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PARLIAMENTARY DEBATES
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HOUSE OF LORDS
OFFICIAL REPORT

ORDER OF BUSINESS

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

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

House of Lords

Tuesday 26 March 2019

2.30 pm

Prayers—read by the Lord Bishop of Newcastle.

Property Guardians
Question

2.36 pm

Asked by ***Baroness Grender***

To ask Her Majesty's Government what steps they are taking to ensure that property guardians are legally protected.

The Parliamentary Under-Secretary of State, Ministry of Housing, Communities and Local Government and Wales Office (Lord Bourne of Aberystwyth) (Con): My Lords, property guardians have some legal protections and we are working to ensure that local authorities enforce their rights. However, depending on the arrangements in place, these protections are often fewer than those of tenants. Therefore, we are improving our guidance for property guardians so that they fully understand their rights and the difference between a licence and a tenancy. We are planning a programme of research better to understand the sector and to inform further work.

Baroness Grender (LD): I thank the Minister for a meeting with him about this last week. Will he use this opportunity to reassure the growing number of property guardians that the full force of the current law will be applied and new regulations considered? Will he also make clear that the clauses that these people sign, which include no talking to the media or local authorities, mean nothing if they live with mould, rats, electrical hazards, fire doors screwed shut and more? They can and should report it, even when, as is often the case, the property is owned by a local authority.

Lord Bourne of Aberystwyth: I thank the noble Baroness for her interest in this. As far as we can tell, there are 5,000 to 7,000 property guardians—the figure is in that area. It is the case that some protections apply. Under the housing health and safety rating system, certain key rights apply, as do rights relating to electrical safety, gas safety and so on. I agree with the noble Baroness that those rights cannot be overridden by non-disclosure agreements. As I said, we are keen to ensure that existing rights are enforced and are planning work to look at the current position and inform possible further action.

Lord Kennedy of Southwark (Lab Co-op): My Lords, I draw the attention of the House to my relevant registered interest as a vice-president of the Local Government Association. Does the Minister think it acceptable that most property guardians must provide their own fire safety equipment when staying in a place as a guardian? Does he agree with the London Fire Brigade, which has raised safety concerns about these dangerous and inadequate arrangements?

Lord Bourne of Aberystwyth: My Lords, I should be grateful to the noble Lord if we could arrange a meeting at which he can raise some of the matters he has just disclosed. As I said, under the housing health and safety rating system, as both tenants and licensees, property guardians have rights in relation to fire and hazards of the first category, which include fire protection. As I said, we are very keen to look at this situation. Some property guardianships are perfectly legitimate but they are not tenancies. For example, if a student looks after a house for a family member or friend in their summer break, that is perfectly acceptable. What is of concern is where the rights of people who are there on a much more permanent basis are overridden; that is what we are looking at.

Baroness Gardner of Parkes (Con): My Lords, what is the definition of a property guardian? Can these situations just be produced by simple means or does there need to be a full legal definition? I do not know, and I think many in the House would like clarification.

Lord Bourne of Aberystwyth: My Lords, thinking on my feet, it is not a straightforward matter. Rights attach to people as tenants; more limited rights attach to people as licensees. I do not think there is a statutory definition of a property guardian. We are looking at how to ensure that property guardians have a bedrock of rights in all situations so that people are properly protected. That is the key.

Lord Shipley (LD): My Lords, the Netherlands has a regulator for guardianship properties, which has introduced a kitemarking scheme. Will the Government consider introducing a similar scheme here? I remind the House of my declaration of interest.

Lord Bourne of Aberystwyth: My Lords, I thank the noble Lord. I met the Property Guardian Providers Association, which might be the organisation to carry this forward. Some 80% of the market are members of that association. The remainder of the market is principally from Dot Dot Dot; a few others may well join that association. We are looking at that measure; it is certainly one possible way forward, similar to the Short Term Accommodation Association that applies in relation to Airbnb-type associations.

Lord Best (CB): My Lords, standing between the occupiers, the property guardians in these empty properties, and the owners—local authorities or people who own an office block—are the property guardian providers, the companies that set up these operations. The Minister knows that MHCLG has a working group on the regulation of property agents, which I have the pleasure of chairing. Will he relay back to the Secretary of State that my working group would be very happy to look at the regulation of property guardian providers, just as we look at estate agents, letting agents and managers of leasehold properties?

Lord Bourne of Aberystwyth: My Lords, I am grateful to the noble Lord. I will certainly relay that message to the Secretary of State. I know he will be extremely pleased; we were hoping that the noble Lord would look at those.

Baroness Jones of Moulsecoomb (GP): My Lords, I thank the Minister for the work he has taken forward since I introduced this issue in a Question for Short Debate in your Lordships' House. Does he have any advice for local authorities, which use property guardian companies to get income from their empty properties, particularly on enforcing the law on decent conditions, which sometimes includes rogue landlord conditions?

Lord Bourne of Aberystwyth: I thank the noble Baroness for introducing this issue. How right she was to raise it in the way she did in October. I am grateful to her for that and our subsequent meetings. She is right about that problem, to which the noble Baroness, Lady Grender, also referred. There is a question about who polices local authorities and the other public authorities in this area. We will want to look at that too, as the noble Baroness said. No doubt the noble Lord, Lord Best, will want to comment on it as well.

Lord Lea of Crondall (Lab): My Lords, would the Minister care to add to his shopping list the lack of recognition of residents' associations in this context? At present, there is no way in which the law can be invoked to ensure that residents' associations are party to these discussions.

Lord Bourne of Aberystwyth: The noble Lord raises a somewhat different but important point. I quite agree. If I may, I will drop him a line on what we are doing in that general area, copy in noble Lords and place a copy in the Library. There are certainly concerns there, which I have shared on previous occasions with my noble friend Lady Gardner of Parkes.

Honours System

Question

2.43 pm

Asked by ***Baroness Berridge***

To ask Her Majesty's Government what plans they have, if any, to review the honours system.

Lord Young of Cookham (Con): My Lords, the honours system is independent of the Government. In recent years, significant progress has been made to ensure that the system is more open and representative, but there is always more that can be done. A number of changes have been made over the past year to review the operation of the system. That work is continuing.

Baroness Berridge (Con): I thank my noble friend the Minister for his Answer, but in 1917 the introduction of a system to recognise service to your country that included the word "Empire" was appropriate—it is not so today. For this reason, many people, often from within the black and minority ethnic community, refuse to accept—or even to apply on behalf of others for—an honour. Can my noble friend the Minister please outline whether consideration could be given to the introduction of an additional honour to the existing system that does not include the word "Empire", so that all parties can be satisfied that those who have a conscientious objection for good reason can accept an honour that might be the Order of British Excellence—keeping the same letters—but so that the existing system could be respected as well?

Lord Young of Cookham: I agree with my noble friend that we should do more to ensure that those from ethnic minority communities who have made a significant contribution to society should see their achievements get public recognition, and we should remove any obstacles in that path. In 2016, 6% of the New Year Honours went to those from black and ethnic minority communities. In the New Year Honours this year it was 12%, and we are averaging around 10%, but none the less more can be done. There are relatively few refusals of honours; the latest figure I have seen is around 2%. The reasons for refusal are not given, but I understand that it is very rare for a refusal to be on the grounds that my noble friend suggested. On her final point, that would require a new order of chivalry. The structure of the honours system is a matter for the monarch; this is well above my pay grade and, indeed, my rank.

Lord Wallace of Saltaire (LD): My Lords, given that there are good grounds for renaming the Order of the British Empire now that we no longer have a British Empire, does the Minister accept that the range of acceptable titles is presumably rather large, since two of our most distinguished orders of chivalry are named after the garter and the bath?

Lord Young of Cookham: I understand that the order cannot be renamed. The statute makes it quite clear that it must be known by that name and no other, so we would have to close it and start another. In response to the general issue that has been raised, it is noteworthy that 10 Commonwealth countries, many of them in the Caribbean, continue to nominate people for Orders of the British Empire and other ranks, so I am not sure that the reservations expressed by my noble friend are necessarily widely shared.

Lord Dubs (Lab): My Lords, while accepting the point about not using the term "Empire", I put a further comment to the Minister. Does he accept that one of the criticisms is that there is a hierarchy of honours and that the top honours go to senior people in this country who get them because of their jobs, whereas at the bottom of the scale are the most worthy people who do voluntary work for fellow members of their community? Is it not those people, who work for nothing for their community, who ought to be given pride of place in our honours system?

Lord Young of Cookham: I agree: no one should get an honour simply for carrying out the job they are paid to do. As I said right at the beginning, the operation of the honours system is independent of government; there is a Main Honours Committee and nine or 10 sub-committees below it, with civil servants and Members of your Lordships' House on them. I am sure they will take on board the comments made

by the noble Lord that there should be a fairer distribution of the ranks of Orders of the British Empire between those who at the moment are the main beneficiaries and others who perhaps get some of the lower orders.

Viscount Waverley (CB): My Lords, does the Minister accept that our now Commonwealth allies are part of our proud heritage and shared great hardship on our behalf? Decisions of this sort should not be taken in isolation as, more than ever, we need to stand shoulder to shoulder.

Lord Young of Cookham: I agree with the noble Viscount. As I said a few moments ago, the order remains in use in other countries: Antigua, the Bahamas, Belize, Grenada and many other countries continue to nominate. Any change would have implications for those Commonwealth countries.

Lord Lexden (Con): Why are so many places left unfilled in the Order of the Companions of Honour, which is particularly well suited to recognising conspicuous service in the worlds of arts and culture?

Lord Young of Cookham: As a beneficiary of the Order of the Companions of Honour myself, I understand the reservations. If my noble friend looks at the some 60 recipients of the Companionship of Honour, he will find that there is a fairly broad representation. We had a photograph taken a year ago to commemorate the 100th anniversary of the installation of the Companions of Honour. I found myself standing next to one of the smallest actresses I have ever come across, and it looks very odd in the picture.

The Lord Bishop of Salisbury: My Lords, I am not sure that the Minister's Answer to the original Question from the noble Baroness was entirely convincing. There is careful screening to check whether somebody might be willing to consider accepting an honour before an application is ever made. That is done by talking to their family, their friends and others involved with them. Therefore, the figure of 2% refusals is entirely unconvincing, and there needs to be a much more careful analysis of what is going on behind the Question in order to deal with the real issue, as is recognised by the questions asked by the House.

Lord Young of Cookham: I take seriously the point made by the right reverend Prelate. People do give reasons for turning down honours; those reasons are not made public. In the letter which my right honourable friend the Prime Minister wrote to my noble friend last year, when this issue was raised, she said that it was "rare" for an honour to be turned down for this reason. But we will try to dig further, in the light of the comments of the right reverend Prelate, and see to what extent this is a real disincentive.

Lord Faulkner of Worcester (Lab): My Lords, the New Year Honours List of 1969 contained a life peerage for Sir Learie Constantine, who took his seat in this House 50 years ago today. On the House of Lords website, there is a very fetching photograph of the bust of Lord Constantine, with the Lord Speaker and the noble Baroness, Lady Benjamin. Lord Constantine's bust, borrowed from the National Portrait Gallery, is in the Royal Gallery from today. Will the Minister encourage all Members of your Lordships' House to attend the event on 1 May, when this iconic figure will be celebrated in a seminar and lecture in the Robing Room? There, Members can pay their own tribute to the first Afro-Caribbean Member of your Lordships' House.

Lord Young of Cookham: I entirely endorse what the noble Lord has said. As he was speaking, I could see noble Lords writing in their diaries the date he referred to.

Special Educational Needs

Question

2.52 pm

Asked by ***Lord Addington***

To ask Her Majesty's Government what is the average time without appropriate special educational needs support spent by students who have successfully appealed a decision to have an education, health and care plan.

Lord Addington (LD): My Lords, I beg leave to ask the Question standing in my name on the Order Paper. I remind the House of my declared interests.

The Parliamentary Under-Secretary of State, Department for Education (Lord Agnew of Oulton) (Con): My Lords, local authorities are required to carry out any tribunal orders within specified time periods. Data is not collected to demonstrate compliance. However, all local authorities are subject to local area inspections. Children and young people continue to receive support during tribunal appeals. A local authority cannot cease an EHC plan for any young person under 18 unless it determines that it is no longer necessary for special educational provision to be made in accordance with an EHC plan.

Lord Addington: I thank the Minister for that reply. However, often it takes people years to get to the process of making an appeal. According to the British Dyslexia Association, if you do not have a lawyer it can then take up to three years to get through, but much less time if you have a lawyer supporting you. How have we got to the situation where the basic government support is available for those who have lawyers and are capable of handling the system? What chance does a dyslexic child with a dyslexic parent stand?

Lord Agnew of Oulton: My Lords, it is important to stress that about only 1.5% of all EHC plans are appealed to tribunal. Of those who decide to appeal, 60% fall away and do not go to tribunal, because their issues are resolved. The other important point is that if a local authority loses a tribunal case, it is not because it has lost the whole case; it is just that the tribunal has taken against one element of the case. That is not commonly understood.

Lord Blunkett (Lab): My Lords, there is no doubt that there is a serious problem across the country. Has the Minister had a chance to talk to the Secretary of State and his colleagues about holding a round table with local authorities and other stakeholders to try to get to the bottom of the disparity between areas of the country where this is working well and those where it is working extraordinarily badly?

Lord Agnew of Oulton: I certainly take the noble Lord's suggestion on board and will recommend that to my right honourable friend the Secretary of State, because we are in a learning period. This is a new and fundamental change to the way that the process is handled. Again, I reassure noble Lords that the process is not dramatically worse than it used to be. It is a huge change. One reason for increasing the number of appeals was that in April last year we extended the scope of tribunals to include health—until then, only education was covered. Before the new regime came into place, between 2008 and 2014 the number of tribunal cases went up every year, except for one year when it dipped by just five.

Lord Watts (Lab): My Lords, the Government seem to be taking comfort from the fact that the majority of appeals are dealt with, but the Question was about the minority who wait up to three years. Should we not address that straightaway?

Lord Agnew of Oulton: My Lords, as I said in my Answer, the local authority cannot withdraw support during an appeal period.

Lord Touhig (Lab): My Lords, the Minister said that compliance data is not collected. Why? Nothing will improve unless the data is collected.

Lord Agnew of Oulton: My Lords, when these reforms came in, we initiated local area inspections. The noble Lord may be aware that we carried out a number of these in combination with Ofsted and the Care Quality Commission. They are shining a light on both good and bad practice in the sector and, where a poor inspection result comes up, they are asked to provide a written plan for correction. That is how we are gradually improving the system.

Lord Storey (LD): My Lords, the Minister may be aware that we are also seeing a rise in legal services offering a no-win no-fee system for parents wishing to appeal. That is likely to add further pressure to already hard-pressed local authority budgets. Actually, when all the costs of one case are taken into account, it can cost up to £80,000. Given that it costs only about £3,500 to train a specialist teacher, does the Minister agree that we should try to prevent this no-win no-fee system from taking off?

Lord Agnew of Oulton: I certainly support the noble Lord's suggestion and will take that back to the department. I see no benefit in ambulance chasers benefiting from these cases. It is also worth pointing out that we support the charity Independent Parental Special Education Advice, which provides advice to parents going through the tribunal process. There is no absolute need to use lawyers, which is why IPSEA is an important path for parents to consider.

The Lord Bishop of Ely: My Lords, I understand that the purpose of the 2014 set of reforms was to ensure a holistic approach by health, education and social care services in the support of children with special needs and of their families. But when appeals take place, I understand that it is not uncommon for social care services to say that they do not know the child. Are the Government ensuring proactive co-operation between health, social care and education services in supporting such children and their parents?

Lord Agnew of Oulton: To reassure the right reverend Prelate, I can say that we are learning from the process. I mentioned earlier the area inspections being carried out. Indeed, a number of inspection reports have required improvements. I shall give a recent example: Rochdale was inspected and asked to provide a written statement of action only in January. An update report showed improvements including educational outcomes, timeliness of response to children and young people, and promotion of understanding of services provided by the LA to those with SEN.

Lord Forsyth of Drumlean (Con): My Lords, I declare an interest: I have a grandson affected by this. Will my noble friend take account of what the noble Lord, Lord Addington, said? I think that I am reasonably sophisticated in dealing with complicated issues, but what is going on here is a rationing of resources. It takes ages for people to get an assessment. If you can afford to pay, you can get a private assessment. If you can work your way through the system, you eventually get a result, which I am pleased to say we got. But people who do not have the resources or the experience and ability to work the system are completely shut out. That is what my noble friend needs to look at.

Lord Agnew of Oulton: My Lords, we have consistently increased funding to the high-needs block and in December last year announced an additional £250 million for high-needs funding. I understand and accept that there is demand here, but we are listening and improving the system all the time.

Brexit: Petition to Revoke Article 50 Notification

Question

3 pm

Asked by ***Baroness Quin***

To ask Her Majesty's Government when they will respond to the petition created by Margaret Anne Georgiadou to revoke their notification of 29 March 2017 in accordance with Article 50 of the Treaty on European Union and to remain in the European Union.

The Minister of State, Department for Exiting the European Union (Lord Callanan) (Con): My Lords, the Government will respond to the e-petition on revoking Article 50 in due course and within the required 21 days for a government response. It remains government policy that we will not revoke our Article 50 notice.

Baroness Quin (Lab): My Lords, I have seen the response that the Government have already posted on the website. It is rather dismissive, simply repeats earlier responses and keeps the date of 29 March as a possibility for leaving. May I suggest an amended response to the Minister? It is: "Recognising that a petition which now has the support of pushing towards 6 million signatures cannot simply be dismissed as coming from an out-of-touch elite but represents an impressive swathe of opinion from right across the country, the Government from now on will ensure that the UK does not leave the EU without a deal and that any deal agreed by the Government and Parliament, however long that takes, will be put to the public in a public vote so that they can judge it alongside the option of staying a full member of the European Union".

Lord Callanan: Of course we respect everybody who signed the petition. It is indeed an impressive number of people, but the noble Baroness was a member of the Blair Government when 750,000 people marched against the Iraq war. We know the result of that. In this country, we have government by the ballot box and by Act of Parliament.

Baroness Ludford (LD): My Lords, how can the Government keep parroting that the will of the people is the same as it was three years ago when the electorate has changed, nearly 7 million people expressed themselves on the march, the petition wants to stop Brexit and polls consistently show a remain majority? If the Government really respected the people, would they not ask them for an update on their views?

Lord Callanan: We have explored this issue many times in response to the noble Baroness. We respect the result of the referendum, which was the largest participatory democratic exercise ever carried out in this country, and we are committed to implementing that result.

Lord Tebbit (Con): My Lords, does my noble friend have any idea of how many of the signatories are British subjects and how many are foreigners?

Lord Callanan: No doubt my noble friend is an avid follower of social media and will therefore have seen some doubt being cast on some of the signatories, but I do not doubt that the vast majority were indeed British citizens.

Lord Roberts of Llandudno (LD): Does the Minister realise that there is more than one online petition? The one to revoke has brought in nearly 6 million signatures, but the one to leave has brought in 570,000 signatures. Should we not now respond to the recent will of the people?

Lord Callanan: As I said earlier in response to the noble Baroness, Lady Quin, in this country we do not have government by online poll; we have government by the ballot box and by this Parliament, and that is what we will be following.

Baroness McIntosh of Hudnall (Lab): My Lords, does the Minister agree that in seeking to make a party-political point earlier he rather undermined the force of his argument? It might be thought by a number of people in this House and elsewhere that had the Labour Government at the time taken more notice of what was brought to their attention by that march, very bad consequences might have been avoided, and that might be true in this case as well, might it not?

Lord Callanan: I was merely making the point that there have been large expressions of public opinion—demonstrations, internet polls and so on—during previous Governments. At the end of the day, we do not have government by internet opinion poll; we have government by participatory democracy, by the ballot box and by this Parliament.

Lord Lilley (Con): My Lords, does my noble friend recall the Prime Minister saying at the opening of the referendum campaign,

> "It will be your decision whether to remain in the EU on the basis of the reforms we secure or whether we leave. Your decision. Nobody else's. Not politicians', not Parliament's. Not lobby groups' … Just you"?

Does he recall any of the leaders of the remain campaign dissociating themselves from those remarks?

Noble Lords: Yes.

Lord Lilley: I recall them being endorsed by Tony Blair, Gordon Brown, Nick Clegg and others. Would it not be an enormous betrayal of trust and undermine confidence in our Parliament and our system if we were to ignore the result and simply revoke Article 50?

Lord Callanan: As usual, my noble friend makes a powerful point. We need to respect the votes of 17.4 million people, which is a bigger number than the 5 million who signed the online petition.

Lord Anderson of Swansea (Lab): My Lords, is there not a contradiction between the Government's expressed intention to put the deal before the House of Commons again and again but not to give the British people a chance to have second thoughts?

Lord Callanan: We remain committed to trying to convince the House of Commons that it is a good deal. It is of course a compromise—nobody gets exactly what they want—but we think that it is the best deal on the table. In fact, it is the only deal on the table, and it will deliver a smooth and orderly departure.

Lord Lansley (Con): My Lords, I declare an interest as the Leader of the House of Commons who introduced the parliamentary e-petition system. It is of course a petition to Parliament, not to the Government. In that respect, does my noble friend agree that the necessary response is that, as the House of Commons is taking some control of this process, it should incorporate a debate on the merits or otherwise of revoking Article 50 as part of its discussions in the coming days?

Lord Callanan: My noble friend makes a good point, and that is exactly what will happen. There will be a debate in Westminster Hall and the Government will respond appropriately.

Business of the House

Motion to Agree

3.06 pm

Moved by ***Baroness Evans of Bowes Park***

That Standing Order 72 *(Affirmative Instruments)* be dispensed with on Wednesday 27 March to enable a Motion to approve a draft affirmative instrument laid before the House under Section 20(4) of the European Union (Withdrawal) Act 2018 to be moved on that day whether or not the Joint Committee on Statutory Instruments has reported on it.

The Lord Privy Seal (Baroness Evans of Bowes Park) (Con): My Lords, the Motion standing in my name will allow us to dispense with Standing Order 72 tomorrow so that we can take the SI that will amend the definition of exit day in UK law before the Joint Committee on Statutory Instruments has reported on it.

Whether or not we approve the SI, we will now not be leaving on 29 March. As noble Lords will know, the Article 50 period has been extended. Exit day has already been changed and it is important that domestic law is aligned with that. Without the SI coming into force, the domestic definition will remain set at 29 March —this Friday—and our statute book will not function correctly. We need to suspend the Standing Order because the JCSI has not yet had the opportunity to formally consider the SI, which was laid yesterday. The committee meets on a Wednesday afternoon and its reports are not normally available until the following Friday. The Government take the scrutiny of their secondary legislation very seriously and I do not move this Motion lightly.

I can tell the House that the extension SI was sent in draft to the JCSI's lawyers at the end of last week to undergo pre-laying scrutiny, which is one of the highly valuable functions that the committee and its staff perform on behalf of both Houses. It is my understanding that the full Secondary Legislation Scrutiny Committee will, outside of its current working pattern, meet this afternoon to consider the SI and will make a report available to the House ahead of the debate tomorrow. I am grateful to both committees. I beg to move.

Amendment to the Motion

Moved by ***Lord True***

To leave out from first "that" to the end and to insert "this House declines to consider the draft European Union (Withdrawal) Act 2018 (Exit Day) (Amendment) Regulations 2019 until a report from the Joint Committee on Statutory Instruments on the draft Regulations has been laid before the House, as it is not in accordance with the practice and traditions of the House to consider significant affirmative instruments laid by Her Majesty's Government without prior consideration by that Committee."

Lord True (Con): My Lords, I thank the Leader of the House for what she has said and, if I may, I will respond to that in my opening remarks, rather than at the end. For the avoidance of doubt, I must make it clear that I do not have any intention of using this amendment to either extend or not extend our stay in the European Union. Noble Lords who have followed our debates know my view. I deplore the fact that we are not leaving on Friday, but I recognise the circumstances that the Leader of the House has referred to; I personally will not make, recommend or participate in any attempt to talk out that statutory instrument, and I know of no proposal to do so. Therefore, any such suspicion is completely unfounded and it is no pretext for the Executive to evade the normal procedures of Parliament on these highly significant regulations that we will debate tomorrow.

Having set that aside, perhaps I may get on to the fundamental point that I want to make. I speak as someone who spent 13 years in the usual channels of this House and who has been a Member in the nine years that have followed. I have come to understand that there is no greater protection of this House, or indeed of Parliament as a whole, than the freedoms that your Lordships enjoy in procedure and the duties that are laid on the Executive. It is the flexible freedom that we have, and the demands that we are able to make of the Executive, that have enabled this House to become the undoubted master of scrutiny.

In these troubling constitutional times I submit that, wherever we stand, it is more important than ever that the House should protect its working procedures. If the Executive is incoherent and not consulting Parliament soon enough—or not consulting it enough—and if the other place now collectively purports to act as the Executive, then who provides the scrutiny if not this House and its committees?

The Joint Committee on Statutory Instruments is not a committee of this House but of both Houses. It exists to protect both Houses against the inappropriate exercise of powers by the Executive. We have in our Standing Orders something the other House does not: a requirement that a report is laid before Parliament by that committee before an important matter is debated. This Standing Order is a protection not only for this House but for the other.

The Joint Committee does a remarkable job. Over the last 18 months it has almost invariably met weekly on Wednesdays; we have heard my noble friend the Minister confirm that it will be meeting again tomorrow—I imagine at 3.45 pm, as always. Since November 2017, it has produced 56 reports, drawing 163 statutory instruments to your Lordships' attention. Anyone who follows its work knows its importance.

I will not concern myself with the merits of the statutory instruments that might—and will—be considered by the Joint Committee. Neither will I consider this particular statutory instrument, which is not before us today. What is before us is an exceptional Motion from the Executive to set aside our Standing Orders and potentially defeat the need for a report on this very important SI by your Lordships' Joint Committee before we debate this momentous matter.

In the Explanatory Memorandum just one reason is given. Paragraph 3.1 says that,

"there will be insufficient time for the Committee to report on this instrument in the normal manner".

I ask your Lordships to hold that phrase, "in the normal manner", in mind. The Leader of the House says that we have to vacate Standing Order 72. I will come back to the question of time, but let me draw your Lordships' attention to the exceptional nature of the Leader's Motion before us: to bypass the requirement for a report from this key parliamentary committee for both Houses. The clerks have told me—I am grateful for their advice—that there have been four such Motions this century—just four. One of those was last October when the Joint Committee was not even in existence.

This underlines the exceptional nature of a Motion to set aside our Standing Orders requiring the Joint Committee report to be laid before the statutory instrument is moved. I do not believe that this vacation of the duty of the Joint Committee to report can be justified, particularly as my noble friend the Minister has confirmed that the Joint Committee is meeting tomorrow to consider the matter. I do not accept the plea that there was no time. My noble friend the Minister has told us that the Joint Committee was informed last Friday. Its guidelines say that it is normal for the Joint Committee to take five working days to consider a matter, but equally the guidelines make provisions for it be done more expeditiously. I have no doubt—

Lord Hunt of Kings Heath (Lab): My Lords, I am having some difficulty in following the noble Lord's line of argument. I would have thought that his remarks would be better directed at the Prime Minister. After all, it is she who has prevaricated about letting the House of Commons make the decision in this regard and then twice ignored its views. With the greatest respect to him, given the dire situation that we are in, what alternative do we have but to take this SI as soon as possible?

Lord True: My Lords, the noble Lord makes a political point.

Noble Lords: Oh!

Lord True: I was seeking to make a procedural point on behalf of your Lordships' House. Our normal procedures are not there to protect the Government, let alone to protect them from any criticism, but to protect Members of your Lordships' House and of the other place to allow them to make representations and for us to hear a considered report. I believe that that is the procedure that we should follow.

3.15 pm

We have heard that the Joint Committee is meeting tomorrow. There are many precedents for the Joint Committee to lay its report before the House after its meeting. The current circumstances are far from normal, as the noble Lord, Lord Hunt, has said, and there is a compelling case for this SI and a report on it to have been considered and reported on by the JCSI, which should be done tomorrow. Then, if need be, the Government could bring the SI before this House tomorrow, except in the evening rather than as first business, and all noble Lords would be informed by what our Joint Committee—which otherwise will be labouring to no purpose if we have already debated the matter—has said.

I do not believe that any part of Parliament should be bypassed by an exceptional Motion in that way, nor do I believe that your Lordships should lightly give up these scrutiny protections. Encouraged by what my noble friend has said, I ask her not to press the exceptional Motion, which will provide further precedents for the future, but to await tomorrow's consideration and report by the Joint Committee and, if need be, we can proceed with the business later tomorrow or on Thursday. I really think it is unnecessary and high-handed to have laid such a Motion in the circumstances that my noble friend has set out when the committee is meeting tomorrow to consider the matter anyway. I beg her to reconsider her Motion and beg to move my own.

Baroness Hayter of Kentish Town (Lab): My Lords, this is a particular pleasure for me, and people behind me will understand why: I was brought up on Citrine's *ABC of Chairmanship*, and we are dealing a lot with Standing Orders and when it is appropriate for them to be suspended. I never thought I would revert to that book in your Lordships' House.

Standing Orders, by their nature, are not laws of the country. The fact is that they can be suspended exactly because the times are exceptional. I agree with what I think was the implication of my noble friend behind me: the situation that we are in is not of this House's making but is because of a failure of negotiation by someone else. In fact, the SI we are discussing still does not have one date on it but two, though no doubt we will make those comments when we debate it.

For today, though, there is a different issue before us: the certainty that is necessary, particularly for lawyers and courts but also for businesses, citizens and everyone else. The situation at the moment, as the noble Baroness the Leader of the House said, is that the agreement reached with the EU may not be exactly what the Prime Minister wanted but it does move the date on which we will leave the EU. It was made with agreement because, under Article 50 of the treaty, the change of date can be made only with the agreement of the member state. So it was our Government who agreed to the change of exit date; it is not something that has been imposed on us but something that our Government accepted. The date to which the exit will move will be in either April or May, as is allowed for.

The important issue is that we will not leave this Friday, but at the moment we have an Act of Parliament that will come into effect then. All the statutory instruments we have passed and all the other changes come into effect at 11 pm our time on Friday. If we fail to deal with this, we could have a situation where we will still be in the European Union till at least 12 April and completely controlled by all the rules we have been part of, but the Act and all the statutory instruments would also be in force. We would have two lots of laws on our statute book at the same time, which would cause a lot of confusion for business, citizens and anyone needing to act by those laws. They could be laws on the environment, the health and safety of animals, consumer rights, workers' rights, or all sorts of other things. This raises an issue about the importance of bringing absolute clarity to domestic law. The case being made is that it would be impossible to do this if one particular committee had not looked at it. This is

[Baroness Hayter of Kentish Town]
a committee whose members have not been addressing us—they have certainly not addressed anyone on our side of the House—to say that you cannot meet without our committee's views. We have not been inundated with views from those committee members, which I think is significant.

The committee may meet tomorrow. The noble Lord, Lord Forsyth, gave a look which asked whether it could alter its meeting. Maybe it could, but it has its rules. It knows the situation and the seriousness of it. The point is, it does not publish until Friday morning. The alternative is that we do not take this tomorrow, but reassemble on Friday, after we get the report, and do it then. That seems one way that we could have input from the committee. If your Lordships' House really wants to come back on Friday and do it then, it should obviously support the amendment in the name of the noble Lord, Lord True. If the committee, of which he speaks so highly, is content and has not brought representations, it would be completely in order. Our other committee will have done its work this afternoon and we should suspend Standing Orders, as has been recommended. We will not support the noble Lord, Lord True, should he push to a Division.

Lord Forsyth of Drumlean (Con): My Lords, I seem to remember that we had quite a lot of debate in this House about the inclusion of the date of 29 March in the legislation. It astonishes me greatly to find that the Prime Minister can go to a meeting in Brussels and, suddenly, what is in statue is completely irrelevant. However, I do not propose to say anything about that because I strongly support my noble friend Lord True. Unlike the noble Baroness, he did not address whether we needed to change the date, and the reasons for changing it, but rather the procedure of our Standing Orders, which requires a report from the Joint Committee on Statutory Instruments.

The noble Baroness, Lady Hayter, for whom I have enormous regard, has suggested that perhaps we should sit on Friday to see the committee's report. That sounds a bit like the tail wagging the dog. There is an issue under our Standing Orders that we should receive a report from the committee. Reading the Explanatory Memorandum, I note that the United Kingdom sent a letter dated 22 March from the Permanent Representative of the United Kingdom to the EU. If he could write a letter to the EU, why could a letter not have been sent to the chairman of the joint committee, inviting it to meet to discuss the matter and report to this House? This may sound like a rather pedantic point—

Lord Kerr of Kinlochard (CB): Yes.

Noble Lords: Oh!

Lord Forsyth of Drumlean: That comes from the author of Article 50; he has a brass neck. It may sound like a pedantic point, but at the other end of this building, the House of Commons has now become the Executive—or, at least, it will be tomorrow. If the House of Commons is now the Executive, how does Parliament hold the Executive to account? The responsibility lies in this unelected House if the House of Commons has now become the Executive.

Although we have no written constitution and I have never been in favour of our having one, I am beginning to change my view. Our constitution consists of all these little rules and conventions. If we no longer have collective responsibility in Cabinet or people respecting the Standing Orders of this place and the other place, and we have a Speaker who behaves in a way that is unconventional by the traditions of the other place, our constitution itself is being undermined. My noble friend Lord True makes a really important point: we have to respect our Standing Orders because that is what lies between us and tyranny. It is absolutely essential that we take account of that.

I cannot resist making one point. I put down a Written Question, which was answered by my right honourable and noble friend Lord Young of Cookham, asking how many times the Prime Minister had told the House of Commons that we would be leaving the European Union on 29 March. Like every other Question, it is best to know the answer before you ask it, but I was not sure of the answer. I knew it was more than 100 times. The reply I got back was that this information is not collected centrally. I do not blame my right honourable and noble friend for that Answer—I suspect it was written elsewhere—but it is very important that the Executive remain accountable to Parliament. My noble friend Lord True makes a very convincing case. While we have such disorder at the other end of the building, it would be very good if we could maintain our traditions, respect our Standing Orders and operate in a civilised manner that sets an example to the other place.

Lord Newby (LD): My Lords, over recent months a number of quite extraordinary claims have been made about the consequences of actions relating to Brexit. The claim of the noble Lord, Lord Forsyth, that all that separates us from tyranny is whether we take this statutory instrument before or after a committee has expressed a view on it seems up there with the most extraordinary.

This House has been considering statutory instruments that are some 650 pages long. In this case, we are looking at a statutory instrument that is of minuscule length, the meaning of which is absolutely clear and the purpose of which is not disputed by anybody. Therefore, it seems that if ever there were a case where we could do without the normal rules with no jeopardy to the future of the state, this is it. Who in this House thinks we will not pass this statutory instrument? Who thinks that there is any ambiguity in its wording? The sooner we have certainty on a whole raft of Brexit issues, the better. This is one straightforward, easy bit. I suggest we deal with the easy bit tomorrow and then start worrying a bit more about the harder bits.

Lord Pannick (CB): My Lords, I support the Motion in the name of the Leader of the House, but when she moves the Motion tomorrow relating to the substance of this statutory instrument, could she address a question not of tyranny, but of legality? A number of lawyers have expressed concern about the legality of this statutory instrument. The concern is that it sets out two alternative exit days: 12 April or 22 May. The power of Ministers to vary exit day is contained in Section 20(4)(a) of the EU withdrawal Act 2018, which says that a Minister may by regulations,

"amend the definition of 'exit day' … to ensure that the day and time specified in the definition are the day and time that the Treaties are to cease to apply to the United Kingdom".

The legal concern which some lawyers have expressed is that a power to specify the day and time when the treaties are to cease to apply is not satisfied by identifying two possibilities; it is not possible, if this SI is enacted, to identify exit day simply by reading it.

I emphasise that I am not adopting this argument but simply drawing attention to it. I ask the Leader, before tomorrow, to consider this point; to consult, if necessary, with the law officers; and to give an assurance to this House that the Government have considered the point and are satisfied that this statutory instrument is a valid one. Whatever one's views on the politics of this difficult situation, I hope we can all agree that it would be complete disaster to adopt an invalid statutory instrument on such an important point.

3.30 pm

Lord Forsyth of Drumlean: Is that not another reason why we should have the report from the Joint Committee?

Lord Pannick: No, because for my part I will be quite satisfied if the Government consider this point. Other noble Lords, including members of the committee, now have notice of this question, and if anyone thinks the point is worth discussing tomorrow, they can have a proper opportunity to do so.

Lord Robathan (Con): The noble Lord has much greater experience of the law than I and most of the people in this House do. Therefore, could he explain whether there would be any possibility of a challenge to the statutory instrument—which he and I would not wish—if we have not followed the correct procedures, as my noble friend Lord True wishes?

Lord Pannick: There could be the possibility of a challenge if this point had any substance to it. I am concerned that we do not adopt or approve a statutory instrument without consideration of this point. The alternative would be to have a statutory instrument that specifies 12 April as exit day and if, as we approach that day, it appears that the date for us leaving the EU will be later than that, a further amending statutory instrument is brought forward.

I emphasise that I am not telling the House that this is, in my view, a fatal amendment to this statutory instrument. I am raising a concern that has been expressed by some lawyers about this point. I would welcome it if the Leader were to consider the point—with the law officers if appropriate—and address it tomorrow.

Lord Hope of Craighead (CB): It is not just a question of alternatives, is it? If you look at the text of the first alternative, you cannot determine what the date is by looking at the words in the instrument. Is that the point that the noble Lord is seeking to make?

Lord Pannick: There are two points. You cannot tell the date on which we are to leave simply by reading the statutory instrument, and that date, on the drafting of the statutory instrument, depends on an external event which is certainly not within our control.

Lord Hamilton of Epsom (Con): My Lords, I am very grateful to the noble Lord, Lord Pannick, for having spelled out that this is not, in the words of the noble Lord, Lord Newby, a frightfully straightforward, simple little exercise. It is actually a very complex issue which raises serious legal questions. Therefore, the Joint Committee should look at it very closely. It should not be bypassed by the Motion that the Leader of the House put in front of us. The noble Lord, Lord Hunt, says that we should be questioning the Prime Minister on this. I only wish we could. Unfortunately, she does not sit in this House, although I am sure my noble friend the Leader will answer for her.

The fact remains that we are trying to bypass our systems. We are upholders of the constitution of this country, and we should seriously question whether this should happen. The opening remarks of my noble friend revealed that the Joint Committee has been asked to look at this and that it could report earlier. Surely, therefore, she can accept the amendment of my noble friend Lord True. If she does, we can go ahead with it quite straightforwardly. There could be an accelerated process of reporting to the House, and we could then get it all done tomorrow, could we not?

Lord Christopher (Lab): My Lords, I hope that the Leader of the House will respond to the point that the noble Lord, Lord Pannick, has raised. There is an indication which has been referred to today—I think in the *Financial Times*—that extreme people who wish to leave were raising a legal challenge to the fact that we are not leaving at the end of the month.

Lord Harris of Haringey (Lab): My Lords, yesterday the noble Lord, Lord Robathan, made the interesting point that he was rather surprised by the assertion made by the Lord Privy Seal that the decisions of the EU Council trumped UK law. She was asked repeatedly about that, so can she clarify what has changed since yesterday so that she comes forward indicating that it raises some really big issues if we do not deal with that? If that is the case, is it therefore suggested that all these statutory instruments which people have been sweating over in the last few months do not in practice replicate EU law and move it into UK law? If there is a distinction between them, that is precisely what we were trying to establish during many of those debates. I would be grateful for that clarification.

The noble Baroness also said in her remarks a few minutes ago that the Joint Committee on Statutory Instruments usually meets at a certain time and reports on a certain date. Presumably there have been plenty of instances in the past when it has not met on those dates. Why was that not put to the Joint Committee?

Baroness Evans of Bowes Park: My Lords, my noble friends Lord True and Lord Forsyth are of course correct to say that it is not usual practice for the House not to consider SIs until the JCSI has both considered and reported on them. This is indeed an unusual request but I remind noble Lords that the House of Commons asked the Government to seek an extension last week. We have done that and laid an SI on the first sitting day that we could after a decision was made. I accept that noble Lords may not like that, but it is the position we are in, and I thank the noble

[Baroness Evans of Bowes Park]
Lord, Lord Newby, and the noble Baroness, Lady Hayter, for recognising that we are in exceptional circumstances. I have recognised that.

That being said, the practice has in the past been set aside where there is a clear case for an SI to be considered urgently. In this Session we have set it aside twice before, each time making a case on its merits, as I hope I have done today. The first instance was to ensure the continuation of the non-jury trial provisions in Northern Ireland; and the second was to control a substance under the Misuse of Drugs Act 1971. I reiterate to my noble friend Lord Forsyth that while the JCSI has not looked at this in detail, the extension SI was sent in draft to its lawyers at the end of last week to undergo pre-laying scrutiny.

I am surprised that noble Lords are now asking me to dictate the terms of how a committee meets. I do not think that in normal circumstances they would want me, as the Leader of the House, to start dictating what our independent committees do. I just ask that that is considered. The JCSI is entirely entitled to decide when, how and why it meets. I genuinely do not believe that it is for me to say that. If the JCSI reported in the usual way, as the noble Baroness, Lady Hayter, said, we would have to meet on Friday to consider it. I believe that noble Lords would like us to get this SI through, so that as the noble Lord, Lord Newby, said, we can have certainty, which is what we deserve to deliver for the country.

As noble Lords know, the terms of our exit from the EU are governed by Article 50 of the Treaty on European Union. On 22 March, last Friday, the UK agreed to EU Council decision 2019/476 to extend the period provided for in Article 50. The EU Council decision and the UK's agreement to it constitute a binding agreement in EU and international law. It is important that the definition of "exit date" in UK law is changed before Friday because, as the noble Baroness said, that is when a significant amount of our EU exit legislation, including hundreds of SIs, is due to enter into force. Unless the date is changed, our statute book will not function properly. There will be clashes between UK and EU law, contradictory provisions will apply and, in some cases, new UK laws will permanently replace EU ones. Our domestic law would be left in a state of confusion and this could have serious consequences, which we all want to avoid, for businesses and the public.

I am very grateful to the noble Lord, Lord Pannick, for his comments: we are confident that the instrument is legally correct, but we will of course look in more detail at his comments today and respond to them in detail tomorrow, when, no doubt, we will have a further discussion.

Lord Lansley (Con): I apologise for interrupting my noble friend, but the noble Lord, Lord Pannick, asked a very interesting question to which I would genuinely like to know the answer. My expectation was that the Government would lay a statutory instrument that would change exit day to 12 April and, if it were necessary to move to 22 May, would lay a further SI. I simply do not understand the motivation or rationale for putting both dates into the SI.

Baroness Evans of Bowes Park: The rationale is that we have two dates agreed with the EU, both now set out in one SI. That means that both situations are covered, which seemed a sensible approach. Again, we will obviously discuss the concerns of the noble Lord, Lord Pannick, and any others that noble Lords wish to raise now that the SI has been tabled, and we look forward to that further discussion tomorrow.

I personally share the frustrations of my noble friends Lord True and Lord Forsyth that we are not leaving the EU on Friday—I know that a number of noble Lords do not—but it is our responsibility to provide legal certainty for the people of this country, and given that the date of our exit from the EU has already been changed I believe it is our duty to take, discuss and, I hope, pass this SI.

Lord Framlingham (Con): What does my noble friend suppose the effect will be on all the businesses that have prepared to leave on 29 March?

Baroness Evans of Bowes Park: I think that what businesses and citizens want is certainty. We have now had a decision between the UK Government and the EU that we will extend the date past 29 March. What we owe the country is to ensure that our legal system and statute book reflect that. We will have a further discussion about this tomorrow, but I believe that we as a House should discuss this SI and, I hope, pass it tomorrow to ensure that we have a functioning—

Viscount Ridley (Con): My noble friend has comprehensively addressed the issue of this statutory instrument, but I do not feel she is addressing the point my noble friend Lord True made about the constitutional precedent that this sets.

Baroness Evans of Bowes Park: I have said that this is an unusual situation: that is why I am here asking the House to agree that we can do this. It is only right to do that. This has been done on a number of occasions. I am not saying in any way that this is a usual situation; I have tried to set out the timeline that has led us to this and I say again that I believe that, for the country, our discussing this SI tomorrow and—I hope—passing it will mean that this House has played an important part in providing certainty to our citizens and businesses so that we can move forward and leave in an orderly fashion. On that basis, I hope that my noble friend will consider withdrawing his amendment.

Lord True: My Lords, before I respond, will my noble friend comment on one thing? She said that it is not for her to ask a committee to sit on a certain day. The guidance from the JCSI to government departments states at paragraph 3:

> "If, in exceptional circumstances, a Department wishes an affirmative instrument … later than the normal deadline to be considered at a particular meeting, a letter from the relevant Minister to the Chairman of the JCSI will be required setting out the reasons why expedited consideration is thought necessary and why the instrument was not laid sooner".

Did the Government send such a letter to the chairman of the JCSI?

Baroness Evans of Bowes Park: I understand that my noble friend has written to the JCSI, but I repeat that it is for that committee to decide when it sits and to decide its programme of business. As I said, we have given a preview of the SI to the committee. I trust its judgment and I fear that, no matter what the pushing, I am not going to dictate what that committee does.

Lord True: I am afraid that that means that the Government have refused to accept an open offer from this committee to all government departments for expedited procedures—an extraordinary decision in the case of one of the most significant statutory instruments ever to be laid before Parliament, whichever side of the argument you are on.

The logic of what we have heard from my noble friend, whom I greatly respect, is this. Tomorrow, your Lordships' House will be asked to meet and start considering this statutory instrument. A few minutes later, somewhere in this House, the Joint Committee will start deliberating, as we have heard, on its significance and potential impact. Your Lordships will be invited to take a decision; the poor old Joint Committee will reach some conclusions and your Lordships and the other place will never be advised of them before the decision is made. This is an absurd position. In any sense, it cannot be right.

We are talking here of printing. We live in the 21st century. Are we really saying that a committee that deliberates tomorrow afternoon cannot print a report and have it before your Lordships' House by Friday? It could be put on pieces of paper like those in my hand.

3.45 pm

Lord Trefgarne (Con): I apologise for not having been present for all of this consideration. I have to tell my noble friend Lord True that the Select Committee on statutory instruments of your Lordships' House has met and prepared a report that will be available to your Lordships tonight.

Lord True: I am grateful for the intervention from my noble friend. However, the position in our Standing Orders and constitutionally is that the Joint Committee on Statutory Instruments—a Joint Committee of both Houses, not just your Lordships' House—considers important affirmative instruments and presents a report. My noble friend's committee's report will be immensely valuable but it cannot have the authority of a Joint Committee, which will have authority and distinction in both Houses.

Lord Hunt of Kings Heath: My Lords—

Lord True: I have given way to the noble Lord before.

Lord Hunt of Kings Heath: I want to say something about the intervention we have just heard from the noble Lord, Lord Trefgarne. He is chairman of the Secondary Legislation Scrutiny Committee of your Lordships' House, which has to be distinguished from the JCSI. I thought it would be helpful to have that acknowledged.

Lord True: I am so grateful; that was a procedural point from the noble Lord, not a political one.

This is a sensible, grown-up House; we do not need to deal with these things by Division. Is not the sensible thing for the usual channels to take this away and for my noble friend not to press her Motion, which creates a precedent for the future? If this type of Motion becomes normal, it will have a chilling effect on future Oppositions and Governments as time goes by.

The sensible thing would be for the usual channels, in discussion with the Joint Committee, to take this away, have some discussions, not press this measure and report to the House tomorrow, before we can lay a document. In fact, they can lay a document while the House is still sitting this evening, or let us know by making a Statement. Then, we can decide whether it is necessary to go ahead with the farce of considering this tomorrow, while the Joint Committee is meeting down the Corridor. We could still then take the business later tomorrow or on Thursday. I do not accept the argument about printing. Will my noble friend consider having consultations with the usual channels and Cross-Benchers?

I was going to make the point that the noble Lord, Lord Pannick, made. I am not a lawyer and I said I would not go into the merits of the statutory instrument. As a lay man, it seems to me astounding that it was not the date—that it must be open to challenge. The other thing is the potential effect of a charge on public funds which might arise from staying in the European Union, which the Joint Committee also looks at.

It would be safer for this House and the other place to have the benefit of a considered report to which representations can be made. I urge my noble friend to take it away, consider it in the usual channels with interested parties and bring it back later tonight or tomorrow. If she will do that, I will reflect on what she said and decide whether I wish to divide the House, which I would rather not do. It is not my intention to do so in any circumstances and is not conditional on what she says. Will she consider that proposal?

Baroness Evans of Bowes Park: I am afraid I cannot give my noble friend that assurance. We have discussed this through the usual channels. This is an important SI that we need to see through and I hope I have explained the reasons why. I acknowledge that these are unusual circumstances—I have accepted that and said so quite readily at the Dispatch Box—but for the sake of the country we need to look at and discuss this SI tomorrow, as the House of Commons will. I hope my noble friend will withdraw his amendment, but I am afraid I cannot accede to his request.

Lord True: My Lords, I regret to say I find that a highly unsatisfactory response and not in the spirit of co-operation across the House. But I see no point in dividing if my Front Bench and the Labour and Liberal Democrat Front Benches are not interested in debating with the benefit of the Joint Committee on Statutory Instruments. There is very little a mere Back-Bencher can do, so I beg leave to withdraw my amendment.

Amendment to the Motion withdrawn.

Motion agreed.

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

Motion to Approve

3.51 pm

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

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

Relevant documents: 15th and 17th Reports from the Secondary Legislation Scrutiny Committee (Sub-Committee B)

The Parliamentary Under-Secretary of State, Department for Environment, Food and Rural Affairs (Lord Gardiner of Kimble) (Con): My Lords, these regulations concern the registration, evaluation, authorisation and restriction of chemicals, otherwise known as REACH. These regulations apply to the whole of the UK, with the exception of paragraph 1 of Schedule 11, which makes technical amendments to the England and Wales regulations that transposed the EU directive on the disposal of polychlorinated biphenyls, or PCBs. We have worked with the devolved Administrations on this instrument and, where it relates to devolved matters, they have given their consent.

Our chemicals sector is world leading and one of the UK's largest manufacturing exporters by value. We fully realise the sector's economic importance and its importance to the way we all live our lives. At the same time, we also recognise the risks to human health and the environment if chemicals are not used properly. The UK is strongly committed to the effective and safe management of chemicals to protect both the public and the environment. That will not change when we leave. This is why we clearly set out our negotiating position in the White Paper published in July last year.

We want frictionless trade which maintains strong chemicals regulation through a common rulebook for sectors such as chemicals that would be supported by arrangements that cover all relevant compliance activity such as REACH, and continued active participation in the European Chemicals Agency, ECHA, so that UK businesses can continue to register chemical substances directly, rather than working through an EU-based representative.

However, we must also be ready should we leave without a withdrawal deal. The building blocks of REACH will all remain, and we are keeping the fundamental approach of REACH, with its aims of ensuring a high level of protection of human health and the environment, as well as enhancing innovation and competitiveness. This is why we seek a smooth transition and an outcome which minimises friction, disruption and delay at our borders and supports the continued chemical supply chains with the EU.

Delivering day one functionality has been a key priority since 2016. To achieve this, we have been working with both industry and the UK regulators. Since 2016, Defra, in partnership with BEIS and HSE, has run an extensive programme of stakeholder engagement with the chemicals industry with the aim of reaching as wide an audience as possible, particularly targeting SMEs and downstream users of chemicals. This programme included regular ministerial meetings with Ministers from Defra, BEIS and DExEU.

Last summer, we held a series of informal briefings for the chemicals sectors, NGOs and other stakeholders on the proposals contained in the instrument. We followed this up with detailed guidance. Since October, this effort has been even more intense. We have engaged directly with more than 1,700 stakeholders. Building on this, we launched the ongoing business readiness campaign in January to spread coverage to as many businesses as possible. We have used online adverts to promote stakeholder events and both social and traditional media outlets for increased stakeholder engagement. In the last week, my officials have also been in Frankfurt and Brussels to spread the message to EU business.

Concurrently, we have been building the UK REACH IT systems. We have tested this system with more than 100 industry users from UK and international chemicals manufacturers and distributors, the energy sector, aerospace, biotechnology and the automotive sector, agriculture and the cosmetics industry. The system stood up well and we received positive feedback, with industry generally finding it straightforward to use. The positive assessment and feedback from attendees during this exercise means that UK REACH IT will be ready to go live for exit day. It will have the critical functionality to enable industry to register new chemicals and for holders of existing REACH registrations to provide the UK agency with details to verify those registrations.

UK REACH provides for the functions of ECHA to be carried out by the Health and Safety Executive. The HSE will receive industry's registrations of chemicals and make technical decisions, for example in dossier and substance evaluations, as well as scrutinising authorisation applications and making scientific recommendations on whether to introduce new restrictions. This builds on the HSE's activities as the competent authority for REACH. The Environment Agency and the devolved environmental regulators will have the role of providing the advice that the HSE will need on environmental matters.

The HSE is ready to act. We are increasing the resources available to it with extra money and extra people. We have done the same for the Environment Agency and for Defra. We have also provided extra resources to both the HSE and the EA to prepare, and we will continue to scale up their resources to £13 million a year at full operation. Appeals against the HSE's decisions will be heard by the First-tier Tribunal, which is fully independent of the HSE. The tribunal can bring in expert advice so that it can assess the merits of the case.

The SI contains a range of transitional provisions to provide legal certainty to business and to protect supply chains. There will be automatic transfer of existing UK registrations into the UK REACH system. This means that industry needs to do nothing on exit day to be reassured that its registrations will be valid in UK law and there will be no break in its access to the UK market.

Companies will need to provide HSE with the information supporting their registrations in two phases: initial information within 120 days and the full information within two years. No fee will be attached to these requirements. As I have said, industry has tested the IT systems and given them its support.

4 pm

To give a sense of scale, we will grandfather more than 12,000 registrations into UK REACH—35% of them from 2018—representing 5,700 chemicals. Looking forward, we would expect 50 to 100 new chemicals to be registered each year. REACH places a registration duty on importers of chemicals. This will be new for companies that import from the EU/EEA as they are currently covered by their supplier's registration. We are therefore giving them a two-year grace period, which will give them time to adapt and will protect supply chains. In the meantime, they must send information to the agency within 180 days in what is described as a light-touch notification procedure to provide assurance that they know how to manage the chemicals safely. We expect downstream user notifications to be over 10,000. I should emphasise that we will keep both two-year deadlines—for grandfathering and for downstream user registrations—under review.

Although we are providing two years for industry to adapt, there have been questions about why we need these data at all. The "no data, no market" principle is key to REACH, and will remain key to the safe use of chemicals in the UK as well. Surely it would be irresponsible to set up a UK regulatory system without data on the chemicals being used in the United Kingdom. That would leave the UK regulator with no data through which to regulate industry and assure the safe use of chemicals in the UK.

The UK Chemical Industries Association and Cefic, the EU chemicals trade body, have published their joint recommendation that the data used to register under EU REACH should be made available for UK REACH at no extra charge. We have heard similar messages from other EU trade bodies. Some chemical consortia have amended their contracts to enable this to happen. That is welcome news and I endorse the industry's efforts.

We are determined that there should be no need for any additional animal testing for a chemical that has already been registered, unless it is subject to further evaluation showing that the registration dossier is inadequate or there are still concerns over the hazards and risks of the chemical. That is why this instrument continues the core aim in EU REACH of avoiding duplicate animal testing.

Both the legislation and the systems we are putting in place are fully operable. The building blocks of REACH will remain: industry's primary duty to understand the hazards and risks of chemicals and ensure safe use, tied to the principle of "no data, no market"; registration by the industry of the chemicals it produces and places on the market—registration is not a regulator-led approval scheme; dossier evaluation by the regulator of at least 5% of registration dossiers to check compliance and quality; substance evaluation, namely investigation by the regulator of outstanding concerns about a chemical, often leading to a requirement on industry to fill the knowledge gaps; the authorisation process, which forces industry to apply for and justify continued use of "substances of high concern"; and restriction of the most dangerous chemicals where unacceptable risks remain.

The SI changes, in Schedule 1—in Article 3—the definitions of the various industry duty holders so that they refer to the UK rather than the EU. This is a simple but essential change. Without it, UK industry would no longer have any duties, including to ensure the safe use of the chemicals it produces and uses.

Just as HSE inherits the role and functions of ECHA, the responsibilities of the European Commission pass to the Secretary of State. For example, the Secretary of State will make decisions to authorise the use of a substance of very high concern or to restrict chemicals on the basis of an opinion from HSE. The Secretary of State would need to bring a statutory instrument to Parliament to make new restrictions or add to the list of chemicals where industry needs an authorisation.

As REACH covers environmental protection, which is devolved, the Secretary of State must act with the consent of the devolved Administrations where a decision relates to an area of devolved competence. A safeguard clause allows the Secretary of State and devolved Administrations to take urgent action where it is needed to protect human health or the environment. This must be followed up with the normal restriction process to see if there should be a UK-wide control.

We will continue to ensure the highest levels of protection for human health and the environment, based on robust evidence and strong scientific analysis. At the same time, we are taking steps to provide industry with the legal certainty it needs to operate and to preserve the supply chains for the chemicals we depend on. For these reasons, I beg to move.

Amendment to the Motion

Moved by ***Lord Fox***

To leave out from "that" to the end and to insert "this House declines to approve the draft Regulations because Her Majesty's Government has provided insufficient information on the impact of the proposed changes, in particular in relation to (1) the additional responsibilities being transferred to the Health and Safety Executive and its readiness to act as the national regulator, (2) the potential costs for the chemical and advanced manufacturing industries in the United Kingdom, (3) the potential duplication of testing on animals, and (4) the need to uphold environmental protections; and calls on Her Majesty's Government to lay new regulations following full consultation with the chemical, manufacturing and consumer goods industries, and the environmental sector, with the aim of delivering a regulatory regime of the highest standard".

Lord Fox (LD): My Lords, I declare my interests as in the register, but everybody in this Chamber has an interest because chemicals touch every part of everybody's lives in this country. That is why the Minister is completely correct that it is vital for this country to have a safe and effective management regime for chemicals. Safety should be the primary concern, alongside environmental sustainability.

Along with other Peers, I worked on the Nuclear Safeguards Bill, which the Government rightfully decided deserved primary legislation, not least because it involved an international treaty but also because it is a complex and important safety regime. During the proceedings

[Lord Fox]
on that legislation, which the Government brought to this House and the other place, it was improved and full debate was had. The chemicals and chemical regulation regime is just as complex and important, if not more so, than nuclear safeguarding, and this should have been brought to your Lordships' House and the other place as primary legislation. It is regrettable that this was not the case.

It is also extremely unfortunate, to say the least, that the Government have left it so late to bring this statutory instrument in front of your Lordships. When this was tabled it was anticipated that this could be three days before the measures in this statutory instrument would be required. Given its importance and complexity, that is beyond remiss and looks like brinkmanship. Despite the fulsome description of consultation, roadshows and so on, the response I have had from industry and civic society—a broad range of stakeholders—has been that this is not a satisfactory statutory instrument, which is why I have tabled this fatal amendment.

I will try to highlight some of the flaws. I am afraid to say it will not be a short speech, because there are quite a lot of flaws. I apologise—but not much, because this issue has to be laid before your Lordships and these issues need to put on the public record. I will ask a number of questions. As the Minister has set out, this regime is effectively ready to roll, so I am sure he will not have trouble answering these questions.

In the months and years to come, it is important people understand what the Government think they have laid before your Lordships in the regrettable event that we have to use this statutory instrument. However, there is another reason why this debate is important. The instrument clearly indicates the direction of travel. In his preamble, the Minister talked about the objective of having a common rule book, frictionless trade and co-operation—I am not sure that is the word the Minister used—with the ECHA. In the event that we leave the European Union, these are all ambitions I would share. However, none of them is a done deal, and this statutory instrument sets a direction of travel for what regime might follow in any case.

The Government have succeeded in unifying one part of the country: those involved in the manufacturing and use of chemicals in the industry are pretty united in their concerns about this statutory instrument. As the Minister set out, much time and effort has been invested in creating and delivering REACH—over more than a decade. Many in the industry and civil society feel that, just when this regime is beginning to deliver, we are walking away from it and potentially creating another parallel exercise. And those who have been involved in this will know what a big exercise it is. As we have said, the political agreement points to co-operation, but we cannot be certain we will get that.

Can the Minister confirm to your Lordships' House that, as well as the process of discussion with the chemicals industry and green organisations, the concerns put forward by these bodies have been represented to Her Majesty's Government? Can he confirm that those consultations have happened?

The economic impact on the UK of the development of an equivalent national chemicals regulation is considerable, and the Minister set out some of the complexities that will be taken on board by the United Kingdom. Furthermore, REACH substance evaluations and authorisations are not small affairs. The Minister mentioned substances of very high concern, or SVHCs. My understanding is that around 488 of those are being re-evaluated by REACH. At the moment, that process is shared across member states, and it is a long and complex process. If the United Kingdom is going to take on board that process individually and separately from the EU, it will take a great deal of time and money, and, frankly, it will require more tests, whether the Minister is seeking to avoid that or not. It is quite clear that, in taking this course, the United Kingdom will face a significant burden, taking on the duplication of a previously shared workload.

The Minister talked about preparation. I understand there is an IT framework, which cost around £5.8 million to create. In July 2018, in a parliamentary committee, a civil servant confirmed that it would not be fully functional on exit day, and I noticed that the language from the Minister was slightly hedged on that issue. The official said that some of the fuller functionalities would not necessarily be required on day one and are on a slower timescale. Perhaps the Minister can clarify what functionality will be available on exit day and what will not.

As the Minister said, Defra has confirmed that the HSE will run this database and lead the overall process. He set out, as Minister Coffey did when presenting this SI in the other place, that the Government anticipate a future budget increased by £13 million—I believe that was the figure. That equates to around 40 to 50 additional staff. Given that the number of chemicals used in the UK will not be drastically lower than the number used at EU level, the HSE will deal with a similar number of chemicals—the Minister talked about grandfathering, and we will come to that—to those under the jurisdiction of the ECHA. I should point out that its annual budget is €100 million and it has nearly 600 members of staff. Consulting with people in the industry, I am told that around 300 to 400 people would be a reasonable assumption of what the HSE would need in order to deliver the very complex tasks that the Minister has set before your Lordships. So I challenge the idea that £13 million would be sufficient resources to deliver this programme. Can the Minister comment on that particular supposition but also, within the framework of his own constraints, tell us how many people have been recruited already by the HSE in order to deliver this, because we could have been delivering this within a few days? I imagine that a recruitment process is already under way. Will the Minister update us on that?

4.15 pm

On data, I completely agree with the no-data no-product rule set out by the Minister. It is essential that we have data and nobody on these Benches is proposing otherwise. As the Minister set out, data for REACH is jointly submitted by a consortia of companies. The problem of grandfathering becomes complex in this area. The Government state that the UK can

download this data. That has clearly been confounded by copyright and ownership issues around data. Companies will need permission to reuse that data for the system. In some cases, the data neither belongs to them, nor to one other company, but to a chain of different companies. The copyright to the data belongs with those companies. The notion that somehow this data is transportable and all you need is for a trade association to agree to that is a naive view. A recent survey carried out by the Chemical Business Association revealed that three-quarters of major UK companies do not currently own the data that they need in order to get the registrations they would require under UK REACH, so I hope that the Minister understands that issue. It is all very well saying that the data can be ported and there is no need to duplicate it, but the data is owned.

Animal testing is an issue of great importance to everyone in your Lordships' House and REACH has successfully minimised animal tests through data sharing and other measures. That point was heavily promoted by the British delegation when REACH was created. The organisation, Cruelty Free International, estimates the number of tests across REACH's 11 years to be around 4 million. All of us would agree that that is far too many, but considerably fewer than would have been necessary without REACH. There is genuine potential for duplication. It is all very well the Minister saying that that will not happen but it will because there will be regulatory divergence when there are two systems. As soon as you have regulatory divergence, it is inevitable that the HSE in this country and the ECHA in the rest of Europe will demand different or parallel data. That will come to pass and that is the point at which more testing will be required, and some of that testing will be on animals. When pressed by a parliamentary committee, Minister Coffey admitted that there could be an increase in animal testing if the UK is no longer a member of REACH, and that is unacceptable.

On operational costs, the chemical industry, as the Minister set out, is important, but this affects more than the chemical industry. It affects the cosmetics industry, the consumer industry, agriculture and, of course, all sorts of manufacturing. Clearly, as the Minister acknowledged, duplication of costs is more severe for SMEs than for larger companies. Right across all sectors we are seeing the creation of a parallel system. This does not chime with the mantra that Brexit would be about burning red tape. We are knowingly duplicating red tape.

Last week, the noble Baroness, Lady Buscombe, spoke to an SI which dealt with pesticides and GMOs and was in some ways a foretaste of this one. She made it clear that the HSE's approach to them would be self-financing. In other words, it will charge industry for the cost of registration. I assume that we are looking at a similar model here. Will the Minister identify what costs have been factored into the HSE's budget for this year and next year and what revenue generation has been put in the budget for that organisation over the next two years? This is not a self-financing system; it is a system that will be financed by industry and therefore ultimately by consumers in this country who will have to pay the price.

Grandfathering is very complex, and I will spare noble Lords too much detail, but there are clear holes in the approach. Companies based outside the EEA can appoint Europe-based only representatives to take over the tasks and responsibilities of importers when complying with REACH. This simplifies access to markets and to the chemicals needed for important activities in this country. My understanding is that UK companies acting as only representatives for REACH will be obliged to relocate from the United Kingdom to mainland Europe to continue to have that relationship with EU REACH. What is Defra's position on that? Are there any ways around it?

The Minister referred to the transitional relationship, which is a two-year process. Two years is an interesting choice. It could have been one year or five years, so what was the modelling? What was at the heart of Defra's decision to make it a two-year process?

While this is being presented as a like-for-like process, we are going to end up with some chemicals not being grandfathered across this system. My understanding is that with chemicals in the current EU REACH listing that are held by a non-UK organisation, there may be problems grandfathering, particularly where the process of approving those chemicals has not been completed. My friend in the other place Norman Lamb raised this. An application for EU authorisation submitted by a non-UK EEA entity on which a decision has yet to be made and on which a UK downstream user is dependent will not be grandfathered. Despite the fact that some chemicals have cleared that hurdle, it remains an issue. The point has been raised with Defra on many occasions. It continues to be ignored or not catered for. What is it about this issue that stops Defra allowing something else to happen?

What overall extra costs will industry face as a result of having to maintain two parallel chemicals processes? While all this consultation has gone on, it is not clear what the impact on industry will be. What effect does the Minister expect this to have on British business?

Scientists, too, are worried about this. Why would they not be? I am a chemistry graduate, although you would not know it to look at me. The Royal Society of Chemistry has expressed concern not just about the duplication issue, which I have gone on about ad nauseam, but about whether the HSE will have adequate scientific capability to take on the increased decision-making and responsibilities of acting as the national regulator. If this concerns the country's leading chemists, does it not concern the Minister as well?

Finally, the Minister, rightly, talked about devolution. The Government have worked hard with the devolved Administrations, but there is one area where we could benefit from more information. What capability do the Government expect the devolved Administrations to have in order to be able to respond meaningfully to the HSE when regulatory issues are put to them?

I see the wrinkled faces of those opposite me and they will be glad to know that I have reached the end of this point. There are clearly many flaws in this statutory instrument. Some of them have been highlighted also by the Secondary Legislation Scrutiny Committee and I am sure that we will hear about others from my

[Lord Fox]
noble friend Lord Teverson. That is why I have tabled this amendment and I await the Minister's response with interest. I beg to move.

The Deputy Speaker (Lord Geddes) (Con): I should inform the House that, if this amendment is agreed to, I cannot call either of the other amendments to the Motion on the Order Paper by reason of pre-emption.

Lord Whitty (Lab): My Lords, in the light of that, I should like to speak to my amendment and to the contributions made so far. It is some time since I have found myself on the Front Bench, so I had better observe the niceties.

First, I thank the Minister for spelling out these complex regulations. No one denies the need, post Brexit, for robust regulation in this field. However, I contend that the way in which the Government are going about it is causing excessive bureaucracy and cost. The Minister rightly referred to the work that his department has done in talking to the industry, and the industry appreciates that, but he must be aware that there are still grave concerns among large sectors of the industry and firms, as well as downstream firms, about the situation post Brexit. I thank his department for all that work and I thank him for producing the latest UK REACH guidance yesterday, bringing together previous technical notes and updating them, but it is a little late given that these regulations were laid when we thought that by Friday we might be out of the EU.

I also thank the noble Lord, Lord Fox, for his amendment. I agreed with pretty much every word he said and I will try not to repeat his points—at least not at great length—but I disagree with the purport of his amendment. The regrettable fact is that we are in an unenviable position here. These regulations could have come into effect on Friday and might still come into effect in two and a half weeks' time. As is the case with so many of the no-deal contingency regulations that we have been through, whatever we might think and whatever the ideal outcome might have been, industry, consumers and the workforce need some degree of certainty about what happens on Brexit day and the day after. If we do not have these regulations, as is the intention of the amendment of the noble Lord, Lord Fox, we will be in a legal vacuum. Given the complexity of this area, the potential danger and the hazardous nature of many of the chemicals covered by the regulations, as well as the legal and insurance situations, I suspect that a lot of trade will grind to a halt. That would be very dangerous for the environment and very expensive to the sector.

4.30 pm

The Government should have taken a different approach to this, the central reason being that they should have sought in all post-Brexit circumstances to remain within the purview of the European Chemicals Agency. Some of us with long memories may recall that, during the rather lengthy passage of the withdrawal Bill, I became quite obsessive about the issue of EU agencies. I tried on several occasions to get Ministers to say what the future arrangements would be with those agencies post Brexit.

At one point in the protracted negotiations—during the Mansion House speech—I was greatly heartened when Theresa May said clearly that there were at least three agencies with which she felt we would need to maintain a relationship in all circumstances: aviation, medicines and chemicals. Continued participation in ECHA was the preferred solution of virtually the whole industry and the vast majority of the environmental groups that commented. I thought the PM understood this, and that we would therefore move to a situation in which we somehow maintain our relationship with ECHA, albeit on a temporarily or provisionally. But these regulations go down a different route: they go for replication and duplication here in the UK of what ECHA has done in this area, and REACH is the biggest single process that ECHA oversees.

There are circumstances in which the EU side has made the situation worse. In the event of a deal and our moving to a transition period, the EU has said we would no longer participate in these agencies albeit that the ECHA board includes as observers the representatives of the EEA EFTA countries, Norway, Iceland and Liechtenstein. A similar arrangement ought to have been available to us.

On other agencies mentioned in the Mansion House speech—for example, those relating to aviation, with which I am familiar from my Select Committee work looking at aviation changes and regulations and as vice-president of BALPA, an interest I must declare—the EU has proposed, and the UK has reciprocated, that for the first 12 months airlines will continue, with one or two exceptions, more or less flying their current routes. That gives leeway, even in a no-deal situation. But here we are immediately constructing a whole new edifice of UK duplication and replication of the ECHA situation.

The noble Lord, Lord Fox, has spelled out just what this means in many circumstances. There are a number of different situations; for example, those that already have ECHA authorisations and access to the UK market, to which the Minister is providing the opportunity for grandfathering rights. The difficulty is that access to the intellectual property, which has been lodged with ECHA to get those registrations, authorisations and restrictions, is not necessarily available either to UK operators or to people importing to the UK. That was not immediately obvious to the department, but it became clear that it would be extremely complex.

As the noble Lord, Lord Fox, says, some of these tests and intellectual property issues rest with consortia and companies, including some not in the UK or even in the EU but which have indirect ECHA registration. Acquiring all that information to register in a duplicate UK situation is both expensive and legally quite difficult.

Other groups are also affected. UK companies with a REACH organisation that wish to continue to export to the EU while also operating in the UK will themselves have to duplicate their REACH authorisations in the UK. New products and products in the pipeline, if destined to be used in both markets, will have to register in two places in the future as new chemicals, combinations and formulations come into play.

That is just the chemicals industry itself, in its broadest sense. The importer and user sectors, which range from aerospace, motor manufacturing and

agriculture to sectors that, by and large, are made up of SMEs, such as furniture, clothing, printing and toys, have never had to do this, but will have to assure themselves that the products they are using, which could be as simple as paint, have at some point received a UK—and, if they export, an EU—authorisation. As I understand it, the department is now aware that one-quarter of REACH registrations cannot provide the data immediately as the ownership lies with a lot of other companies and consortia. That means that the granting of grandfather rights, while it sounds very cosy, will not operate at 100% even over the two-year period that they have been given for providing the full documentation.

I understand the road that the Government have gone down, but there was a much simpler way to try to maintain some engagement with ECHA. These regulations have had quite a bumpy ride: they went through a number of iterations by the department before they were produced and have had a rough ride with the House of Commons Environmental Audit Committee, our own Secondary Legislation Scrutiny Committee and, above all, the EU Select Committee, for which the noble Lord, Lord Teverson, who chaired the inquiry, is about to speak. I will leave his points until he does so.

On the possible duplication of animal testing, I understand the Minister's reassurance but this could also fall foul of the complication of what the authorisation within ECHA has provided. For many substances there has been animal testing to get a REACH authorisation, and that may not be available directly to people who are going to try to produce a parallel authorisation in the UK. The history of all this is that it has been largely due to British influence that Europe has minimised animal testing and made it more humane. It would be an irony if some degree of duplication followed from the British decision to leave Europe and we had to repeat its work because we could not get hold of the information or were developing new products.

The other dimension that I will mention is the whole question of the resources and structure of the HSE. For a year I was the Minister for the HSE and I have a very high regard for it. I reflect that there have been large cuts to the HSE's resources, manpower and scientific expertise over recent years, which it would have to build up again in this area. It is important to understand that the resources that need to be available to the HSE for it to genuinely parallel what ECHA has done are significantly greater than the Government have so far indicated. It is not entirely clear, given that it will obviously not have all the expertise in-house, quite how it will construct parallels to the committees and advice that ECHA has had over the years. Indeed, Mary Creagh, chair of the Environmental Audit Committee in the other place, said that there is no provision for committees of experts or other committees to help the HSE to form its opinion. How are we to ensure that the HSE has available capable systems of scientific advice, which it would have to build up from scratch?

This is a question of resources, access to scientific information and priorities. In effect, when we delete "EU" and substitute "UK", the HSE will take on the role of the Commission in this regard, yet it will be a relatively new part of the HSE's responsibilities, even when it is acting in concert with the Environment Agency and the devolved environment agencies. There is a really serious issue for the industry and it has been drawn to our attention by a wide range of environmental bodies, including the Royal Society of Chemistry and Greener UK.

I understand the position that the Government have got themselves into but there is an alternative way. Even at this stage, the Government should consider whether to adopt that other way and negotiate continuing involvement in the ECHA.

My amendment regrets this duplication and requires the Government to make sure they do what they have said they will do in other contingencies and make participation in the ECHA a negotiating goal. That goal should be there for a no-deal situation, as well as any other situation. We are going down the wrong road by spending money, resources and time on seeking to establish a completely replicate system in the UK.

Lord Teverson (LD): My Lords, I have tabled an amendment to this Motion, and speak very much as the chair of your Lordships' EU Energy and Environment Sub-Committee. We deal with Defra issues. We issued a report on Brexit and the chemicals industry which has not yet been debated on the Floor of the House, so that is why I want to bring up some of these issues here.

I will give a little background about the chemicals industry, because it is key to this debate. It is the second-largest manufacturing industry in the UK, after food processing. It has a total gross value added of something like £12 billion. It is extremely dependent on trade: some 60% of its output goes to the EU and some 80% of our chemicals imports come from there. It employs half a million people. Not just the chemicals industry but a huge proportion of industries in this country use chemicals in their supply chains. Therefore, it is not just the chemicals industry that is affected by this but all those other businesses that use chemicals in their processes, particularly those that are downstream in the manufacturing process. They do not import, export or manufacture chemicals themselves but they use them, so they are affected by the REACH regulations.

I will be more critical than I usually am, as chair of the committee. The committee found—and felt very strongly, if I am honest—that Defra was not on the front foot on this issue. Understandably, Defra focuses on agriculture, fisheries, flooding and stuff looked at by the Environment Agency; the EA obviously has a role in this. When we had Ministers and senior department officials in front of us, we felt very strongly that they did not understand the gravity, timescale and effect on industry of coming out of REACH. That is not the case now, but perhaps this SI is an example of trying to catch up and lay a statutory instrument that is sufficient for the industry's needs, but not being able to do that quickly enough.

I will talk a little about the European Chemicals Agency. To give your Lordships an idea, it has 500 staff, a budget of around £100 million, and 21,000 registered substances, of which only about 5,000 are registered by UK companies and organisations. That is a serious

[Lord Teverson]
operation. What I want to come back to is that all of its functions will now have to be replicated in the United Kingdom. That is essential after Brexit. There will still be 21,000 chemicals that the UK will want to use, which will have to be authorised, recorded and checked up on, to make sure that the regulations are applied.

The committee very much welcomed the Prime Minister's view that we should remain part of the European Chemicals Agency. We agreed with that very strongly. But of course that is not possible if we are not in the single market or a member of the EU or EEA. That is just not on offer. We asked many times what the Government have managed to negotiate further with the EU on this. They are not able to, because the EU will not do that. It is not in the Government's power to arrange that pre-Brexit, unfortunately. That is the situation: we cannot be part of the chemicals agency and the REACH regime if we are not part of the single market.

The committee was also struck by the absolute unanimity of the whole industry, NGOs and the scientific community—far more than on any other subject we have looked at, whether fisheries, biosecurity or food supplies—that we should try still to be part of the European Chemicals Agency; or, if not, we should have total alignment with its decisions, however we manage to do that.

4.45 pm

My first question, coming back to those resources, is: how on earth can the HSE actually cope with this demand and need, this way of keeping the chemical industry and all those that are part of the supply chain actually moving? I understand that there is an extra budget of £13 million and that some 35 to 40 extra people are being recruited, but that is minuscule in comparison with the resources of the ECHA as it is at the moment. I would be very interested to hear from the Minister how that recruitment is continuing.

The committee has found from other areas that IT systems are often thought about rather late on in the Brexit process. I welcome the fact that the systems are in place, as I am sure the committee does, but in effect all we have is an empty spreadsheet. It cost us 5.8 million quid, but hey, we have a spreadsheet that is ready to operate but, I presume, completely empty. Industry has two years to fill it up, but one of the naive points that came over from the department was that it seemed to be under the impression that, on Brexit day, you could just paste all the information off the European system on to the British system and it would work. That was what the Minister and senior officials talked about. That forgets commercial copyright and intellectual property. In the end they agreed that this just could not happen. Yes, we have a two-year grace period, but it still means that all those businesses inside and outside the UK will have to fill that spreadsheet with the full details of those chemicals. That might be okay for those that are UK-owned, but a number of them are owned by more than one company, so all the UK registrations probably have EU companies as well where those intellectual property rights will be equally important. Reregistration will be a very difficult and expensive task.

I will quote one thing from our report, from a witness who approached a Conservative member of the committee. Their company has 50 products on the EU market and they set out the cost indications of leaving REACH:

> "'Even under a soft Brexit costs will increase because of a duplication of work to comply with REACH and BREACH [British REACH] even if this is simply in administration costs. Significant costs will occur if duplication of registrations and testing is required within the UK. Where the company sells into the EU costs will further increase due to the need to have either an [EU representative] or a subsidiary presence. Raw material costs and/or availability after Brexit will be a challenge and will also incur cost increases'".

They stated that there would be,

> "'an initial annual cost of between £3m to £4.5m, with ongoing annual costs of between £0.5m to £1m', adding that this could also have implications for the company's continuing involvement in the EU market, potentially leading to the loss of 75–85 jobs".

That is an actual quote that came to us from a medium to large business, because it was so concerned about the way this was going.

The timing is difficult in terms of two years. To get REACH to where it is at the moment took something like 10 years. The EU gave a Brexit window for British companies to register in the EU—between 12 March and 24 March—which has now ended. Does the Minister have any information about how many UK companies have been able to take up that opportunity, the EU being concerned about its own supply chains?

Animal testing has come up. I understand the Minister's assurances, but many of these products are going to have to be retested—there is no question about that. In one of our evidence sessions, the noble Lord, Lord Krebs—who is in his place and, I hope, will speak soon—asked Thérèse Coffey, the Minister, about animal testing. She said, in the end:

> "We would have to undertake a regulatory approach, and if that required animal testing that would require animal testing".

I think the Minister agrees with us on that, and that to me is the logic.

This is a key sector of industry, which was neglected in the early days of Brexit. I am very pleased that Defra, as a ministry, has tried to catch up, but this is still an inadequate and weak SI. Our committee was very critical of the way in which this had been handled. Some of it has moved forward and improved, but I have to say to the Government that we are far from having a satisfactory regime at this time.

Lord Krebs (CB): My Lords, I speak as a member of the EU Energy and Environment Sub-Committee, so ably chaired by the noble Lord, Lord Teverson, who has just spoken. I do not wish to repeat all the arguments that we have heard expressed so eloquently by the noble Lords, Lord Fox and Lord Whitty, but I want to ask a question which follows from what the noble Lord, Lord Whitty, said. I have assumed all along that there must be some secret benefit of establishing a separate parallel UK system which duplicates the European system. I have yet to find anybody who can explain to me what this benefit is. Therefore my first question to the Minister is: what is the benefit? Do tell us. Reveal all, so that we can all enjoy the warm glow of appreciation.

I move quickly from that very general point to a much more specific point, which has been alluded to already by the noble Lords, Lord Fox and Lord Whitty, concerning scientific evidence to support risk assessment. To me, it would be really dangerous in the future, for confidence, for UK consumers and for the viability of our chemical industry and all the products that depend on chemicals, if we had a divergence in risk assessment between the European system—run by the European Chemicals Agency—and the UK system. Think what that would mean if, on one hand, we were told by the other 27 countries that chemical X is not safe to use but, on the other, we were told by our own national system not to worry about it and that it is safe. That leads us to the key question: how will these risk assessments be carried out? The SI does not provide for the replication of an independent standing committee of experts to carry out risk assessment.

We have asked Minister Coffey about this on more than one occasion. Just last week, on 19 March, in response to the question of why we cannot replicate the committee structure, she replied—if I can read her writing—that we want to ensure that,

"the HSE will have access to the best advice and would not be limited to the UK or even the EU—setting up a statutory committee is likely to reduce that freedom".

Why does having a statutory committee reduce the freedom to seek advice from other experts? At one stage, I had the pleasure of serving as the chairman of the Food Standards Agency. We had numerous statutory committees advising us on novel foods, on microbiological safety, on nutrition and so on. But that did not prevent us seeking other expert advice, where necessary, from people who were not on those statutory committees. I simply fail to understand the logic.

Furthermore, whatever system the HSE has for providing risk assessment, what is key to public confidence is transparency. There is no point in the HSE coming up with a risk assessment that says "This is safe" or "That is not safe" if the public, NGOs or scientists in the academic community and elsewhere cannot understand in a fully transparent way how that decision was reached. One thing that has happened in many of the statutory advisory committees elsewhere in government—led, I believe, by the Food Standards Agency back in the early part of this century—is that these committees meet in public. People can actually see what the evidence was, what the arguments were and how the decision was reached. Can the Minister assure this House that whatever mechanism the HSE uses—and I certainly think it should have an independent statutory committee—its decisions will be fully transparent, and that the decision-making group will meet in public so that people can see how the decision is made?

I have focused on one minor detail, although I think it quite an important one, of the many concerns raised by the Select Committee that I sit on, as well as by the noble Lords, Lord Fox and Lord Whitty. Finally, I remind the House how pervasive chemicals are in our lives. It has already been pointed out that this is about not just the chemical industry but all the industries that depend on chemicals, whether for motor manufacturing, toiletries or furniture and so on. There is a food chain in this country—many noble Lords may even have bought food from this outlet—which claims that its food contains no obscure chemicals. There is a risk that it contains nothing at all because food is nothing but chemicals, and some of them are obscure. This is fundamental to everything in our lives and how we regulate the safety of chemicals is of absolute paramount importance to everything we do, including the food we consume.

Baroness McIntosh of Pickering (Con): My Lords, it gives me great pleasure to follow the noble Lord. I can speak only for myself, as I find that I am not on a committee so I have no expert knowledge in this regard. However, I pay tribute to the work done by the Secondary Legislation Scrutiny Committee in its 15th report, which I will refer to.

I know why this statutory instrument is being prepared; my noble friend the Minister set that out clearly in his opening remarks. In the impact assessment, the policy objective in paragraph 14 sets out the terms of the political declaration on the future relationship between the UK and the EU. Perhaps my noble friend can put your Lordships' minds at rest this afternoon by showing that we will seek more than just a UK-EU free trade area for goods. The difficulty of our meeting to consider this two days before we were due to leave the European Union is that as we do not yet know the circumstances of our leaving, until the House of Commons has taken a view in this regard, we do not know whether we are leaving with no deal or whether there will be a transitional arrangement. In the event of the Prime Minister's deal being agreed by Parliament, can my noble friend say how Defra and the Government intend to use a possible transition period to ensure continued co-operation between the UK authorities and EU agencies such as the European Chemicals Agency?

I agree with all those who have spoken on the questions raised in this 15th report about additional admin and the potential costs, and I have one request of my noble friend: since the report is strongly worded, and since neither the Expansion Memorandum nor the impact assessment have set out the costs and financial implications, it would be very helpful if he would set those out this afternoon.

5 pm

The noble Lord, Lord Teverson, referred to the gross value added. I add that 95,000 jobs were recorded as directly relying on this sector in 2017. Perhaps what is not widely known is that, of the 2,800 chemical businesses, 97.5% are either small and medium-sized businesses or micro-businesses. I think noble Lords are united in being aware of the consequences of our leaving the European Union for that category of SME and micro-business: this sector is especially important in that regard.

Lord Teverson: I absolutely endorse that: we often think of this industry as dominated by large corporates and internationals; it is not. There is a huge SME sector which is just as important in this.

Baroness McIntosh of Pickering: I am most grateful.

In paragraph 17 of the 15th report the department is recorded as replying to one of the concerns thus:

"Should it become clear that we are in a 'no deal' scenario, staffing levels will be scaled up as required over a period of several years, allowing time for recruitment and training".

[Baroness McIntosh of Pickering]
The question has to be asked: as we are on the eve of a potential no deal, what is the position now and how far advanced are we with the scaling up? Are the officials coming from the industry and from other departments? What certainty can we have that the officials who are being asked to prepare for exit day under no deal are in place and have the knowledge in this regard?

My heart sank when my noble friend said that the dedicated IT system had been tried and tested and was ready to go. Successive Governments have found themselves in an embarrassing situation where we have a new, swanky IT system in place, it has been tried and tested and is ready to go, but it has proved to fail. I think the two examples I am going to choose actually reflect badly on my own Government. One relates to the Rural Payments Agency, where we not only introduced a new system of farm payments but, at exactly the same time, introduced a new IT system which had been tried and tested—and failed. The other IT system that caused great distress throughout the country was rolled out by the Child Support Agency. Again, we had a new IT system that had been tried and tested and proceeded to fail, with devastating consequences for families across the country. I hope that my noble friend will be proved right that this IT system is indeed ready to go.

At paragraph 27 of its 15th report, the committee raises concern about the possibility of failure and disruption:

"We remain concerned … that there may be disruption to the UK chemical industry, supply chains and wider economy as a result of new requirements to register chemicals from the EU after exit".

That is certainly something noble Lords would wish to be satisfied on this afternoon.

My final point is that the House is incredibly grateful to Secondary Legislation Scrutiny Sub-Committee B for its work in preparing us for this debate on a very important SI.

I am rather concerned that the noble Lord, Lord Fox, might be at my dinner. We were at breakfast together this morning, as indeed was my noble friend Lady Byford and a number of others. We are now together—almost—post-lunch. I pray that we might be at dinner together this evening, but perhaps we might both have a reprieve. He mentioned the need for reassurance about ongoing consultation, and that all the groups are united. It is quite a challenge to unite such disparate groups as the Green Alliance and the broader environmental groups, the health companies, the animal rights charities and indeed the chemical industry. I conclude by asking my noble friend to give the House an assurance that the consultations are indeed ongoing and will continue throughout any transitional period.

Viscount Hanworth (Lab): My Lords, much of what I intended to say has already been said, and said very well. Nevertheless, I will add further testimony that reaffirms the comments of my committee colleague, the noble Lord, Lord Teverson.

The experience of serving on the Energy and Environment Sub-Committee of the European Union Committee has highlighted a crisis in government that affects both politics and administration. Modern government is highly complex. Mundane matters of daily life and of trade are surrounded, as they must be, by regulations and legislation, and it can take a great intellectual effort to understand all the circumstances. Minor incremental changes to legislation can usually accommodated. If a small mistake is recognised, the matter can be amended. The changes proposed by the Brexit agenda are of a very different order. In this connection, Ministers and their civil servants have often had only a tenuous grasp of the matters at hand, and they have sometimes demonstrated before our committee an astonishing oversight.

The EU REACH regulations have proved to be a case in point. Here, we face some of the perplexities and absurdities of the Brexit agenda. It has been unclear whether under any circumstances the UK could continue after Brexit to remain a member of the REACH organisation, albeit that this has never been clear until recently.

The initial proposal put to our committee by the Minister in charge, who was flanked by a Civil Service adviser, was that the establishment of a UK REACH system—or a "BREACH" system, as we have heard it called—could be achieved easily by cutting and pasting the contents of the REACH database, which is owned by the European Chemicals Agency, into our own national database. It was pointed out to them that this was not generally possible. The information in the REACH database is also owned by commercial enterprises that have contributed to it. Some of it is subject to commercial secrecy. The data would have to be acquired via negotiations. Moreover, given that the data is often subject to joint ownership, such negotiations would be difficult and protracted.

In effect, the ambition of the Brexit agenda has been to acquire the fruits of a co-operative enterprise without having to co-operate with others. It has become clear that, in order to remain in business, UK companies will have to transfer their registrations to European Union-based companies, or parties, at least. They will have to bear the cost of registering with both the UK and the European Union. Moreover, unless they already have a presence in the European Union—other than in the UK—they will be depending for such registrations on the good will of rival enterprises. This is hardly a case of regaining national control.

The preponderance of the output of our chemical industry is exported. Some 61% of our chemical exports went to the European Union in 2017, and 73% of our chemical imports came from the European Union. If the Brexit agenda is fulfilled, we shall be looking at the likely demise of a significant British industry.

The chairman of our committee wrote to the Minister expressing our anxiety at the lack of preparation for these eventualities. In reply, the Minister told us that there has recently been a flurry of activity aimed at alerting industry to the need to prepare for Brexit. It is difficult to measure the extent of these activities, but it is clear that Defra has had other things on its mind.

This brings us back to a point that has already been made. The Conservative Party is in favour of small government and light-touch regulation, yet it has proposed changes far beyond the capacity of politicians and

civil servants to accommodate. Its maladministration of the nation's affairs amounts to an utter dereliction of duty.

Lord Trees (CB): My Lords, I strongly support the amendment of the noble Lord, Lord Whitty, and will address the issue of animal testing, which has already been referred to by several noble Lords.

The amendment calls on Her Majesty's Government to seek continued participation in REACH as a priority in negotiations with the EU. This is particularly important with respect to the use of animals for the safety assessment of chemicals. As was referred to earlier, animal welfare is of great concern to the public, but I believe that the vast majority understand the need, under strict regulation, to use some animals to ensure human safety.

However, all interested parties—the public, the scientists involved and the welfare organisations—expect observance of what are called the three Rs in experimentation. That is, to refine, to replace and to reduce the number of animals used. That concept has been pioneered in the United Kingdom. The REACH guidelines explicitly require minimal use of animals, and permit it only after all other alternatives are exhausted. Most importantly, having a single registration and regulatory portal for the EU avoids any repetition of animal testing.

The instrument under debate today will require an independent UK chemical regulatory process centred on the HSE and the Environment Agency. Notwithstanding the terrific logistical challenges that that presents, which have been well articulated by the noble Lords, Lord Teverson and Lord Fox, this is essential in the event of no deal, and indeed in the event that the EU will not accept the UK's continued participation in REACH. I should point out that, to date, no third-party membership has been admitted to the REACH system.

I have three questions for the Minister. First, will he reassure us that the UK systems replacing REACH will harmonise with it as much as possible and will take all measures to avoid the need to generate separate data for registration? The Minister has told us that current registrations will continue to be accepted, but that all UK registrants will have to resubmit their registration dossier to the UK competent authorities within two years. So will the current animal safety testing data be accepted at that time without the need for further testing? Conversely, for UK firms importing products from the EEA that are currently registered by an EU member state, will the existing data for animal testing suffice when they are required to register within two years of Brexit?

Bearing in mind the problems of intellectual property, what assessment has Defra made of the problem of intellectual property and the ownership of data in the context of its transferability? Finally on future registrations of new products, will Her Majesty's Government negotiate with the EU the mutual recognition of animal testing data so as to avoid the need to duplicate animal testing, whether for EU registrants to export to the UK or for UK registrants to export to the EU?

Baroness Bakewell of Hardington Mandeville (LD): My Lords, I thank the noble Lord, Lord Fox, for setting out in such detail the issues around the statutory instrument. I also thank the Minister for his time and that of his officials for the briefing that we had at the beginning of the month.

I have read the Explanatory Memorandum three times and each time I have become more concerned. I have dealt with a number of SIs during this exit process, but the EM on REACH is the longest I have dealt with. It is an extremely complex subject. The stated purpose of the SI is to correct deficiencies in retained EU law. I remain unconvinced that this will happen.

5.15 pm

As we have heard, REACH and the European Chemicals Agency operate on a no data, no market basis. The industry is also responsible for managing the risks from its use of chemicals. This seems sensible, but there are significant pitfalls and costs for some of our smaller companies and businesses operating in this area. Paragraph 2.4 of the EM assures us that the UK regulatory system for chemicals will be "similar" to the current EU system. Similar is not "identical", nor "the same as". This is open to interpretation and confusion. Although it is important to achieve value for money for the UK taxpayer, ensuring public safety should have an equal status with value for money.

The European Chemicals Agency is responsible for the effective registration system for chemicals. As we have heard, once exit day has passed, this responsibility will pass to the Health and Safety Executive as the UK competent authority. The HSE will run a database for applicants for new chemical registrations. Like the noble Baroness, Lady McIntosh of Pickering, my heart sank when I read in paragraph 7.18 of the Explanatory Memorandum:

"A UK IT system will facilitate the operation of the UK REACH system".

Government does not have a good track record on setting up new IT systems, as the noble Baroness so eloquently said. Those applying for registration and being refused will have recourse to the First-tier Tribunal, instead of the ECHA board of appeal. Like my noble friend Lord Fox, I am extremely concerned about the lack of capacity in personnel within the HSE and the tribunal to deal with this extremely complex subject.

As the Minister also said, the SI includes an amendment to the definition of used PCBs. This rolls easily off the tongue and means very little. It actually refers to the various environmental protection regulations for the disposal of polychlorinated biphenyls and other dangerous substances. PCBs are one of the most toxic pollutants affecting rivers, schools and fish and are a persistent organic pollutant. Will the amendment to the definition of PCBs be more stringent or more lax? Perhaps the Minister can reassure us.

The long list of what is being done and why is extremely concerning. Can the Minister explain what the,

"alternative methods for assessing the hazards of substances",

are likely to be? As for the Environment Agency providing expertise in relation to environmental science, I am again concerned about the organisation's capacity. Both the Environment Agency and the Health and Safety Executive have been asked to take on many additional functions as a result of the myriad statutory

[Baroness Bakewell of Hardington Mandeville] instruments which this House has debated in recent months. Each one glibly says that the powers will be dealt with by those organisations, but there is no mention of capacity building or additional resources to help. Each SI cannot be seen in isolation but must be seen in the context of all the other duties passing over. There is a cumulative effect, and the system must be robust.

I live in an area with a big manufacturing company which used to be British-owned but is now Italian-owned. As we have heard, the system of registering to trade in chemicals is often that the larger company applies and the smaller contractors operate under that registration—that is, it is grandfathered over. This has not been a problem while the main holder was an EU-based company. It will not be a problem when the registration is held by a UK company, but it will be a significant problem for those small engineering companies operating under the registration of an EU-based or worldwide company that does not hold a UK registration.

Years ago, I worked for a small engineering company that did subcontract work for other local companies. Often, parts had to be electroplated, which was done in Bath by another small company. These small operators, which often use extremely toxic chemicals, are likely to be hit the hardest by this legislation. Sadly, despite my noble friend Lord Fox's many meetings with them, Defra officials have failed to grasp the implications and make any amendments to the SI to mitigate the consequences.

Paragraphs 7.14 to 7.23 of the Explanatory Memorandum give details of the interim arrangement for UK registrations into the UK REACH system. It is cumbersome, with cost and safety implications. I am concerned at the fate of many of our small companies, which are the lifeblood of our economy.

Moving on to the consultation undertaken, the EM states that 23 stakeholders from a range of organisations were consulted in a series of eight meetings. That represents less than three consultees per meeting. The Minister indicated that wider consultation subsequently took place. Can he say how many small companies were consulted during this process and how many industries they covered? I am concerned that insufficient weight has been given to their views.

Dani Loughran, the managing director of Aston Chemicals, has given me permission to use her example of how this SI will affect smaller companies. Aston Chemicals employs 36 people and imports chemical ingredients from around the world used in personal care products, such as shampoo, toothpaste, skincare and cosmetics. It brings its products into the UK by boat or air and supplies them to manufacturers in the UK and the rest of Europe. The UK has been a gateway to Europe with cost-efficient freight routes landing at UK ports.

REACH is causing another huge problem for the chemical industry because it will mean that we are no longer a member of the European Chemicals Agency, or ECHA. We all know that it manages all chemical regulations, including the EU's landmark REACH regulation. Chemical manufacturers all over the world have spent millions testing their chemicals and providing extra safety data to meet the REACH requirements, with access to the massive EU single market as a reward. After Brexit, the UK wants to replicate this regulation with UK REACH. It would mean manufacturers having to do the whole thing again—with more testing and more enormous costs—but, this time, just for access to our market in the UK. For most chemical companies, this will not be worth while as the size of the UK market simply will not justify the huge costs involved, resulting in products being withdrawn from sale in the UK. UK manufacturers will not be able to manufacture without these ingredients, and as chemicals are at the top of the supply chain for many industries, they will all be affected. EU manufacturers, however, will be fine, so the logical outcome is for these industries to move out of the UK and into the EU, losing more UK jobs and tax revenue. Aston Chemicals is not alone; thousands of UK companies are having to do the same.

I understand that we do not live in a perfect world. We often have to make compromises, but some compromises need to be weighed up very carefully. If this fatal Motion is passed, the UK will be left without any framework within which to operate on this sensitive issue, and businesses and the public will suffer. If we support this SI, which has some significant flaws, the UK will operate under an imperfect regime, the consequences of which have been highlighted this afternoon. There are several phrases to describe this situation: "between a rock and a hard place" or "between the devil and the deep blue sea". I know that the Minister is listening to the arguments put forward, but I suspect that his hands are tied by those in the other place. However, I look forward to what he has to say and hope that we can find a way forward.

Lord Selkirk of Douglas (Con): My Lords, I will be extremely brief. This has been a remarkably good debate, and I strongly congratulate the sub-committee Chairman, the noble Lord, Lord Teverson, the noble Lords, Professor Lord Krebs and Professor Lord Trees, and the noble Viscount, Professor Lord Hanworth, each of whom made extremely relevant and important points. While we were considering this, I was struck by how many are employed in the chemical industry; I understand the figure is far above 50,000. I hope it will be strongly borne in mind that their expertise is absolutely essential for our country, especially when there is the possibility of wide-scale duplication.

The other point I make is that a restriction on the availability of medicines would cause grave concern. I hope that the Minister will exercise a watching brief and that an independent statutory committee will be created, as called for by the noble Lord, Lord Krebs. This will take no more than a lot of hard work, understanding and, if I may say so, openness and transparency.

Lord Gardiner of Kimble: My Lords, in this debate noble Lords with considerable experience have made extremely valuable contributions, certainly for me. I also found it immensely valuable having meetings earlier to get abreast of some of the key, essential points that noble Lords have made today.

I reiterate what the noble Lord, Lord Teverson, and my noble friend Lady McIntosh said, as well as the noble Baroness, Lady Bakewell, when talking about

Aston Chemicals. I feel confident mentioning the name, as the noble Baroness mentioned it. So many of these businesses are in the small business sector, and how essential it is. I acknowledge the importance of the chemical industry and its contribution. I think we all agree how essential it is to have a regime—we can discuss what would be the optimum regime—where we can all have confidence in the use of chemicals. There have been strong expressions on matters that I entirely respect and understand, but I have a responsibility to your Lordships to say—and these are not just my riding instructions from the other place—that we need this statutory instrument if we are to have an operable system, which the chemical industry acknowledges.

I have counted and I think I may have had 45 to 50 questions. It would be impossible to indulge your Lordships and answer every one in great detail, but I will endeavour to answer as many as I can. The noble Lord, Lord Fox, opened by asking if Her Majesty's Government—Defra and other departments—are concerned about these matters. I say emphatically yes, for the two reasons I opened with that noble Lords raised. This is a major commercial interest of this country. We also have the great responsibility of ensuring that our country is safe, and indeed that products from our country are safe for others to use.

On IT, the first thing to say is that I could never have invented any of it—so I can safely say that I would not have been in any positon to say whether this will work—but I am assured that for day-one functionality we are ensuring that industry will be able to register new and imported chemicals and to provide authorities with information required for maintaining the validity of existing registrations. Post day one, we will enable joint registrations for industry and build back-end functions for the HSE. I acknowledge what the noble Lord, Lord Fox, the noble Baroness, Lady Bakewell, and my noble friend Lady McIntosh said about IT, but this has been tested with industry and I can only report what I have heard on the success of that testing.

5.30 pm

The noble Lord, Lord Fox, asked about the position on the UK-based only representatives relocating to the EU. For UK-based manufacturers or ORs to maintain their EU REACH registration, they must transfer their registration to an EU-based entity. This is the policy of the EU and the ECHA, over which we have no control. That is the position. However, only representatives are not obliged to relocate; they can set up a subsidiary in the EU or leave a subsidiary in the UK. Even if they relocate, they will be grandfathered into the UK. These chemicals therefore would not be lost to the UK market.

The noble Lord, Lord Fox, asked about the two-year grace period. He conceded that the "no data, no market" principle is central to REACH. The new UK REACH IT system will need to be populated by data provided by industry. The transitional arrangements in the instrument mean that the industry has grace periods in which to supply this data, but it is important that we preserve the "no data, no market" principle.

As I said in my opening remarks, we will keep matters under review. But we have to balance the needs of industry, on the one hand, with the need to have the data to protect health and the environment, on the other. We will work with the industry on this; it is important that the relationship is strong. I assure noble Lords that it is my understanding that our work with the industry, BEIS and the HSE has been very strong. To the noble Lord, Lord Teverson, I say this: I am sorry we have not yet had our debate, but quite a lot of things have happened since that very helpful and important report.

The noble Lord, Lord Fox, asked about the capability of the DAs. We are working with the devolved Administrations, the HSE and the Environment Agency so that we can develop a UK framework for managing chemicals. We recognise that the DAs' resources are currently relatively limited and we will work with them individually to see how that should be addressed. That is an important point.

The noble Lord, Lord Fox, mentioned making data available and relying on what trade associations say. It is not naive to rely on EU trade bodies such as Cefic; indeed, Cefic's model contract has been widely used across the EU. I did not realise it, but Cefic is a very influential body and is widely listened to.

Lord Fox: I was not implying that there was something wrong with the trade association. My point was that it is wrong to hide behind that statement and not acknowledge that there are serious copyright and confidentiality issues around this data which make the whole cut-and-paste exercise much more complex and expensive than the Minister seemed to present.

Lord Gardiner of Kimble: I understand the point from the noble Lord. However, as I said in my opening remarks, it is the case that Cefic and other bodies are working extremely constructively, as there is a mutual benefit.

As a prelude to today, I read last Thursday's *Hansard*—my noble friend Lady Buscombe was very helpful in taking me through that interesting debate. To be pedantic, let me be clear that the 488 approvals mentioned are part of a programme under the biocidal products regulation and not REACH. All of government is looking in great detail at what needs to be done and what resources are necessary to make sure it happens.

The noble Lord, Lord Krebs, and my noble friend Lady McIntosh asked about the benefits of a UK system. I have said already—and will say again, because the noble Lord, Lord Whitty, raised it—that our preference is obviously to maintain participation in the European Chemicals Agency. That is the Government's aim, and I will go into further detail on it. However, we are here because we have to consider all eventualities. In his report, the noble Lord, Lord Teverson, made it very clear that although sometimes we do not wish to be in a certain place, we have to do the responsible thing. Indeed, his committee considered how we deal with all scenarios.

The noble Lord, Lord Teverson, also asked how many UK companies have taken advantage of the Brexit window. I do not have any details from the ECHA on that, but if I receive any further information, I will make sure it is passed to the noble Lord.

[Lord Gardiner of Kimble]

The noble Lord, Lord Fox, mentioned the duplication of costs. It is the case that, unfortunately, if there is no deal and we have to set up a UK REACH system, or if at the end of the negotiations participation is not possible, we would, as other countries do, have to have a regulatory system. However, I emphasise that, through our transitional measures, we are seeking to minimise the costs; for companies registering new chemicals, the requirements will be the same.

I understand the concerns of business and civil society. That is why we have had such a considerable number of discussions, as I referred to in my opening remarks, with business, all representatives who have an interest and Ministers in BEIS.

I was struck by last Thursday's intervention from the noble Lord, Lord McKenzie of Luton. He described the Health and Safety Executive as,

"one of the jewels in the crown of our regulatory firmament",—[*Official Report*, 21/3/19; col. 1602.]

and said he had no doubt about its intellectual capability. I agree with the noble Lord and with the points made by the noble Lord, Lord Whitty: no other organisation is better placed than the HSE to act as the UK agency.

As I said, we intend to scale-up resources to £13 million at full operation. I say to my noble friend Lady McIntosh that this funding is primarily for human resourcing in Defra, the HSE and the Environment Agency, to make sure that: we have the necessary levels of technical specialist input into risk and socioeconomic assessments of chemicals for the UK; first-rate policy advice can be provided; we can increase engagement with UK businesses and appropriate international fora; and we can take forward legislation as we seek to become a global leader in promoting the sound management of chemicals. As the noble Lord, Lord Teverson, rightly identified, the HSE will at this stage take on about 35 to 40 people. We will have a strong and effective regulator by building on the expertise of the HSE and the Environment Agency to operate REACH in the UK. As for the estimated number of staff, we think we will need 135 full-time equivalents across the three organisations of Defra, the EA and the HSE for the work I have outlined.

The noble Lord, Lord Whitty, raised the matter of independence. As the UK agency, the HSE must also draw on independent expert scientific advice when developing its opinions on restrictions and authorisations. This will add to the robust evidence and analysis underpinning its opinions. If there are reasons the HSE does not commission independent advice—for example, where ECHA has already published a robust opinion on a chemical—it must publish its justification.

The noble Lords, Lord Fox, Lord Teverson and Lord Whitty, raised the potential costs to industry. The instrument puts in place transitional arrangements to provide business continuity. We are bringing all UK registrations automatically into UK REACH, so there is no break in market access. We are making sure that companies can continue to buy chemicals from the EU from day one. Grandfathering means that there will be no break in industry's duty to identify and apply the appropriate risk management measures in businesses. We will not weaken the "no data, no market" principle because that is fundamental to REACH. But we have engaged closely with industry stakeholders about costs and how to mitigate them. As I said, the UK Chemical Industries Association and Cefic have published their joint recommendation that data used to register under REACH should be available for UK REACH at no extra charge.

On grandfathering, we acknowledge the existing ECHA registrations. That is why we have the grandfathering system and will accept reduced information for the first two years. But that is not a tenable position in the long term if we want to have an effective regulatory system that protects human health and the environment.

A number of noble Lords, particularly the noble Lord, Lord Trees, mentioned animal testing. This instrument preserves the built-in mechanisms to reduce the amount of animal testing. This is the last-resort principle that means that companies and the regulator can turn to animal tests only if they have exhausted all other ways of getting the information they need to complete the understanding of the chemical. There is also the testing proposal mechanism, which means that in many cases industry cannot proceed with animal testing unless it gets the regulator's agreement first. The UK's regulations preserve these provisions. Without this instrument, we would not have those powers to stop animal testing.

The UK's record on these matters is acknowledged internationally, which was mentioned by the noble Lord, Lord Whitty. The UK has been the forefront in ECHA in opposing animal tests where alternative approaches are available. I should say to the noble Lord, Lord Trees, that we will aim to harmonise as much as possible. We will accept existing animal tests produced for EU REACH. We will not ask for new ones. Looking forward, we will work on the basis of mutual acceptance of data and the EU follows the same principle.

The noble Lord, Lord Fox, raised the important issue of environmental protections. The Government have repeatedly made clear their commitment to environmental standards. The policy paper that we published alongside the environment Bill in December last year reinforces the regulatory provisions throughout REACH that are fully preserved in the instrument today.

I also say to the noble Lord, Lord Krebs, that we will continue to need robust scientific evidence to make sure that we are properly protecting human health and the environment. That is why we have put in place strong arrangements for scientific advice. The HSE must seek external knowledge and advice when forming its opinions or otherwise justify why it has decided not to. It must act in a way that ensures a high level of transparency and it must publish its opinions. The HSE will have access to the best advice and will not be limited to the UK or even the EU. Indeed, we think by contrast that a UK statutory committee runs the risk of rather narrower membership and limiting our access to expertise. We are also committed to transparent processes. We will have arrangements in place in UK REACH to allow stakeholders to observe discussions and considerations where independent scientific advice is provided and to read publicly available minutes of these meetings.

The noble Lords, Lord Krebs and Lord Fox, raised divergence. It is the case that industry and NGOs have expressed views on that matter. First, the UK will not diverge from EU regulatory standards, at least not if that means reducing our standards. In other words, that we will retain the highest possible standards is the whole basis of this regulation. We will look very closely at what the EU does, but it is right that our regulators should apply their own judgment based on independent, expert advice on individual chemicals.

5.45 pm

My noble friend Lady McIntosh asked about IP and continued co-operation with the EU. Again, we have recognised the importance of continued co-operation. We will work through the negotiations to achieve that.

In speaking to his amendment, the noble Lord, Lord Whitty, raised the issue of the Government making continued United Kingdom participation in the European Chemicals Agency and REACH an objective in negotiations with the European Union. The Government's objective is exactly that. Having read the sub-committee report of the noble Lord, Lord Teverson, that principle was welcomed by the committee. But we cannot unilaterally provide for that in UK legislation. The purpose of this SI is to make the legislative arrangements for a stand-alone UK chemicals regime in the event of our leaving without a withdrawal deal, although as I emphasised to my noble friend Lady McIntosh, the Government's aims for chemicals in a negotiated future relationship with the EU were set out in the White Paper. The White Paper looks forward, as has been said, to participation by the UK in agencies such as the European Chemicals Agency, a common rulebook for sectors such as chemicals and continued participation.

This is an important debate, but my noble friend the Chief Whip has told me that I am taking too much time. May I take a number of points because they are important?

I naturally regret the observations of the noble Lord, Lord Teverson—and the noble Viscount, Lord Hanworth—about Defra and its response. However, I know that my honourable friend the Parliamentary Under-Secretary of State for the Environment is in regular correspondence with the noble Lord. Work began on this in 2016, so I can assure noble Lords that a huge amount of work has gone into this.

I would also say to the noble Viscount, Lord Hanworth, and the noble Lords, Lord Krebs and Lord Teverson, and my noble friend Lord Selkirk, that I learnt about the professors on the noble Lords' committee. I found that report a great assistance in assessing the issues.

I can assure noble Lords that the importance of the chemical industry is fully understood. Alongside this, we all want to have a regime in place that gives us confidence about the responsible use of chemicals. As far as I have been informed, industry has been clear, whatever reservations it has about certain elements, that it needs this instrument on the statute book.

I will assess the quite considerable number of other questions that I have not been quick enough to handle, but I respectfully say to the three noble Lords, all of whom I know have a deep understanding of this issue, that it would be much appreciated if they felt able not to press their amendments and to support the instrument.

Lord Fox: My Lords, I thank the Minister for his response. He should not apologise for going to length. This is an important issue and it could shape the future regulation of a very important part of our national life. My noble friend Lord Teverson said that his committee had the impression that Defra did not grasp the scale of the undertaking of chemical regulation. After noble Lords' contributions today, that will not be the case with the Minister or with Defra. All noble Lords contributed something different in setting out the problems with this statutory instrument. There are problems with cost duplication. There is a likelihood that the number of animal tests will increase. There is no assurance that the HSE has the resources or systems to deliver this.

Tied to all this is that it has been left too late. This statutory instrument is not fit for purpose, yet by running it down to the wire, by literally leaving it to the last possible moment, as my noble friend Lady Bakewell said, there is not time to replace it with something that is fit for purpose. The purpose of this debate is to set out the big issues that face this statutory instrument. This is Defra's statutory instrument, the Government's statutory instrument and, frankly, the Minister's statutory instrument. I hope we never have to see it in action because I believe it to be deeply flawed and that the country would suffer. I shall not press this amendment to a vote today because I think the Minister can live with this statutory instrument in the future. I beg leave to withdraw my amendment, but I shall support the noble Lord, Lord Whitty, if he presses his amendment.

Amendment to the Motion withdrawn.

Amendment to the Motion

Moved by ***Lord Whitty***

At the end insert "but this House regrets that the draft Regulations fail to fulfil the Prime Minister's intention to maintain the United Kingdom's participation in the European Chemicals Agency, which would have avoided (1) the duplication of registrations and the consequential increased costs to United Kingdom manufacturers, downstream users and importers, (2) the duplication of testing procedures, including animal testing, and (3) the pressure on the resources and expertise of the Health and Safety Executive and the environment agencies, which could increase the risks to United Kingdom citizens' health, and to our environment; and calls on Her Majesty's Government to make continued United Kingdom participation in the European Chemicals Agency and REACH an objective in negotiations with the European Union".

Lord Whitty: In view of the widespread concern around the House, I beg to move.

5.51 pm

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6.03 pm

Amendment to the Motion

Tabled by ***Lord Teverson***

At the end insert "but this House regrets that the draft Regulations do not address concerns raised by the European Union Committee in their report *Brexit: chemical regulation,* published on 7 November 2018, about Her Majesty's Government's plans for chemical regulation after the United Kingdom's exit from the European Union."

Relevant document: 23rd Report from the European Union Committee

Amendment to the Motion not moved.

Motion, as amended, agreed.

Common Fisheries Policy (Amendment etc.) (EU Exit) Regulations 2019

Motion to Approve

6.03 pm

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

That the draft Regulations laid before the House on 17 January be approved.

Relevant documents: 15th and 19th Reports from the Secondary Legislation Scrutiny Committee (Sub-Committee A)

Baroness Vere of Norbiton (Con): My Lords, these grouped instruments will ensure that all the applicable parts of the common fisheries policy have effect in UK law, should the UK leave the EU without a deal. The technical amendments that they make will ensure that retained EU law provides effective and enforceable UK law, as well as continuity to businesses, while protecting the environment. No policy changes are made to the effect of the retained EU law and no change is expected in the way that the fishing industry conducts its activities as a result of the instruments.

These three instruments are closely related. Two of them amend some of the same regulations—one making simple fixes and the other transferring powers to exercise functions contained in those regulations. The third instrument amends late-emerging regulations that came into force in late December 2018 and January 2019. Together, they amend retained EU law in order to provide legal continuity for UK fisheries management post EU exit.

The amendments extend and apply to the United Kingdom. Fisheries management in the UK is largely devolved to Scotland, Wales and Northern Ireland. These instruments have been developed and drafted in close co-operation with the devolved Administrations, who have given their consent, ensuring a common approach which respects the existing devolution settlements and maintains the existing system of fisheries management. For the future, the UK Government and the devolved Administrations are working together to develop a new UK framework made up of both legislative and non-legislative elements in order to maintain a common approach in a number of areas.

[Baroness Vere of Norbiton]

Where provisions place obligations or confer functions or powers on member states, the references to member states are, generally speaking, changed to "a fisheries administration" to maintain the existing system of fisheries management. In addition, EU-specific terms, such as "Union vessels" or "Union waters", have been replaced with an equivalent term—for example, "United Kingdom vessels" and "United Kingdom waters"—to apply them to the UK only.

I shall deal briefly with each SI in turn. The first one, the Common Fisheries Policy (Amendment etc.) (EU Exit) Regulations 2019, amends the majority of retained EU legislation. I refer noble Lords to paragraph 2.2 of the Explanatory Memorandum, which sets out the regulations that are amended by this instrument. These regulations include the following: the basic regulation; the control regulations; regulations on illegal, unregulated and unreported fishing; multiannual plans and effort regimes; the data collection frameworks, and many more. Other provisions—for example, those defining characteristics for vessels, the fishing fleet register and measures for the conservation of resources and ecosystems—will also be amended.

The instrument was presented to the sifting committee on 27 November 2018 and it recommended that it be subject to the affirmative procedure. Since then, additional detail has been added to the Explanatory Memorandum, including an annexe that more fully describes the nature of the amendments made by the instrument. It has been considered by the Secondary Legislation Scrutiny Committee, which reported the instrument due to the public and political importance of fisheries. The Joint Committee on Statutory Instruments did not report it.

The second SI, the Common Fisheries Policy and Aquaculture (Amendment etc.) (EU Exit) Regulations 2019, amends regulations concerned with regional fisheries management organisations—RFMOs. Having these in place when we leave the EU will mean that we are fully compliant with international agreements, allowing us to join key conventions in our own right. The SI also amends the technical conservation measures that fishing vessels must adhere to. These regulations are essential for the management of the fisheries activities of UK vessels, wherever they are, and non-UK vessels in UK waters.

Furthermore, amendments are made to the North Sea multiannual plan, which establishes long-term plans for the recovery, preservation and sustainable management of mixed fisheries in the North Sea. The instrument also transfers powers previously conferred upon EU entities to make legislation or exercise legislative decisions. These will now be enacted by UK Administrations, and parliamentarians will be able to scrutinise them in a way not possible when the powers were exercised by the EU. There are also minor consequential changes to domestic legislation. The instrument has been considered by the SLSC and the JCSI, neither of which reported it.

Thirdly and finally, the Common Fisheries Policy (Amendment etc.) (EU Exit) (No. 2) Regulations 2019 amend three regulations that set out exemptions from the landing obligation for certain fisheries in north-western waters and the North Sea. The minor, technical amendments to these provisions enable the UK to facilitate the full implementation of the scheme from January 2019. This will ensure that the UK continues to abide by the same conservation measures.

The SI also amends two regulations that set fishing opportunities. One sets total allowable catch—TAC—and quota for fish stocks for 2019, and the second sets total allowable catch and quota for certain deep-sea stocks for 2019 and 2020. In these two regulations, the prohibitions on the fishing of certain species in certain areas will be amended so that they continue to apply. However, provisions that put into law the TAC and quota set by the EU will be revoked because it will not be appropriate for these to apply to the UK when we become an independent coastal state. Again, the instrument has been considered by the SLSC and the JCSI, neither of which reported it.

Because these instruments make only necessary technical amendments to retained EU law that, prior to exit day, already applies in the form of directly applicable EU law, the impact is expected to be minimal and therefore a full impact assessment was not carried out. While there was no formal duty to consult, a 10-week consultation was conducted through the fisheries White Paper, which described future fisheries policy as well as the general legislative approach taken by these SIs.

Alongside that, meetings have taken place with key stakeholders from the fisheries sector, including the National Federation of Fishermen's Organisations and the Scottish Fishermen's Federation; the wider industry, including producer organisations; and environmental non-government bodies such as the World Wildlife Fund. Stakeholders, including the Association of Inshore Fisheries and Conservation Authorities, were supportive of the approach. We have also been happy to receive questions and comments from environmental non-governmental organisations, including ClientEarth and the Green Alliance, which we have addressed in the Explanatory Memorandum and made publicly available.

These instruments make retained EU law effective in UK law. The legislation is essential to ensure that we retain an effective system of fisheries management from day one of EU exit, so that our fishing continues to be well regulated and sustainable. This legislation is complemented by the Fisheries Bill, which creates the powers to allow us, over time, to build UK policy for a sustainable and profitable fishing industry. A previous instrument, the Fisheries (Amendment) (EU Exit) Regulations 2019, amended domestic fisheries legislation to make it effective in UK law after EU exit; some of those amendments arose as a consequence of changes made by these instruments. That instrument was taken through this House by my noble friend Lord Gardiner on 6 February 2019. I beg to move.

Baroness McIntosh of Pickering (Con): My Lords, I thank my noble friend the Minister for moving these rather meaty statutory instruments. I would like to place on record my admiration for the then fisheries Minister in the other place, my honourable friend Richard Benyon, for the fisheries policy that he negotiated. It has been revolutionary and has changed the way that fisheries policy is decided and conservation measures are taken. It set the scene by allowing coastal states to agree what the conservation measures would be.

Under the new provisions that we are adopting this evening, with retained EU law and making sure, as she said, that there is a smooth transition to our becoming a third country, if one cares about conservation of fisheries going forward, how will we agree conservation measures with the nearest coastal state? The way that the map is drawn means that we virtually share waters with our nearest neighbour, France. The Scottish fisheries situation is slightly different in that Scotland does not have a near neighbour in the sense of backing up to a coastal state.

Having said that, I think that Scottish fishermen will be deeply interested in one of the few—three, in fact—rollover agreements that has been agreed: that with the Faroe Islands, where we take £200 million mostly in fish products each year. Obviously, that will compete directly with the Scottish fisheries. I understand that the agreements with Norway and Iceland are not yet available to view, but I would imagine that most of the imported products from Norway and Iceland will also be in fisheries. I have two questions on that. First, what discussions have there been in the Joint Ministerial Council on the rollover agreements to date, the future rollover agreements and the implications, particularly for Scottish fishermen? Secondly, how will we agree going forward to conserve those fish? I have always maintained that fish do not wear a union jack; they swim between the various waters and it is very difficult to control them. We need a conservation policy that will be shared on an ongoing basis with our near neighbours, the French and others, with whom we currently share a common fisheries policy. Going forward, I am sure that it will be the Government's intention to do this.

6.15 pm

My noble friend the Minister explained that, through these SIs, we will agree total allowable catches and quotas; and she set out the arrangements in these for 2019. She will be aware of an ongoing problem that currently plagues most coastal fisheries in the United Kingdom, which has absolutely nothing to do with the common fisheries policy. It could have—but has not—been resolved within the terms of the common fisheries policy. Will the Minister confirm—where it is appropriate and where there is a surplus in the quota—that we will take this opportunity to allow inshore fishermen, particularly under 10 metre fishermen, an increased quota of cod?

The reason I make this plea is that I was for five years the MP for Filey. There is now only one boat—or possibly there are no boats—fishing out of Filey. In that part of north Yorkshire they fish predominantly for shellfish but they have always made this plea about cod. So too has my right honourable friend the Secretary of State for Work and Pensions, with whom I visited Hastings a number of years ago to see how they would benefit from an additional quota for cod where appropriate. As we are leaving the European Union and setting up our own quota, will my noble friend the Minister use this opportunity, where there is a supply of cod, to allow these inshore fishermen access to that cod quota? It would potentially increase their livelihood and their income substantially.

Baroness Byford (Con): My Lords, I thank my noble friend the Minister for introducing these statutory instruments, which I welcome. As she said, it will enable us to have a smooth transition from the current arrangements with the EU, and I am pleased to know that the international agreements are well in place. I personally look forward to our taking responsibility for our own fisheries in future years, and I am delighted that work has continued with the regional and devolved bodies to make sure that this will happen.

I have three questions, but I would first like to make one or two other comments. The most important thing, which has been worrying many of us who have spoken in fishing debates before, is the question of our responsibility towards having sustainable stocks in the future and looking at total allowable catches. It is very important that science continues to work with the industry, because that is the best way forward.

The landing obligations are referred to in the statutory instruments, but I wonder whether my noble friend has more details that she would like to share with us. On the EU quota set, which was 69% in 2018, I was somewhat disturbed to learn that it has dropped to a minimum 59% in 2019. I wonder what the reason is for that.

Like other noble Lords, I have received briefing papers from the Marine Conservation Society, Greener UK and Wildlife, to name just a few. They have a series of questions, which I would like to put. The first is about enforcement when we come away from the EU. Is the Minister quite content that we will have enforcement systems in situ when we leave?

Secondly, I believe that a governance gap is possible in the way in which we currently have to report to the EU. At the moment we are slightly in limbo, because the Fisheries Bill in the House of Commons is not moving. We have also been promised a draft environment Bill, but that is still on hold; we do not have it. So the question is: if we move away and this comes into being sooner rather than later, who will actually act to hold the Government to account? At the moment, it is not clear from the statutory instruments.

I turn to the landing obligations, particularly regarding discards. This issue has troubled us over many years and I do not think that there is enough about it in these two statutory instruments. The Minister may say that it is not necessary, but it would be good to have some form of words about landing obligations, and discards in particular. I will also refer to a practice that I think is totally unacceptable: the trawling that has occurred on some sea beds around the country. Over the last few weeks I have been asking Questions on this matter and getting Answers from Ministers. The issue is not featured in these SIs but it is of huge interest and importance.

On the reporting requirements, there is no detail. I wonder therefore whether the proposed office for environmental protection is the Government's choice. As that will not be in being to start with, have they considered using the Marine Management Organisation as a possible office to hold in the in-between time? Scientific research is hugely important, and we need to look at that in future.

[Baroness Byford]

There are many other areas on which I could talk with great passion about the fishing industry. I personally look forward to us gaining control over the waters around our country. I know that the negotiations will not be very easy. Some of the organisations that I have mentioned have concerns about what is in these statutory instruments, what is coming in the Fisheries Bill and the gap between the two. If my contribution tonight has slightly reflected those concerns, I think it has been worth while.

I accept the statutory instruments as they stand. I am grateful to the secondary legislation committees that have done a lot of work on this. We have a great opportunity in front of us—a way in which we can work together for the benefit of the whole. In the meantime, though, there are some practical questions that I think need answering.

Lord Eames (CB): My Lords, I too welcome the way in which these statutory instruments have been introduced to the House and welcome their gist, particularly in relation to inshore fishing. However, I will press the Minister on the question of the fishing industry in Northern Ireland. Once more we are reminded that the land border that has been between Northern Ireland and the Republic is soon to become the border between the EU and the UK. Because of that, there are special sensitivities, stretching into fishing among other industries, of which we must be aware.

I ask the Minister to address the issue of the relationship between fishing in what will then be the EU but is today the Republic of Ireland, and fishing from County Down and County Antrim in Northern Ireland. The reason I raise this is that recently there was an incident where two vessels from Northern Ireland ended up in police custody in the EU/Republic of Ireland. That was a misunderstanding, but it shows how easily the sensitivities over the way in which our waters are controlled and policed can boil over into actual incidents.

What consultation has there been, particularly with the Irish Republic, on the question of policing the Irish Sea waters? This issue is particularly concerning the fishing industry in Northern Ireland at the moment as we move towards Brexit. The detailed information that the SI contains can encourage confidence, but it indicates that there can be a great difference between the written word and practice. That applies equally to the fishing industry in Scotland so far as the Irish Sea is concerned.

I ask the Minister: can we expect real sensitivity on the question of the Northern Irish fishing industry after Brexit under the terms of this SI, given the proximity of the EU to the Irish Sea situation? This is not just an academic issue; it is one of deep concern to an industry that is already under great pressure.

Lord Deben (Con): My Lords, I am the longest-serving Fisheries Minister. I am therefore very concerned to intervene in this debate.

I have always been surprised by the degree to which people talk about the common fisheries policy as if there were no need for a common policy. The policy may not be the best one that we could have, but the truth is that even after these SIs are passed the idea that we can take control of what we call "our" waters is just not true. Many of those waters, irrespective of the common fisheries policy, are shared. If you are only 22 miles from France, it is not surprising that many of these waters are shared and you need a common policy. These SIs fly in the face of any sense because we are not going to have a national policy except in the areas where, largely, we have already had one. The noble and right reverend Lord talked about inshore fishermen. We have been able to deal with the inshore fishermen for a very long time, even though many of them blame their situation on the common fisheries policy when it should be blamed on the British Government under various different parties.

A common policy is essential because, first, we have shared fishing grounds and, secondly, we have shared stock. Even if the fish happen to be in our waters at a particular time, as my noble friend Lady McIntosh pointed out, they may well have come from other waters. They do not carry flags. The fact is that unless you have a common policy about fish conservation, you find yourself in a very dangerous position, because one lot of fishermen can say, "Well, I'm not going to conserve if the other lot aren't"—and of course all fishermen believe that other fishermen are not. Let us be perfectly clear about that point: if you have been Fisheries Minister for as long as I was, you discover that that is the case. I remember a man in my own constituency, in a small fishing village of about seven or eight boats in all, to whom, after a meeting when they were complaining about everything, I said: "I thought you were going to complain about that Belgian trawler". "Ah", he said, "them Belgian trawlers I can put up with. It's Lowestoft men I can't stand".

The truth is that there is an ability between different fishing communities to find their neighbours not terribly helpful, so if the Government think they are going to have an easy time, I have to warn my noble friend that they are not. They can no longer blame the common fisheries policy; they will have to accept responsibility. However, they will not have the power because they will not be able to control the stocks; nor will they control the areas in which we have joint arrangements.

Historically, we dealt with that. There were a lot of fish and, if someone got in your way, a marlinspike was no doubt used. We then had a more sensible policy and we are now trying to move ourselves towards some way of relating to our neighbours. The noble and right reverend Lord from the north of Ireland made a very important point about the closeness, the lines and how you organise this. I am unhappy about this statutory instrument because it is another example of us trying to do something which is manifestly worse than what we had before.

6.30 pm

My second major point is that the fishermen have been very widely misled. They think that two things will happen: first, that we will take control of all these fisheries areas and, secondly, that they will have more opportunity to fish. We do not increase the number of fish by leaving the common fisheries policy. What we do is find the much more difficult issue of dealing with the contradictory demands of the fishermen on the one hand and of conservation on the other.

Thirdly, not only have we got ourselves into those two positions but we have removed ourselves from the very important role we played. My noble friend Lady McIntosh referred to my right honourable friend Richard Benyon, who was, in my view, the best Fisheries Minister we have had. That is a proper compliment; I really think he was. He was crucial in ensuring that we improved the conservation policies of the European Union. Our voice has always been for conservation, despite the unhappiness of the fishermen. I used to deal with fishermen who were appalled that one fought for the science. Of course, if we leave the European Union, we will not be in those discussions, so we will not be able to defend our fishing stocks. They are joint stocks; there are no national stocks or national fish. Generally, fish wander where they wish. You either have a common conservation system or a much less effective one. We make it even less effective because there will be no British Fisheries Minister there to argue the case for conservation and ensure that the common policies enhance it.

The fourth issue which seems to arise here is that we produce this policy and these agreements, saying that we will merely put into British law what is already there in European law, and then we face the fishing industry. The problem with that industry is that it touches the heart of very large numbers of people. It is, I think, smaller in size than the British lawnmower industry, but the fact is that we have a range of Ministers trying to satisfy the call of the fishermen in different parts of the country.

I share this view. I dealt with villages all the way down the Suffolk coast, that 70-mile stretch, which had a whole range of small groups of fishermen. I yield to no one in my enthusiasm for the fishing industry. But I also know that the Government have told people how wonderful it will be. I have read the speeches of my right honourable friend the Secretary of State for Defra. If I were a fisherman listening to those speeches, I would think that the land of milk and honey was coming and that there was going to be a most wonderful new circumstance. However, there will not be, because we do not create fish by political disengagement.

What will happen is that my noble friend and her noble neighbour, and the right honourable and honourable Ministers, will now be the centre of all the discontent of fishermen. They will say exactly what they have always said, which is that we have to follow the science. That means that we will have to be tough about conservation. But of course they will no longer have the European Union to blame.

That brings me to my fifth point. It was not just British Ministers who were so important in the European Union, it was British fishery scientists. We have some of the finest fishery scientists in the world. What arrangements are being made for them? How will we see that their advice, on waters that are shared and certainly very similar, will be heard by the European Union as it always was? Will British fishery scientists be excluded from the opportunities they have had up to now, because of our wanton stupidity in leaving the European Union? I see nothing in this SI which refers to that; there probably is no place for it, but I hope my noble friend will tell me something about Defra's intention to support our fishery scientists, who are so important. Will it make sure that their voices are heard elsewhere?

My noble friend Lady Byford made some important points which I want to refer to. Of course, this SI has to keep to the simple—simple!—business of translating EU law into British law. In doing that, it once again raises the real issues of discards and trawling the seabed. In all the rhetoric about Brexit and fisheries, I have not seen any new concepts, ideas or intentions about the very serious damage done by trawling the seabed or discarding. We are waiting for the Fisheries Bill but, in what we know about it, I have not seen much evidence of any really innovative or imaginative arrangements on those issues.

Finally, I must say to my noble friend that I very much hope that she will not ask the MMO to take responsibility here. There are some real questions about the efficacy and abilities of the MMO. The truth is that, as a nation, we have not been all that good at fisheries management, even of the areas over which we have had total control. I think my noble friend Lady Byford will agree that, over the last 20 years, we have been very concerned about some of the management issues and the lack of an ear to hear the problems. Like her, I am worried that there is a gap in governance here. We are in a position in which we do not have a Fisheries Bill or an environment Bill, in any real sense. We will have the SI but, unless the House of Commons manages to do something to rescue this whole wretched business, which I pray it will, we will find ourselves outside the European Union with neither of those Bills. Therefore, this SI will stand alone, with all its difficulties and dangers. I hope my noble friend will give us some confidence that we have a plan B for governance, which we would hope to have from those two Bills.

I am sorry to have detained the House for this long, but I have done so because it seems that very large numbers of people in the fisheries industry have been sold a totally false story. They have been told that life will be wholly different, better and much more independent outside the European Union. Actually, it is unlikely that life will change much for them. In so far as it does, it will be worse, because we will no longer have influence over the people with whom we share our stocks and, very often, our fishing grounds. Of course I will support this SI, because we have to have it, but my goodness, what a miserable day for the fisheries industry.

Lord Teverson (LD): My Lords, I say to the noble Lord, Lord Deben, not to worry too much because the fishing industry will have already assumed that it will be sold out. It always does. I suspect that it hears all the expectations, but is very cynical about them. That certainly seems to be the case in Cornwall, where I come from.

I do not wish this debate to be a Richard Benyon love-in, but I agree with the noble Lord, Lord Deben. When I was a Member of the European Parliament, along with the noble Baroness, Lady McIntosh, I was very critical of the common fisheries policy. I was on the fisheries committee of the European Parliament.

[Lord Teverson]
We said that there had to be regionalisation of this policy. We also said that the way international agreements, which I will come on to, are implemented has to change so that there is some conservation of the stocks of African or Mediterranean states, rather than them being completely pillaged. We also covered areas such as discard, which I will come on to as well.

The fact is that Britain took on that agenda. Whichever DG it was, I think DG14, the Fisheries Commission, was one of the most conservative and backward-looking directorates that I found in Brussels, yet we changed that. The irony is that we are leaving the common fisheries policy when we actually had significant regionalisation for a couple of years—that is still being implemented—a landing obligation, although I will come back to its effectiveness, and many other reforms.

The noble and right reverend Lord, Lord Eames, and the noble Baroness, Lady Byford, brought up control of our waters. We have absolutely no control over the fish. In fact, the spawning grounds are often in a different EEZ from where they are caught. We have negotiation over quotas, with relative stability being the problem where we can maybe negotiate, but we should never forget that we have total control of enforcement over our own EEZs, whatever nation is flagged on a vessel. If we are not controlling them that is our problem.

I can now talk a little about that, because I ceased to be a board member of the MMO at the end of January after six years of the privilege of being in that position. The MMO, like most Defra organisations, suffered budget cut after budget cut. Its main concern, which comes back to environmental protection, is that it was to do the minimum—I exaggerate slightly; it wanted to do the most it could—to avoid infraction. It did a great job with reducing resources—much better than most private industry could do. That was its challenge.

I come back to the SIs. As we have said, we are waiting for the Fisheries Bill, which is not here, but one of the most important preparations for day one of a no-deal Brexit—which is of course not in the SI and I am not asking the Minister to respond on it—is how we cope on the high seas with the very high emotions of fishermen and fisherwomen who will be excluded from their traditional fishing grounds. We saw last year at the Baie de la Seine how tempers rose very strongly over a completely different issue. There was actual conflict and physical abuse, not of people, but of vessels, and danger to individuals because emotions understandably run very high in the industry, where there is high danger to individuals considering the conditions it has to operate in. If we get it wrong on day one and there is conflict on the high seas because of it, it will be the first area where there will be physical conflict because of Brexit. It is a real issue. Both sides have to be very clear on enforcement and how they will respond to provocations. If there is one area where there will be conflict it will be this one. I very much hope that there will not be, as we all do, because there is danger on the high seas. Anyway, I am not asking the Minister to respond to that. I am sure the authorities are making sure that will be the case.

6.45 pm

I thank the Minister for having a meeting with us, during which we went through some of these issues. I have to ask the House's forgiveness in that I do not particularly understand the status of the North Sea multiannual plan. I understand all the other international agreements—the North-West Atlantic Fisheries Organization, the north-east Atlantic fishing organisation and the Atlantic tuna organisation. That is all being sorted out. They are international agreements and we will be a member of them. I do not understand the status of the agreement with the North Sea multiannual plan, which we know is crucial. It has been very successful in regenerating stocks in the North Sea, which effectively became an ecological desert and has become far better. I would be interested to understand whether it is an international agreement. I know that my EU sub-committee has looked at the other three international agreements, but we have not looked at that one. I would be very interested to understand what its status is and how we will continue to play a full part in it. Just for the record, I would like to ask the Minister how much the other three agreements will cost British taxpayers. I know it will be in the hundreds of thousands of pounds. It would be useful to put on record the extra cost to the British Treasury from our becoming individual members, rather than sharing EU membership.

The SI's Explanatory Memorandum says that we are not bothering about the southern fisheries agreements that the EU has with a number of other nations in the Mediterranean and Africa, but I would like confirmation as to whether any British-flagged vessels take advantage of those agreements. Will they then be excluded from Brexit day?

One of the other areas that the Government have not declared a position on is what happens to the quotas agreed in December last year if we have a no-deal Brexit in the next couple of months. Will those quotas remain until the end of the year? At the moment the fishing industry does not know what access it will have to stocks in the rest of the year. That is one area where the Government could give a greater deal of certainty.

Coming back to money, I note that the Explanatory Memorandum says:

> "The draft Regulations propose the transfer of fee raising powers".

I would like the Minister to confirm that no additional charges on the industry will be made as a result of these SIs.

I come back to the point from the noble Baroness, Lady McIntosh—in fact from all noble Lords—that these are common stocks; they are a common resource. Advisory councils have been a great innovation. The Explanatory Memorandum effectively says that we will come out of them. I guess we have to, but that is not an acceptable solution. We have from day one to continue to work with other coastal states—I include Norway, which is an EEA member, as well as member states—to make sure that consultation and working together on the range of fish stocks will carry on, whether in the North Sea, the western waters or the Irish Sea. I would be very interested to understand the Government's intentions.

One of the number of EU institutions that exists in the UK as a result of the common fisheries policy is producer organisations. They are very much an EU institution. They are very important organisations that allocate quotas between their members. They carry out a number of other functions to do with the common commercial policy and marketing. Will these remain exactly the same and does this SI cover that?

Finally, I want to come to conservation and sustainable yield, which the noble Baroness, Lady Byford, mentioned. It is really important. The noble Baroness, Lady Jones, will speak more about this, but I just wanted to deal with a statistic mentioned by the noble Baroness, Lady Byford. We in the EU Energy and Environment Sub-Committee were very concerned, and wrote to the Minister, about the fact that at the last agreement of the CFP in December, the number of stocks achieving maximum sustainable yield was decreasing from 69% in 2018 to 59% in 2019. That is unacceptable. The statutory target in the common fisheries policy is for all stocks to meet maximum sustainable yield by 2020, which is now next year. I would like to understand from the Minister what we are doing to achieve that, and why we are not including MSY in this area.

I completely understand that some of those quotas were increased because of the landing obligation and because there should be fewer discards. I went to an EU conference in Copenhagen earlier this year, the purpose of which was the landing obligation. All the northern European states that did fisheries were there. Not one—including the United Kingdom—was actually applying the landing obligation. It is not happening. It is not being enforced. The indicator is the number of non-discarded fish outside quota that are landed. There are hardly any port facilities for them to be landed, and there have been hardly any landings. That concerns me in its own right but, in the context of this SI, I am more concerned that perhaps we have increased quotas to take account of what is not discarded, while in reality discarding is continuing.

Baroness Jones of Whitchurch (Lab): My Lords, I thank the noble Baroness for her introduction to these three SIs, and for the courtesy of meeting us, with her officials, beforehand. I thank all noble Lords who have spoken in this debate. As has been said, these SIs are of vital importance to the future of the UK fishing industry. We need something of this kind because we need to understand the arrangements that will be in place on day one. If we do have a no-deal exit—I echo the view of noble Lords who have said that it is very much to be avoided and regretted—then we cannot afford to be in a situation where people on the high seas are allowed to do their own things and are not regulated at all, which may otherwise be the point. Therefore, we do need some rules about all of this.

The EU withdrawal Act set out that, in SIs of this kind, there should be only the technical details that are necessary to ensure continuity with the previous EU rules and requirements. At this point, we should just be trying to mirror, as far as we can, the existing EU rules, accepting that more fundamental changes should be matters for another day, when we are able to give the proposals deeper scrutiny and talk about the wider issues that noble Lords have, quite rightly, raised today. We have a major concern that these proposed SIs go way beyond the withdrawal Act remit—an issue raised by the noble Lord, Lord Deben, the noble Baroness, Lady Byford, and others. In a number of areas, the SIs anticipate further changes that the Government expect to make to fisheries legislation, based on the fisheries White Paper and the Fisheries Bill currently being considered in the Commons. They also anticipate that the oversight and enforcement functions will be absorbed by the new environmental watchdog, proposals for which are set out in the draft environment Bill, which is not even expected to be published in its final form until the next parliamentary Session. These assumptions were confirmed in the letter sent by Defra to the Secondary Legislation Scrutiny Committee, which had raised issues about these points.

This really is not good enough. While I understand that the drafters of these SIs do not always have UK institutions comparable to those of the EU, they have an obligation in these EU exit SIs to match the existing powers, functions and responsibilities in the relevant EU legislation, and to match, as far as they can, the powers that exist in EU institutions. These SIs fail to do that. It cannot simply be assumed that the Fisheries Bill, which we have never considered in your Lordships' House, and the outcome of which we do not know, will provide the answers. It may also be that, when we get to the Fisheries Bill, we will have the opportunity to debate discards, the trawling of the seas and so on. Those are, quite rightly, issues for another day. What we have before us now should not be a precursor to the Fisheries Bill but, as far as possible, what we have under the current EU arrangements. That is not what we have in this SI. I hope the Minister can address these concerns in her response.

On the specifics contained in these SIs, the SIs remove the functions in the common fisheries policy that are currently overseen by the European Commission—for example, obligations to provide assessments and reports to the European Commission, including the provision of data on stock quantities and the reporting of certain catches against gear type. They also fail to replicate the Commission's enforcement functions, which will limit the powers of the future office for environmental protection, since the functions would already have been removed from these SIs and would no longer exist in UK law. This would make it very difficult for a future office for environmental protection to take those powers on, as those would be powers that it was not already expected to enforce. As currently drafted, there is a real problem in these SIs concerning the lack of oversight and enforcement. Does the Minister accept that they fail to replicate the European Commission's functions in full? Can she explain how the department intends to rectify that omission?

The regulations in the first SI also remove the obligation on member states to carry out certain inspections and take action on certain infringements—including the establishment of effective, proportionate and dissuasive penalties. The regulations in the second SI remove the requirement to update the list of illegal fishing vessels every three months. I just give those as examples. Is the Minister concerned that these omissions send the wrong signal to fishers who—occasionally—seek to flout the rules, and that more steps need to be taken

[Baroness Jones of Whitchurch]
to emphasise to those fishers that they will be dealt with under an enforcement regime on a par with that of the EU from day one? It is important that the noble Baroness clarifies the position on that matter.

I now turn to the issue of the replacements for the European Fisheries Control Agency and the Scientific, Technical and Economic Committee for Fisheries. There is no apparent substitute for the important role that the EFCA plays in the co-ordination of inspection facilities at European and international levels. This whole issue of co-ordination was raised by the noble Lord, Lord Deben, who quite rightly made the point that, whatever we do, there will be a need for a continuing common policy. He is absolutely right on that. The noble Lord, Lord Teverson, was also right in saying that if we do not get that right from day one, if there is any room for misinterpretation or obfuscation on that whole issue, then there will be a real danger of conflicts on the high seas. We need to have a continuing liaison with our European counterparts to ensure that we know where we are from day one, and to ensure that everybody understands the rules. What arrangements have been made to retain third-party status and to continue to share information about the implementation of rules and standards at UK level? We need to ensure that we have some security and clarity for the fishers as well as continued conservation, which a number of noble Lords quite rightly raised as an important priority.

The regulations in the first SI also remove the ability of member states to share vessel monitoring system data with other member states when a vessel is fishing in that other member state's waters. This could lead to overfishing, so sharing access to that data is crucial. What arrangements are being made to maintain the maximum co-operation on data sharing with other countries, and indeed with the EU?

7 pm

On the STECF, the SIs remove references to its oversight and advisory role. I understand that that organisation will not have a formal function once we leave the EU, but why can the SIs not place an obligation on the Secretary of State to consult with a different specified scientific body, such as Cefas? The SI makes a more general commitment to the best scientific advice and so on, but the more we can pin this down to the actual organisations that will provide that scientific support, the more clarity we will have that it will be dealt with in an organised and effective way.

I go back to the issue of conservation, which has been a running theme through our debate this evening. The noble Lord, Lord Teverson, said that I would raise the issue of the maximum sustainable yield, and I am going to do that because it came up particularly in reference to the third SI. That SI omits the link to Article 6 of Regulation 2019/124, which states that total allowable catches should be set in line with,

"the principle of sustainable exploitation",

and maximum sustainable yield. We need to see that important principle specified and written down. In its letter to the Secondary Legislation Scrutiny Committee, Defra said that it was omitted because the objectives will be restated and updated by the Fisheries Bill. But as I and others have already said, it is not good enough to assume that these issues will be picked up in a future Bill. As things stand, there appears to be no legal commitment to ensure that fishing limits will be set within the maximum sustainable yield, which is a very important principle. These SIs represent a step backwards for the environment and for sustainability. I would be grateful if the Minister could clarify whether she accepts that the maximum sustainable yield provision should have been retained in this SI. What steps will she take to correct the omission and ensure that it is spelt out clearly?

The noble Lord, Lord Teverson, talked about advisory committees. As he said, these SIs delete references to the advisory councils, which have played an important role in bringing stakeholders and the scientific community together in the past. Defra has explained that the reason for this is that it is consulting the sector on a new fisheries advisory infrastructure. I understand that and I know, again, that it is anticipated that this will be spelt out in more detail in the Fisheries Bill. This might all be well and good, but it takes time. The details of what will be proposed are still not clear, and there seems to be no reason why the EU-style advisory council could not have been carried on in the interim. We will otherwise have a vacuum where those consultations are not carried on on a formal basis. Does the Minister now accept that an interim arrangement based on the original model should have been written into the SIs? Will she now agree to take steps to establish an interim advisory structure before the Fisheries Bill can be finalised?

Finally, in a number of places the second SI removes a requirement to act under EU law and makes it an advisory power instead. For example, the requirement on trans-shipment procedures now becomes a discretionary power to act. This again represents a watering down of the EU legislation. Equally, there is no provision to include the recitals of the relevant EU legislation on fishing in these SIs. This goes against the promises made during the passage of the withdrawal Bill to respect and reference recitals. Again, it represents a weakening of the legislation.

I hope that the Minister has made a note of our concerns and that she is able to provide reassurance that the Government intend to make good the omissions that we have identified, and ensure that the fishing sector and environmentalists can have more confidence in the Government's intentions. I look forward to her response.

Baroness Vere of Norbiton: I thank all noble Lords who have taken part in this evening's debate. It has certainly been a debate of great passion. I encourage all noble Lords to bring that passion to the discussions on the Fisheries Bill, during which I hope many of these issues will once again be aired in greater detail and by which we can put them in a legislative framework.

I am confident that these SIs mirror the existing EU rules, with the caveat that the rules must of course be operable. It would be pointless if we brought over rules which simply could not be operated once they reached our rulebook, so it is necessary for these SIs to look as they do. I accept that they are part of a suite of legislation. However, I would caveat that by saying that we are already fairly well down the road in the debate and discussions on the sort of national fisheries

policy that we want to see in the future. As noble Lords will know, we have already had the fisheries White Paper. It went into quite some detail on what the Government feel is an appropriate national fishing policy. There was a 10-week consultation and we had a lot of feedback from various stakeholders.

What is also true is that we are leaving the European Union and, as such, we become an independent coastal state. Again, that comes with various obligations, many of which are about engaging with neighbouring coastal states and encouraging co-operation and the sharing of data. It includes encouraging the sustainability of the seas in which the fish live; when they travel across those borders, they definitely do not have a union Jack on them. I am not as pessimistic as my noble friend Lord Deben about it all being terrible and dreadful, with us being stuck out on our own. There are countries far smaller than us which have very successful negotiating strategies, are able to deal internationally and able to operate their own independent fishing policy.

I accept that we are on a journey and I hope that we get to the next stop on that journey very soon. I think all noble Lords would welcome the opportunity to have a go at the Fisheries Bill—I certainly would—but it is important that the SIs we have tabled for debate today are a temporary measure. They will put a line in the sand and say: "This is where we were at this point". These measures will all make sense and enable us to operate the fishing policy that we currently have.

Lord Deben: All that my noble friend said in that last paragraph is true, except that there is a series of things which operate now and will be put into the Fisheries Bill. There are two problems with this. First, we do not know what or how those provisions will be, so we have to take it on her word—I am perfectly prepared to do so—that it will all be at least as good as the present arrangements. Has it occurred to Defra that it is a peculiar constitutional concept if the Minister asks the House to accept these laws on the basis that there will be laws, rather than having within these provisions an interim arrangement?

Secondly, the noble Baroness, Lady Jones of Whitchurch, made a point about something which I do not understand: that all these things could have been included as an interim arrangement, and that would remain or be changed when we come to the Fisheries Bill. For me, the difficulty is that I am being asked to support something which could have been complete—under the withdrawal Act, it should have been complete—but is not. It is just a promise that it will be completed in the future. I do not understand why that is.

Baroness Vere of Norbiton: I think my noble friend is slightly misconstruing my words: certainly, there are elements within the legislation that could not be brought over because of the withdrawal Act, because it would have made a change in policy or would have gone beyond the powers we have within the withdrawal Act. It was simply not possible to do so, so I am asking noble Lords to consider today that we are on a journey. We have already had a huge number of comments from Ministers in both Houses about where we feel our fisheries policy is going and where we would like it to go, but we would obviously like the support and input of noble Lords as we develop that policy. Even taken by themselves, we do not feel that there are significant omissions that cannot be explained by reasons other than that we are trying to put EU legislation into UK law and it has to work. It has to stand up for itself.

Baroness Jones of Whitchurch: I am sorry to push the noble Baroness—she knows that I do not do this very often—but I have to concur with the comments of the noble Lord, Lord Deben. I listened very carefully to what she said, but to go back to the example of maximum sustainable yield, Defra wrote to the Secondary Legislation Scrutiny Committee saying that the commitment was omitted because it was going to be dealt with in the Fisheries Bill. Maximum sustainable yield could have been put into this SI even though it was going to be corrected, updated, or however the noble Baroness wants to reword it, in a future fisheries Bill. I give that as just one example: we could say the same thing about the advisory councils. There could have been an interim arrangement for advisory councils in this SI, understanding that in the future we might want to restructure them. Those are just a couple of examples. I am not sure that the noble Baroness is very convincing on this. We all want to have a wider discussion on the Fisheries Bill, but that is not what these pieces of secondary legislation are about.

Baroness Vere of Norbiton: I thank the noble Baroness for her comments and will certainly consider them in more detail. If I can get any more information on this, I will send it to her. I repeat, however, that some of the articles were not amended because they are not operable; they are conditional upon mutual access to EU waters. We will be an independent coastal state when we leave, and that will be put in sharper relief if we leave the EU without a deal in days or weeks. We are facing this from the perspective that we will be an independent coastal state and therefore, where there are issues that rely on reciprocity and on the actions of others, we cannot put those, in all good faith, into UK law and expect them to be able to stand up.

I do not want to dwell too much on this because a number of noble Lords asked questions, but I will reflect on it and try to provide the noble Baroness with a bit more clarity. I shall get the legal team on to it to make sure that we cover it. I will say, because a number of noble Lords mentioned it, that sustainable fishing is at the heart of our 25-year environment plan. It underlined the fisheries White Paper and negotiations will be essential, whether that be with our nearest neighbours or countries further away.

The noble Lord, Lord Teverson, my noble friend Lady Byford and the noble Baroness, Lady Jones, raised maximum sustainable yield. We have always been a strong advocate of maximum sustainable yield, both in international agreements and in negotiations over catch limits for shared stocks that we have an interest in, and this is not going to change. For example, Article 6 of the TAC and quota regulation is concerned with TACs to be determined by member states and has been omitted because the Secretary of State will be determining TACs under the power in the forthcoming Fisheries Bill and current common law powers, along with the criteria for setting the quota.

[Baroness Vere of Norbiton]

My noble friend Lady McIntosh mentioned quota management and how that might exist between the different countries of the United Kingdom. Of course, we will be reviewing quota management as we leave the European Union. We described in the fisheries White Paper how we will approach this, including the possibility of moving to a new basis for allocation of any additional quota we gain through negotiation. A number of noble Lords mentioned the very important issue of the landing obligation. Again, as we set out in the fisheries White Paper, the UK Government remain fully committed to ending this wasteful and atrocious discarding of fish and we continue to work with the industry. Once we have left the EU and the CFP we will have the flexibility to do this in a way that reflects the nature of UK waters and fisheries. While we can continue to use retained CFP measures, we will also have the opportunity to adopt new measures that will reduce discarding while also preventing choke. Some examples were set out in the fisheries White Paper.

There has been much discussion today about scientific evidence; I agree that it is critical. Perhaps for fisheries more than for some other sectors, a truly international perspective is hugely beneficial, and the UK has immense strength in this area. The Government are working with the devolved Administrations to develop a replacement fisheries advisory framework for the UK that is fit for purpose and can deliver world-class scientific advice to meet our commitments. We intend to continue to collect the marine and fisheries data, as is currently happening, to inform the International Council for the Exploration of the Sea of research and stock assessments. We are currently in the process of establishing an agreement with ICES for when we leave the EU. We will continue to use its research outputs and advice as well as our own, very well respected national labs—for example, Cefas.

7.15 pm

The noble Baroness, Lady Jones, mentioned the governance gap and the fact that the office for environmental protection has not been set up. I absolutely accept this. Noble Lords had the opportunity to question the Government on this many times in debates on recent SIs and we have made the commitment at the Dispatch Box many times as to what we intend to do to address the governance gap around the office for environmental protection, and to address the fact that it will not be set up on the day that we leave the EU. Interim measures will be in place and we have committed previously that the OEP will have the power to look back at infractions that happened before the date that it was set up.

Baroness McIntosh of Pickering: My noble friend mentioned Cefas. I visited the International Council for Exploration of the Seas in Copenhagen about two years ago. It has a number of leading British scientists and other nationalities who will be concerned about their status, but it is an international organisation. Have the Government formed a view as to whether we will still be a party to ICES post Brexit?

Baroness Vere of Norbiton: I believe that we will be and I shall write if that is not the case—it is indeed the case.

Enforcement is an incredibly important issue. Defra is working very closely with the Marine Management Organisation, the Association of Inshore Fisheries and Conservation Authorities, the Royal Navy, Border Force and other organisations to make sure that appropriate arrangements are in place for day one. The UK will maintain its scheme of monitoring, control and surveillance through vessel monitoring systems, electronic logbooks and other reporting requirements. Over time, as we develop our fisheries regime, we will use the new powers in the Bill to create the offence of vicarious liability against, for example, owners and charterers of fishing vessels.

The noble Lord, Lord Teverson, was very clear that we should make sure that all those operating on the front line of control and enforcement are briefed on what they should do on day one: this is critical, because we have seen what has happened when things have gone wrong. People can be in the wrong place at the wrong time and doing the wrong things; tempers can get very frayed indeed and it can escalate extremely quickly. So, following approval from Her Majesty's Treasury and Ministers, we are implementing our full control and enforcement preferred approach and putting in place a significant uplift in our control and enforcement capability for day one. In addition, the Joint Maritime Operations Coordination Centre—JMOCC—has been established to enhance joint working between law enforcement agencies and the Royal Navy to improve patrol capabilities and increase information sharing across government.

I thank the noble and right reverend Lord, Lord Eames, for drawing our attention to the issue of the Irish border. Many people think that that is a land border, but it is a sea border too, and I know of concerns about the suspension of the agreement between the UK and the Republic of Ireland due to a verdict of the Supreme Court of Ireland several years ago. This agreement allows for fishing in the inshore 0-6 nautical miles zone of Northern Ireland/Republic of Ireland waters. The Government are pleased that the Irish Government have committed to resolve the issue and to restore the agreement on the Irish side. We will certainly continue to discuss this with the Irish Government. Furthermore, we are working very closely with the Irish Government to patrol the seas in that area. It is absolutely critical that in all these circumstances, we work very closely with our neighbours to make sure that there are no misunderstandings, while recognising that, for example, control of seas around Northern Ireland is the responsibility of DAERA in Northern Ireland.

The noble Baroness, Lady Jones, mentioned the replacement of penalties. I should point out that fisheries administrations already have the power to adopt appropriate measures for ensuring control, inspection and enforcement activities under domestic legislation, so it is not necessary to bring the powers across. Where we already have the powers, obviously, we have not brought them across. The current and proposed future UK system of control and enforcement delivers effective penalties. We have no intention of weakening what we already have in place. Section 24 in Part III of the Fisheries Act 1981, for example, sets out penalties for offences, and Chapter 3 of the Marine and Coastal Access Act 2009 sets out the civil sanctions to be imposed by the appropriate licensing authority.

The noble Lord, Lord Teverson, asked about the cost of joining RFMOs. I am afraid I cannot remember what each of the initials stands for, so the noble Lord will have to forgive me, but for the IOTC—I am guessing that the T might stand for tuna; I cannot remember.

Lord Teverson: Yes, tuna.

Baroness Vere of Norbiton: Yes. The cost of joining the IOTC is £150,000 to £200,000; for ICCAT it is £100,000 to £150,000; for the NAFO it is £45,000 to £80,000; and for the NEAFC it is £400,000 to £600,000. That is the cost of our participation when we sign up as a member in our own right.

The noble Lord, Lord Teverson, also spoke about sustainable fisheries partnership agreements, which are agreements with nations that tend to be much further away. As an independent coastal state, the UK will set its own fishing opportunities in agreement with third countries, and we are considering whether and how we should replace existing agreements. The UK has not fished in Morocco since 2011 and it has not fished in Mauritania since 2012, so the only active fishing interest we currently have is an agreement with Greenland, with one vessel fishing there. That has been active in eight of the last 10 years. But certainly, we can go back and look at this in due course, once we have left the EU.

On the issue of quota and the figures, we have revoked provisions that relate to the setting of UK total allowable catch and quota for the UK. These provisions could not be made operable because it would be inappropriate for the EU to set the UK's quota once it is no longer a member state. International quota swaps have already happened in 2019, so the fishing opportunities available to the UK as stated in the regulations are already out of date. The Secretary of State will therefore replace the current EU figures with the UK fishing opportunities, using common law or prerogative power. The 2019 figures will be published as an annexe to the UK quota management rules, which will be updated in time for exit day.

If the noble Lord will oblige me, I would like to come back to him on the legal side of the North Sea multiannual plan. I have a response here but I am not satisfied with it and I would rather write to him.

This SI brings across provisions that already exist for fees and charges. This does not in any way represent a change to the status quo, as the fisheries administrations already have this power.

Sharing of the MS data is of course a very important issue. A number of provisions in the CFP oblige member states to co-ordinate with or assist other member states, often in close co-operation. The UK absolutely intends to co-operate with the EU and our other neighbours, but of course is unable to legislate for co-operation with member states in the absence of international agreements, which I hope we will get in the future. Data for scientific purposes will continue to be collected and shared with international organisations such as ICES and the RFMOs. The data will also be published, as it currently is.

Baroness Jones of Whitchurch: Perhaps I might press the Minister on that a little. It sounds like that is all a project for the future. However, it would have been nice to have been reassured that, notwithstanding that we will not be part of the current arrangements, discussions are already taking place with our European counterparts to make sure that a mechanism, however informal, for that continuity of data sharing will be in place from day one, rather than starting the discussions after we have left, when there is bound to be a gap in data sharing. Perhaps she could reassure us that this is already being actively discussed with the European Union.

Baroness Vere of Norbiton: I am not able to comment on the meetings that have happened to date on this issue, but I am very happy to find out for the noble Baroness and to write to her with that information.

Finally, I want to address the issue of amending the powers from "requires" to "allows". I completely understand why this may have looked a little odd. However, powers of the European Commission are often drafted into EU law as obligations for the Commission to legislate. This is essentially an instruction—from the European Parliament, for example—for the Commission to legislate to fill in the technical gaps, which, obviously, the Commission goes off and does itself. But in the majority of cases the Commission will already have legislated in relation to these powers, and many of the Commission's delegated and implementing Acts which resulted from the exercise of these powers are of course being rolled over into UK law. In these cases, there is therefore no longer a requirement for these powers to be drafted as obligations, as the obligation has already been discharged. However, the Secretary of State and/or the devolved Administrations might want to make those changes, as appropriate, in the future, and therefore "requires" becomes "allows".

Motion agreed.

Common Fisheries Policy and Aquaculture (Amendment etc.) (EU Exit) Regulations 2019

Motion to Approve

7.26 pm

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

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

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

Motion agreed.

Common Fisheries Policy (Amendment etc.) (EU Exit) (No. 2) Regulations 2019

Motion to Approve

7.26 pm

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

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

Relevant document: 21st Report from the Secondary Legislation Scrutiny Committee (Sub-Committee A)

Motion agreed.

Common Organisation of the Markets in Agricultural Products Framework (Miscellaneous Amendments, etc.) (EU Exit) Regulations 2019

Motion to Approve

7.26 pm

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

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

Relevant documents: 18th and 19th Reports from the Secondary Legislation Scrutiny Committee (Sub-Committee A)

The Parliamentary Under-Secretary of State, Department for Environment, Food and Rural Affairs (Lord Gardiner of Kimble) (Con): My Lords, I declare my farming interests as set out in the register.

The matters in these instruments are closely interrelated, and I hope that noble Lords might find it helpful if I speak to them together. These instruments amend retained EU law and domestic legislation on the common organisation of the markets in agricultural products—also known as the Common Market Organisation or CMO—to ensure their smooth transition into a domestic regime. They also amend retained EU law and domestic legislation covering a limited number of miscellaneous rules and functions within the wider common agricultural policy.

The CMO is part of Pillar 1 of the common agricultural policy, alongside direct payments. It comprises a number of schemes and standards designed to support, directly or indirectly, farmers and the prices they receive for their goods.

The technical and operability amendments made in these regulations will maintain the effectiveness and continuity of this legislation, which would otherwise be inoperable following exit. They will ensure that we can continue to operate schemes under these regulations for our vital farming sector and maintain the standards they set, which support confidence in our farmed goods in domestic and international markets.

This legislation makes appropriate corrections to ensure that these standards and processes continue to operate in a UK context. Where changes are required, we have endeavoured to ensure that these will have limited impact on businesses and other stakeholders. We have consulted extensively with the devolved Administrations on these instruments to ensure that the legislation that they amend continues to work, while also respecting the devolution agreements.

For six of the instruments, most of the areas they cover are devolved, with powers transferring to devolved Ministers. In many cases the Secretary of State is able to act on behalf of the devolved Administrations, should they give their consent. However, in some circumstances this does not apply to Wales, due to certain provisions that are specific to the Welsh devolution settlement. The Welsh Government have carefully considered whether the Secretary of State should be able to act on their behalf in respect of each of the functions concerned, and the drafting reflects that. Only one relates exclusively to reserved matters: the draft Common Organisation of the Markets in Agricultural Products and Common Agricultural Policy (Miscellaneous Amendments) (EU Exit) Regulations 2019.

The majority of the instruments under debate concern the common organisation of agricultural markets. The CMO sits in Pillar 1 of the CAP and was set up as a means of meeting the latter's objectives, in particular by stabilising markets, ensuring a fair standard of living for agricultural producers and increasing agricultural productivity. It has over time broadened to provide a range of measures that enable the EU to manage market volatility, incentivise collaboration between and the competitiveness of agricultural producers and facilitate trade.

The first statutory instrument in this group, draft Common Organisation of the Markets in Agricultural Products Framework (Miscellaneous Amendments, etc.) (EU Exit) Regulations 2019, amends retained EU legislation with the purpose of making operable the overarching framework of the CMO, rather than the detailed rules of each of the constituent policies. These amendments are all appropriate to ensure the continued operability of this framework, and include such amendments as those replacing tonnage ceilings for market intervention schemes that apply across the whole EU with a level that is suitable for the UK's domestic market.

7.30 pm

The policy areas covered by this framework can largely be broken down into: the aforementioned market intervention measures, such as public intervention and crisis support; sector-specific aid schemes, such as the fruit and vegetables aid scheme; marketing standards, which maintain consumer confidence in our farmed goods; import and export rules, such as quality controls on imported hops; and competition-related measures, such as the creation of producer organisations. Alongside the framework for the CMO, this statutory instrument makes operable the EU regulation that governs the scheme for the promotion of agricultural products. Together, all these schemes and standards work to support our farming sector and the prices that famers receive for their farmed goods.

The second statutory instrument in this grouping, the draft Common Organisation of the Markets in Agricultural Products and Common Agricultural Policy (Miscellaneous Amendments) (EU Exit) Regulations 2019, ensures the operability of certain provisions in the CMO and wider CAP relating to reserved matters: in particular, the regulation of anti-competitive practices, of international law, of imports and exports and of intellectual property law. The amendments made in these regulations ensure that the relevant retained EU legislation will continue to operate effectively as domestic law. As an example, one amendment made here replaces an appeals procedure for recognition of wine geographical indicators that was run by the Commission with a domestic procedure via the First-tier Tribunal. This statutory instrument also confers existing legislative functions held by the Commission in these reserved policy areas on to the Secretary of State to enable the smooth functioning of related schemes for producers, traders, importers and exporters of agricultural goods.

The third statutory instrument in this grouping, draft Market Measures (Marketing Standards) (Amendment) (EU Exit) Regulations 2019, makes operability changes to a range of EU regulations laying down marketing standards and related rules for seven areas: bananas, beef and veal, carcase classification, fruit and vegetables, hops, milk and milk products and spreadable fats, and pigmeat. The instrument aims to minimise disruption to the flow of goods while preserving standards, and to make marketing standards legislation appropriate to the domestic context of the United Kingdom.

The amendments in this instrument aim to maintain confidence in the quality of the farmed goods in our markets, and ensure that product information remains transparent and accurate. For example, rules allowing labels on mixed fruit and vegetables to specify whether they originate within or outwith the EU will be amended to allow labels to specify instead whether the produce originates from the UK. I emphasise that this includes a transition period of 21 months during which the old labels may be used, so long as they comply with all other relevant legislation, including the requirement not to mislead consumers.

I will draw your Lordships' attention to one minor point which was raised with me earlier today. As a result of changes made by the European Union to EU regulation 543/2011, relating to marketing standards for fresh fruit and vegetables, a small number of provisions in the draft Market Measures (Marketing Standards) (Amendment) (EU Exit) Regulations 2019 will require minor amendment. These changes were published in the *Official Journal* only last week, and are due to come into force before exit day. Our proposal is to make a new statutory instrument to amend the Market Measures (Marketing Standards) (Amendment) (EU Exit) Regulations 2019 to reflect the changes we have just heard of, and then make both SIs together. This will ensure that our regulations correctly link to retained EU law as it is on exit day. I want to be absolutely clear, as I heard about it only this afternoon, that this is because of recent changes. I therefore promise that the statute book will have retained EU law as it exists when we leave. I hope that is helpful to your Lordships. We will attend to it.

The fourth statutory instrument in this group, the draft Market Measures Payment Schemes (Amendment) (EU Exit) Regulations 2019, makes appropriate amendments to EU regulations laying down detailed rules for three areas to ensure their continued operability: public intervention and aid for private storage, measures to promote agricultural products and rice processing. The amendments ensure that this legislation can operate effectively. Amendments here include those to remove the role of the Commission in tendering procedures for selling products into intervention storage in the case of, for example, a price collapse in a certain agricultural sector, and ensure that this process continues to work domestically.

The fifth statutory instrument in this grouping, the draft Market Measures (Miscellaneous Provisions) (Amendment) (EU Exit) Regulations 2019, makes the appropriate amendments to ensure operability of a range of domestic statutory instruments that provide for enforcement of EU rules on marketing standards—for example, the Marketing of Fresh Horticultural Produce Regulations 2009, which, among other things, empower the Horticultural Marketing Inspectorate to make checks to ensure that fresh produce is labelled and marketed correctly, protecting consumers and ensuring confidence in the fresh produce on our market. The regulations make the appropriate amendments to ensure this domestic SI remains operable, maintaining continuity in our enforcement operations. The other domestic regulations this SI covers concern: beef and veal labelling in England; carcase classification and price reporting in England; quality of green bananas in England and Wales; olive oil marketing standards in the UK; certification of hops in the UK; milk price reporting in England and Northern Ireland; and the school milk scheme in England and Northern Ireland.

The sixth statutory instrument in this grouping, draft Agriculture (Legislative Functions) (EU Exit) (No. 2) Regulations 2019, amends elements of the EU legislation on the CMO and some of the elements of the EU legislation on organic food and feed that provide for legislative functions. Under the amendments, functions currently exercised by the European Commission will instead be exercisable in the UK. This will enable these legislative functions to continue to be used at a national level. It does this also for a small number of functions in the wider CAP that relate to the CMO. Without these amendments, the legislative functions contained in these retained EU regulations would be inoperable. This would prevent the UK Government and the devolved Administrations from being able to make any necessary changes to the relevant policy regimes to keep them up to date. This instrument uses powers in the European Union (Withdrawal) Act 2018 to correct these deficiencies to enable the functions to be exercised by UK public authorities.

The seventh statutory instrument in this group, the draft Livestock (Records, Identification and Movement) (Amendment) (EU Exit) Regulations 2019, makes appropriate amendments to retained EU law on the identification and movement of cattle, sheep and goats so that it will continue to function correctly.

We have been pragmatic in how we are amending this retained legislation. For example, we will not be requiring animals imported from the EU to be retagged, as is currently required for third-country imports. This is because the EU ear tags and the information on them will be of the same specifications as UK tags and can be used by our tracing systems. This will avoid creating an unnecessary burden on importers.

The instruments in this grouping make changes to ensure an operable legal framework for the CMO, supporting farmers and delivering continuity. They also ensure that retained EU law will function correctly. As I said, the changes are technical, ensuring operability and addressing any deficiencies. These changes will ensure that we can continue to set and enforce standards for farmed goods covered by the CMO and continue to operate the aid schemes set therein. I beg to move.

Baroness Byford (Con): My Lords, I thank my noble friend for introducing the seven sets of regulations. At this time of night, having sat here from about 3 pm, other Members will be delighted that I will not repeat everything I have written down, because he clearly introduced the regulations in the correct manner.

[Baroness Byford]

I am very grateful to Secondary Legislation Scrutiny Sub-Committee A for its 18th report, which looked at the regulations and which it followed up in its 19th report with some extra questions. My noble friend may want to pick up on some of them when he responds. I should declare the family farming interest, in particular the fact that we receive payments, including for environmental matters.

This is a very important group of statutory instruments which cover matters such as aid for private storage, aid schemes, marketing standards—which are particularly important—labelling, packaging, production methods, conservation and storage and transport certification, to name but a few in the first instrument. The Explanatory Memorandum on the third instrument, on marketing measures, states that our retained EU law is being kept as close as we can to the current system. Paragraph 7.2 refers particularly to public intervention and aid for storage, aid schemes generally, marketing standards, producer organisations, import and export rules—which are extremely important—and crisis measures, which my noble friend did not mention but which he might also want to pick up when he responds.

On the fourth SI, on marketing measures payment schemes, managing market volatility is again particularly important. Perhaps my noble friend can say a little more about that when he responds. The collaboration and competitiveness of agricultural producers is hugely important: bringing producers together so that we can gain competitiveness in the international trade in which we shall be competing. Promotion and high standards are particularly important, as are the production methods to which they refer. Awareness and recognition of EU quality schemes is increasingly important, and the statutory instruments allow us to achieve that. My noble friend did not mention—but there is so much for him to mention in these statutory instruments, it is probably just as well for us tonight that he did not go through the whole lot—the safety proposed to farmers by removing surplus products. Again, perhaps he would pick up on that. I shall not comment on the fifth statutory instrument at all.

7.45 pm

The sixth SI concerns the legislative functions in the EU regulations relating to the CMO schemes, CAP financing, organic food and feed, and the management and monitoring that would be inoperable if we did not move these provisions across. I want to raise two issues with my noble friend on that SI. First, there is the establishment of a system of price reporting within the sugar sector. I am intrigued by that. That is presumably within our UK growing of sugar, rather than the international aspect, particularly from the ACP and Latin American countries, which also produce cane sugar. I should say that on our farm we produce sugar. Secondly, it is an instrument to react to market disturbance. My noble friend did not pick up on that, but perhaps he can cover that in his concluding remarks.

Lastly, I turn quickly to the Livestock (Records, Identification and Movement) (Amendment) (EU Exit) Regulations. It is hugely important that we continue to ensure that we have full and correct identification and movement of animals in this country. We have had some terrible times over recent years, and we need to keep well on top of how we deal with livestock records. The 14th report of the committee identified the possibility of fee charging. Perhaps the Minister could reflect on that.

I have touched on only some of the issues raised. There is a whole group of them. We could have had a mini-debate on all of them but, at this time of night, for fear of being wearisome, I hope that I have picked up some of the points that my noble friend was unable to touch on and that he will respond when he winds up.

Lord Addington (LD): My Lords, I thank the noble Lord, Lord Gardiner, for briefing us and arranging meetings letting us know the intention behind the regulations. He has a deserved reputation for civility and courtesy in this House, and he has very much earned it in my case, as I am not a great expert in this field.

I gather that this is an attempt to enact a degree of continuity and certainty for the farming industry in the immediate case. If we are going to go through these radical changes, that is to be applauded. However, can the Minister indicate the limitation of the certainty that can be given? For instance, how far in the future are we thinking: is it merely to the end of this Parliament? According to the newspapers, that could be a month away or about three years; we do not know. What are the limitations? What is the ongoing philosophy, because the philosophy is also important? If the Government continue in power, what will they think of doing? That thinking and control will matter. That is the guiding light for what will go on. Some idea of what is happening there would be helpful.

I have a few other questions. The noble Baroness, Lady Byford, touched on a few of the things I was going to say, and one or two of the others seem to disappear into the middle distance given the lateness of the night and the importance of what is going on. If there is to be no great change, that is fine, but if change is unavoidable I encourage him to describe where he thinks there will be the greatest change, because the people involved will need as much warning as possible. If the Government have identified those areas, that would be helpful to know.

The regulations are not welcome but seem unavoidable in the current situation, so I thank the Government for at least getting a hard hat ready for the fall.

Lord Grantchester (Lab): My Lords, I thank the Minister for his excellent introduction to the batch of regulations before the House and declare my interest, as in the register, as a recipient of EU funds. I also thank the noble Baroness, Lady Byford, and the noble Lord, Lord Addington, for their contributions tonight.

The regulations complete the framework of agricultural mechanisms needed to be transferred to the UK from the EU to maintain certainty and continuity on food. The House dealt with further tidying-up amendments yesterday to update the position from the alterations agreed at the EU level in January. The Minister, his team and his department can be congratulated on their achievements, perhaps with certain exceptions in other areas. Nevertheless, they have brought across

many technical and policy areas of EU law into UK law through these instruments to maintain the necessary legal frameworks.

The Minister made other remarks signifying that further technical updates could continue. Can he go further and state whether all future developments in the EU will continue to be implemented in UK law until measures under the Agriculture Bill come into force, which would allow certainty of continuation until the end of this Parliament, and whether those developments will maintain full parity with what is happening in the EU?

As we discussed last week, these regulations need to be introduced to maintain continuity and consistency on the EU's regime to bring about a smooth transfer to the UK's new regime, proposed under the forthcoming Agriculture Bill. I am sure that, in response to the noble Lord, Lord Addington, the Minister can confirm that nothing will change from a regulatory standpoint in the entire food chain, from the farmer to the consumer, to the benefit of both and the food supply chain. I am certainly grateful to the Government for that clarity. To credit the Treasury for its guarantee, the food industry has a certain amount of certainty until the end of this Parliament—that is still believed to be in 2022, whether the UK has a transition period or not—when the new provisions under the Agriculture Bill are expected to take effect. Until that landscape, producers and consumers are protected. There are no guarantees after that.

As Parliament nears the end of the process to leave the EU with a fully functioning statute book, what consideration have the Government given to communicating these solutions, especially regarding the farming industry? I understand that the Minister's department has already gone live with the online system for this year's BPS, and that the guidance notes are not materially different; that is, they are essentially the same as last year's. Do the Government have any plans? More pertinently, when does the Minister think his department will issue guidance to provide clarity for the industry?

We have dealt with rural development programmes and the common agricultural policy in recent weeks, but these regulations deal with CMOs, the common organisations for market structures, market measures, legislative functions and livestock regulation, as the Minister explained. Again, the Explanatory Memorandums do not provide enough clarity, or reveal with details enough of the consultations that have occurred throughout industry, including on the devolved Administrations and their separate industry structures. Can he outline the full scope of those consultations by naming the various food sector bodies that have been consulted on these CMO instruments? I recognise that, necessarily, the CMA will be involved as far as competition law is concerned, but how will specific industry issues be dealt with on a sector-by-sector basis?

For example, in yesterday's debate, PDOs and geographical indictors were discussed in relation to the transfer of functions to the Secretary of State, but no mention was made of the UK policy and decision-making process, nor of what guidance there may be on future recognitions. Can the Minister outline the plans for that once the UK has transferred the various brands across from the EU list, including the ones discussed yesterday dealing with wine and US liquor?

My next general comment concerns the lack of impact assessments across the regulations. As these regulations merely bring existing schemes into being on a UK statutory basis, the Government say that nothing has changed, as the saying goes. I understand that, but there are often sufficient amendments to justify examination and explanation. I ask the Minister to clarify two situations. First, what is the position across the statutory instruments we have been discussing in the past few weeks on the various end-dates of differing programmes, new applications and their funding? I have discussed that with him and his team.

Although these regulations come under Pillar 1, the Minister will nevertheless recall the provisions on the interaction of farmers between Pillar 1 and Pillar 2 regarding these schemes. The RDP measures will continue for new applications until the end of the scheme in 2020, in contrast to the annual reopenings of environmental and countryside stewardship schemes, with all their lifespans running for many years into the future. Can he clarify the provisions and assure us that the overall framework will apply uniformly across the various regimes, whereby all new applications will close on the same date in 2020? If there are to be any changes, I contend that they would merit appraisal under the impact assessment, as they would breach the Treasury's guarantee to continue its funding until the end of this Parliament.

The second area that may merit an impact assessment regards the policy changes to end the multi-programmes that operate across more than one member state, as the UK will no longer be a member state after exit. These multi-programmes are often important in recognising cross-border collaboration and value-adding marketing schemes. Although the schemes may end, will the Treasury continue its funding in all, only certain or no circumstances? What is its position regarding pertinent databanks and information under these programmes? I would be grateful if the Minister could clarify that. Will agreement with the EU be necessary to continue with, or possibly untangle, the provisions satisfactorily? An impact assessment on the effects of this change would have been helpful.

Regarding the complex nature of interactions with the devolved Administrations, can the Minister confirm that how these operate at present will be entirely consistent and continue with these regulations as well? In particular, can he clarify on which areas all four nations need to agree?

Paragraph 4.5 of the Explanatory Memorandum on legislative functions asks about the interaction of these SI arrangements with ongoing trade negotiations, provisions under the Trade Bill and the publication of the temporary tariffs announced recently. It needs to be recognised that these SIs, as was discussed in yesterday's updates, transfer only EU functions and its latest position to the UK. I recognise that the Minister's department was not the lead department in settling these possible temporary tariff quotas and levels, which could have a fundamental impact on industry, but I hope that he will be able to discuss the implications in

[Lord Grantchester]
due course. The role of Parliament and full industry consultation is paramount in determining tariff levels. Can he outline how such consultation will be undertaken in future?

Finally, it needs to be recognised that although the EU powers under certain provisions are being transferred into UK law, they are not necessarily being implemented —indeed, they may never be implemented. I refer in this regard to the questions asked by the noble Baroness, Lady Byford, on the powers to charge fees in relation to the livestock regulations. I know that the industry is grateful that fees are not currently enforced. Can the Minister confirm that this position will continue and that the Government will not commence with this provision, so that the status quo will continue?

I am grateful to the Minister and all his staff at the department for the constructive way they have engaged in discussions with all Benches in your Lordships' House. In the new world of life outside the EU, it must be recognised that all trading blocs give support to their food and agricultural sectors, and that careful consideration therefore needs to be exercised regarding this fundamental and strategically important industry. I am pleased to approve the regulations today.

8 pm

Lord Gardiner of Kimble: My Lords, I am most grateful to all noble Lords who have spoken. Like the noble Lord, Lord Addington, I have the disadvantage of being before my noble friend Lady Byford and the noble Lord, Lord Grantchester, who farm in a much more extensive manner than I do. I reiterate my commitment to the farming world as a farmer.

I thank the noble Lord, Lord Addington, and the noble Lord, Lord Grantchester, for acknowledging government support. I think I have been clear in previous debates—we have had a number of debates on this—about the government commitment to maintain the same level of support until the end of this Parliament, expected in 2022. This is certainly unique. In the European Union, for instance, no other member state's farming sector has had that level of guarantee. This commitment includes all funding provided for farm support under both pillar 1 and pillar 2 of the current CAP. The noble Lord, Lord Grantchester, may recall from the debate that the point about the RDPE funding is that any agreements under pillar 2 that have already started will continue to be funded by the Treasury under that guarantee, even if they go beyond 2020.

The noble Lord, Lord Addington, asked about change. I entirely agree with the noble Lord, because at a time of change there is always much concern. Sometimes it is not quite as bad as we all imagine. I emphasise that there are no immediate changes for farmers and consumers due to the statutory instruments before us. Indeed, these instruments maintain the status quo, with amendments made to ensure that the existing regulatory regime continues to work properly and to provide a consistent regulatory framework.

I raise two areas where changes have been made. In both cases we have worked to ensure that the impact on farmers, businesses and consumers is minimised. The first is in the labelling of farmed goods, where minor changes are necessary to some labels as UK goods will no longer be able to be identified as EU goods. To allow producers and traders time to adapt and to use up their existing labelling stock and reduce waste, we have pragmatically introduced transition periods for these labelling changes until the end of 2020. Another pragmatic point I mentioned earlier was in the tagging of live bovine animals. Here EU legislation requires the retagging of all live bovine animals imported from third countries. We have exempted animals from the EU from this definition so as not to introduce a new requirement of retagging EU animals when we leave. As I said before, this is because the tags are fully compliant with our IT systems, and we thought that that would prevent unnecessary additional costs. These statutory instruments are absolutely designed to ensure continuity and stability for farmers by maintaining the current CMO and livestock frameworks. I think the noble Lord, Lord Addington, meant the complete range of regulations. On livestock movement, again I assure the noble Lord that there will be no changes on the ground. I reiterate that this livestock movements SI does not introduce new rules or new policies. The rules that livestock keepers and businesses must comply with will be unchanged by this SI.

My noble friend Lady Byford asked a number of questions. If I get all the answers, I will of course report on them. If I do not, it would be much better if I wrote in some detail. My noble friend asked about livestock fee charging and what this entails. There is a power in the retained regulation on cattle ID registration, regulation 1760/2000, to charge for controls in this area. It is not Her Majesty's Government's policy to charge for these controls and we have no plans to do so.

My noble friend Lady Byford asked about agricultural promotions and the specific questions raised by the SLSC about funding for agricultural promotions laid out in the Common Organisation of the Markets in Agricultural Products Framework (Miscellaneous Amendments, etc.) (EU Exit) Regulations 2019. The department provided a response and we confirmed to the committee that there is no funding from the Government for the continuation of these multi-programmes after exit until their completion in 2020 and that stakeholders have been informed.

On the question of livestock, the ESIC and SLSC's sifting committees made similar points suggesting that the changes made by the SI conferred significant new powers on Ministers and provided for charging for cattle ID. As I say, they disagreed with the department's original Explanatory Memorandum, which described the changes being made by this instrument as minor and technical. They took the view that 20 or so amendments being made by it had the effect of conferring functions on a Minister in their domestic ministerial capacity that EU regulations confer on the UK as a member state. As I said, we have no intention of charging.

My noble friend asked about price reporting. We have made operable the provisions to set up a system for price reporting in the sugar sector. If I have any further information on that, I shall write to my noble friend and provide a copy to all noble Lords who have spoken.

My noble friend asked a question on public intervention and crisis measures. We are retaining these measures, as it is not appropriate to revoke them under the European Union (Withdrawal) Act 2018. However, the economic case for market intervention is weak. In a global trading environment it can achieve its aim of increasing prices only in very specific circumstances. Where it does, there is a cost not only to the taxpayer but to consumers. The Government—I think this is the case across parties—have not historically supported the general use of public intervention and private storage aid in the EU, and the medium-term intention would be to phase out this policy.

My noble friend Lady Byford asked about a safety net and what assistance would be available if there were a crisis. We have already carried out significant no-deal preparations and have contingency plans in place to minimise disruption as much as possible. As part of this, we are in close contact with the devolved Administrations, all farming sectors and farming unions, including the livestock sector, and are looking at a range of possible options if we were to leave without a trade deal.

The noble Lord, Lord Grantchester, raised a number of matters on consultation and assessment. As I think the noble Lord is expecting me to say, there are no changes in policy except in the really limited areas I have described, which are all pragmatic. Where there are changes, they are largely minor and reflect the domestic context. I can say that Defra carried out targeted stakeholder engagement on these policy changes and, as I say, consulted extensively with the devolved Administrations. Where there is a possible impact on businesses, such as with labelling changes, a transition period will be implemented.

I want to take noble Lords back and embellish what I said about multi-programmes. The term refers to programmes that involve multiple member states. I think we all have to accept that there is no reasonable way in which we could make these schemes work domestically, given that they engage a number of other member states. I do not think that the UK's share of the work and funding is variable. For simple programmes that require the participation of only one member state, as I have said, we have given a Treasury guarantee that they will be fulfilled. However, it would not be possible to operate programmes with multiple member states and so we will not be continuing with those.

Lord Grantchester: Can the Minister provide clarity on these multi-programmes? There are obviously implications for UK businesses that partake in those, and I understand the Minister's remarks on that. However, will he clarify that none of these schemes has implications for government commitments and obligations to fulfil EU schemes as part of the £39 billion transfer of funds? Do they all fall outwith those obligations?

Lord Gardiner of Kimble: It is only reasonable that I answer the noble Lord precisely in writing to provide clarity. I would not want to assume the configuration of the £39 billion and whether schemes in this area may be implicated.

On consultation, the approach we have taken to engagement has been proportionate and fair, particularly given that the changes made by the statutory instruments are technical and operable in so many cases. We have worked closely with the farming world.

The noble Lord, Lord Grantchester, asked about the legislative functions SI. These provisions allow the Secretary of State to require export licences for the export of farmed goods. They are necessary to allow the UK to manage any new third-country export quotas that the UK may need to manage. Examples of current export quotas that the EU manages, and that the UK will therefore need to manage, include export quotas for cheese to Canada and the United States and for skimmed milk powder to the Dominican Republic. As I am sure the noble Lord knows, the administration of import tariff quotas will be subject to separate regulations made under the Taxation (Cross-border Trade) Act.

As I have said, Defra has consulted extensively with the devolved Administrations on all aspects of the SIs, and consent was sought and given for those that relate to devolved matters. In so far as the regulations make amendments to food law, we consulted in accordance with our legal obligations through representative bodies such as Dairy UK, the NFU and local councils. We received replies from numerous public bodies and organisations in England, and in all four constituent nations, expressing support for our proposed operability changes.

Where industry bodies requested longer transition periods for labelling, we took that into consideration and increased the length of transition to the end of December 2020.

On the livestock SI, my noble friend Lady Byford, and the noble Lord, Lord Grantchester, with his long-term dairy interest, will be pleased to hear that stakeholders—and I have been part of this—have played a leading role in helping Defra develop the principles and approaches that will underpin the delivery of its planned new livestock tracing services over the next few years, through its traceability design user group. Again, this is really important, and there is enormous buy-in from industry.

8.15 pm

As to which areas the devolved Administrations will need to agree to, Defra is working with the devolved Administrations to find administrative approaches that work for the whole of the UK and those areas where some form of co-operation is required to ensure adherence to the principles of the Joint Ministerial Committee on EU Negotiations. The working level agreement is expected to cover crisis measures, market intervention such as public intervention and aid for public storage, and the exchange of information and data related to our membership of the EU.

My noble friend Lady Byford asked about livestock records. There are no changes to the current requirements for record-keeping.

The noble Lord, Lord Addington, asked about the general philosophy for the whole of the agricultural sector, and I will answer him, declaring my interests. On future support, we have already said that there is enormous merit in farmers playing the essential role that only they can undertake on the 70% of our

[Lord Gardiner of Kimble]
land-mass that is farmed, which is helping to enhance the environment. Therefore, there is a recognition that public money would be available for all the public benefits that so often are not understood or are already being undertaken by many farmers. There is that prism, which, as a farmer, I feel is complementary, of food production and enhancing the environment. It is a challenge, but it is eminently doable. Innovation and research will be immensely important to that.

In terms of these statutory instruments, my noble friend Lady Byford raised a number of points to which I have not been able to give her the detailed answers that she would like and deserves. But on the basis that I have covered most other points—and I will study *Hansard*—I beg to move.

Motion agreed.

Common Organisation of the Markets in Agricultural Products and Common Agricultural Policy (Miscellaneous Amendments) (EU Exit) Regulations 2019

Motion to Approve

8.17 pm

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

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

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

Motion agreed.

Market Measures (Marketing Standards) (Amendment) (EU Exit) Regulations 2019

Motion to Approve

8.17 pm

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

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

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

Motion agreed.

Market Measures Payment Schemes (Amendment) (EU Exit) Regulations 2019

Motion to Approve

8.18 pm

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

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

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

Motion agreed.

Market Measures (Miscellaneous Provisions) (Amendment) (EU Exit) Regulations 2019

Motion to Approve

8.18 pm

Asked by ***Lord Gardiner of Kimble***

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

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

Motion agreed.

Agriculture (Legislative Functions) (EU Exit) (No. 2) Regulations 2019

Motion to Approve

8.18 pm

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

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

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

Motion agreed.

Livestock (Records, Identification and Movement) (Amendment) (EU Exit) Regulations 2019

Motion to Approve

8.19 pm

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

That the draft Regulations laid before the House on 10 January be approved.

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

Motion agreed.

Customs Safety and Security Procedures (EU Exit) Regulations 2019

Motion to Approve

8.19 pm

Moved by ***Lord Bates***

That the draft Regulations laid before the House on 27 February be approved.

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

The Minister of State, Department for International Development (Lord Bates) (Con): My Lords, in moving these regulations, I will speak to the three statutory instruments that are part of the Government's package

to prepare for the possibility of the UK leaving the EU without a deal. The instruments are related to safety and security, cash controls and the Economic Operators Registration and Identification scheme—EORI.

EU law provides the legal framework for implementing these policies across the EU. By virtue of the European Union (Withdrawal) Act, this law will form part of our domestic law on exit day and will continue to apply as retained EU law.

The relevant EU legislation was drafted to apply to EU member states. Therefore, it will not work as effective legislation for the UK without amendments. These instruments ensure that the UK has a functioning legislative rulebook by replacing references and terminology that will no longer be valid in the event of no deal. This ensures that the UK will have effective safety and security, cash controls and EORI regimes after the UK leaves the EU.

First, allow me to set out the context of the provision we wish to introduce for managing the safety and security risk of goods entering and leaving the UK. The Union Customs Code sets out that the movement of goods into and out of the EU requires entry and exit summary declarations, also known as safety and security declarations. So, for example, shipments from the US or China require a safety and security declaration before entering the EU. If the UK leaves the EU without a deal, UK importers and exporters will be required to complete safety and security declarations for goods moving to and from the EU, as well as the rest of the world.

As well as making required changes to retained EU law, this instrument introduces a provision to phase-in the legal requirement for entry summary declarations on goods imported from the EU. The legal requirement to submit entry summary declarations for goods imported from the EU will apply from 1 October 2019.

HMRC has listened to industry concerns about ongoing uncertainty and the readiness of businesses to comply with safety and security requirements on UK-EU trade from day one. Therefore, we are taking this approach to give businesses more time to prepare to submit declarations to HMRC. This does not remove the requirement for declarations for goods imported from the rest of the world. Goods entering the UK from the rest of the world will still have to make entry summary declarations as they do now.

When the UK leaves the EU, a separate customs union will be created between the UK and the Crown dependencies—the Channel Islands and the Isle of Man. This instrument includes a provision to support the operation of the UK and the Crown dependencies, namely that the movement of goods between the UK and the Crown dependencies will not require safety and security declarations. This instrument does not apply to the movement of goods between Northern Ireland and Ireland.

The second statutory instrument we are talking about today relates to cash controls. The EU monitors the international movement of cash by requiring individuals who are entering or leaving the EU, and who are carrying €10,000 or more in cash, to make a cash control declaration. This declaration must be made to the customs authority of the member state into which they are arriving or leaving.

The UK is committed to continuing this practice. The declarations provide information about the international movement of cash and are one measure that assists in the fight against money laundering, the proceeds of crime and the funding of terrorism. If the UK leaves the EU without a deal, this instrument will require cash control declarations at the UK border, including the border between the UK and the EU. It does not apply to the border between Northern Ireland and Ireland.

The current practice, which requires these declarations between the UK and non-EU countries, will continue. This instrument extends those requirements to movements between the UK and EU. It makes the small change that we will require declarations on amounts of £10,000 or more, rather than €10,000.

The final change as a result of this instrument that I should draw to your Lordships' attention relates to information sharing. Currently, details of the movement of cash are automatically shared between member states. This instrument removes the requirement to share information but permits sharing of information where it is in the UK's interests so to do.

The third and final instrument we are discussing today is for the Economic Operators Registration and Identification scheme, EORI. An EORI is a unique registration number given to businesses that interact with customs authorities so that HMRC can identify them effectively. EORIs are necessary when applying for customs simplifications or facilitations, when making declarations or in other interactions with the customs authority.

All EORIs issued by the UK, known as UK EORIs, will remain valid for use in UK customs processes in the event of a no-deal EU exit. Following the UK's departure from the EU, UK individuals and businesses that want to trade with the EU or other territories outside the EU and do not already have a UK EORI will need to obtain one. Persons who are not established in the UK but who wish to lodge a UK declaration will also require a UK EORI. This instrument ensures that the UK has a functioning EORI scheme by replacing references and terminology in retained EU law that will no longer be valid in the event of no deal. Traders whose only international trade is between Northern Ireland and Ireland will not be required to register for a UK EORI.

These instruments will ensure that the UK has independent customs processes that work after we have left the EU and will maintain the security of our borders while ensuring that traders are faced with as little change as possible and are given time to prepare for the new customs requirements after EU exit. I commend—

Lord Purvis of Tweed (LD): My Lords, before the Minister sits down, can he tell the House how many businesses currently have an EORI? The last published information from the Government suggested that only one-sixth of businesses which trade exclusively with the EU and would require an EORI have one. What is the current position?

Lord Bates: The current position is that the largest number of businesses affected would be UK businesses. There are an estimated 245,000 traders who will need

[Lord Bates]
to register for an EORI. That figure comprises 145,000 VAT-registered businesses and 100,000 businesses below the VAT threshold. Overseas businesses will also require a UK EORI to make customs declarations for goods being imported into the UK after we leave the EU.

Lord Purvis of Tweed: I am grateful to the Minister for indicating how many businesses would be required to have one. How many businesses are registered for and have secured an EORI?

Lord Bates: The answer is 52,000. I beg to move.

Lord Palmer of Childs Hill (LD): I thank the Minister for the explanation of these three statutory instruments and for the detail he provided. I trust that when he winds up he will stress that this is continuity rather than anything new. To the extent that this is continuity, I do not wish to dwell at this hour on things that are replacing what already exists, but I shall deal with some of the things that might be slightly different.

The customs safety and security procedures SI refers to exempting risks during a six-months transition period. Will the Minister tell the House whether this exemption will cause any risk? There must be a risk in giving a six-month exemption. If this were an insurance company, there would be a risk assessment for giving that six-month exemption. I am sure the Minister and his team have worked that out.

This SI also places requirements on small firms in the transitional period. I agree that there have to be requirements for small firms, but I question why businesses are included as small firms if they employ up to the rather arbitrary figure of 50 people and therefore have this exemption. Has the Minister considered how many companies employing 100 people would divide their company in two and thus be exempted? One could use any multiple of 50, but it seems to be an easy way to avoid the requirement and I wonder whether the Minister and his team have thought about that. Should this be done according to the number of people employed or the size of the enterprise? A massive enterprise with millions and millions of pounds does not have to bother because it can be classified as a small company, but if the opposite applies, you are not exempted.

8.30 pm

I turn to the cash controls SI. The Minister mentioned €10,000 becoming £10,000. The SI summons a wonderful vision of men and women with suitcases containing £10,000 going from one territory to another. Can he enlighten this rather diminished House about the circumstances in which people do that? Is it happening and is it something that we should consider? It seems to be a legal invitation to commit malpractice and criminal activity. I cannot think of many occasions nowadays when one needs to cross the border with £10,000. Perhaps the Minister can give us his ideas about that.

The same statutory instrument notes the aim to build risk profiles. It is great to do that but what are the Government doing about the existing risk profiles rather than new ones? We are not reinventing the wheel here. I assume that we are dealing with people who already have risk profiles somewhere in the EU. Perhaps the Minister can say something about that.

Lord Purvis of Tweed: My Lords, when the Trade Bill first came to this Chamber in September, out of interest I registered with HMRC as a small business trading with the European Union to find out what information the Government would be providing to businesses. One of the core elements was the EORI component. A business that trades either exclusively or predominantly, or indeed at all, with the European Union was told that it would be required to have an EORI number in the event of no deal. The Government have taken that position consistently over a number of months in indicating that preparations for a no-deal Brexit need to be made.

It has been fascinating to observe both the information that the Government have received and how businesses have responded. As I indicated to the Minister, the last time the Government published information about how many businesses were prepared and in a position to trade with their European counterparts the day after a no-deal Brexit, only one-sixth of British businesses were in a position to do so. That meant that five-sixths would not be able to trade legally with their counterparts in the EU 27 countries. Now, a fortnight before the revised exit day if we leave on a no-deal basis, only one-fifth of businesses can do so. Therefore, if we leave with no deal on 12 April, one-fifth of all British businesses that trade with customers in EU 27 countries are in a position to do so legally. In addition, if, as the Minister said, they are in the category of the 145,000 VAT-registered businesses, they are required to be registered with an EU 27-equivalent of HMRC in those countries.

The Government have not published data on that information. It would be very interesting to know whether they are collecting data themselves. Not only do businesses have to be registered with our regulatory body, the HMRC, but for those 145,000 businesses to pay the correct level of VAT, tariffs and customs duties, they have to be registered with the customs or VAT body of the member state concerned. This is the advice that the Government have been giving, so it would be interesting to know how many companies are in that position.

Even if we crash out on a delayed basis in a fortnight's time, the vast majority of British businesses will not be in a position to trade legally with their European counterparts. Regardless of what the Government have been saying about the need for preparedness for a no-deal Brexit, British businesses are simply not prepared. That may be because they do not believe the Government would be so cavalier with the interests of the British economy or that, in the words of the business Minister who resigned overnight, the Government are,

"playing roulette with the lives and livelihoods of the vast majority of people in this country who are employed by or otherwise depend on businesses for their livelihood".

Or perhaps they do not believe that the advice provided by the Government has been of a sufficient standard.

I am open-minded about which category they might be in but sympathetic to the latter because, last week, on the day the Government indicated they were open

to extending Brexit day, I received an email, as a business, indicating that exit day would still be 29 March. This afternoon, as I listened to the Leader of the House speaking about the statutory instrument for extending Brexit day, I received an HMRC email indicating that the policy of the British Government was still to leave the European Union with a deal; but there was no indication of an exit day at all.

How on earth can British businesses be expected to prepare now with the Government not even indicating a firm basis on which they need to prepare? Given that having an EORI number is only one of a number of requirements on British businesses, the Government—not Parliament—are asking them to make impossible business decisions. They are asking them to take risks to plan for an eventuality that even the Government are not confident will happen. It would be helpful if the Minister, in responding to this short debate, gave an estimate of when the Government expect all British businesses to be in a position of readiness for exiting the European Union. If at the moment, a fortnight out, only a fifth of British businesses that trade with their counterparts in the European Union are prepared, when do the Government estimate that all British businesses will be in that position?

Lord Tunnicliffe (Lab): I too thank the Minister for presenting these SIs. Taking them in the same order as on the Order Paper, the first one concerns customs safety and security procedures. The impact assessment says:

"The main purpose of this regulation is to enable the UK to continue to meet its safety and security obligations under the World Customs Organisation … Framework of Standards by introducing a new UK regime".

This is the new UK regime. It introduces a safety and security declaration—in a sense, at the UK-EU border—after a six-month transition period. It also introduces an authorised economic operator programme. I could not understand whether this was an asymmetrical situation or a symmetrical one. For the six months while the UK firms do not have to make these declarations, is it possible that EU member states may require declarations from what was to have been this Friday and is now a fortnight on Friday, or do we have a reciprocal deal? The impact assessment gives a feel for the real world. It says:

"In the event of a no deal scenario, the UK will no longer be part of the EU security zone and carriers and operators will need to make safety and security declarations for goods moving between the UK and the EU. Whilst many carriers, specifically large economic operators, are experienced in transporting goods to both the EU and non-EU countries, HMRC anticipates that this will present a significant ongoing administrative burden for them, especially when submitting an ENS as it will be a new legal obligation and an additional cost to submitting a customs declaration for import purposes".

The intention of this programme is no doubt to smooth the effects of a no-deal scenario but at best it will only reduce the chaos, and chaos there will be—at least, that is what it seems to me. However, let us look at the reason why these instruments are in front of us. Paragraph 3.1 of the Explanatory Memorandum says the reason is that the European Statutory Instruments Committee and the Secondary Legislation Scrutiny Committee both recommended that the instruments should be moved from the negative procedure,

"to the affirmative resolution procedure, as they believe the House may wish to debate the implications the safety and security requirements may have for trade across the Ireland/Northern Ireland border".

The reference to this in the Explanatory Memorandum is:

"The amendments to the retained EU law contained in this instrument will not have effect in relation to trade in goods between Ireland and Northern Ireland. Further details on the arrangements for trade between Northern Ireland and Ireland will be published as soon as possible".

I looked at the instrument to see how that retained law was disapplied. Almost hiding in plain sight in regulation 1(3) is this simple statement:

"They do not have effect in relation to the movement of goods between Northern Ireland and the Republic of Ireland or the reverse".

That has a charming, heroic simplicity about it. In one line it says that a problem that completely destroyed the Prime Minister's agreement—that is, the backstop—can be ended by that simple statement. What are the plans for the border under these circumstances? The regulation says they will be published "as soon as possible". One would have assumed that there was a target to publish them before this Friday because it is the 29th, although we now know that exit day is possibly a fortnight later.

The question posed is the question that the best minds of Her Majesty's Government and the EU have failed to solve: what will actually happen at that border? My understanding is that if we fall back on WTO rules, there is an obligation to impose tariffs and for these sorts of safety and security rules to be enforced. We will in fact end up with a border down the Irish Sea. Are the two parties in Northern Ireland simply going to ignore all their obligations under these various international treaties? If we have here tonight, at this late hour, a solution to the Irish border question, I would be delighted to hear it from the Minister.

8.45 pm

Lord Bates: I am afraid that I will probably disappoint the noble Lord, Lord Tunnicliffe. In this context, I should say that this is certainly not an objective or outcome that we are hoping will occur; we want to leave with a deal, ideally the withdrawal agreement that has been set out. I will deal with the contributions from the noble Lords, Lord Purvis, Lord Palmer and Lord Tunnicliffe, as best I can. There will be some gaps, so I give notice that I will have to write on a couple of points.

The noble Lord, Lord Palmer, began by asking me to stress the continuity element. I am very happy to say that that is what we are seeking to do. We are simply following the same process as with the onshoring exercise to ensure that we replicate what is there at present. Continuity is the objective. I suspect that the answer to the noble Lord's subset of questions on number, amount or size of firm is that we are providing continuity of the existing arrangements. I will not be able to answer this evening the point about the innovative idea of firms with 100 employees dividing into two to somehow get around the requirements; I will write on that point if I may.

Let me deal with the noble Lord's other point. If the UK leaves the EU without a deal, this instrument will remove the requirement for safety and security declarations

[Lord Bates]
for six months. He rightly questioned what assessment we had made of this. Taking this approach, the risk to safety and security will not increase after EU exit, given that goods from the EU are not currently subject to safety and security declarations. The transitional period does not apply to non-EU traders that already comply with the current safety and security regulations. After the six-month transition, businesses will be obliged to submit safety and security declarations.

The noble Lord, Lord Purvis, asked what information the Government will provide to businesses on EORI and how to register. I take his point about the level of registrations; of course, we wish it were higher. We have tried to make it as easy as possible to register. He has had the experience of doing it. Our belief is that doing it online takes five to 10 minutes. I do not know whether that corresponds with the noble Lord's practical experience. I have not done it, but our feeling is that it can be done relatively easily. Businesses need to be aware that it will be important for them to do that in the event of a no-deal Brexit.

Lord Tunnicliffe: Will the Minister flesh out the word "important"? Can businesses trade if they do not have—I cannot pronounce the damn thing—this unique identification number?

Lord Bates: That is the whole point. We are saying that, in the event of no deal, they would require that to trade. It is a very serious commitment. If they are above the relevant threshold, that will be a requirement.

Lord Palmer of Childs Hill: If there are a lot of businesses which have not registered, through negligence or misinformation, how much of a risk is that?

Lord Bates: Clearly, that is a risk. We have put out technical notices and engaged quite significantly with industry bodies on this. We have listened to the industry, which is one of the reasons why we have taken this approach on safety and security, with the six-month transitional period. We have tried to get the information out there as much as possible. However, we are concerned about that as an eventuality and encourage businesses to register, even at this late hour.

Lord Tunnicliffe: I hope the Minister will forgive me for pressing this point, but there is a world of difference between being concerned, with perhaps some irritation, minor penalty or whatever, and whatever proportion you want to take—say four-fifths—of the firms that would want to trade across this border not being able to in a fortnight's time.

Lord Bates: Once they became aware of that situation, if that eventuality occurred, the remedy—to get the registration—is a fairly simple and straightforward process. We would like them to do it before then. That is why we have been encouraging them to do that—but we cannot force them to at this stage.

Lord Purvis of Tweed: Businesses cannot do it afterwards if they want to trade on day one of exit if there is no deal. A post-fact situation is irrelevant if they wish to trade without any obstruction on day one of a no-deal exit. Will the Minister confirm this or get information from the Box before he sits down? The information I have received is that HMRC can only process a maximum of 11,000 a day. I hear what the Minister is saying about the Government encouraging businesses to register and that it may take only a short period of time, but that depends on the complexity of the business they do. That is for them to have an EORI. Even if all the businesses wish to register, there is only a certain capacity at HMRC, as I understand. I would be delighted if the Minister can say that that is incorrect and that before exit day—on 12 April if there is no deal—all the businesses that can trade can conceivably be in a position where they can trade. If he is not able to give that reassurance, we are in a very difficult position.

Lord Bates: Let me clarify that, because I think we can be more helpful on that point. There is a lighter-touch element to this: businesses can trade but they need to give a name and address. That is the requirement. They need an EORI number when interacting with customers and HMRC. So when they are doing that part of the exercise, rather than the trading element—completing their VAT return et cetera—they will need that number when they interact, but to trade they would need simply to give their name and address. I hope that offers some reassurance.

Lord Purvis of Tweed: I am not sure that it offered the clarity we need. Is it the Government's position that, in the absence of having an economic operator number to trade with others in the EU 27, businesses have only to state that they have a British-registered trading address? That is absolutely not the advice that HMRC has been providing British businesses that trade with those in the European Union.

Lord Bates: The reality is that we would prefer them to have an EORI registration number. It is a fairly straightforward process that takes five to 10 minutes. But we are talking about extraordinary circumstances. The advice I am given and that I am presenting is that they need to give just their name and address to be able to continue to do that.

The noble Lord asked about the limit on processing of 11,000 per day and whether HMRC had the capacity. The customs declaration service has the capacity to process significantly higher numbers than that.

The noble Lord, Lord Tunnicliffe, asked whether we would end up with a border down the Irish Sea. These non-fiscal statutory instruments will not create an east-west border between Northern Ireland and Great Britain. This will be a temporary measure until a permanent solution is in place. We will seek to discuss this at the first opportunity with the Irish Government and the European Union. However, until this point, this policy is necessary to avoid a hard border on the island of Ireland and to uphold the Belfast Good Friday agreement.

Lord Purvis of Tweed: I am grateful for the Minister's patience on this. It is important. He said at the Dispatch Box that HMRC has a capacity much greater than for providing 11,000 registrations a day. On GOV.UK on 28 February 2019, HMRC announced:

"HMRC has the capacity to sign up 11,000 businesses per day for EORI numbers".

What have the Government done since then to provide that extra capacity? Am I wrong in believing the Government on 28 February? What extra capacity is provided to offer this, other than what the Government themselves have said in their own statement?

Lord Bates: I am advised that the customs declarations service does have the capacity to process significantly more. I do not have a number. When I write on the other issues, I will include an update.

Lord Palmer of Childs Hill: Just to clarify once more, there has been legal advice over the years that, when something is in *Hansard*, it proves to be something people can rely upon. The Minister is saying that a name and address being given will suffice. As that has, presumably, now been recorded in *Hansard*, has the law now been clarified?

Lord Bates: The noble Lord may not have been present for a rather fascinating debate on Pepper v Hart, which took place on another Bill recently—the Trade Bill, I think—and my noble friend Lady Fairhead is here. I and the noble Lord, Lord Stevenson of Balmacara, are not going to rehearse that argument again, but a degree of clarity came through that. I do not wish to make light of a very serious point which the noble Lord is raising, that this is impacting on real businesses, real lives and real trading opportunities. What I am trying to do is give as much information as I can from the Dispatch Box in a fast-moving situation, and provide more information in writing. I hope that the noble Lord will accept that in good spirit.

The noble Lord raised the point about £10,000. I share his surprise. Like him, I am not used to carrying anywhere near that sum across borders. The Financial Action Task Force, an international government body, has identified this as a key risk. This requirement of declaration is set by each of the members; the EU sets the limit at €10,000; the USA sets it at $10,000. The Government chose their own limit, using a memorable round number. They did not want to use another state's currency or alter the figure to reflect changes in the exchange rate.

The noble Lord also asked about existing risk profiles. In a no-deal scenario, we will continue to use the current risk profiles, updating them as needed.

The noble Lord, Lord Tunnicliffe, asked if we had asked the EU for a transitional period. After the UK's exit from the UK, we will seek to negotiate a safety and security agreement with the EU, so that safety and security declarations are not required on imports between EU countries and the UK.

The noble Lord, Lord Purvis, asked for the Government's estimate of when all businesses would have an EORI number. We are committed to making it easier for businesses to be ready. Information is clearly laid out on GOV.UK. I have said all that.

Lord Purvis of Tweed: I am grateful again to the Minister because this is a very important point. My question is a simple one. On 28 February, the Government released the information that 40,973 businesses have registered. On the same day, they said that up to 11,000 businesses a day could be registered because of the capacity. The Minister has said at the Dispatch Box that that capacity is now considerably higher, without explaining what has been done in the meantime to provide that extra capacity. Can he provide something simple? Is there sufficient capacity for all British businesses which trade with the European Union to be in a position, if they so choose, to be registered before 12 April?

Lord Bates: I am afraid that I cannot go further than what I have in front of me, but I will happily put an assessment of that question in writing. Of course the situation as it stands today is that, without the statutory instrument which may receive the agreement of your Lordships' House tomorrow, we would leave on 29 March. This is one element where there is a real sense of urgency and a need for businesses to prepare for that.

I can save writing a bit of a letter here. The answer is yes; we can do that. Let me take the time over the next few days, before April 12, to go into a little more detail and set that out. I will write to all noble Lords who have participated in the debate and, as usual, place a copy in the Library. I hope that will be helpful to noble Lords.

I again thank your Lordships for their contributions and scrutiny. I think we have benefited from that process.

Motion agreed.

Customs (Economic Operators Registration and Identification) (Amendment) (EU Exit) Regulations 2019

Motion to Approve

9.01 pm

Moved by ***Lord Bates***

That the draft Regulations laid before the House on 27 February be approved.

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

Motion agreed.

Cash Controls (Amendment) (EU Exit) Regulations 2019

Motion to Approve

9.01 pm

Moved by ***Lord Bates***

That the draft Regulations laid before the House on 27 February be approved.

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

Motion agreed.

Protecting Against the Effects of the Extraterritorial Application of Third Country Legislation (Amendment) (EU Exit) Regulations 2019

Motion to Approve

9.02 pm

Moved by ***Baroness Fairhead***

That the draft Regulations laid before the House on 7 March be approved.

The Minister of State, Department for International Trade (Baroness Fairhead) (Con): My Lords, EU Council regulation 2271/96, which protects,

"against the effects of the extra-territorial application of legislation adopted by a third country, and actions based thereon or resulting therefrom",

is commonly known as the EU blocking regulation. It seeks to protect UK and EU businesses from the harmful effects of the extraterritorial application of legislation adopted by another country.

Extraterritorial application of legislation refers to a situation where a country has enacted certain laws, regulations and other legislative instruments which purport to regulate activities of natural and legal persons outside its jurisdiction who are not its citizens or legal persons incorporated in that jurisdiction. This could, for example, result in penalties against a UK citizen for carrying out activities in the UK which we consider to be fully legitimate under our law. The UK and EU have long opposed the extraterritorial effect of sanctions legislation on our businesses and the dissuasive impact that this can have on legitimate trade. In fact, the UK's opposition to such actions predates the blocking regulation. We have had regulations on our statute book since 1980.

The blocking regulation seeks to protect UK businesses in two key ways. First, Article 4 of that regulation guarantees that courts in EU member states will not recognise or allow the enforcement of judgments against EU businesses for fines that they incur in a third country for breaching sanctions with extraterritorial effect. Secondly, its Article 6 enables businesses to seek damages through the courts in any member states, should they be negatively impacted by the application of extraterritorial legislation in scope of the regulation.

Of course, there may be occasions where compliance with third-country sanctions regimes is necessary. Where these instances arise, the EU has the power to issue authorisations for businesses to comply with third-party sanctions regimes. Such compliance can include seeking permission from a third country to continue doing business with countries affected by that third country's sanctions, such as approaching OFAC for a licence to continue operating in Iran. This form of compliance preserves and increases trade, although without such authorisation it is technically illegal under the blocking regulation. For this reason, compliance authorisations may need to be issued by Her Majesty's Government after Brexit. Currently, requests for such authorisations are considered by the EU Commission in accordance with the process and criteria set out in Commission implementing regulation 2018/1101 of 3 August 2018, referred to as the implementing regulation.

This SI amends the blocking regulation and the implementing regulation as retained in UK law, using powers under Section 8 of, and paragraph 21(b) of Schedule 7 to, the EU withdrawal Act 2018, and fixes it for the UK-only context. It ensures that the UK statute book on leaving day remains equivalent to that on the day before we leave. The SI, generally speaking, transfers the functions of the European Commission to the Secretary of State, as would be expected of SIs made under the EU withdrawal Act 2018. For instance, once the SI enters into force, UK businesses will be able to apply to the Secretary of State for permission to comply with extraterritorial sanctions, and the Secretary of State will be able to grant this permission if he or she judges the application to be consistent with the criteria set out in legislation.

Currently, the Commission defines the scope of the blocking regulation—which specific pieces of legislation it applies to—through tertiary legislation amending and updating the annexe to the blocking regulation. The SI transfers this power to the Secretary of State through the mechanism of laying of a negative SI. As we leave the EU we must ensure that we continue to protect UK businesses from the effect of extraterritorial legislation. We firmly believe that our operators should be able to continue legitimate trade free from the harmful effects of the extraterritoriality that we consider illegal under international law. This statutory instrument is a key part of this policy stance and is particularly relevant given our foreign and trade policy stances on Cuba and Iran. I welcome the opportunity for scrutiny of it and I look forward to hearing the contributions of noble Lords.

Lord Purvis of Tweed (LD): My Lords, I do not think there will be any difficulty on these Benches about ensuring the continuity we will require in order that there is certainty for British businesses that they can operate on the correct side of international law. The only areas that I hope the Minister will clarify—her introductory remarks were quite helpful—concern, first, the application process that will be required if we are to have a stand-alone position outside European regulations. The applications for authorisations will have to be made to the Secretary of State, as the regulations state. Will the Minister indicate what process such applications will involve?

The second area, which the noble Baroness will not be surprised that I raise, concerns the matter of another judiciary within the United Kingdom. While, as part of Scottish criminal law, this will be a reserved power, nevertheless the criminal penalties that may well apply on the potential breach of some of these things by Scottish businesses would have to be prosecuted by the Scottish courts. One of the examples the Minister raised, that of Iran, is very relevant for the very large Scottish oil and gas industry that trades across the whole region, including within Iran. It is a relevant point, given the not-so-subtle threats from the United States that it will consider breach of its sanctions policy by those British businesses that continue to trade with Iran under a perfectly legal framework. If we are to have a stand-alone approach, absolute certainty, clarity and reassurance would be very helpful. The Government indicated that no consultation was necessary

in bringing forward the statutory instrument. I was slightly surprised about that, given that we have two distinct judicial systems in the UK.

The Government also indicated that before the UK leaves the EU, guidance on how a blocking regulation would apply to the UK would be published. Given that when this instrument was drafted the intention was that, potentially, we would leave on Friday without an agreement, can the Minister say whether this guidance has been published? If it has not, when will it be, to offer that reassurance?

Finally, the Explanatory Memorandum states:

"The Blocking Regulation currently provides that the Commission is to regularly report on the effects of the extraterritorial third country legislation. This will become a requirement on the part of the Secretary of State in the retained version".

Through what mechanism do the Government intend to do that? Will it be through Written Statements to Parliament, or will a public document be laid before Parliament to provide that transparency? I hope that the Minister can clarify all those aspects.

Lord Stevenson of Balmacara (Lab): I, too, am very grateful to the Minister for her very full introduction to this SI. It took us into areas new to me, such as the intersection between foreign policy and trade policy. That is an interesting issue and the noble Lord, Lord Purvis, was right to focus his remarks on how these things will work in practice. I look forward to the Minister's response.

When the Minister introduced the SI, she pointed out that much of the regulation that has been transposed was originally introduced in 1996 in response to the extraterritorial reach of certain sanctions imposed by the US in relation to Cuba in the 1990s. Obviously, it has been updated since then, particularly with reference to Iran. It set a train of thought in my mind about how exactly our current foreign policy meshes with these regulations. With particular reference to Iran, the commentary I have been reading seems to suggest that the package of measures that is being transferred across would encourage the European Investment Bank and banks in the UK—possibly even the Bank of England—to finance activities in Iran and to strengthen ongoing sectoral co-operation and assistance to Iran. That would include financial assistance through development corporation or partnership instruments, and encouraging the UK to explore the possibility of one-off bank transfers to Iran's central bank, which would allow Iranian authorities to receive oil-related revenues.

I suppose this is all right—I do not really understand very much of this; it is way above my head—but when the Minister responds perhaps she could explain exactly how that meshes with our current policy towards Iran, which I understand is not as sympathetic or supportive as might be suggested by the rather large cash transfer opportunities which were being discussed.

This statutory instrument follows on from activities that have been going on in Europe for a number of years in relation not just to Cuba but to the other countries that were mentioned. It requires companies to notify the Commission within 30 days whenever renewed US extraterritorial sanctions directly or indirectly affect the economic or financial interests of the company in question. Various other things apply. EU companies can recover damages in EU courts from persons causing damage as a result of the sanctions, and it nullifies the effect of any court judgments or decisions of administrative bodies that are based on the reinstated US sanctions. My question here is: has anything happened in that regard? Do we have details on the number of companies that have notified the Commission within 30 days, as required? How much money has been recovered, and how many times have the courts been subject to recovery requests? I am sure that it will not affect the way in which we respond to the SI, but it would be interesting to have on the record whether this has been an active process or one that is more observed in the absence of activity than in the reality.

My attention was drawn to a quote from what is in some senses a rather unusual source, since I do not often quote this person. The UK Foreign Secretary at the time that this instrument was brought in, Boris Johnson, said that he thought it was rather difficult to protect European businesses due to the extraterritorial effect of US sanctions and the difficulties companies have when they touch the live wire of the American financial network—they find themselves sanctioned almost immediately. So my third request for more information is to ask whether the former Foreign Secretary is right that this has been rather difficult for companies to access and use.

I suppose I am leading to this question: what rationale do the Government give for continuing this transfer? It would clearly be inappropriate to have a situation in which an EU regulation had legal effect in the UK when we had not properly transferred it. If the ends do not justify the means, I am rather surprised that the Government are taking this step forward, so could the Minister reassure me when she comes to respond that this is a necessary instrument, that it fits with our current foreign policy operations and thoughts and that there is no concern in that respect?

9.15 pm

Baroness Fairhead: I thank noble Lords for their contributions in this short but useful debate. I hope I have been clear about the Government's commitment to the continuation of these regulations. To address the point made by the noble Lord, Lord Stevenson of Balmacara, about why we are doing this, we believe that if we do not retain and amend this legislation, we will no longer be able to offer protection to UK businesses from the harmful effects we consider to be illegal under international law. We would in effect be acknowledging the superiority of the sanctions regime of a third country relative to our own. Successive Governments since the 1980s have agreed that this is unacceptable and our Government is no exception.

The noble Lord, Lord Stevenson, also highlighted some of the real challenges of these regulations. Yes, they provide protection, but there is also a challenge for companies who find themselves in that spot between being blocked from complying and failing to comply, and therefore being in breach of sanctions. This instrument is not a perfect solution. In application it is probably to be used more as a tool to dissuade companies and

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individuals from complying with extraterritorial sanctions. In terms of usage, only about 14 applications have been received by the Commission. I hope that answers the hard point of the questions.

The noble Lord, Lord Purvis of Tweed, asked some questions about the application process for the exemptions. At the moment businesses apply to the European Commission for exemptions; we will try to make that a bit more straightforward by providing a dedicated mailbox for our businesses to apply for exemptions once the SI enters into force. We hope that that will be a much more readily accessible approach.

On the question of when guidance will be published, over the coming months we will start with the EU guidance and update it to make sure that it complies with the UK context.

In terms of the devolved Administrations, I think that the noble Lord, Lord Purvis, acknowledged that this is a reserved power. We have kept the devolved Administrations informed of the policy on this matter and have sent them the Explanatory Memorandum. In terms of criminal proceedings in Scotland, this has been permitted under the 1996 order, so I hope that that is relatively straightforward.

My final response is to the noble Lord, Lord Stevenson. He asked how this fits in with current foreign policy with regard to Iran in particular. There are sanctions that we support against Iran. However, as I have said before to the House, we believe that the Joint Comprehensive Plan of Action is the best plan to make sure that we prevent Iran obtaining nuclear weapons. We believe that protecting trade with Iran, supported by this blocking regulation, is important to show that we are committed to legitimate trading with Iran. We are firm believers in the importance of the JCPOA.

Lord Stevenson of Balmacara: I am sorry to interrupt the Minister's flow and I am grateful to her for giving way. I was trying to make a slightly different point, which is not the broader case about the JCPOA but on the British national currently held in detention in Iran for whom diplomatic efforts have been made to create a major issue with Iran. I do not see how this instrument helps. The point I was trying to make is that other issues are at play here.

Baroness Fairhead: I do not deny that other issues are at play. For the purpose of this debate, the question is whether the blocking regulation supports our approach to the JCPOA, and I think it absolutely does.

Lord Purvis of Tweed: I thank the Minister for giving way. On the JCPOA, the core members of the EU, including the UK, have established a financial mechanism which will effectively protect British businesses conducting business with Iran. If we are moving to having a distinct system outside that mechanism, which is protected through the European process, if the SI is passed and we leave without a deal, where will British businesses be with regard to that mechanism set up through the aegis of the European Union? If British businesses cannot have the reassurance that they will have that European Union protection, they will feel vulnerable and be in a weaker position than they are now.

Baroness Fairhead: Let me address that head-on. We are absolutely clear that we want certainty and protection for businesses. It is a difficult issue: support comes through banks, many of which choose not to engage given their dependence on their licence to operate in the US or for other commercial reasons. That is their choice to make.

Protection is not actually an EU event, it is an E3 activity—the UK, France and Germany. We have created a special purpose vehicle, the official name of which is INSTEX. It is designed to help businesses conclude legitimate trade. We believe that it has the potential to support the delivery of the sanctions relief that we committed to under the JCPOA and will facilitate trade under European and international law. It is part of the E3, and I think that that will be maintained. I acknowledge that it is not a perfect situation, but we are trying to make sure that we are clear that we are protecting businesses as much as we can in a difficult situation.

To conclude, I thank noble Lords who have participated for their constructive and challenging input to the debate. I hope that I have been able to provide further clarity and I commend the regulations.

Motion agreed.

Cat and Dog Fur (Control of Import, Export and Placing on the Market) (Amendment) (EU Exit) Regulations 2019

Motion to Approve

9.24 pm

Moved by ***Baroness Fairhead***

That the draft Regulations laid before the House on 4 March be approved.

The Minister of State, Department for International Trade (Baroness Fairhead) (Con): My Lords, the regulations are necessary to maintain the ban on trade in cat and dog fur following the UK's withdrawal from the European Union. We recognise the strength of feeling in the UK against a trade that could encourage killing cats and dogs to make money out of their fur. The regulations are most certainly needed to continue to meet the public's expectations. Without them, the legislation imposing the ban would be inoperable.

The regulations were laid before Parliament on 4 March. They are made under powers in the EU withdrawal Act 2018. Noble Lords will know that, given the context, those powers are limited and allow only the correction of technical deficiencies in existing EU law that, by the operation of the Act, will be retained in UK law following withdrawal. The regulations correct such deficiencies, for example by replacing references to the EU and its institutions with the appropriate UK references.

To be clear, such powers cannot make policy changes. I add that it is beyond the scope of the regulations and today's debate to consider wider changes to the ways in which animals with fur, and indeed other creatures, are protected. This is about ensuring continuity and

making sure that the legislation is operable. To ensure that the ban on trade in cat or dog fur is maintained, I commend these regulations to the House.

Lord Purvis of Tweed (LD): My Lords, if we are to leave the European Union and crash out in a way I consider disastrous, a degree of legal certainty is necessary for some of the areas where protection for animals is provided. Indeed, the Minister will recall that this specific example was raised in the Trade Bill.

I welcome putting this mechanism in place to ensure that there are no gaps in this heinous trade, which British criminal proceedings established as a crime more than a decade ago. I also welcome the high penalties for this crime being maintained. In doing so, I wonder whether the Minister can address a few points of clarification. It is important to note that the Government's Explanatory Memorandum highlighted the fact that the European Commission found little evidence of trade in this area. Nevertheless, regrettably, if those in the criminal fraternity see an opportunity or an opening, they are likely to exploit it.

With that caveat, I ask for further explanation on the instrument. Its existing power to derogate, contained in the EC regulation, will be transferred to the Secretary of State. The Minister said that this measure would not be a vehicle for making new policy, but this power would provide Ministers with the ability to derogate. Where will potential derogations occur? If they have already been highlighted for educational or taxidermy purposes, are those purposes defined in current legislation? I know through my links with the textile and fashion industry in Scotland and across the UK that, regrettably, companies could set themselves up as taxidermy companies to exploit a loophole. Clarification from the Government on that point would be very welcome.

The second area was that the current approach, as the Explanatory Memorandum states,

"allows the European Commission to adopt an analytical method to identify different species of fur",

and, if necessary, to amend on that basis. This will now be a power of the Secretary of State, so how will the Government consider this analytical method for considering which species are covered by this regulation?

My final point relates to the devolved Administrations, which I am sure the Minister will not be surprised about. While this will be considered as part of a reserved power—I have no dispute about that—inevitably there has been an interaction with devolved Administrations. When I served in the Scottish Parliament there were proposals for legislation to ban puppy farming and the consequential element of what would potentially become a product from that puppy farming. Indeed, legislation exists in Scotland on other wild animals and the pelts derived from them. If the Minister were able to clarify what discussions the Government have had—primarily in Scotland, which has some complementary areas of primary legislation in this area—it would be most welcome.

9.30 pm

Lord Stevenson of Balmacara (Lab): My Lords, the Minister brought forward a well-argued and brief case, and there is no need for us to go over much of the ground here. This is a very straightforward translation across of an existing power, and it is obviously necessary. These bans are only there because of public indignation and moral outcry about the trade in fur products, with particular reference to cats and dogs in this case.

However, as the noble Lord, Lord Purvis, said, there is a wider context, and it would be helpful to have some sense of where this lies in the thinking on the broader trade in live puppies—and presumably cats—which are brought in to the great distress of the animals concerned, with poor standards of veterinary care and often with misleading information about what breeds they are and their likely state of health. There is also the broader question about how these issues are to be policed.

Mention is made in the commentary around this statutory instrument that determining the quality of the fur is complicated by the fact that it is sometimes quite difficult to track exactly what it is and where it has come from. More work needs to be done on that, and I wonder whether more effort will be placed on this now that the matter is being brought into direct control from the UK. That broader question also leads to the point about whether resources are available to make sure that it is properly policed. Presumably this is a trading standards issue. Trading standards is often asked to take on additional burdens and rarely given additional resources, since its funding comes from local authorities. I would be grateful if the Minister could confirm that there will be adequate resources for this work to be carried out.

Baroness Fairhead: My Lords, I will try to address a number of the concerns raised. The noble Lords, Lord Stevenson of Balmacara and Lord Purvis of Tweed, both mentioned a broader, more extensive ban. There may be time another day to talk about extending the ban. There have been no challenges to this ban under WTO rules. Our position is that that is beyond the scope of this statutory instrument, and therefore it is not a subject for discussion today.

There is a power to derogate in the current regulations. Because we are required only to correct technical deficiencies and because it exists, removing it would amount to more than correcting a technical deficiency. The power is there so that it is appropriate to bestow it on the UK. But let me be absolutely clear here on the Floor of the House—and this is why I am not going to address the other detailed questions of the noble Lord, Lord Purvis—that the Government have no plans to use that power. As the noble Lord said, the derogation is for education and taxidermy. We have no plans to make use of that power.

The noble Lord, Lord Purvis, asked about the use of specific analytical methods. The requirement to report was to the Commission. We no longer need to do that, because we can determine what analytical methods we use. As the UK uses DNA-based methodology, we consider that to be the most appropriate overall and expect to continue to use it.

On the agreement of the devolved Administrations, it is recorded in the Explanatory Memorandum to the 2008 regulations on this subject that this is a reserved matter. The international trade regulation falls within

[Baroness Fairhead]
the general reservation for international affairs set out in the Scotland Act 1998. We have shared these regulations with the devolved Administrations in draft, and, in practical terms, we are confident that there is consensus across the UK on the desirability of maintaining the ban.

I can confirm to both noble Lords who have spoken that we expect these regulations to continue to be rigorously enforced. HMRC will continue its role. It inspects consignments of fur at the point of entry into or exit from the UK, and on retail premises, to ensure they do not contain any cat or dog fur. It will retain its existing power to seize goods it considers to be in breach. It can also bring criminal proceedings against any persons found to have breached the prohibitions.

With that, I hope I have addressed the noble Lords' questions.

Lord Purvis of Tweed: One might assume that this is an area where, if the border with the European Union is in Northern Ireland, capacity will have to be in place to ensure there is no opportunity for the importation of illegal goods through that border. How do the Government intend to ensure that the checks that the Minister said will be required, and that it is the Government's intention to carry out, will take place at the Northern Ireland border?

Baroness Fairhead: I will have to write to the noble Lord on that point; I do not have the specifics of how it will be managed. It is important we maintain these prohibitions, and the country believes that too. I commend the regulations to the House.

Motion agreed.

Trade etc. in Dual-Use Items and Firearms etc. (Amendment) (EU Exit) Regulations 2019

Motion to Approve

9.38 pm

Moved by ***Baroness Fairhead***

That the draft Regulations laid before the House on 4 March be approved.

Relevant document: 53rd Report from the Joint Committee on Statutory Instruments (Special attention drawn to the instrument)

The Minister of State, Department for International Trade (Baroness Fairhead) (Con): My Lords, I am pleased to open this debate on the Trade etc. in Dual-Use Items and Firearms etc. (Amendment) (EU Exit) Regulations 2019. These regulations do a very serious job. Without them, existing European Union law will not be effective in UK domestic law on the day we exit the EU, a vital part of our long-term planning since Royal Assent of the European Union (Withdrawal) Act.

The regulations include amendments that will allow the UK to maintain those EU laws that control exports of items with both military and civil uses. They will control the export of civilian firearms of the type used by hunters and sports shooters. If we do not retain and amend this legislation, we will no longer control the export of such potentially dangerous items. This will put the United Kingdom in breach of international agreements which require we impose these controls and which prevent military equipment falling into the hands of those who intend this country harm. They also prevent or disrupt the proliferation of nuclear and chemical weapons and play a key part in promoting global security by controlling the strategic goods that leave our shores.

The exit-related legislation provides the necessary legislative building blocks to ensure readiness on exit day. The EU withdrawal Act enables a functioning statute book on exit day by providing Ministers with the tools to deal with deficiencies in domestic law arising as a result of our exit from the EU, so it is right and proper that we use it for matters such as export controls.

By making this regulation and the associated Export Control (Amendment) (EU Exit) Regulations 2019, the department will have completed much of the legislative part of controlling the export of strategic goods in preparation for a no-deal Brexit. If this regulation is no longer required on exit day, we would expect to revoke or end it. Alternatively, commencement could be deferred to the end of an implementation period.

Broadly, all the provisions applying to exports from the EU customs territory today will instead apply to exports from the UK. However, leaving the EU will mean that the rules will have to change, and we cannot guarantee that all the export licensing requirements that UK exporters are familiar with will remain the same. For this reason, the Government have made every effort to provide certainty for businesses and the public wherever possible. We have published a new general export licence, which provides for the export of dual-use items to all European Union member states and the Channel Islands. In August, we published a technical notice on export controls, which explained our plans for post-EU exit export control licensing. We have also included EU exit advice, both in the export control training programme and at the annual export control symposium, as well as giving extensive advice to key sector trade associations.

The House should be aware that the Joint Committee on Statutory Instruments has reported the draft regulations on the grounds that they require elucidation in one respect and were defectively drafted in three respects. On the first point, we provided the committee with an explanation of why the transfer of technology by electronic means to the Isle of Man is considered to be an export whereas the physical movement of goods is not. This is a consequence of our customs arrangements with the Isle of Man and is consistent with our controls on military goods and technology. On the other three points raised by the Joint Committee, we have acknowledged that these are drafting errors that we will correct in the near future by laying a further SI, which corrects the drafting. We are very grateful for the diligent work of the committee, and I am happy to confirm that none of those errors affects the proper functioning of the regulations.

I hope that this House will work in the interests of our nation to ensure the passage of this legislation, which we believe is essential to ensuring that we are prepared for EU exit. I beg to move.

Lord Purvis of Tweed (LD): My Lords, I am very grateful that the Government have responded promptly to the committee's report in indicating that they will correct the drafting errors, which were very basic. If it is the Government's position that they are preparing for exit day by addressing such an important issue as arms exports and controls, for there to be three glaringly obvious mistakes is very worrying. That said, I am grateful that the Government have indicated that they will bring forward another SI to correct the mistakes in this one. It is symptomatic of where we are in the Brexit process, but it is depressing given the seriousness of this issue.

9.45 pm

With regard to the substance of the SI, will the Minister say a little more about the Isle of Man? I understand the distinction for traditional customs purposes between those who offer, in effect, services and those who export goods. It is fairly clear in customs practice. I also appreciate the distinct relationship between the Isle of Man and the United Kingdom, but that distinction is academic when it comes to dual-use items, software and cyber warfare. It does not reflect the reality of modern arms exports or defence capabilities. I serve on the International Relations Committee. Our last report went into considerable detail about cyber-warfare capability. As the reality is that a mixed-used technology can be used for offensive and defensive purposes, we need an up-to-date system of regulation. Simply stating that we are using the traditional definition of the export of goods and the export of services is not sufficient. I hope the Government may be in a position to indicate that any successor to this SI will reflect the new reality. The committee is looking at nuclear non-proliferation, and much of the evidence is about the sensitivities within cyber-warfare capability and about exporting or importing goods that would traditionally be used for nuclear or fissile technologies. Any enemy of our state could use a platform in the Isle of Man to provide cyber capabilities and would not be covered by these regulations, but somebody exporting traditional weaponry would be covered. That is a weakness.

That leads me to my final point. It is a depressing reality of leaving the European Union that the Government are indicating that we will remove ourselves from a network of 27 other nations, in which we have effectively led debates about the regulation of dual-use weaponry for our defence. The European Union will have a list of technologies and we may well have a stand-alone list. We will leave a network with a unified system of processes for the determination of the capability of those systems, and we will have a stand-alone process. We will leave an integrated licensing system, and we will have to devise our own. Those three areas show the potential weakness of the United Kingdom compared to being part of a unified bloc. The reality is that we will have to be part of that bloc, aligned with it or distinctly separate from it. Since the Government have indicated that they wish to have a treaty on security and defence, it is fairly obvious to me that as soon as we leave the European Union we will be negotiating to realign ourselves with the three systems we will be leaving. It is a rather depressing scenario for our defence, but it is perhaps symptomatic of the process that is under way in leaving the European Union. If the Minister is able to clarify those points, I will be most grateful.

Lord Stevenson of Balmacara (Lab): My Lords, I am again grateful to the Minister for her comprehensive introduction to this SI. I follow the noble Lord, Lord Purvis, on a number of points and look forward to the responses to them.

I was puzzled by why the version of the SI that we have is not the corrected version, but I think time has probably defeated us on that. I look forward to seeing the final version when it comes out. Having to rerun this debate so quickly might be a little otiose, but it is always a pleasure to have these debates.

My question is slightly broader, and it may be better answered in a letter. The SI concerns the need to amend domestic and directly applicable EU legislation so that it continues to function in relation to the way in which these types of weapons are exported. I could not pick up from what the Minister said—this is why I suggest she might write to us—where this fits into the broader system we set up in early 2000 to try to make sure that exports of weapons as weapons are properly controlled. At that stage it involved three departments of state, but it presumably now involves four. Who has control of that? Are those systems fully operational, and is there any issue there? In a sense, I am confident that there is not, but there is growing concern about the way in which weapons have been used in certain areas. Rather than being used in genuine defence situations, they appear to have been used in internal conflicts and in other scenarios, which was never intended. Therefore, the problem might be that the dual-use material here might also fall into that category, and I wonder whether the Minister can confirm that the broad structure that is there to protect exporters but also to protect our own systems will apply. If so, exactly how will that work in practice?

Secondly, on the same theme, the Explanatory Memorandum makes relatively light work of the new pro forma licences that will be available in the UK to deal with these goods. I do not need a detailed response tonight but I would be interested to know a little more about how these will work in practice. "Pro forma" can be shorthand for not requesting a very detailed exposition from the exporter. I hope that that is not the case. I assume that pro forma means that the licences will be pre-printed and relatively easy to fill in, but I would be grateful to have confirmation of that. What is the system? Where do they go? What are we looking for here? Are these materials are being created under a very deep cut through the system? Will the system track back over rules of origin? Will we be clear where they originated from and where their final destination is likely to be? Presumably all those things will be in a system at some point. Will they be clearly written up and submitted properly, and, if so, to whom, and will they cover all the points that I have made?

Baroness Fairhead: My Lords, I shall try to address the questions directly. Turning to the concern raised by the noble Lord, Lord Purvis of Tweed, I can confirm that controls will apply to cyber capability materials when they are exported to the Isle of Man.

Lord Purvis of Tweed: Part of my point was about exports from, rather than to, the Isle of Man. Currently I am unaware of the Isle of Man taking a very aggressive stance against the rest of the United Kingdom on cyber capability. However, I was anxious about any part of the United Kingdom or the Isle of Man being used for exports to other states. Therefore, it is not only a question of exports from the United Kingdom to the Isle of Man; it is a question of the Isle of Man being the basis for exports from the United Kingdom.

Baroness Fairhead: There are two points that I would like to raise on cyber capability, and to some extent they will also address the process that the noble Lord, Lord Stevenson of Balmacara, asked about. There will be an open pro forma licence for materials going to what we consider to be low-risk territories—that is, the EU. Where there will be a change is if the products go into the EU and are then exported from the EU to another part of the world. Cyber and cryptographic goods are an area that we are taking increasingly seriously. The noble Lord, Lord Purvis, mentioned some of the open general export licences, but only those absolutely consistent with our consolidated criteria are included. All high-risk capabilities are deliberately excluded. As your Lordships will know, the controls on cryptography come from the Wassenaar agreement. There are various agreements that we comply with. The EU Parliament has suggested removing regulation from dual use, but we believe that we have international obligations to implement the controls and we do not agree with that. To be absolutely clear about cyber surveillance, which I believe is a key concern in the work that the noble Lord is doing, cyber surveillance equipment is not included in the open licence.

Regarding the more general impact of our exit on future co-operation with the EU, we absolutely recognise the importance of maintaining close co-operation and hope it will be a key part of the negotiation on our future partnership with the EU.

The noble Lord, Lord Stevenson of Balmacara, raised a subject that is probably for another day. I can just give some reassurance that the Export Control Joint Unit has been created with the Ministry of Defence, the Foreign Office and DIT. DIT is essentially the regulator; the other two departments provide their input, advice and challenge. The unit is established and populated. It is a very important subject but, as I said, one for another day.

I think we all agree that it is critically important that we maintain robust strategic export controls, to fulfil our international obligations and to keep the world safe. I hope that I have been clear about the Government's commitments to this regulation. I finish by reiterating a key point of my opening statement: that if we do not retain and amend this EU legislation, we will no longer control the export of dual-use goods or firearms. We have a responsibility to ensure the security and safety of our people, and this legislation supports that objective. I commend this Motion to the House.

Motion agreed.

Healthcare (International Arrangements) Bill *(changed to Healthcare (European Economic Area and Switzerland Arrangements) Bill)*

Returned from the Commons

The Bill was returned from the Commons with the amendments agreed to.

Royal Assent

9.57 pm

The following Acts were given Royal Assent:

Civil Partnerships, Marriages and Deaths (Registration etc) Act,

Northern Ireland (Regional Rates and Energy) Act,

Healthcare (European Economic Area and Switzerland Arrangements) Act.

House adjourned at 9.57 pm.