK to develop frameworks which will deliver a common approach to nutrition policy and ensure that devolved interests are taken into account in the formulation of new policy and future decisions taken within central government concerning nutrition.

Proposals underpinning this SI were subject to a public consultation during December. As no significant changes to the existing regulatory regime were proposed, costs to business were deemed to be below the de minimis threshold. Departments are not required to publish de minimis assessments. However, we conducted an equalities impact assessment and found no impact on any of the protected characteristics as defined in the Equality Act 2010. We are grateful to the broad range of stakeholders that responded to the consultation, including food manufacturers, trade bodies, a local authority and members of the public.

On 25 February we published our response, which detailed how respondents were supportive of our proposals but sought more detail on how they would work in practice. Appropriate guidance, which my department plans to publish via bulletins ahead of exit day, has been tested with industry via the Department of Business, Energy and Industrial Strategy's business experts group. Having received excellent feedback on the draft, I am confident that it is fit for purpose, clearly communicates any changes in process and provides all the additional information respondents requested.

We know that this is an important area of legislation, with many thriving businesses operating in this space. I again assure the House that it is our overarching aim that the amendments made by this instrument provide continuity for businesses and ensure that, when the UK leaves the European Union, the exceptional standards of safety and quality for nutrition regulation will continue. These draft regulations were passed in the other place on 28 February. With the assurances I have given noble Lords, I hope that they will support this necessary legislation. I beg to move.

Baroness Thornton (Lab): My Lords, I will speak briefly. I thank the Minister for proposing these regulations. I remember several years ago one of the issues we had to deal with in the European Union was that the thriving industry in the UK for nutrition, vitamins, minerals and substances was much more advanced than those of many of our European colleagues. The framework we are now looking at, and will be pulling out of, is very largely of our making. That standards will be transferred intact is not surprising, since we developed them 10 or 15 years ago in the UK; we did so partly because we wanted access to the markets of the European Union for supplements, vitamins and so on.

[Baroness Thornton]

My first question is this: what will happen to those markets? After Brexit day, what will happen to this industry, where we have been leading in Europe? It is quite clear that the purpose of this SI is to remedy deficiencies in UK legislation relating to nutrition arising from the withdrawal of the UK from the European Union without a deal. The Explanatory Memorandum says, and the Minister repeated, that there would be a,

"low level of impact … on businesses".

But no impact assessment has been made—although I accept that the results of the consultation came to that conclusion. It also says that some "administrative burden" will be placed on businesses. That is a matter of some concern, and one we would wish to keep under scrutiny. Some of these businesses are not huge corporations but are relatively small; any additional administrative burden is a matter of concern.

3 pm

The Government should be congratulated on having got the consultation published, and the industry should be congratulated on responding in the 10 days it was given to do so. It is good that those results have been published. All in all, those things seem to have worked well in preparation for Brexit without a deal. But I repeat what I have said on every occasion I have had to deal with these SIs: it is a shame that we have to do this; it is a terrific expense and a waste of everybody's time. However, given what has been going on down the other end of this building over the past 24 hours, it is probably even more essential that we get these things on the statute book and that they provide the necessary protection for these businesses.

I have a particular question to ask, which I am not sure the Minister will be able to answer. In the process of researching the impact on our nutrition industry in the event of a no-deal Brexit, my attention was drawn to how sports nutrition would be impacted. This is to do not just with the production of sports nutrition of various sorts but with regulation of the sports industry. The European Specialist Sports Nutrition Alliance agrees with many companies working in the UK and the EU which manufacture sports nutritional products that the future is uncertain. It says that it does not know what the outcome will be but that "there are many concerns", such as:

"Is the UK going to diverge in terms of regulation, from the EU?"

For sports industries, that is a big question. I do not expect the Minister to have an answer now, but it needs an answer. Those industries need to know what the impact will be on them and on sports nutrition.

Baroness McIntosh of Pickering (Con): My Lords, I congratulate the Minister on bringing forward what will obviously be needed as we approach a situation in which no deal might be more likely. I have a number of questions.

My noble friend's department has used the right language in this statutory instrument, but I am concerned that that language is not being reflected in, for example, the discussions on the Trade Bill that we had yesterday. On food safety, our honourable friend the Parliamentary Under-Secretary of State for Health and Social Care, Steve Brine, talked in the other place about retaining high standards and protections for the consumer, and safeguarding public health, as my noble friend did. Can the Minister use her good offices to make sure that all departments are using the same language?

It used to be that, according to the original Article 36 of the treaty of Rome—noble Lords will forgive me, but I cannot remember which article it now is—we could ban a nutrient or any ingredient that was deemed by the European Union to be unsafe on the grounds of public safety. I am at a loss as to why parliamentary draftsmen for one Bill—the Trade Bill—do not accept that the tried and tested, recognised language used by the Department of Health and Social Care and the Department of Environment, Food and Rural Affairs should not be used by the Department for International Trade. If the Minister could make that point throughout, that would be extremely helpful.

Is the Minister able to tell the House this afternoon when the appointments to the committee are likely to be made, and when it is likely to be set up?

On the current exclusion for infant and follow-on formula, I understand that the department will issue further advice on that "once the EU exit position is clarified". That could take a while. As our honourable friend Steve Brine said in Committee next door:

"The Department will issue further advice on that once the EU exit position is clarified, which is clearly yet to happen".—[*Official Report*, Commons, Thirteenth Delegated Legislation Committee, 28/2/19; col. 10.]

I am pleased to see that he has a sense of humour.

What will the position be on sharing with us decisions taken by the EFSA panel—and indeed on access to the food alert system, which will presumably apply to nutrients as well—and the sharing of information and decisions made by the panels which will be set up in this country? I remember going to Denmark when one of the few things that used to be cheaper there was vitamin C. You could buy two or three tubes of it in one go across the counter, until it was put on the proscribed list, which is regularly updated—I had not realised that you could overdose on vitamins C and D, and so on. Many other medicinal products regularly used by women of a certain age were also limited in scope as well. It seems good practice to share the decisions that are taken in the UK by the various panels, and to continue to share information and ask EFSA to let us know what its conclusions are. Presumably, we will wish to rely on the widest possible available scientific evidence.

With those few questions, I welcome this statutory instrument. Clearly, it will be helpful to know when the committee will be appointed and set up, the position on infant and follow-on formula, and the position on best practice. However, my main concern is that all departments should be using this language, not other language that is much less transparent and even opaque.

Lord Rennard (LD): My Lords, people are right to be concerned about food safety and nutrition issues, the integrity of some of the claims that are made and the effects of substances which are permitted for use as supplements for various purposes. People who are presently satisfied by the standards set by the European

Food Safety Authority have legitimate concerns about future regulatory approaches and potential changes to them.

The draft nutrition regulations in this SI may provide some temporary reassurance for consumers and businesses using these products, but, as indicated by the Minister a few minutes ago, they do not provide any sort of long-term reassurance about what may happen in future. As she said, regulations in the UK and the EU will be identical on departure day—whenever that might be—but they will inevitably divert in future when different people in different bodies come to different conclusions. Can she therefore indicate what the issues will be when a UK body begins to make different regulations to those determined by the European body?

Can the Minister indicate what additional costs there may be in the long run from setting up new bodies to replace EU regulations with UK ones? Perhaps she can tell us what have been the recruitment costs for the new bodies and what will be the ongoing costs of running them. Before June 2016, many people were led to believe that they would be freed from sharing the cost of things like the European Food Safety Authority. However, what will be the costs of establishing and running these bodies, in particular the new UK Nutrition and Health Claims Committee?

We are told that the processes to be undertaken will be similar to present ones at EU-wide level, but presumably businesses seeking to sell products such as nutritional supplements across the UK and the EU will in future need the approval of both EU and UK authorities. Will this not mean that the burdens and costs of regulation for us outside the EU will be increased, rather than reduced as many people were led to believe? The extra costs and burdens of duplicating UK and EU approval processes will surely hinder future research and innovation.

Most fundamentally, will the Minister confirm that leaving the EU on a no-deal basis would mean that we deny ourselves and the rest of the EU the benefits of sharing costs and expertise on these issues across the UK and the EU?

Baroness Manzoor: My Lords, as always, I take this opportunity to thank all noble Lords for their constructive and valuable insights. I shall endeavour to do my best to answer the questions raised by the noble Baroness, Lady Thornton, my noble friend Lady McIntosh and the noble Lord, Lord Rennard.

I entirely agree with the noble Baroness, Lady Thornton, and am very grateful for her comments. The UK currently benefits from world-leading standards in both the safety and quality of its nutrition regulation and, as I said, we will be closely mirroring the existing regulatory framework. I reassure noble Lords, especially my noble friend Lady McIntosh, that this statutory instrument will ensure that we maintain those high standards if the UK leaves the EU with no deal.

I am also pleased to hear that the department's presentations are clear, because it is very important that what we are saying in this area is communicated effectively and with understanding. I appreciate my noble friend's comments.

I say again that this SI ensures a functioning regulatory system for this aspect of nutrition legislation. In response to the noble Baroness, Lady Thornton, it will ensure minimum disruption to businesses, consumers and the public. We are fully prepared. The UK has a long tradition of close scientific collaboration with EFSA, which we of course greatly value. I say to my noble friend Lady McIntosh that we will endeavour to continue to work as closely as we possibly can with EFSA. However, the SI ensures that in the event that the relevant functions of EFSA can no longer be accessed, the UK is fully prepared to exercise them.

I reassure all stakeholders and noble Lords that it is our policy intention to mirror the existing regulation as closely as possible. The noble Lord, Lord Rennard, asked about the future. I understand and appreciate that, and it is a legitimate issue to raise—the noble Baroness, Lady Thornton, also raised it—but this is an exit SI: if there is no deal, it will come into play. Everything is open for negotiation once we leave the EU. I cannot guess what may or may not happen in future; all I can say is that, currently, we will mirror current regulation as far as we possibly can and continue to work with the EU on the rapid alert system that my noble friend Lady McIntosh mentioned. If and when we leave the EU, the EU rapid alert system includes a duty of care to inform third countries, so that information will continue to be shared.

On the impact on businesses, I do not want to say to the noble Baroness, Lady Thornton, that there will be no impact. We appreciate that there may be some additional administrative burdens on companies which have to submit claims to both the UK and the EU authorities if they want to claim in both areas, but we intend that procedures for submitting claims in the UK will closely follow those already in place in the EU. We estimate that the application paperwork should take nominal time—approximately 30 minutes—to complete. I say to the noble Lord, Lord Rennard, that costs are not expected to be significant.

3.15 pm

The noble Baroness, Lady Thornton, asked about a number of issues on food, particularly sports foods. She rightly anticipated that I do not have an answer on that at the moment because, once again, it is up for negotiation. However, we are working closely with suppliers to identify the implications of alternative sourcing and substitution for their processes and menus and will be developing guidance in conjunction with other areas of nutrition, such as caterers and nutritional specialists, to ensure that the supply chain is prepared and continuous supply is maintained. Of course, that is part of business planning.

My noble friend Lady McIntosh asked when appointments will be made to the committee. I reassure her that appointment letters were issued to the specialist members and the chair on 6 March. As I said in my opening remarks, should the committee need to be set up, it is ready to go. It will be very important. As the noble Baroness, Lady Thornton, said, we do not know what the future holds tomorrow or next week, but we are ensuring that we have systems and processes in place to continue to deliver our current high safety standards.

My noble friend also asked why infant formula is not covered by the statutory instrument. I alluded to that in my opening remarks and said that the Government

[Baroness Manzoor]
will work very closely with the industry. It will not be in place if we leave on the date that was envisaged, but we will of course mirror any future regulations as they come into play.

Lord Fox (LD): On a point of order, when the noble Baroness turns away from the microphone, we cannot hear what she is saying.

Baroness Manzoor: My apologies to the noble Lord. I was saying on infant formula, as I mentioned in my opening remarks, that if there are any changes, we will continue to mirror the regulations and, if there are any new initiatives, we will introduce new regulations in the usual way.

The noble Lord, Lord Rennard, and my noble friend Lady McIntosh also asked whether we would continue to be a member of EFSA. As I said, the nature of the UK's future relationship with EFSA will be subject to negotiation with the EU. However, this SI provides for the appropriate expert committee or authority to assume EFSA's function in a no-deal scenario, and this will guarantee certainty for business.

I hope that that answers most of the questions that noble Lords asked. I conclude by again reassuring all stakeholders that it is our policy intention to mirror the existing regulations as closely as possible. Guidance will be published shortly, and industry should be further reassured that stakeholders who we have consulted believe it covers all necessary aspects of the legislation and is fit for purpose from exit day. I commend the Motion.

Motion agreed.

Health Services (Cross-Border Health Care and Miscellaneous Amendments) (Northern Ireland) (EU Exit) Regulations 2019

Motion to Approve

3.19 pm

Moved by ***Baroness Manzoor***

That the draft Regulations laid before the House on 11 February be approved.

Relevant document: 18th Report from the Secondary Legislation Scrutiny Committee (Sub-Committee A). Instrument not yet reported by the Joint Committee on Statutory Instruments.

Baroness Manzoor (Con): My Lords, I should make it clear that I will not move the second Motion in this group on the National Health Service (Cross-Border Healthcare and Miscellaneous Amendments etc.) (EU Exit) Regulations. The Joint Committee on Statutory Instruments has drawn it to the special attention of the House, and the House, rightly, will need time to consider its report. I shall speak to the two remaining Motions standing in my name on the Order Paper: the Health Services (Cross-Border Health Care and Miscellaneous Amendments) (Northern Ireland) (EU Exit) Regulations 2019 and the Social Security Coordination (Reciprocal Healthcare) (Amendment etc.) (EU Exit) Regulations 2019.

The Government are bringing forward these two statutory instruments under Section 8 of the European Union (Withdrawal) Act 2018, to correct deficiencies in retained EU law relating to reciprocal and cross-border healthcare, and to ensure that the law is operable on exit day. When the UK leaves the EU, that Act will automatically retain the relevant EU legislation and the domestic implementing legislation in UK law. However, in the event of no deal, and if we do not legislate further, the regulations would be incoherent or unworkable without reciprocity from member states. If we did nothing there might also be a lack of clarity regarding patients' rights to UK-funded healthcare in the EU.

Current EU reciprocal healthcare arrangements enable people to access healthcare when they live, study, work, or travel in the EU/EEA and Switzerland, and vice versa in the UK. These arrangements give people retiring abroad more security. They support tourism and businesses, and facilitate healthcare co-operation. The UK funds healthcare abroad for a number of current or former UK residents. This includes 180,000 pensioners and their dependents in the EU. We also fund needs-arising healthcare in the EU/EEA and Switzerland for UK tourists and students. There are 27 million EHIC cards in circulation in the UK, which results in around 250,000 claims each year. We directly fund healthcare for 10,000 posted workers and their dependents in the EU/EEA and Switzerland. We also fund around 1,350 UK residents each year to travel overseas to receive planned treatment in the EU/EEA and Switzerland. Finally, around 1,100 people from England and Wales access healthcare through the cross-border healthcare directive route.

The Government's intention is to continue these reciprocal healthcare arrangements with countries in any exit scenario—deal or no deal—as they exist now, until 31 December 2020. In a deal scenario, the in-principle agreement we have reached with the EU, the EEA and Switzerland is that during the implementation period—that is, until 31 December 2020—all reciprocal and cross-border healthcare entitlements will continue and there will be no changes to healthcare for UK pensioners, workers, students, tourists and other visitors, to the EHIC scheme, or regarding planned treatment.

The Government want to secure a wider reciprocal healthcare agreement with the EU/EEA and Switzerland following the end of the implementation period that will support a broad range of people when they move between the UK and the EU/EEA and Switzerland for leisure, study or work. In a no-deal scenario, our offer to all member states is to maintain the current reciprocal healthcare arrangements for at least a transitional period to ensure that people living in, working in or visiting our respective countries can continue to access affordable healthcare.

The statutory instruments we are considering will support us in maintaining current reciprocal healthcare arrangements for countries with which we have agreed reciprocity for a transitional period lasting until 31 December 2020, and to remove these arrangements in the longer term. The transitional arrangements would not apply to countries that do not agree to maintain the current reciprocal arrangements. Continuing the current arrangements is possible only with the

agreement of other member states, and we are in advanced discussions on this issue. We have approached other member states and are prioritising the major pensioner, worker and tourist destinations.

The UK and Irish Governments are committed to continuing access to healthcare services within the common travel area, and both Governments are taking legislative steps to enable us to implement these arrangements by exit day. The two instruments that we are considering are our implementing mechanism. We also welcome the action by those EU member states that have prepared their own legislation for a no-deal scenario, including, but not limited to, Spain, France, Portugal, and Belgium. However, depending on decisions by member states, it is important to acknowledge that people's access to healthcare could change. Naturally there is concern about what this will mean and what should be done. This is an uncertain situation and I appreciate that that may be difficult for people. I hope I can be reassuring.

All of the 27 EU member states are countries with universal healthcare coverage, and in general people have good options for obtaining healthcare, provided that they take the appropriate steps. After exit, should there be no bilateral arrangements in place, the majority of UK nationals who currently live or work in the EU will still have good options for accessing healthcare. Depending on the country, it will generally be possible for people to access healthcare through legal residency, current or previous employment, or joining a social insurance scheme and contributing a percentage of their income, as other residents need to do. Less frequently, people may need to purchase private insurance. When people travel overseas they should purchase travel insurance, as we already encourage everyone to do. However, I appreciate that this can be difficult for people with long-term conditions, and it is important that people make the best decisions for their circumstances when choosing to travel.

As is the case now, UK nationals who return to live permanently in the UK will be able to access NHS care. If these people return to live in the UK part-way through their treatment, they will be treated by the NHS fairly and equitably. UK nationals who have their healthcare funded by the UK under current EU arrangements and are resident in the EU on exit day can use NHS services in England without charge when they temporarily visit England.

We recognise that this means change, and in some circumstances additional expense, for UK nationals living abroad. It is to avoid this that we are bringing forward these statutory instruments. I would like to reassure noble Lords that the Government have issued advice, via government and NHS websites, to UK nationals living in the EU, to UK residents travelling to the EU/EEA and Switzerland, and to EU nationals living in the UK. This advice explains how the UK is working to maintain reciprocal healthcare arrangements, but that their continuation depends on decisions by member states. It also sets out what options people might have to access healthcare under local laws in the member state they live in if we do not have bilateral arrangements in place, and what people can do to prepare. However, in some circumstances, these instruments will protect individuals irrespective of reciprocity with other countries. That issue was raised by the noble Baroness, Lady Thornton, during the Third Reading of the Healthcare (International Arrangements) Bill. I take this opportunity to reassure her again.

3.30 pm

Through these instruments, we can finish funding healthcare for people in a transitional situation. To be clear, this would cover people in the middle of treatment on exit day, those who have already had treatment and those who have applied for, or been given authorisation for, treatment before exit day. This would apply for a year or the period of authorisation, whichever is later. Of course, that assumes that the state is willing to provide treatment and accept reimbursement from the UK. Through these instruments, the Government are offering to continue to fund healthcare through the current reciprocal healthcare and cross-border healthcare arrangements until 31 December 2020 in the member states that agree to reciprocate. It is not feasible to fund directly healthcare for hundreds of thousands of people living in or visiting the EU without the co-operation of member states.

Noble Lords will know that the Government have also brought forward a Bill focused on reciprocal healthcare arrangements—the Healthcare (International Arrangements) Bill—which is an important means for implementing reciprocal healthcare arrangements. This Bill will ensure that the UK can respond to all possible exit scenarios, and complements the approach we are taking with these instruments. It provides powers to give effect to comprehensive healthcare arrangements that are bespoke or different in any way to the current arrangements provided by the EU regulations. It also provides a legislative framework to implement longer-term, complex reciprocal healthcare arrangements with the EU, or bilateral agreements with individual member states.

We are also exploring whether there is a need to fund further healthcare for limited numbers of people in exceptional circumstances where there would otherwise be a serious risk to their health. The Bill will give us the powers to do that and to respond to an unpredictable situation. Clearly, we need to prioritise support for individuals who need it most in countries where there are challenges in obtaining healthcare; it is our hope that it will not be necessary at all. We need to be clear on the outcome of bilateral arrangements and the needs of specific groups before setting out the policy. I recognise the difficulty of the current situation and want to assure people that we are doing all we can to minimise the changes in the way care is accessed.

I should clarify before I close that the instruments we are considering do not make changes to welfare benefits policy. The Department for Work and Pensions is bringing forward separate legislation on welfare benefits. I assure noble Lords that we have been working closely with our colleagues in the devolved Administrations, who have provided consent for these instruments. In the absence of a Northern Ireland Executive, we are also taking forward today, on behalf of Northern Ireland, amendments to the legislation that implemented the cross-border healthcare directive in Northern Ireland.

In conclusion, I want to make it clear that these instruments make miscellaneous amendments to EU references in retained EU law, such as removing references

[Baroness Manzoor]
to EU concepts. Moreover, the Bill and these instruments are necessary legislative vehicles to ensure that the UK Government are ready to deal with reciprocal and cross-border healthcare in any EU exit scenario. These instruments provide us with an effective mechanism to ensure that there is no interruption to people's healthcare in a no-deal situation. I know that I have spoken for a long time but I felt that it was important to set out this issue clearly for the House. I beg to move.

Baroness Thornton (Lab): I thank the Minister for introducing the regulations and for clarifying the position on the National Health Service (Cross-Border Healthcare and Miscellaneous Amendments etc.) (EU Exit) Regulations—I have just taken about four pages out of my speech. I am sure that we will meet at the Dispatch Box to discuss them at some point next week.

The transitional elements allow for all ongoing treatment to continue for a maximum period of a year following exit and for pre-authorised treatments. Similarly, dedicated regulations deal with the special situation in Northern Ireland, where such arrangements are more frequent due to the land border with the Republic of Ireland.

I know that the Department of Health and Social Care regards these regulations as providing temporary provision until what is now no longer called the Healthcare (International Arrangements) Bill takes effect by allowing for the current system—including the European Health Insurance Card and S1—to continue until December 2020 with individual countries, but only if a memorandum of understanding is in place. I must say, taking at random an article that appeared yesterday, it seems that British nationals in Europe regard the healthcare plans for pensioners as uncaring. They feel that they are being thrown under and a bus and abandoned. They do not regard the one-year undertaking as at all adequate. The Minister and her colleagues will need to deal with the fact that this measure does not reassure many of our fellow citizens who are living and accessing healthcare abroad.

I will repeat what I have said on every occasion during debates on the many SIs we have had to deal with that prepare us for the "crashing out" scenario. It is quite dreadful. I found these regulations particularly depressing, because they affect many older people in many parts of Europe, and there is enormous anxiety. My questions for the Minister are not about the mechanisms being proposed here to deal with healthcare, but about how they are being communicated to UK citizens all over Europe for whom we are responsible.

I suspect that these regulations are needed now more than ever—perhaps even more than when they were first laid. It is a shame that they are needed at all. The Government are lurching in a disorganised fashion towards goodness knows what kind of exit from the European Union. "When?" also now seems to be an open question. These regulations, along with dozens of others, are necessary for a no-deal exit. They provide for a wind-down of UK reciprocal healthcare arrangements with the EU and European Economic Area in the case of a no-deal Brexit. I feel very sad when I say these words, because it feels like we are throwing away something precious—sharing what we have with our European friends and nations.

I think that the Minister can anticipate considerable anxiety about these regulations, which the Prime Minister's actions and words yesterday have done nothing to alleviate. Entering a blame game when you are the Government and have the power to resolve the situation seems the height of irresponsibility, and I am not surprised that some Conservative MPs have expressed their dismay and shame.

Let us turn to the statutory instruments concerning Northern Ireland. I am very grateful to the British Medical Association for its briefing and for the attention it has drawn throughout our discussions to the benefits of cross border co-operation on health services. I will put on the record some of those benefits, as I have done in the past. I seek reassurance from the Minister that these benefits will remain safe in a "crashing out" scenario.

Health services in Northern Ireland and the Republic of Ireland work separately, but often they do not have sufficient demand to provide cost-effective and highly specialised medical services, so cross-border co-operation on health services with the Republic of Ireland over the past two decades has allowed a high quality of such services to be delivered on an all-island basis. Patients in Northern Ireland no longer have to travel to England to receive care. Between 2003 and 2015, more than €40 million euros was invested in cross-border health and social care initiatives via co-operation and working together, creating a partnership between health and social care services in Northern Ireland and in the Republic.

Additional project applications amounting to €53 million were submitted in relation to acute hospitals, prevention, early intervention, tackling health inequalities and other services. Examples of this include the paediatric cardiology service based at Our Lady's Children's Hospital in Dublin, which enables children from throughout the island of Ireland to receive treatment without having to travel to England. The radiotherapy unit at Altnagelvin Area Hospital provides access to radiotherapy treatment for more than 500,000 cancer patients living in both Northern Ireland and the Republic of Ireland. The creation of this unit has had the greatest impact on patients in the north-west and Donegal, removing the need for lengthy journeys to Galway, Dublin and Belfast for treatment.

The cross-border cardiology service at Altnagelvin Area Hospital has enabled patients from County Donegal with diagnosed heart attacks to receive lifesaving treatments. Other services include shared dermatology clinics over four sites along the border; out-of-hours GP services at Castleblayney, County Monaghan and Inishowen in County Donegal; ENT services at Monaghan Hospital and Northern Ireland's Daisy Hill and Craigavon hospitals. Cross-border collaboration has enabled ENT waiting lists in the Health Service Executive Dublin North East area to be significantly reduced by facilitating ENT consultants from Northern Ireland's Southern Trust to practise in Monaghan.

Cross-border service arrangements have been established and are providing high-quality, safe care for patients in a range of areas, including primary care, cancer services and paediatric cardiac services. These vital health services should not be destabilised

during or after the Brexit process. It is also vital that patient access to these key health services is not jeopardised. How is the Minister able to reassure the House, and indeed thousands of patients in the Republic and in Northern Ireland, that our cross-border arrangements will indeed be unaffected and safe?

I turn now to what was the third instrument, the Social Security Coordination (Reciprocal Healthcare) (Amendment etc) (EU Exit) Regulations 2019. Current EU reciprocal healthcare arrangements enable people for whose state healthcare costs the UK has responsibility, known as "UK-insured", to have access to healthcare where they live, study, work or travel in the European Union, the EEA and Switzerland—and vice versa for people whose state healthcare costs those states have responsibility for. The EU reciprocal healthcare arrangements give people more life options, and support tourism, businesses and healthcare co-operation, as the noble Baroness explained in introducing the regulations.

What we are talking about here is the European health insurance card. Some 27 million of our fellow citizens hold the EHIC and, as the noble Baroness said, some 190,000 UK pensioners living elsewhere in the EU are registered with the S1 scheme. I decided to go on to the NHSE website to see what, one week away from Brexit, we are being told we need to do. I have to say that it was not encouraging, because the website is still encouraging people to apply for the EHIC even though it may not be valid in one week's time, and it is very difficult to see what other advice is available.

I tried to follow the route through various parts of the website, but I could not find advice on what kind of cover I would need if I were travelling somewhere in Europe in two or three weeks' time, post Brexit, particularly if we had crashed out without a deal. I could not find the advice mentioned by the noble Baroness about taking out insurance, and I could not find advice that might be available if I had a long-term condition. That seems to be completely inadequate and it will not do at this stage, when we are so close to what might be an exit without a deal.

My questions to the Minister are very straightforward. How do people know what to do? How will they find out? When will the NHS website be updated? What is going to happen to those people I quoted at the beginning of my remarks, who already feel abandoned, if in just over a week's time we leave the European Union without a deal and they find that they cannot access clear, unbureaucratic advice on how to keep themselves and their families safe?

3.45 pm

Lord Rennard (LD): My Lords, I am pleased that the second of the statutory instruments in this group is not being moved now, because the issues involved in that one require more consideration than we might have given them today. The Government should think rather more carefully about some of these issues because it is clear that a considerable number of UK citizens living in other EU countries are incredibly concerned about them. They would be even more concerned if they had heard the remarks of the noble Baroness at the beginning of this discussion on these SIs. The idea that they may have to apply for extra insurance policies, social insurance schemes and so on as soon as a week on Saturday illustrates why it is so important that we do not crash out of the EU on Friday of next week. People are also acutely aware of how the Government at the moment appear to be treating rather differently issues such as the voting rights of UK citizens living overseas and the healthcare rights of UK citizens currently living in EU countries.

Tomorrow the Government will support a Private Member's Bill in the House of Commons to give permanent voting rights in UK elections to all UK citizens living overseas. However, many of them were denied votes in the EU referendum and now find themselves potential victims of that decision in terms of fundamental changes to their existing healthcare rights. The winding down of reciprocal healthcare arrangements was not really examined in the referendum campaign as a potential consequence of that vote.

On Tuesday the Minister of State for Health, Mr Stephen Hammond, sought to allay some of their fears. But the *Guardian* today reports on the furious reaction of UK nationals who have retired to EU countries. The offer by the Government to cover healthcare costs for up to one year, if they have applied for or are undergoing treatment before exit day, is a terrible one. One of the people quoted in the *Guardian* article today says that if a person,

> "has paid into the system all their lives and retired to an EU country in good faith, with all the reciprocal arrangements in place, they could be left high and dry if they, say, get cancer after 29 March"—

next Friday. Tuesday's Written Statement by the Minister said that pensioners will be eligible to return to the UK and get treatment on the NHS under the contingency plans. But another of the people quoted in the article today asks:

> "How can pensioners with cancer, cardiac problems or other major issues be expected to make or even afford repeated visits to the UK for regular vital treatment?"

The present system works well and is cost effective, because healthcare is cheaper in many EU countries than in the UK, so the existing system helps save the NHS money. We are losing a benefit and incurring more expense.

Campaign groups such as Bremain in Spain, British in Italy and Expat Citizen Rights in EU have all raised practical problems with the Government's plans. They are right to criticise the way in which people who have paid national insurance contributions for many years, and may continue to pay taxes to HMRC, may now be deprived of their rights to reciprocal healthcare arrangements where they now live. They may in practice be unable to return to the UK for treatment they need.

Those of us living here who travel to Europe have come to regard the EHIC as a major advantage, and it has helped to keep travel insurance costs within Europe far lower than for the USA, for example. It is welcome that the cards may remain valid to the end of 2020, as opposed to next Friday, but only where a separate memorandum of understanding is in place with the relevant country. From what we heard a few moments ago, I understand that this is not the case with many countries so far. The basis of the statutory instruments relies heavily on the Government's ability to agree transitional reciprocal healthcare arrangements with

[Lord Rennard]

EU member states. Few agreements have already been reached, eight days before some people want us to leave the EU. It is hard to see how the new arrangements proposed can be subject to proper scrutiny—particularly without the relative costs of the new arrangements being assessed—together with what appear to be major drawbacks for UK citizens living in or visiting EU countries in future.

Current EU reciprocal healthcare arrangements allow UK citizens to have access to healthcare when they live, study, work, or travel in the EU, EEA and Switzerland, and vice versa. What they get in future may not be nearly as good, and the costs of the new arrangements are not known. The Government have admitted in these SIs that,

"there is a high level of uncertainty around the precise value of the costs and benefits".

It is also clear that the Government are relying on powers to be given to the Secretary of State via the Healthcare (International Arrangements) Bill to make any provisions for after 31 December 2020, but we do not know who that Secretary of State will be then, or what it will be possible for them to agree. Does the Minister accept that we cannot give proper scrutiny to legislation when so much is unknown and uncosted? Can she say something about what the costings really are? Does she accept that it is regrettable that the timeframe for consideration of these measures means that there has not really been any proper public consultation about them, particularly with UK citizens living across different EU states?

Like the noble Baroness, Lady Thornton, I also want to know what arrangements the Government will make for advising travellers and expats as to their healthcare coverage status if we leave without a deal next Friday. We have seen little preparation for that so far. How will the date of 31 December 2020, outlined in the SIs as the day when all current arrangements with other member states cease, be revised if the Government succeed next week in securing an extension to the Article 50 process?

Baroness Manzoor: My Lords, I thank the noble Baroness, Lady Thornton, and the noble Lord, Lord Rennard, for their valuable contributions to this debate. The effect of these two sets of regulations is to make miscellaneous amendments to EU references in retained EU law relating to reciprocal and cross-border healthcare. I understand the wider points that both noble Lords have made, but am not in a position to comment on those wider points in relation to exit. I am in a position to comment on these SIs. I reassure the House and both noble Lords who have spoken that we are doing everything we possibly can to ensure that we have arrangements in place for reciprocal healthcare with the EU. These regulations ensure continuity of reciprocal healthcare arrangements, where appropriate, for UK citizens living, working or travelling abroad, while removing these arrangements in the longer term, as the noble Lord, Lord Rennard, said.

I turn to specific points raised by noble Lords. The noble Baroness, Lady Thornton, referred to the common travel area. I reassure her that the UK and Ireland are both committed to continuing the reciprocal healthcare arrangements on a bilateral basis after the UK's withdrawal from the EU. We recognise our unique relationship with Ireland and the importance of the common travel area, and in healthcare, as in other relevant policy areas, we have been working closely with Ireland to ensure that the rights associated with the common travel area continue to be protected, and we have made good progress. Discussions to continue reciprocal healthcare arrangements are under way between the UK and Ireland and, once concluded, these instruments will provide a mechanism to implement the agreement and thereby ensure that there is no interruption to healthcare arrangements between the UK and Ireland for a transition period.

The noble Baroness, Lady Thornton, asked about the impact the legislation arrangements that are in place will have on an all-Ireland basis. The north-south arrangements to provide healthcare services on the island of Ireland are not impacted by the UK's withdrawal from the EU or by these SIs. These arrangements operate under MoUs, as she correctly identified, and service level agreements between Irish and Northern Irish health authorities will continue to operate after exit day. The UK Government have made a commitment to ensure that these arrangements continue and that new arrangements can be made. The noble Baroness is aware that healthcare is devolved to Northern Ireland, and this statutory instrument has been brought forward in the absence of a Northern Ireland Executive.

I share the concerns raised by the noble Baroness in relation to paediatric heart surgery and cancer. I reassure her that the north-south arrangements to provide services such as paediatric heart surgery are not impacted by the UK's withdrawal from the EU and the UK Government have made a commitment to ensure that those arrangements continue and that no new arrangements in relation to those areas are put in place.

The noble Baroness, Lady Thornton, asked what guides are available. The website GOV.UK contains "Living in country guides", which contain country-specific information on the steps that people can take in relation to healthcare, and is regularly updated. However, I take on board the comments the noble Baroness has made and I will feed them back to the department to ensure that any further information is put in these guides.

The noble Baroness, Lady Thornton, and the noble Lord, Lord Rennard, asked about bilateral agreements if there is no deal. I acknowledge that the timescales are challenging. The Secretary of State for Health has written to all Health Ministers in the EU to offer an agreement on a reciprocal basis with other member states that individuals continue to be covered for healthcare under the same terms as now if they retire in, work in or visit the other country. We are currently engaging with member states to see whether these arrangements can be put in place should we exit the EU without a deal. While it would not be appropriate to share details of the negotiations with member states at this stage, I reiterate that our clear focus is to protect healthcare access for people in the EU.

The noble Lord, Lord Rennard, raised the issue of how we inform individuals of their rights in a no-deal scenario. I refer him to the answer I have just given in relation to the website and the guidelines. If they need to be updated with new information, the department will certainly do that.

One of the final issues raised by the noble Lord, Lord Rennard, on which I can comment relates to the costs of spend-on arrangements with the EU. The longer-term costs of reciprocal healthcare arrangements are subject to negotiations between the UK and the EU, as the noble Lord will be aware. Expenditure under the current EU reciprocal healthcare arrangements was approximately £630 million in 2016-17, and we expect future expenditure on EU reciprocal healthcare arrangements to reflect current costs. Our intention is that Parliament will have clear and easy-to-access details of public spending on healthcare arrangements implemented under the Healthcare (International Arrangements) Bill. We have made a government amendment reflecting the suggestion by the noble Baroness, Lady Thornton, and others to provide Parliament with a regular report on payments made using the powers under the Bill. We anticipate that this report will be a baseline. We intend to go further than reporting on payments, but we cannot provide a statutory obligation to do so at the moment.

I think those are the key questions that I can answer.

4 pm

Baroness Thornton: I hope the Minister does not mind, but while she was speaking I went to GOV.UK to have a look. She is quite right that there is a lot of information there, but if I want to know about healthcare in France or wherever, I will go to the NHS website. That is the first place I would think of going. If I want to know about my passport or that sort of thing, I would go to GOV.UK or the Home Office. There is a really serious communication issue here that the Government must take seriously very quickly.

Baroness Manzoor: My Lords, I take the issue very seriously because communication is key, particularly in the healthcare industry where there are very vulnerable people. It is right that we make information available in an easy, clear format. I am grateful to the noble Baroness for checking that out. She makes a valid point. I will feed her comments back to the department and, if we are able to do so, we will put the information on the generic website because I suspect that I, or anyone else, would go to the NHS pages as well. It seems the most logical thing to do. She has seen the webpage, I have not, but I will take her comments back. I hope the noble Baroness is reassured—she is nodding.

These two instruments and the Healthcare (International Arrangements) Bill will give us the best possible chance of ensuring that there is no loss of reciprocal healthcare arrangements for UK citizens in the EU, the EEA and Switzerland.

Motion agreed.

National Health Service (Cross-Border Healthcare and Miscellaneous Amendments etc.) (EU Exit) Regulations 2019

Motion to Approve

4.02 pm

Tabled by ***Baroness Manzoor***

That the draft Regulations laid before the House on 11 February be approved.

Relevant document: 18th Report from the Secondary Legislation Scrutiny Committee (Sub-Committee A). Special attention drawn to the instrument by the Joint Committee on Statutory Instruments, 53rd Report.

Motion not moved.

Social Security Coordination (Reciprocal Healthcare) (Amendment etc) (EU Exit) Regulations 2019

Motion to Approve

4.02 pm

Moved by ***Baroness Manzoor***

That the draft Regulations laid before the House on 11 February be approved.

Relevant document: 18th Report from the Secondary Legislation Scrutiny Committee (Sub-Committee A).

Motion agreed.

Chemicals (Health and Safety) and Genetically Modified Organisms (Contained Use) (Amendment etc.) (EU Exit) Regulations 2019

Motion to Approve

4.03 pm

Moved by ***Baroness Buscombe***

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

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

The Parliamentary Under-Secretary of State, Department for Work and Pensions (Baroness Buscombe) (Con): My Lords, this draft statutory instrument was laid before Parliament on 18 February and was approved in another place on 13 March 2019. The Government's priority is to reach a negotiated settlement with the EU. However, it is our duty as a responsible Government to prepare for all eventualities, including leaving with no deal. This statutory instrument is one such contingency measure to ensure that regulations governing chemicals and genetically modified organisms for continued use stay operable under a no-deal scenario.

I take this opportunity to reiterate that this instrument will deliver on our commitment to protect workers' rights as the UK leaves the EU by ensuring that health and safety regulation continues to provide a high level of protection in the workplace and for others affected by workplace activities. It will also deliver on the Government's commitment that standards of protection for people and the environment will remain at least as high as at present as the UK leaves the EU.

Together with ministerial colleagues in the Department for Environment, Food and Rural Affairs, we oversee a number of key regulatory regimes that affect the chemicals sector. Since the referendum, our joint programme has conducted particularly intensive work to ensure that

[Baroness Buscombe]
there will continue to be a functioning regulatory regime with associated enforcement activity for chemicals under any exit scenario. These draft regulations form part of the work being done to adjust our existing legislative framework in readiness for leaving the European Union.

I appreciate the technical nature of the regulations. They are made particularly complex by being a composite of several different regulatory regimes. It was decided to present these proposals as a single instrument for the benefit of your Lordships' House in reducing pressure on parliamentary time and ensuring that we are able to deliver an orderly exit. Noble Lords should be assured that the proposals are sensible, proportionate and necessary.

If approved, these draft regulations will make necessary amendments to three retained EU regulations, as well as EU-derived domestic legislation affecting the whole of the United Kingdom, including Northern Ireland. As stated, the purpose of the instrument is to amend the relevant legislation to ensure that there is provision for an independent UK regulatory regime that maintains existing standards and protections. Going forward, the Government's priority will be to maintain a legal framework to ensure the continued effective and safe management of chemicals in order to safeguard human health and the environment. That framework needs to be flexible enough to respond to emerging risks, while still allowing trade with the EU that is as frictionless as possible.

The first of the three retained EU regulations to be amended is the biocidal products regulation. This governs the placing on the market and use of products that contain chemicals which protect humans, animals, materials or articles against harmful organisms such as pests or bacteria. It is in place to ensure that these chemicals are safe for humans, animals and the environment, while improving the functioning of the biocidal products market. This market covers a wide range of products such as wood preservatives, insecticides such as wasp spray and anti-fouling paint to remove barnacles from boats.

Secondly, the classification, labelling and packaging of substances and mixtures regulation ensures that the hazardous intrinsic properties of chemicals are properly identified and effectively communicated to those throughout the supply chain, including at the point of use, partly through standardised hazard pictograms and warning phrases associated with specific hazards, such as explosivity, acute toxicity or carcinogenicity.

Lastly, the export and import of hazardous chemicals regulation implements the Rotterdam convention and requires exports of listed chemicals to be notified to the importing country. For some chemicals, the consent of the importing country must be obtained before export can proceed.

These regimes rely on EU processes to take and implement collective decisions. However, much of the business of these regimes already operates at national level. Decisions at EU level are taken on the basis of evaluations and assessments undertaken by member states or following consideration of scientific opinions reached by relevant expert committees. Under a no-deal scenario, this instrument provides for these evaluations or opinions to inform a national decision, rather than informing UK input into an EU decision.

The Health and Safety Executive currently acts as a UK competent authority within the EU regimes for chemicals regulations; therefore, it already has existing capability and capacity which can be built upon to take full UK regulatory authority responsibility. For example, across the whole of the EU, the Health and Safety Executive currently processes around an eighth of the biocidal active substance approvals and around a third of the biocidal product authorisations.

It is necessary to put in place arrangements for the Health and Safety Executive to recover its costs for work across the wider chemicals regimes, including for plant protection products, which is currently done by EU institutions and for which a fee is charged. This cost recovery approach is in line with Her Majesty's Treasury policy and is a well-established procedure for charging industry for the various work and advice provided by the Health and Safety Executive, such as applications for approval of first aid training on offshore installations and pipelines, or evaluation of safety cases made under COMAH regulations.

This instrument also contains a small number of technical operability amendments to the Genetically Modified Organisms (Contained Use) Regulations 2014. These regulations pertain only to the use of genetically modified organisms in controlled settings, such as a laboratory, and currently refer to a number of European directives and regulations. The references, some of which are the responsibility of other government departments, are now updated with the corresponding repatriated UK domestic law. There are no policy changes or updates to duties, and all existing protections covering human health and the environment are maintained and will continue to work in the same way post EU exit.

The UK chemical sector is our second biggest manufacturing industry and second largest exporter. It is also integral to the provision of essential products and technologies on which society relies. This instrument will provide clarity to the chemical industry and regulators, ensuring that the legal requirements that apply in relation to chemicals regulations are clear immediately after exit and provide certainty to consumers that the use of chemicals in the UK will continue to be desirable and safe.

Before closing, I would also like to stress that the devolved Administrations have provided consent for the elements of this instrument which are considered devolved. I hope that all noble Lords will join me in supporting the draft regulations. I beg to move.

Lord Fox (LD): My Lords, I thank the Minister for introducing this statutory instrument; quite clearly it covers some important ground, albeit in a compendium of different issues.

I am not sure what we have done to deserve the raffle prize of the most coveted slot of the week. I was a little surprised—with all due respect—to see a DWP Minister putting this forward, but the Minister explained the Government's perspective that worker protection is one of the clear priorities of this legislation, along with human health and the environment, of course. This SI is something of a younger sibling to another one—the REACH statutory instrument, which we will debate on Tuesday. In that respect, I will touch on some issues

today, but I expect to deal with them at greater length next week. I do not know whether the Minister then will be the noble Baroness, Lady Buscombe, or the noble Lord, Lord Gardiner. Perhaps the audience in the "royal box" might carry to the noble Lord some of the issues that I put forward today; it would be good if he could come prepared. As the Minister said, these regulations cover the important chemicals industry, and touch on our research capability through the GMO issues. There is some very important ground for us to consider.

4.15 pm

As the Minister might be aware, I have a common problem in this and other SI debates: in many respects, they are importing regulatory responsibility into the United Kingdom when in many cases there is no ready-made regulatory body to deliver those regulations. In this case, the Health and Safety Executive is clearly there and ready. However, it is getting pulled into a variety of other needs and requirements. For example, although not in the scope of this SI, the debate around Grenfell Tower includes looking at a massive extension of what the HSE might do, while the REACH legislation will massively change and increase what it is expected to do. But yet the 2016-17 business plan forecasts that central government funding will be £100 million less in 2019-20 than it was in 2009-10; a 46% cut. Can the Minister explain how these extra tasks will be taken on while the Government are continuing to cut from the HSE? Or, if funding is not going to be cut, by how much will it be increased? How many extra people do the Government expect the HSE to take on just to cover this statutory instrument alone, without even touching on some of the others we will talk about in future? What extra resource, or people, should we expect?

I have some specific questions. As I understand it, for EU businesses with valid authorisations for their products, those will continue to be valid in this country after Brexit for a period. However, after 12 months, if they do not have a valid UK company registration, that will not be the case. Has the department's assessment come to any understanding of what changes that will bring to available products—available chemicals—in the UK market? In other words, will some companies that currently have registration in this country choose not to register to deliver those products? I was pleased that the Minister talked about the cost-recovery mechanism, but she did not say what level of return this process is expected to give to the HSE—I assume it is the HSE that levies this.

By my understanding, applications for product approval that are ongoing will have to be resubmitted to the HSE within the defined deadline. The Government say that this evidence will be the same, and so therefore need not be duplicated. However—and this is an issue we will come back to on Tuesday—in many cases UK-based companies do not own that data, and REACH data is copyrighted. That means the data has to be reproduced in some way. This is a very big issue that is extremely important to the chemicals industry, which has raised it with me and, I know, with Defra in a number of different ways. As yet, there has been a completely unsatisfactory answer from Defra on this issue. Does the Minister understand the issue? Given that the answer to that is, I hope, yes, what are the Government planning to do about it?

Active substances are currently in the process of being systematically re-examined by Europe under REACH. Currently, the member states divide up this re-examination process between them. Now, assuming that we go ahead with this go-it-alone regime, the UK will take possession of the reassessment process for all 488 of those substances. The EU has set a deadline of 2024 for this reassessment process, and the Government have given themselves powers to extend that deadline. The Explanatory Memorandum admits that the UK has not yet developed a programme for how these 488 active substances will be reassessed, and it is very clear that, for the UK to take that all on board, the timeframe will be extremely difficult to maintain. What is the plan on this? It is worrying if the Government do not have one; it is also worrying if they decide to stretch this process out. These are chemicals of concern, and, as the noble Baroness rightly pointed out, these issues will affect the people who work with them. They need reassurance, and this reassessment process needs to happen. My contention is that, unless something drastic happens, this will stretch out into the 2030s, which is clearly not acceptable.

I turn briefly to the powers in this SI. The statutory instrument gives power to Ministers to implement new technical and binding legislation, without parliamentary oversight. Ministers will be able to: approve or reject the sale of biocidal products in the UK; devise their own classification and labelling scheme, which, unlike EU classification, will bind UK-based suppliers; and decide what chemicals go on an administrative list, which relates to what hazardous chemicals can be imported into the UK. In each case, Ministers will act following recommendations from the relevant agency—largely, the Health and Safety Executive and/or the Environment Agency. How can the decisions of the Secretary of State be challenged, particularly if Ministers go against the scientific recommendations they are presented with, for whatever reason? This is a really important issue.

Lord McKenzie of Luton (Lab): My Lords, I thank the Minister for her introduction and explanation of these regulations. I acknowledge the contribution of the noble Lord, Lord Fox. Perhaps he might see it as a starter for 10 for Tuesday's main event. He made some important points, particularly on data, and I am interested in the Minister's response on that.

As should be clear from debate in the other place, we will not oppose the instrument, given its expressed intent to ensure that the regulation of UK chemicals and genetically modified organisms will operate effectively when the UK leaves the EU. We are mindful of other regulations that have been referred to and which have been tabled, including the draft REACH etc. (Amendment etc.) (EU Exit) Regulations 2019, which have been the subject of comment by Secondary Legislation Scrutiny Sub-Committee B. Its report has been drawn to the special attention of the House on the basis that the explanatory material laid in support of the draft regulations provides insufficient information on their expected impact and gives rise to issues of public policy likely to be of interest to the House. These regulations have been scheduled for consideration next week and are the responsibility of Defra. I do not

[Lord McKenzie of Luton]
propose to stray into this territory this afternoon in any detail, except where there is an overlap with these regulations.

My understanding is that the DWP has responsibility for the regulations before us today as it is the host department for the HSE. The HSE and Defra oversee several regulatory regimes which impact the chemicals sector. When approved, it is understood that the regulations will cover the whole of the UK and provide for an independent UK regulatory regime which maintains existing standards and protections. As the Minister spelled out, this afternoon we are concerned with: the biocidal products regulations, which govern the use and placing on the market of biocidal products; the classification, labelling and packaging of substances and mixtures regulations, a single market measure which applies to the supply of chemicals; the export and import of hazardous chemicals regulations, which require exports of limited chemicals to be notified to the importing country, with consent needed for some; and minor technical amendments to the GMO provisions, as we have heard.

Referring to the list in paragraph 2.6 of the Explanatory Memorandum, paragraph 2.7 states:

"If these changes were not made, several chemicals regimes in the scope of the instrument would not be fully operable when the UK leaves the EU".

Can the Minister expand on that point and give us some specific examples?

The Government have chosen to amalgamate these instruments in one set of regulations and assert that this decision was taken to reduce the pressure on parliamentary time. These are complex issues. If the Government are following this route, it should be incumbent on them at least to produce an impact assessment. It is understood that one is available for the REACH regulations but not for those before us today. It has apparently been asserted that if the direct financial impact of the measure is below £5 million, there is no requirement for an impact assessment. If that is the basis of the claim for there being no need for an impact assessment, perhaps we could see a copy of that £5 million calculation.

Currently, scientific and technical updates are proposed, considered and adopted through the EU's delegated decision-making arrangements. Under these new regulations, this will be done by ministerial decision following recommendations from a relevant competent authority or agency. Can the Minister give us a list of who was included in competent authorities and agencies for these purposes? Is there a risk that, in comparison to the breadth of the current arrangements, the UK will have a narrower updating arrangement? How can we be assured that best practice will prevail? The Explanatory Memorandum argues for this administrative procedure on the basis of efficiency and speed, and points to the precedent of the Veterinary Medicines Directorate. It seems that Defra is pursuing such an option for plant protection products. What happens when the UK advice under these arrangements diverges from the EU advice provided to entities within the EU? Is any process envisaged to reconcile the differing positions to get some impact on the market?

The HSE briefing reminds us that for biocides and pesticides regulations in future, the HSE will no longer be able to act as "lead authority" for active substance approvals and some product authorisations. Who will, and what does the Minister consider the consequences of this to be? How assured can we be that this will not lead to a change of policy?

As for classification, labelling and packaging, it is envisaged that all existing main duties of classification would remain the same and that we would adopt the UN globally harmonised system. This new UK mandatory classification is also to be hosted by the HSE. It is understood that this will involve all existing MCL substances plus new and revised entries as agreed. Can the Minister say something about how the process of agreement in these circumstances will proceed? What enforcement arrangements are envisaged?

We know that the HSE would also take on responsibility for an independent UK system in respect of biocidal products. This would involve applications for approval and authorisation going to the HSE, which would take on the role of ECHA. It is understood—this point was made by the noble Lord, Lord Fox—that active substance approvals and product authorisations would remain valid, but ongoing applications with the HSE for evaluation would need to be resubmitted. At what and whose cost?

Apart from its increased responsibilities arising under these regulations, as the debate on REACH identified, considerable additional responsibilities are envisaged for the HSE at a time when the organisation is going through significant budget cuts—I am reminded that the HSE has been six months without a chief executive. What assessment has been made of the capacity of the HSE to cope, as well as that of Defra and the Environment Agency? I have no doubt about the intellectual capacity of the HSE; it is one of the jewels in the crown of our regulatory firmament, although that is not always acknowledged by some members of the government party.

The Explanatory Memorandum seeks to address the financial position of the HSE. It appears to recite three situations—first,

"fees to recover the full costs of its regulatory activities";

secondly,

"variable fees and charges dependent on the size of organisation involved";

and thirdly,

"domestic fees and charges systems … proportionate to the actual cost incurred of intervening".

The latter are seemingly adopted for these regulations and mean that there will not be full cost recovery. Is this correct? What is the estimated annual shortfall?

The SLSC specifically regrets that a financial analysis has not been provided which identifies the potential cost of the proposed regulatory regime, nor an assessment for the industry of a no-deal scenario. Will the Minister undertake to provide these? Debating these regulations has, if nothing else, reminded us how important the chemical sector is to the UK economy. This must be underpinned by robust and secure regulatory provisions. We look forward to the further deliberations next week.

4.30 pm

Baroness Buscombe: My Lords, I thank the noble Lords, Lord Fox and Lord McKenzie, for their pertinent questions on this instrument, which is extremely important for the chemicals industry. In response to the noble Lord, Lord Fox, I am here as the DWP Minister. The DWP is the lead department for HSE operations. When the REACH regulations—on which the noble Lord has tabled a Motion—are debated next week, it will be my noble friend Lord Gardiner at the Dispatch Box, not me. He is the Minister for Defra, the department which is directly impacted. I will make sure that my noble friend is aware of today's debate. I hope it will help him prepare for next week's debate and that we can avoid a fatal Motion.

I will do my utmost to respond to the questions asked. As both noble Lords have emphasised, this is an incredibly important industry. The chemical sector is our second largest manufacturing industry and is vital to the economy and to many other industries, often leading the way in research and innovation. It is not only our second largest export industry but a key component in other important sectors, such as pharmaceutical, automotive and aerospace. We want to make sure that it continues to succeed and will do our utmost to support it.

The Government therefore seek to ensure that any potential new burdens on UK companies are minimised. The Health and Safety Executive is aware of the impacts and cost implications for business of any potential changes. It will, consequently, endeavour to keep such changes as simple and straightforward as possible. The Health and Safety Executive will implement an active communications programme on this point, leading up to exit and following it, to ensure that all stakeholders are aware of any potential changes in their responsibilities.

Both noble Lords asked about capability. This is understandable, because this adds to the already established role the HSE plays. Some of my ministerial colleagues in another place have had numerous, cross-government meetings with the HSE to discuss capability. The HSE, as we know, currently acts as the competent authority, but resources have been reprioritised to meet new pressures and to supplement existing capability and capacity. Under a no-deal scenario, the HSE would look to recruit around 120 additional staff in 2019, with an estimated cost per annum of £3.3 million. It should be noted that currently more than two-thirds of its budget for work carried out by the chemicals regulation division in the HSE is cost recoverable and the expectation is that cost-recoverable work will continue to form a reasonable proportion of its income after we exit the EU. Additional funding will also be made available to the HSE. The HSE keeps its resourcing plans continuously under review and will carry on assessing the impact, including on cost-recoverable work.

Lord Fox: Just to be clear, is 120 extra people the total number expected to be taken on to cover all the post-Brexit requirement? Is the £3.3 million not new money but money that has been moved from one HSE box to another? The noble Baroness talked about money being reprioritised: from which priority has it been moved in order that this becomes a priority? I would like a little more clarity around that.

Baroness Buscombe: I ask the noble Lord to bear with me in case my officials can reassure me on both those points: I would not like to take a punt, as it were, before we close this debate.

I thank the noble Lord, Lord McKenzie, for attending a recent meeting to which all Peers were invited, chaired by the then Minister for Disabled People and the lead Minister for the HSE in the Department of Work and Pensions. At that meeting it was helpful to have the opportunity to listen to representatives of the HSE, who were very clear about the pathways forward in the event either of a deal or no deal, and who work extremely well, I have to say, with our department and across government to support its crucial work now and the crucial work that will be placed upon it.

The noble Lord, Lord Fox, asked about accountability for decisions. The UK Government are committed to transparency so that citizens can hold the Government to account on how decisions are made that affect their lives. Decisions taken by the Secretary of State regarding chemicals regulation will be subject to the same processes that hold Ministers to account as any other decisions. In addition, for several decisions, the consent of the devolved Administrations will be required.

As for the cost to the industry, the proposed amendments in this instrument relate to the maintenance of existing regulatory standards. Therefore, the instrument has been calculated to have a net direct impact on business or civil society organisations of less than £5 million annually. The Government seek to ensure that any potential new burdens on UK companies are minimised. The HSE is aware of the impacts and potential cost implications to business of any potential changes and consequently will endeavour, as I have already said, to keep these as straightforward and simple as possible.

I can now respond to the noble Lord, Lord Fox. There will be 120 additional staff in 2019 and the £3.3 million is DWP funding for the HSE's work and REACH is funded by Defra. The cost-recovery work is additional to this funding. I hope that that is clear.

On parliamentary scrutiny, after exit the same UK regulatory scientists will recommend updates to ensure the continued protection of people, the environment and the interests of UK business. This will be for the UK only, not as part of the EU system. When Ministers agree with a recommendation, they will issue a decision to this effect and the HSE will then ensure that the updates are given effect from an agreed date and alert duty holders to changes. Decisions taken by the Secretary of State on chemicals regulation will be subject to the same processes that hold Ministers to account on other decisions, as I have said. This approach is better suited to the volume and pace of the scientific and technical changes involved, and will allow for effective management of the downstream consequences. Enabling the updates in this way ensures that they are dealt with promptly and efficiently, which is necessary to provide legal certainty for UK businesses. The approach also prevents undue pressure on parliamentary time; under the BPR regime, for example, there can be up to 50 active substances approval decisions a year.

On the Biocidal Products Regulation and the active substance review programme, in a no-deal scenario the UK would be outside the EU review programme

[Baroness Buscombe]
and responsible for taking on active substance approvals nationally. The UK could however take into account evaluations done by other regulators, and would seek to do so where feasible. This includes the EU, which would continue to work to the same standards as operated by the UK. However, we would also maintain the option to take different decisions from the EU 27. Submission deadlines specified under Article 89 of the Biocidal Products Regulation will continue to apply, allowing the use of products containing active substances that are within the scope of this review programme, permitting them to continue to be made available on the market for a specified period of time. Other rules for participation in and withdrawal from the review programme will also remain similar to those in the present EU review programme.

Lord Fox: I apologise for rising again, but I thought the Minister said that it is perfectly reasonable for the Government to expect that in some cases, if the European Union safety authority decides to ban a chemical for a particular use, the UK would follow that ban without doing its own work and assessment. Is that a correct assumption?

Baroness Buscombe: I said that the UK could take into account evaluations made by other regulators, and would seek to do so where feasible. This includes the EU, which will continue to work to the same standards as the UK. It would also maintain the option to take different decisions from the EU 27.

Lord Fox: I think that is a yes.

Baroness Buscombe: That is a yes.

The noble Lords, Lord Fox and Lord McKenzie, asked about data. In a no-deal scenario, following EU exit it is not expected that the UK would be granted any permission to access confidential information held by the European Commission or the European Chemicals Agency, so any information previously submitted via these processes would not be available for the Health and Safety Executive to refer to. Such data must therefore be resubmitted to the HSE where necessary for it to continue operating the regulatory regime.

The specific circumstances in which data resubmission would be required are set out in the Biocidal Products Regulation transitional arrangements. The HSE appreciates that the requirement for applicants to resubmit their data packages may result in some increase in cost to business. However, this increase is expected to be minimal, on the basis that any data the HSE requests will be the same information as previously submitted and can be submitted in electronic format.

The technical data requirements needed to support an approval of an active substance or an authorisation of a biocidal product would be the same as those specified under the EU regime. In the immediate period following exit day, the necessary processes will be in place such that applicants can submit data to and correspond with the HSE as the competent authority. Such processes and systems will be sufficient to process applications and permit the necessary communications to take place in the weeks following EU exit, with the intention that a more streamlined, efficient process will be developed in due course. More information on what systems will be used will be made available to applicants as soon as it is available.

As I have been corrected to an extent, I return to a point I made a few moments ago on taking decisions on active substance approvals nationally and whether we would just do what the EU has done and accept a ban. To clarify, we would always make our own assessment of EU conclusions, so we would not just accept them at face value. Perhaps that is helpful.

4.45 pm

Lord Fox: That brings me back to the point I made in my speech: there are 488 chemicals to be reassessed if we follow the European Union's work programme on this. In addition, it will be an extremely laborious, expensive and time-consuming process that will inevitably be slower than it would have been had we remained within the European chemicals regime.

Baroness Buscombe: My Lords, I think I can say confidently that in our discussions with the HSE it has said that it is confident that it could carry out this—albeit laborious—assessment as our competent national, domestic authority were we to leave without a deal.

The noble Lord, Lord McKenzie, asked specifically about impact assessments. The department has been provided with guidance that the impact of EU exit statutory instruments should be assessed in line with standard practice by following the existing better regulation framework, in accordance with Her Majesty's Treasury's Green Book guidance. The proposed amendments in this instrument relate to the maintenance of existing regulatory standards. Therefore, as I said, this instrument has been calculated to have a net direct impact on business of £5 million annually. This approach is in line with published guidance, and departmental chief analysts are responsible for ensuring that the proportionate level of analysis is provided. Costs arising for duty holders will be costs of exit rather than of this instrument, which are not applicable to this assessment. An analysis of the wider impacts of the UK's exit from the EU was published in November 2018 in *EU Exit: Long-Term Economic Analysis*.

The noble Lord, Lord McKenzie, asked about transparency. The UK Government are committed to transparency so that citizens can hold the Government to account with regard to how decisions that will affect their lives are made. Therefore, in a no-deal scenario the Government would ensure that regulatory decisions are made with justification, in an open manner, with regular and full consultation on key decisions, in line with the Regulators' Code, committed to transparency. The UK remains a signatory to the Aarhus convention, which guarantees the public rights on access to information, public participation and justice in environmental matters.

The noble Lord, Lord McKenzie, also asked for assurances with regard to scientific and technical updates. The Health and Safety Executive is a world leader in the regulation of chemicals and will continue to be so following EU exit. The Government will ensure that the best scientific and technical advice is available

during the process. Indeed, we have to be proud of the extraordinary expertise and skills we have in this area; we must ensure that the best skills and advice continue to be available and that decisions are transparent and involve the opportunity for public participation.

On fees and cost recovery provisions—I apologise in advance if I am being repetitive—the UK will charge fees in line with Her Majesty's Treasury's policy and the Regulators' Code, which requires regulators to clearly explain the basis on which fees and charges are calculated. Industry will be charged only for the work and advice provided by the Health and Safety Executive. This approach is a well-established procedure for ensuring a 100% cost recovery.

Potential changes to fee levels would require legislation to be passed through Parliament. The principle of transparency underpins any changes to fees, so there would be a wide consultation process. This instrument is a purely formal change of the location of powers. In response to the question from the noble Lord, Lord McKenzie, about paragraph 2.7 of the Explanatory Notes, I can say that the situation will not be operable after exit unless we make these changes to ensure clarity about the formal location of powers—that is, powers resting with the HSE.

I think that I am almost there. I think I said that the competent authority involved in scientific advice will be the HSE, alongside the Environment Agency and the devolved authorities' relevant competent authorities, such as HSENI. It is important to make clear our involvement with the devolved Administrations. All the competent authorities will be involved in decision-making.

There was a question on enforcement. The Government are extremely committed to the protection of workers, the public and the environment. The Health and Safety Executive has sufficient enforcement capacity to police non-compliance with chemical regulations, but enforcement action will be proportionate to the health and safety risks and to the seriousness of any breach of the law, as the HSE enforcement policy statement sets out. HSE's approach to enforcement will not change as a result of exit. Although some duty holders will have new or different roles to fulfil, depending on their position in the supply chain, the scope of the regulation and the number of duty holders affected will remain broadly the same. HSE has planned a modest increase in enforcement resource to cope with the potential increase in the number of enforcement cases that could arise as a result of increased scrutiny from other agencies, such as Border Force or HMRC.

I think that that covers pretty much all the questions. I hope that noble Lords will bear with me. I put it differently from the noble Lord, Lord Fox: I always call this the graveyard slot. But I want to touch on consultation, because I know that this has been of concern to noble Lords across the House in relation to a number of SIs. We have a very good story to tell about what the Government, working with the HSE, have been doing to ensure that those who are impacted by these changes are aware of what is going on.

Consultation on chemicals was conducted on an informal basis, although, until very recently, this was constrained due to sensitivities arising from the ongoing negotiations with the EU. At the beginning of February, HSE consulted all the major chemical trade associations and it has held a series of workshops and events to discuss changes with representatives of industry and non-governmental organisations. Indeed, in the past month alone, a series of roadshows was held in Belfast, Hull, Cardiff, London, Chester and Edinburgh. In total, across all events since February 2018, HSE has engaged with approximately 1,240 attendees and, since August, the EU exit chemicals regulations guidance pages on HSE's website have had just under 100,000 views. In the past month, pages with specific EU exit guidance on each EU chemicals regulation have had approximately 3,600 views. So we take the issue of consultation seriously. It is not formal consultation, because there are no policy changes in the legislation, but we believe that it is necessary to ensure that all those who are impacted either directly or indirectly by the regulations and changes associated with our exit from the European Union are aware of what we are doing and the impact of this statutory instrument.

This instrument will provide clarity to the chemical industry and regulators, ensuring that the legal requirements that apply in relation to chemicals regulations are clear immediately after exit, and it will provide certainty to consumers that the use of chemicals in the UK will continue to be desirable and safe. I commend the regulations.

Motion agreed.

House adjourned at 4.54 pm.