

Vol. 797
No. 284



Wednesday
3 April 2019

PARLIAMENTARY DEBATES
(HANSARD)

HOUSE OF LORDS

OFFICIAL REPORT

ORDER OF BUSINESS

Questions	
Access to Cash	163
Immigration Detention.....	165
Female Entrepreneurship.....	167
Freedom of Expression	169
Windrush Compensation Scheme	
<i>Statement</i>	173
Animal Health, Plant Health, Seeds and Seed Potatoes (Amendment) (EU Exit) Regulations 2019	
<i>Motion to Approve</i>	182
Electricity Capacity (No. 1) Regulations 2019	
<i>Motion to Approve</i>	192
Flags (Northern Ireland) (Amendment) (EU Exit) Regulations 2019	
<i>Motion to Approve</i>	199

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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.

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House of Lords

Wednesday 3 April 2019

3 pm

Prayers—read by the Lord Bishop of Peterborough.

Access to Cash

Question

3.07 pm

Asked by **Lord Naseby**

To ask Her Majesty's Government how they intend to ensure that the public have access to cash throughout the United Kingdom.

The Minister of State, Department for International Development (Lord Bates) (Con): My Lords, the Government are committed to safeguarding access to cash while supporting digital payments. Last year, we launched a call for evidence on cash and digital payments in the new economy. We will publish a summary of responses in due course. We will continue to work with regulators and banks to ensure that people continue to have real choice over how they spend their money.

Lord Naseby (Con): My Lords, is my noble friend aware of the great worry experienced by 17% of our citizens about their virtually permanent need for access to cash? Against that background, has my noble friend found time to see and read the *Which?* report, the submissions made by Age UK and the rather heavy tome produced by Access to Cash Review? If he has, that is a happy coincidence. If not, will he please make sure he does so? Is he also aware—

Noble Lords: Question!

Lord Naseby: My Lords, 17% of our citizens are suffering. Against that worry, is he aware that, while the Post Office and Nationwide are helping, the rest of the mutuals movement is handicapped by the Government's failure to implement fully the Mutuals' Deferred Shares Act 2015?

Lord Bates: My Lords, I pay tribute to the work of the mutuals. The noble Lord is right that a situation is emerging where people, particularly the most vulnerable, are seeing access to cash beginning to reduce as a payment option. One in six transactions used to be made in cash; at the moment it is one in three, and it will go down to one in 10. This is an inevitable consequence of the movement of technology. We need to adjust, but we are committed to supporting access to cash for the most vulnerable people, to whom he referred.

Lord Davies of Oldham (Lab): My Lords, times they are a-changing. Tottenham Hotspur is playing its first match on Saturday—tonight, sorry—in its extremely expensive but attractive new stadium, and the stadium is cashless. They must have got their demography right in making that decision, but even if in urban areas there are sufficient cash points and access to cash, in rural areas and small towns there is a developing crisis. A very large number of people, as has already been mentioned, do not have ready access to cash. When will

the Government appoint someone to monitor this situation and insist that the banks and other organisations supply cashpoints?

Lord Bates: That is partly within the role of the Payment Systems Regulator, although not entirely. On the point about cash and Link machines, Link is a network of banks that supervise these things. It has increased the interchange fee between ATMs so that it can meet its obligation to ensure that ATMs are at least 1 kilometre from the next free ATM in rural areas. That is a very important commitment, which the regulator will hold them to account for.

Lord Wigley (PC): Does the Minister accept that in those scattered rural areas there is the very real problem that it is impossible to get good broadband connectivity, and therefore internet banking is not possible? That is not just an inconvenience; it means it is very difficult to get economic development of the sort that is needed.

Lord Bates: I am aware of that. There is obviously the universal service obligation. This year for the first time telephone banking apps will overtake digital online as the way in which most people access their banking services, so that is another factor. However, I am aware of the concern.

Lord Low of Dalston (CB): My Lords, Barclays and HSBC have ATMs with an audio output, which enables blind people to access their cash independently. What will the Minister do to encourage the remaining banks to increase the independence of blind people in accessing their cash independently by ensuring that all cash machines have an audio output, such as those of Barclays and HSBC? Would he be willing to write to the CEOs of the remaining banks to find out how many of their ATMs have an audio output and what plans they have to ensure that all their machines have this vital facility?

Lord Bates: I am happy to undertake to take that up with the Economic Secretary to the Treasury, who is responsible for retail banking, as well as the Financial Conduct Authority. I know that significant progress has been made on that, and I will write to the noble Lord.

Baroness Kramer (LD): My Lords, nearly 40% of payments are still in cash. Does the Minister recognise that although the payments regulator cites post offices as places where one can get cash, they tend to close at 4 pm or 5 pm? People need access, and 1 kilometre is far too far away to keep any local community functional in the way that it needs to be.

Lord Bates: There are limitations that arise from the changes in the way that people access their financial services and cash. We are seeing contactless overtaking debit cards as a way of payment. These changes are happening, but it is important that the regulator and the Government work together with the industry to ensure that people continue to have the access they need to these important cash services.

Lord Blunkett (Lab): My Lords, in fully supporting the point made by the noble Lord, Lord Low, I draw attention to the corollary, which is the denial of choice as the financial institutions gradually seek to eliminate

[LORD BLUNKETT]
the use of cheques. I believe it is important for the Minister to take this issue alongside the cash issue so that people have genuine choice in the way that they pay their bills.

Lord Bates: I am happy to undertake to do that. At the same time as I write the noble Lord, Lord Low, I will write to the noble Lord, Lord Blunkett.

Lord Hunt of Wirral (Con): My Lords, I declare my interest as a non-executive director of Link. Will the Minister recognise that in the review Natalie Ceeney has set out very clearly the way ahead for Link to work with the regulator in making cash available in line with the recommendations of the Ceeney report? Will he ensure that that is now implemented?

Lord Bates: We are still studying the report, which came out fairly recently and contains a lot of data and material. The Link network went to countries such as Sweden, where the proportion of transactions in cash is now only 10%, and asked what could be learned from that situation, which is where we are going to be in five to 10 years' time, to ensure that people in this country have protection and choice available to them.

Baroness Tonge (Non-Aff): My Lords, as the more affluent members of our society no longer carry cash, will the Government consider giving bank accounts and card readers to the destitute and homeless on our streets?

Lord Bates: I do not want to make any value judgments about people carrying cash. Cash continues to be carried by the vast majority of the population—I think the report mentions a figure of about 95%. One of the things we have advanced is fee-free banking, which revolutionised the approach for many people in precisely the situations the noble Baroness refers to.

Immigration Detention Question

3.15 pm

Asked by *Baroness Whitaker*

To ask Her Majesty's Government whether they intend to implement the recommendations of the report of the Joint Committee on Human Rights, *Immigration Detention* (HL Paper 278), published on 7 February, in particular those related to indefinite detention.

The Minister of State, Home Office (Baroness Williams of Trafford) (Con): My Lords, we are carefully considering the recommendations made in the JCHR report alongside those in the recent Home Affairs Select Committee report, and will respond to both in due course. On indefinite detention specifically, the law simply does not allow this. However, we recognise the importance of these matters in informing how we can have a detention system that is fair, upholds our immigration policies and acts as a deterrent to those who might seek to frustrate those policies.

Baroness Whitaker (Lab): My Lords, I am almost heartened by the Minister's response. However, is she aware that, of the over 2,200 people detained without any limit being given and without review, appeal or any consideration of vulnerability—some for over three years—some were released back into the community, after all that? This causes untold damage to family life and they had clearly been wrongly sentenced. The recommended limit of 28 days is surely long enough. Can HMG not undertake to implement at least that?

Baroness Williams of Trafford: In terms of review, we are now trialling immigration bail at two months rather than four, which we did previously. The overall picture is that 92% of people leave immigration detention within four months and 69% within 29 days. We have improved the system by not detaining people for longer than needed and fewer people are now spending time in detention than ever before.

Lord Morris of Handsworth (Lab): My Lords, is the Minister aware that children are also detained in some detention centres? Can she tell the House how the education needs of those children are provided for?

Baroness Williams of Trafford: Not only have the overall detention figures gone right down—they are lower than since the collation of figures began in 2009—but the number of children in detention has gone down drastically. The safeguards have also improved since those times. The noble Lord is absolutely right to ask this, because the safeguards and the well-being of children are absolutely paramount, whether a child is in detention or not.

Lord Paddick (LD): My Lords, with consistently more detainees being released into the community from immigration detention than are being removed from the UK, does the Minister accept that this suggests that the initial decisions to detain frequently lack rigorous assessment of why detention is necessary and justified?

Baroness Williams of Trafford: As I said, the figure of 92% of people being released from detention, who have been there perhaps for immigration bail or other forms of review, is the result of our not wanting to keep people in detention and doing so only to remove them.

Lord Singh of Wimbledon (CB): My Lords, while the checking of documentation and control of numbers can be justified, does the Minister agree that indefinite detention and a callous, dismissive attitude to would-be immigrants or asylum seekers, including the elderly and infirm, as detailed in the report, can never be justified? This is a Christian country. In Leviticus 19:33-34, the Bible reminds us:

"When a stranger resides with you in your land, you shall not wrong him ... you shall love him as yourself".

Baroness Williams of Trafford: I thank the noble Lord for that point. As he made it, thunder was clapping—I do not know whether it was for here or for another place.

The noble Lord is absolutely right that the law does not allow indefinite detention. The purpose of detention is to remove someone, and in as short a time as possible.

He raises a good point about vulnerable people. It might help him to know that we are currently piloting a scheme to manage a number of vulnerable women in the community who would otherwise have been detained at Yarl's Wood. With the input of a medical expert, we are looking to differentiate more strongly between vulnerable cases to ensure that the most complex get the attention that they need.

The Lord Bishop of Durham: My Lords, the Joint Committee's report recommends that initial detention decisions be reviewed by a judge within 72 hours. Can the Minister explain why the usual standards of British justice should not apply here?

Baroness Williams of Trafford: The right reverend Prelate will be comforted to know that all decisions on detention benefit from the oversight of the independent detention gatekeeper. On the analogy with the criminal justice system, that system is different. Custody is in place to establish a criminal investigation, but detention has already established that the person needs to be removed.

Lord Dubs (Lab): My Lords, is there ever a case for keeping a child in detention?

Baroness Williams of Trafford: It is very unfortunate if a child ends up in detention. The decision is balanced on the need of that child to be, perhaps, with its parents. As I told the noble Lord, Lord Morris of Handsworth, the number of children in detention has drastically reduced since 2009.

Lord Green of Deddington (CB): My Lords, does the Minister accept that there has to be some balance in this debate? If there is a specific time limit, especially a short one, it is all too easy for someone to spin out the proceedings—perhaps, in some circumstances, by making a false claim—until he or she has to be released and can then disappear. There has to be some balance and there has to be an ability to detain people until their cases are sorted.

Baroness Williams of Trafford: The noble Lord is absolutely right. Anyone who wishes to frustrate the system could do so through a time-limited detention. The Government are clear: we want to limit time in detention, but actually placing a time limit on it has the effect that he describes.

Female Entrepreneurship Question

3.22 pm

Asked by **Lord Harrison**

To ask Her Majesty's Government how they intend to implement the recommendations of *The Alison Rose Review of Female Entrepreneurship*, published on 8 March.

The Minister of State, Department for International Development (Lord Bates) (Con): My Lords, the Government responded to the Rose review by immediately setting out a new, ambitious target to increase female entrepreneurship by half by 2030, and making new

commitments to help drive more funding to women starting and growing businesses. Alison Rose is working with private sector partners to take forward the recommendations of the review, and will update all in due course.

Lord Harrison (Lab): My Lords, women run businesses better than men. The Rose report, in which that is mentioned, shows that some £250 billion would be added to the UK Exchequer were it to be followed rigorously. Given that, what is being done to help women with childcare, and with increasing business networks? Finally, given that women have extreme prowess in speaking languages, what is being done in this post-Brexit world to ensure maximum use of women in speaking languages to feed and help British business?

Lord Bates: I am certainly happy to go with the noble Lord on that. He points out, rightly, that the report says that there are 1.1 million fewer women setting up their own businesses compared to the proportion of men doing so in the country. The ambition to change that would therefore result in a boost of some £250 billion to the economy. The report makes interesting reading on the barriers to employment: childcare is certainly a major one. That is why the 30 hours of free childcare for parents of three to four year-olds is such an important contribution, but we are aware that much more needs to be done. The report has given the Government a clear working strategy going forward.

Baroness Burt of Solihull (LD): My Lords, if we want,

“to strengthen the UK's position as one of the best places in the world for women to start and grow a business”, as the report says, then no one can be left behind. The Government's response to the Rose report refers to:

“Easing the financial costs of family care with new banking products”.

Will the Minister outline the government thinking about what these products could be and how they will help the estimated 1.1 million women entrepreneur start-ups that the report estimates are missing from the economic life of this country? If he does not have the facts right at his fingertips, perhaps he would undertake to write to me.

Lord Bates: I would be happy to do that to expand but, briefly, the thought was that one of the barriers was in female access to venture capital. An interesting study on that identified bias in the system against female entrepreneurs. It therefore came up with some ideas, along with the British Private Equity & Venture Capital Association and Diversity VC, on how that could be addressed. I think we all recognise that the great research and data that we have seen in the report has given us the ideas to think about policy solutions for the future.

Baroness Neville-Rolfe (Con): I would welcome my noble friend's views on how we could use networking better. I found this enormously helpful in my own business career. For example, there were female mentors telling me what to do, and what not to do. In leading a female executive network across the world, when I was at Tesco, we used to discuss everything from childcare

[BARONESS NEVILLE-ROLFE]
and juggling it, to how to get pay rises. Also, there is Cancer Research UK's Race for Life each year; it was in running that that I first met the late Lady Jowell and many other noble Baronesses. These networking occasions really help to build confidence and we should do more for female entrepreneurs.

Lord Bates: Indeed, that was one of the things which Alison Rose brought out, as she is doing in her present role, particularly in the finance sector. I pay tribute to my noble friend for being one of the pioneer female directors along with my noble friend Lady O'Cathain, who was one of the first female directors of a British retail bank. Lots more needs to be done, but we are standing on the shoulders of some very impressive people.

Lord Davies of Oldham (Lab): My Lords, we are so far behind France, America and Canada in the numbers of women becoming entrepreneurs compared with men. This suggests that there is a rather significant fundamental bias at work in our society. Do we not need to look at the teaching of economics and financial issues in schools for girls, to create some degree of equity and confidence among young women?

Lord Bates: That was a particular focus of a report done by Vince Cable when he was Secretary of State. It was carried out by Lorely Burt MP, now the noble Baroness, Lady Burt. He came out very much on the side of more needing to be done for entrepreneurs. Alison Rose identified that the problems occur at school with not getting more females into STEM subjects. While some progress has been made, with a 25% increase since 2010, the report recognised that significantly more needed to be done to ensure that people had the skills necessary to set up their business and make a success of it.

The Earl of Listowel (CB): My Lords, while I warmly welcome the investment that the Government have made in childcare, is the Minister concerned that childcare work, done principally by women, is still very low status and low paid? Will he talk with his colleagues about investing more in continuous professional development for early-years workers so that they start their own businesses and develop themselves?

Lord Bates: Many of them have done that. As well as skills strategies, developments such as the national living wage have made a significant difference to people in those professions. We need to look at all those issues.

Freedom of Expression *Question*

3.30 pm

Asked by **Baroness Ludford**

To ask Her Majesty's Government what action they are taking to ensure freedom of expression following the temporary detention by Border Force of a man at Gatwick airport for displaying an anti-Brexit badge.

Baroness Williams of Trafford (Con): My Lords, freedom of expression is enshrined in Article 10 of the European Convention on Human Rights. This includes the,

"freedom to hold opinions and to receive and impart information and ideas without interference by public authority".

Under the Human Rights Act 1998, public authorities have to act compatibly with the convention. The Government are happy to take this opportunity to reassure Parliament that they take freedom of expression very seriously and are determined to promote it actively.

Baroness Ludford (LD): My Lords, I am not sure that that answers the Question. I think that the House's understanding of the Question will be enhanced by my explaining, at the risk of breaking conventions, that the badge worn by Mr Brinsmead-Stockham read: "Bollocks to Brexit"—like the one I have with me. It was a bit rude, certainly, but surely not a reason to be detained by Border Force. Meanwhile, a leave campaigner has put malicious devices on train tracks in a politically motivated attack on infrastructure, which is apparently not being treated by the police as terrorism. Should the authorities not get their priorities right?

Baroness Williams of Trafford: The individual concerned was delayed as opposed to detained—I think that there is a clear difference between the two.

Noble Lords: Oh!

Baroness Williams of Trafford: It was for four minutes. I cannot say a lot about it because the incident is being looked into, but I agree with the noble Baroness that whether we say what is on her badge or quite the opposite, we should be perfectly entitled to do so.

Lord Pearson of Rannoch (UKIP): My Lords, I hope that I shall not ruin the career of the noble Baroness, Lady Ludford, by supporting her Question and in finding the Government's Answer disappointing. Likewise, what about the Christian preacher, Pastor Olu, who was arrested, had his Bible wrenched from him and was dumped several miles away by police for preaching the divinity of Jesus, to which a nearby Muslim took offence? Are the Government aware that freedom of speech and expression are dying under their watch?

Baroness Williams of Trafford: I do not know where the specific incident that the noble Lord talked about took place. Was it in the UK? No? You only have to go outside the doors of this Palace of Westminster to hear that any view, as long as it does not incite hatred towards someone, is absolutely taken on board—I enjoy walking past people who either agree with my view or do not, and who regularly admire my handbag—and to know that freedom of speech is well upheld by this country and by this Parliament.

Lord Kennedy of Southwark (Lab Co-op): My Lords, wearing a pro-Brexit or anti-Brexit badge should not be a reason to be stopped, delayed or detained at a border entry point. These are difficult times and passions

are running high, but can the Minister ensure that officials are briefed on ways to avoid these matters becoming incidents?

Baroness Williams of Trafford: I assure the noble Lord that in the case of the individual concerned in the Question, we are undertaking some fact-finding meetings with the member of staff and the higher officer on duty at that time. I think that the noble Baroness and the noble Lord will be comforted by that. The noble Lord, Lord Kennedy, perhaps strayed into other events that have taken place around the Palace of Westminster. We all have the right to give our views on Brexit—and, my goodness, we have done that—but when that strays into some of the more aggressive behaviour that we have seen, it is absolutely unacceptable.

Lord Dykes (CB): Should the Leader of the House not be more enthusiastic about the slogan cited by the noble Baroness, Lady Ludford? After all, it is used frequently and is well known as the slogan of the chairman of Pimlico Plumbers in London, a very famous and distinguished remainder.

Baroness Williams of Trafford: I think my noble friend the Leader of the House is no more enthusiastic about the slogan than I am, but everyone—I thought the noble Lord was going to refer to the wife of the Speaker of the House of Commons—has the right to air their views on what is an incredibly heated topic at the moment.

Lord Forsyth of Drumlean (Con): My Lords, on the subject of people having freedom of expression to give their views on Brexit, will my noble friend give the House an undertaking that our rules will not be subverted so as to prevent us considering legislation properly throughout its stages in this House?

Baroness Williams of Trafford: I say to my noble friend that the conventions and rules of this place and the other place have been upheld for hundreds of years and I agree that we should have the time to be able to consider such huge matters before us at this time.

Lord Tomlinson (Lab): If there was objection on the grounds of the language used, what was the offensive word? Was it bollocks or Brexit?

Baroness Williams of Trafford: Probably both.

Lord Paddick (LD): My Lords, when we debated the Counter-Terrorism and Border Security Bill, we argued that the power given to Border Force to detain people for up to six hours should be based on reasonable suspicion, while the Government argued it should be able to detain people without any suspicion. Is the detention of the pro-remain supporter at Gatwick not an example of how Border Force can now, thanks to the Government, lawfully overstep the mark?

Baroness Williams of Trafford: Again, we must make a distinction between someone being detained and being delayed by four minutes, but I take the point behind the noble Lord's question: obviously, Border Force has to be very careful about why it detains someone. That is the very point in the legislation the noble Lord referred to that we brought through together.

Arrangement of Business

Announcement

3.37 pm

Lord Taylor of Holbeach (Con): My Lords, I would like to update the House regarding the business for next week. Following discussions in the usual channels, *Forthcoming Business* will be issued as soon as I have completed this business statement, indicating the business for 8 to 11 April. At the moment, it is our intention to sit Monday to Thursday next week. We cannot rule out, however, having to sit on Friday 12 April, which, as noble Lords will be aware, is the date on which the current extension to Article 50 expires. As last week, we may need to sit in order to pass secondary legislation associated with any agreement the UK reaches with the EU.

As I said on Monday, I am grateful to all noble Lords for their patience and understanding at this critical time, as well as to my counterparts in the usual channels for their continuing co-operation. Most of all, of course, I am grateful to the staff of the House for their outstanding and unstinting support. I know that many noble Lords will have been following the activity of the House of Commons very closely. *Forthcoming Business* does not anticipate any votes or decisions that it may make today or on future days.

Lord McAvoy (Lab): My Lords, having been consulted in the usual channels, on behalf of Her Majesty's Official Opposition I endorse the actions and statements by the Government Chief Whip. It would be inconceivable that the House of Lords should not be sitting at a time of national deliberations bordering on a crisis, and therefore we fully support this. On behalf of the Opposition, I also endorse the Chief Whip's praise of our staff—without them, we would not be able to manage and we appreciate them all.

Lord Forsyth of Drumlean (Con): My Lords, I have a debate tabled as first business after Questions tomorrow on behalf of the Economic Affairs Committee. I am hearing rumours that insurgents may try to grab control of the Order Paper and enable Private Member's business to take precedence over other business. Could the Chief Whip enlighten us as to what is going on?

Lord Taylor of Holbeach: As I said earlier, no doubt noble Lords are following what is going on down the other end. In *Forthcoming Business*, my noble friend's debate on two reports is due to be discussed immediately after Questions tomorrow. If other business is presented to the House, that is nothing to do with me; it is to do with those who wish this House to consider it. We are a self-governing House, and have the capacity to make our own decisions on how this is best conducted.

Windrush Compensation Scheme Statement

3.40 pm

The Minister of State, Home Office (Baroness Williams of Trafford) (Con): My Lords, with the leave of the House, I will repeat a Statement given by my right honourable friend the Home Secretary in the other place. The Statement is as follows:

“With permission, Mr Speaker, I will make a Statement to the House on the Windrush compensation scheme. Copies of the response to the consultation on the Windrush compensation scheme will be available from the Vote Office.

The United Kingdom has a proud history of welcoming arrivals from around the world. We have long held open a door to those who want to come and help build a better country—including, of course, my own parents, or indeed the parents of the shadow Home Secretary. We have all benefited as a result, with the UK emerging as a stronger, broader, more vibrant and successful nation. We would not be the country we are today without the men and women who crossed oceans to come here legally, make their homes, work hard, pay taxes and raise their families. And we all know it.

This is why the whole country was shocked by the unacceptable treatment experienced by some members of the Windrush generation. People who have built their lives in this country, who have done so much for this country and who have every right to be in this country were told that they were not welcome. It was a terrible mistake. It should never have happened. That it did is a matter of profound regret to myself, my department and the Government.

That is why, just under a year ago, one of my first acts as Home Secretary was to stand at this Dispatch Box and say sorry on behalf of successive Governments: sorry to the parents and grandparents who suffered the trauma of being incorrectly ordered to leave the country they love; sorry to those who had paid taxes here for decades, only to be denied the NHS care to which they were perfectly entitled; sorry to hard-working men and women who were unfairly refused the right to work, and even refused the dignity of a roof over their heads.

But I know that words alone are not enough, which is why, 11 months ago, I did not just say sorry to the members of the Windrush generation; I also vowed to right the wrongs that had been done to them. I sincerely hope that this compensation scheme being unveiled today goes some way to doing that. It has taken longer than I would have liked, but if we are to deliver justice for the Windrush generation and their families, it is vital that we get this right.

Today’s scheme is the product of many months of work with affected individuals and their representatives, including well over 2,000 responses to our call for evidence and consultation. We are also indebted to Martin Forde QC, who has provided us with invaluable independent advice and met with a great many individuals who were directly affected. His findings have contributed hugely to the final design of the scheme, and I take this opportunity to thank Martin for his work.

As a result of this meticulous approach, I am confident that the proposals for the scheme are closely aligned with what affected communities wanted to see—namely, that it is simple, accessible and fair. Full information is now available online and via a free telephone hotline. Guidance is being provided to help people understand what compensation they might be entitled to and how to submit a claim. The application process itself is as simple and as clear as possible.

It is also important to note that the scheme is not only open to those of Caribbean origin. The Government propose broadly to align eligibility with the Commonwealth citizens task force. This means that Commonwealth citizens settled in the UK before 1973, along with certain children and grandchildren of theirs, are eligible to apply if they have losses to claim for. Other eligible groups include those of any nationality who have a right of abode, or settled status, or are now British citizens, who arrived to live in the UK before 31 December 1988.

Of course, the historical nature of the wrongs done means that some of those who have been affected throughout the years are, sadly, not alive to see justice done. Where this is the case, we propose to accept claims from the estates of individuals who would themselves have been eligible had they not passed away, and from close family members of an eligible person.

Later this evening, I will be welcoming community group leaders to Parliament, alongside some of those who have suffered, and their families. It will be an opportunity to reflect not only on the mistakes of successive Governments that brought us to this point but also on what we as a country can do to ensure that mistakes like this are not repeated.

Wendy Williams’ review will explore how members of the Windrush generation came to be treated like illegal migrants, and I look forward to receiving her recommendations. But there is no doubt that the roots lie in a historical policy that saw people given settled status without also being given the ability to prove it.

Nothing we say or do will ever fully wipe out the hurt, trauma and loss that should never have been suffered by the men and women of the Windrush generation. But together, we can begin to right the wrongs of Windrush. We can begin to turn the page on this sad chapter in our history, and we can do justice by people who have contributed immeasurably to this country. When the UK called out for help, thousands of people from the Caribbean and across the Commonwealth stepped up to help get us back on our feet. Now it is time for us to step up and do what is right by those whom we have failed. I commend this Statement to the House”.

My Lords, that concludes the Statement.

3.47 pm

Lord Kennedy of Southwark (Lab Co-op): My Lords, I thank the noble Baroness for repeating the Statement made in the other place by her right honourable friend the Home Secretary earlier today. I too place on record my thanks to Martin Forde QC and his colleagues for the work they have done; we are grateful for the work they have undertaken.

I concur with the comments in the Statement to the effect that we have a proud history of welcoming new arrivals here. My own parents were immigrants to this country from the Republic of Ireland in the 1950s, and my mum went on to work in the NHS as a nurse. I agree that what happened to the Windrush generation was a shocking, unacceptable outrage. People who had every right to be here, who were working hard and paying their taxes, were treated in a shabby, disgraceful way.

The noble Baroness refers to the scheme, but it will be helpful to the House if she could outline briefly what the scheme will look like and how it will work. I welcome the proposal to accept claims from the estates of individuals who have, sadly, passed away. However, could the noble Baroness set out what she means by “close family members” in respect of claims submitted for compensation? Is that children, grandchildren or cousins? It would be good to be clear on that point as soon as possible.

When the noble Baroness talks of media coverage, what does she mean? I have seen the coverage in the mainstream media, but will the Government make use of social media? A social media campaign, properly targeted, could prove to be very effective in this regard; even if it could not make contact with individuals, certainly it could make contact with their children and grandchildren.

Finally, can the noble Baroness say a little more about the programme of events she referred to in the Statement and how long it is envisaged that will run for? I look forward to the noble Baroness’s response to my questions.

Lord Paddick (LD): My Lords, I, too, thank the Minister for repeating the Statement. This is a shameful episode in our country’s history, where those who came here to help the UK were wrongly denied the right to remain. I pay tribute to my noble friend Lady Benjamin for her tireless and successful campaign for a Windrush Day. It is sad that this scandal casts a shadow over what is meant to be a celebration of everything the Windrush generation and their descendants have contributed to the UK. It is difficult to see how the wrongs of unlawful deportation, where some of those affected have died in poverty overseas, can be made right. Rather than accepting claims from the estate of those who have passed away and from close family members, will the Government approach those affected and proactively offer compensation?

While the Government await the results of Wendy Williams’ review, there are some things that they could and should do now. They need to address the ongoing “hostile environment” created by such measures as the right to rent scheme. As Liberal Democrats, we argued when the scheme was being discussed in this House that, as a recent High Court case has found, forcing landlords to carry out immigration checks on potential tenants is likely to be discriminatory, not just against immigrants but against black and minority ethnic Britons. Why are the Government appealing against that finding when they say that they are dismantling the hostile environment?

Can the Minister also explain why Windrush generation individuals who received settled status without being given the ability to prove it are now being asked to

prove that they are of “good character” and why, if they fail to do so, they could be refused right of abode, settlement or citizenship? On page 14 of 19, the Windrush scheme application form states:

“Please give any other information which will help us decide whether you are of good character. Please use an additional sheet if necessary”.

I thought those who had a right of abode in the UK would automatically be given the right to remain. Perhaps the Minister can explain what is going on.

The Government accept that the roots of the Windrush scandal lie in a policy that saw people receive settled status without giving them the ability to prove it. Will they therefore accept the Liberal Democrat amendments to the Immigration and Social Security Co-ordination (EU Withdrawal) Bill currently before the other place, so that EEA and Swiss nationals and their family members who are granted settled or pre-settled status under the EU settlement scheme are provided with physical documented proof of that status, so that they can prove it?

A compensation scheme is one thing. Government action to prove they have learned lessons is quite another.

Baroness Williams of Trafford: I thank both noble Lords for their questions and join the noble Lord, Lord Paddick, in commending the noble Baroness, Lady Benjamin, for all the positive work that she has done in this area. She is a joy to work with and a great advocate for the members of the Windrush generation.

Turning first to the question of the noble Lord, Lord Kennedy, about exactly how the scheme will work, I rarely use a prop in this place, but I happen to have one on me. I refer him to the complete guide to the Windrush compensation scheme, which can be found both in physical copy and on the GOV.UK Windrush compensation scheme website. The rationale behind this came about through the consultation to learn at first hand from the various stakeholders how the scheme might work best and most efficiently. Making the application form as easy to complete as possible was the number one priority, while reaching out proactively to people was the second.

The noble Lord, Lord Kennedy, asked about the various events taking place. Clearly an event is being held in Parliament today with the Home Secretary, and 15 community events have been planned over the next three months. They are open to anyone of any nationality. The first will be held in Lambeth Town Hall this Friday and a full schedule will be published shortly on GOV.UK. He also rightly made a point about social media. It is the best way to get information out as quickly as possible and we are using it to publicise the scheme. I will be tweeting and I hope the noble Lord will retweet my message because we all have a leadership role to play in this.

The FCO is also working to promote the scheme overseas because we want as many eligible people as possible to claim. So that they can do so, promotional materials are being sent to all posts. Tomorrow, the Immigration Minister will brief the Commonwealth high commissioner in the UK. We are placing adverts for the scheme and the events in core publications. Here in the UK, we will write to those who have already been supported through the task force to let

[BARONESS WILLIAMS OF TRAFFORD]

them know about the compensation launch, as well as to those who have signed up for updates on Windrush. The onus is on us all to go through the channels we know to publicise the launch of the scheme.

The noble Lord, Lord Kennedy, also asked about the definition of “close family members”. They include a mother, a father, a child, a brother or sister, a wife or husband, a civil partner and unmarried long-term partners living together. All fall within the remit; if someone has been affected by some of the detriment relating to the Windrush generation, in turn their close family members will also have been affected.

I have answered the question about social media. The noble Lord, Lord Paddick, asked me about the events taking place. Oh, the Box got it wrong and I was right: it was the noble Lord, Lord Kennedy. In any event, it is helpful for all of us to know what events are going on and where. I have a list of the various places: Bradford, Birmingham, Bristol, Leicester, Manchester, Swansea, Cardiff, Newport, Belfast, Nottingham, Glasgow and London.

The noble Lord, Lord Paddick, asked about the hostile environment. This has been batted around quite a lot. As my right honourable friend the Home Secretary said earlier, successive Governments do not have clean hands over what has been described as a hostile environment. Unfortunately, it started under Labour and finished under the current Home Secretary. Being in a compliant environment is far more appropriate.

The noble Lord also talked about the “proof of good character” provision. There has always been a good character test for a reason. Clearly, if someone fails it through criminality, that needs to be brought to the fore.

He also talked about the physical document. A lot of discussion has taken place about this issue in terms of the EU settlement scheme. People feel uneasy that they do not have a physical document. In fact, what the Government are bringing forward is the use of a digital token. Such a token cannot be lost like a physical document and it will assist people in whatever area of life they need help with, be that work, rent and so on. The digital token can be checked for that specific purpose, although obviously there is a data protection issue here. I recognise that some people do not like not having something physical in front of them, but of course they will be notified by email or letter that their claim has been processed and has gone through. However, I accept the point being made by the noble Lord. He also asked whether we will support the Lib Dem amendment to the forthcoming immigration Bill. We shall consider it when it comes to your Lordships’ House, and I am sure we will have a great discussion on it.

4 pm

The Lord Bishop of Peterborough: My Lords, while grateful for the Statement and the compensation scheme, I have a particular concern to raise with the Minister. We have recently seen publicity about very poor decisions on immigration made in the Home Office, suggesting that decisions are being made by staff who are perhaps too junior or not adequately trained. Can we be assured that there will be enough staff working on this scheme who are of sufficient seniority and adequately trained?

Baroness Williams of Trafford: I think I know the matter to which the right reverend Prelate is referring. I met the right reverend Prelate the Bishop of Durham and other noble Lords to discuss the issue in question. It was a productive discussion in which we talked about better training for people making decisions and—in the case we are talking about—better religious literacy. Yes, we have to learn lessons from the sorry Windrush episode and make more consistent and proper decisions as we go forward.

Lord Pannick (CB): I have a similar question. Can the Minister assure the House that there will be sufficient officials dealing with these applications to ensure that they are decided speedily? Does the Home Office have a target time for dealing with these applications?

Baroness Williams of Trafford: The target time is as quickly as possible, but the noble Lord makes the right point and I know the episode to which he refers as well; I worked with him on it. There are several levels of assistance for claimants. We are about to contract with a third party so that our advice can be given online or by phone. As I say, the application form has been designed to be as simple and to provide as efficient and speedy a response as possible.

Baroness Berridge (Con): My Lords, while welcoming this compensation scheme, I find it very sad—the noble Lord, Lord Paddick, alluded to this—that the word “Windrush” is now in many people’s minds associated with this system in the Home Office. There is now, of course, a national day, 22 June. Can my noble friend the Minister please outline whether specific money is being allocated so that that day can be commemorated in such a way as to try to make good some of the negative publicity around Windrush and to return it to the place it should have in our national history—one of celebration and commemoration?

Baroness Williams of Trafford: I thank my noble friend for asking that question. Yes, we need to turn what has now widely been seen as a negative period in our history into a positive period, one in which the Windrush generation contributed hugely to this country after the war. I do not know about funding, but I can certainly find out for my noble friend. I will let her know and place a copy in the Library.

Baroness Benjamin (LD): My Lords, I thank the Minister for her kind words, as well as my noble friend. I am part of the Windrush generation and this issue is close to my heart. I was delighted to hear the Statement being read out. I am also happy to say that not only do we have a Windrush Day, which 50 applicants will be getting money to celebrate, but we have £500,000 to spend each year on Windrush Day from now on, which is great. The Prime Minister has also asked me to chair the Windrush Commemoration Committee and has given us £1 million to create a significant Windrush monument to recognise and celebrate this important part of our history—the great contribution the Windrush generation has made to Britain—and for us to leave a lasting legacy. However, many have asked why the money is not being spent on compensating those affected by the Windrush scandal. This is something

that the committee has to deal with all the time. I say that we must do both. What are the Government doing to deal with this criticism, to bring harmony and to bring an end to the Windrush scandal as soon as possible?

Baroness Williams of Trafford: I thank the noble Baroness for outlining the money that has been spent, which I could not do in answer to my noble friend—she has of course been right at the heart of this for some months now. As for spending money on Windrush compensation rather than on the projects and the monument the noble Baroness talks about, we are actually going to spend it on both. The scheme overall is not capped, although obviously certain elements of it are financially limited. She can be confident that we will fulfil our obligations in both areas.

Baroness O'Neill of Bengarve (CB): Will the Minister tell the House what work the Government have done to identify other groups that may have very great difficulty presenting identification documents that establish their right to remain and live here? I think particularly of people born in children's homes in both Northern Ireland and the Republic of Ireland, who may have had a rather turbulent childhood and may not have access to documents that record their birth or adoption. I believe the numbers are not negligible.

Baroness Williams of Trafford: I absolutely agree with the noble Baroness in what she says about Northern Ireland and southern Ireland. There will be people alive who do not even know where they came from, such as the chaotic system back in the 1950s, and until the 1970s, in both Northern Ireland and southern Ireland—in some cases children were sold abroad. Nobody could fail to be moved by the story of Philomena, who eventually identified who her son was after he died. The noble Baroness makes a very good point, and that is why we have the pre-1973 cohort and the pre-1988 cohort. The problems faced by the Windrush generation are not confined solely to people of the Windrush.

Earl Attlee (Con): My Lords, I am a little worried about the point made by the noble Lord, Lord Paddick, on good character. It seems to me that someone is either entitled to be in the UK or not. What does good character have to do with it?

Baroness Williams of Trafford: Sometimes, someone who fails a good character test—for example, because of criminality—will be precluded from having leave to remain in this country. That is what the good character test is around.

Lord Ouseley (CB): My Lords, we always hear about lessons learned when there are major disasters or atrocities of the kind associated with the Windrush generation and the compensation scheme. As early as 2012, representations were made by Caribbean Heads of Government about the mistreatment of their residents and the issue of non-documentation and proving their right to be here, in spite of having been here since the last war. As late as 2014, those representations were made. Just over a year ago, I asked a Written Question, and a Written Answer came from the Minister herself. I was told that no representations had been made to

Her Majesty's Government; it was the tenacity of those campaigning on behalf of people who had been mistreated that ensured the matter came into the open and started to be taken seriously.

It was almost exactly a year ago that a major press conference launched the initiative that exposed what was going on. So when we come to hear about lessons learned, which was stressed in the Statement, I would like to know why the representations made by the Caribbean Heads of Government were not made known to anyone else? Was that based on the context of the hostile environment, which suggested that these people did not matter and were unimportant, and that it was irrelevant to take those representations and pass them on? When the Minister realised what had happened, she made it known that she was misled and did not have that information when she gave an incorrect answer to the House. Can we be assured that, if this happened tomorrow—if representations were made to Her Majesty's Government through the Foreign and Commonwealth Office, as they were on that occasion—representations would be communicated to those in the Home Office who have responsibility for this matter and there would not be a repeat of the situation we have just had?

Baroness Williams of Trafford: I thank the noble Lord for the points he has made. He will be aware that the Home Secretary has asked Wendy Williams to carry out a lessons learned review and we look forward to hearing its findings. We often say "This will never happen again" in all kinds of settings in life. The Windrush episode is a travesty for this country and all we can do on identity assurance is to build on that situation and try to do things better in future.

Lord Dholakia (LD): My Lords, what is being done to ensure that such a tragedy never happens again in this country? My concern is that as early as 1980 the Commission for Racial Equality produced a report on immigration control procedures in which everything that is being talked about in regard to the Windrush migrants to this country was reported. However, the type of culture which developed was, in effect, meant to keep people out rather than allowing eligible people to enter the country.

My other concern is for EU migrants who will be applying shortly for settled status in this country. I recently visited the Liverpool centre and, as far as I can discover, all they will be entitled to is a number confirming their status here. I am worried that they will have no documentation for future occasions when they are asked to prove their status in this country. Will the Minister look again at what can be done to make sure that they will have the type of documentation that can be produced on demand, rather than a number which can be lost at any given time?

Baroness Williams of Trafford: On the noble Lord's last question about the number being lost, it will be of course be a digital token, a digital identity. I acknowledge the fears that some people who are resisting it have about something which is not on paper. It may make them feel insecure but it is probably more secure than a piece of paper which can easily be lost. I totally agree with his point about the culture, which had

[BARONESS WILLIAMS OF TRAFFORD]

grown over successive years into a situation where we were more likely not to believe people than to believe them and, over decades, the Windrush tragedy happened. On the question of ensuring that it does not happen again, I refer to the answer I gave previously about Wendy Williams carrying out the lessons learned review. Identity assurance—this goes back to the noble Lord's question about having a physical document—as it has grown up from the 1970s onwards, has become more important for people in everyday life to enable them to work, to rent and to prove that they are who they say they are.

Baroness Hussein-Ece (LD): I acknowledge the Minister saying that it was a travesty—it is a travesty and a tragedy—but my noble friend Lord Paddick asked how proactive the Government will be in compensating and reaching these people who were wrongly deported and have been treated so shabbily. We have read of terrible cases where people have died, been denied cancer care and deported. Over the years, a number of people under the radar have been deported. The fact that they were deported means that the Home Office must have a record of who those people are and so, instead of waiting for them to contact us or their respective Governments if they are already in the country to which they were deported, what are the Government going to do to contact them? As the Government must have a record of paying for their flight back to their country of origin, surely they should be proactive in bringing them back or compensating them if they are not in a position to come back and are living in poverty in another country. Can the Minister say specifically what proactive measures are being taken to deal with that?

Baroness Williams of Trafford: The noble Baroness asks a perfectly logical question about what we have done about some of the people who we might have wrongly removed from this country. Officials spent a long time doing a manual trawl of some of the people we removed. I had the numbers—the number 57 comes to mind, but I will double check and write to the noble Baroness about the exact breakdown of the numbers that we checked.

Lord Hussain (LD): Is there a right of appeal for those claiming compensation under the Windrush scheme?

Baroness Williams of Trafford: That is a very good point. I do not know whether there is a right of appeal. Obviously there are a number of different categories, some of which will be yes or no because it is cut and dried, but others may not be. I will write to the noble Lord on the appeal process.

Lord Paddick: Will the Minister give me further clarification on the good character issue? Clearly if somebody is a British citizen or has a permanent right to remain in the UK, which a lot of these Windrush people have, even if they are convicted of a criminal offence, they cannot be deported. Why are the Windrush generation being asked about previous convictions and to prove their good character before they are given written confirmation, if you will, of what is the case: that they are British citizens or that they have the right to remain?

Baroness Williams of Trafford: Obviously each case is different, and the good character test would have to be applied to anyone applying for leave to remain in this country. There is a spectrum of what denotes good character or otherwise. The decision will be different in different degrees of criminality, so I am very happy to write to the noble Lord.

Animal Health, Plant Health, Seeds and Seed Potatoes (Amendment) (EU Exit) Regulations 2019

Motion to Approve

4.17 pm

Moved by Lord Gardiner of Kimble

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

The Parliamentary Under-Secretary of State, Department for Environment, Food and Rural Affairs (Lord Gardiner of Kimble) (Con): My Lords, as the Government have made clear, we intend to incorporate on to our statute book and make operable all relevant aspects of EU law from the point of exit to ensure that we have fully operable arrangements which protect our biosecurity and minimise trade disruption. This instrument covers animal health, plant health, seed marketing and seed potatoes and primarily makes technical amendments to ensure that recent EU decisions will be operable on exit day. I would like to make it clear from the outset that our biosecurity controls on animals and plants are paramount, and this instrument contributes towards ensuring that we will have the most robust arrangements in place to protect public health and the environment.

The amendments made by Regulation 2 concern recent updates on animal health control measures relating to African swine fever in certain member states. This instrument amends Commission implementing decision 2014/709, ensuring that recent updates relating to the two ongoing earlier requirements applicable to all member states are transferred to the appropriate Minister in the United Kingdom.

Appropriate Ministers are required to prohibit movement of live feral pigs and to erect advisory signage alerting the public to the ways in which the disease can inadvertently be spread by people who travel to and from affected areas. I assure noble Lords that this amendment supplements our existing powers in the Diseases of Swine Regulations 2014 to prevent and control African swine fever, including powers to cull infected animals and establish protection zones, surveillance zones and feral pig control zones in the event of any such outbreak.

Regulation 3 amends retained EU law to ensure that TSE functions operate correctly by replacing a reference to production and manufacturing processes approved by “the EU Commission” to processes approved by “the Secretary of State”.

Part 3 of the statutory instrument covers plant health. Regulation 4 applies to England only, and Regulation 5 applies to England, Wales and Northern Ireland. The instrument amends the Plant Health (Amendment) (England) (EU Exit) Regulations 2019 and the Plant

Health (EU Exit) Regulations 2019 to deal with new EU plant health decisions introduced and to recognise arrangements with the Crown dependencies.

Planned meetings with the Crown dependencies concluded early in 2019 and Regulations 4 and 5 recognise the outcome of broader government agreements with them. The Crown dependencies, which include Jersey, Guernsey and the Isle of Man, are currently treated as part of the United Kingdom for the purposes of EU plant health legislation, so plants and plant products move between the Crown dependencies, the United Kingdom and the rest of the EU under the same EU plant health rules. Outside the EU, these arrangements will no longer apply, and there have been discussions with the jurisdictions concerned to agree future arrangements for the trade in regulated plant material. The Crown dependencies have agreed to adopt controls similar to those of the UK in order to continue to facilitate this trade. The changes made by this instrument give effect to those arrangements, specifically in relation to the import and movement of regulated material from the Crown dependencies.

The amendments made by Regulation 5 also deal with new EU plant health decisions recently introduced, supplementing the lists of regulated pests and plant material and controls in the regulations. Regulation 5 prescribes in full on our statute book the detailed requirements in recently introduced EU legislation preventing the introduction and spread of the damaging plant pest, the red-necked longhorn beetle. This pest is a threat to a range of fruit and ornamental species in the United Kingdom, including cherry, peach and plum. It has been present in Italy since at least 2010, where it is established in the Naples area. The specific measures that we are introducing will help protect against its introduction through, for instance, wood-packaging material and nursery plants.

Regulation 5 also amends recent EU decisions to provide for imports of ash wood from the United States and Canada to continue under the same stringent derogation provisions after exit, ensuring continuity of supply for UK businesses without compromising our biosecurity. This follows a prolongation of the EU decisions concerned, which have been proven to provide effective protection regarding this trade and which we wish to retain.

The Plant Health (Amendment) (England) (EU Exit) Regulations 2019 are also being amended to enable UK plant passports to contain specific details such as the origin, identity and quantity of the plants concerned. These are required in relation to the marketing of fruit plant propagating material and fruit plants to avoid the need for dual labelling. This follows an update of business-as-usual legislation, which has recently allowed this change to be made.

Part 4 of the statutory instrument covers seed marketing and seed potatoes, and it applies to England, as this is a devolved matter. Regulation 6 amends the Seed Marketing Regulations 2011 to allow a two-year interim period to recognise authorisations granted by EU member states for marketing the seed of new vegetable varieties that have not yet completed testing for official registration. This pragmatic approach maintains trade and will give growers in England continued access to new varieties at the earliest possible stage.

Regulation 7 addresses technical operability issues by removing from the seed potatoes regulations references to the European Commission, Community and member states, replacing references to “third countries” and removing reporting obligations to the EU.

Regulation 7 also assures continuity in supplies of seed potatoes by amending the Seed Potatoes Regulations 2015 to provide for a one-year interim period during which EU varieties and seed can continue to be marketed in England. In addition, it avoids financial loss by permitting a one-year period for existing stocks of pre-printed official EU certification labels to be used.

Regulation 8 amends the Marketing of Seeds and Plant Propagating Material (Amendment) (England and Wales) (EU Exit) Regulations 2019 to exclude the marketing in England of vegetable seed produced in Switzerland. The regulations had been amended to allow seed from Switzerland, but vegetable seed is outside the scope of the EU’s trade agreement with Switzerland—hence this change.

This instrument is required to attend to a number of elements of retained direct EU legislation to ensure its operability and appropriate functioning after exit. I beg to move.

Baroness Byford (Con): My Lords, I thank my noble friend the Minister for introducing this statutory instrument, which is hugely important for the protection of both animal and plant health. I welcome the steps that are being taken within the statutory instrument. Most of the sections refer to transposing EU law into UK law, but I have one or two questions for the Minister. In Part B, on page 34 on infested zones, it says that the conclusions will be,

“based on sound scientific principles”,

and gives powers to,

“the appropriate UK plant health authority”,

to amend the buffer zones where required. Can the Minister tell us whether this power is literally transposed across or is a new initiative? If it is a new initiative, it makes good sense; if it was already there, I am glad.

On the same area of infested zones, the statutory instrument says that the demarcation can be lifted,

“if the plant pest is not detected in the area over a period of four consecutive years”.

Again, I ask the Minister: is that current practice or a new introduction within the statutory instrument?

I now move on to the marketing of seed potatoes from the EU and Switzerland, to which the Minister has just referred. On page 43, paragraph (8) refers to “GMO regulations”. Again, I wonder whether that is within the current restriction and whether it will have any bearing on any new varieties that might be worked on or introduced.

On page 3 of the Explanatory Memorandum, paragraph 2.10 refers to,

“UK plant passports to contain ... information in relation to fruit plant propagating material and fruit plants”.

It states that the Plant Health (England) Order 2015 is out of date—the Minister referred to this earlier. Will it be updated or does the statutory instrument that we are debating at the moment do that?

[BARONESS BYFORD]

Moving on again, I am glad to see that people travelling from the EU will be subject to the same rules as in the past when bringing plants and plant products into the UK, particularly those with their own packaging. One of the big risks we run is introducing disease from incoming plants, however well-intentioned the person was who brought them in.

The Explanatory Memorandum also refers to the European Statutory Instruments Committee's comments that this SI has, "political and legal importance", making "extensive amendments" to the two EU exit SIs. I wondered what these were, because when I read through it I did not pick them up. I hope that my noble friend the Minister will be able to comment on that when he winds up.

4.30 pm

Baroness Bakewell of Hardington Mandeville (LD):

My Lords, I thank the Minister for his comprehensive introduction and for his time, and that of his officials, in the briefing session. As he said, we have here an SI that covers four subjects. First, regulation 999/2001 covers animal health in the form of bovine spongiform encephalopathy—BSE. Secondly, Commission implementing decision 2014/709 covers movement restrictions within the EU where African swine fever is present. Since the UK is designated free from that disease, we are not currently subject to those restrictions. Thirdly, Council directive 2000/29/EC covers protective measures on organisms harmful to plants and plant products. Fourthly, Council directives 2002/56/EC, 2002/55/EC and 2008/90/EC prescribe marketing standards for seed potatoes, vegetable seed and fruit-propagating materials. That is quite a mixed bag.

I shall deal first with the animal health aspects and TSE. This is a technical amendment relating just to England, as Scotland and Wales already have their own arrangements. Part 2, relating to African swine fever, relates to other member states. There is none here in the UK at the moment and we have not had an outbreak in the past. The SI makes provision to make it illegal to both import and export wild boar into the UK. There are powers in place to ensure that we can deal with an outbreak of African swine fever should one occur, and I am content that this aspect of the SI is both sensible and sufficient.

Until quite recently, a landowner a mile away from where I live had a small herd of wild boar on his land. His neighbours were none too pleased as it was not unknown for the piglets to escape and run riot, in the way that piglets will. Everyone was extremely pleased when he at last got rid of that small herd. I wondered whether he might have been subject to this SI had it been in place at the time.

The plant health aspects are slightly more complex. We debated this topic last week but that SI did not cover the Crown dependencies of Jersey, Guernsey and the Isle of Man. That is now rectified today. I will refrain from making the obvious comment.

Schedule 16A refers, as the Minister has said, to the red-necked longhorn beetle, which is currently present in Italy and a tremendous pest. The SI attempts to prevent this pest arriving in the UK. The other aspect

covered by the SI is the import of ash wood, which may come in from Canada and the USA. It is vital for the UK to protect its biosecurity, and by restricting the importation of both the longhorn beetle and ash wood that may come from unregulated areas, I am assuming that we are ensuring full protection. Can the Minister confirm that that is the case?

It is vital that all imports of plant material are fully regulated and certified; that is, with a plant passport. All paperwork needs to accompany imports with very detailed information on plant health, with pre-notification of imported plants from infected regions. I agree with the noble Baroness, Lady Byford, about the issue of travellers bringing plant material into the country in their luggage. I hope that flagging up this piece of legislation will raise its profile and prevent the import of material that could be injurious to our indigenous plants.

Lastly, we come to seed marketing and seed potatoes. This follows a negative SI and is only a small part of what went before. There are no barriers to trade within the UK and no impact on the Scottish seed potato producers; it is a really big industry in Scotland. Our producers are reliant on certain types of potatoes coming in from the EU. In Scotland they use different types of potatoes from those in England, and I shall look out for those when next buying potatoes, although I am not confident that I will be able to find them where I live.

The previous SI on this subject had wide-ranging acceptance of the use of seeds from the EU for a two-year period. Given that the UK's production of ware potatoes is valued at £900 million, it is important that we get this right.

I was very interested in the phrase "unlisted vegetable varieties" in paragraph 2.15 of the Explanatory Memorandum. I was correct in thinking that this applied to new varieties of vegetables. These have yet to be registered and require two years of official testing before that registration takes place. My understanding is that there is a short-term registration authorisation before this, so that the product can be market-tested to some extent. Perhaps the Minister could confirm that. One such new vegetable is kalettes, which have become very popular as a new and tasty way to eat our greens. There will undoubtedly be others. I can recommend kalettes if your Lordships have not already tried them.

Although there has been discussion with the devolved Administrations and there is now agreement on the way forward, there is no consistent approach across the UK. Basically, the devolved Administrations are doing their own thing, which, of course, they are entitled to do. However, this could lead to confusion among producers and growers as to whether they are complying with the legislation.

I fear there will be huge problems further down the road as we work with these various pieces of legislation, which have become very fragmented and piecemeal. It has all become rather rushed at the end, instead of there having been a proper implementation plan at the outset, with sensible groupings together. That said, I support this SI. I doubt that it will be the last, but I live in hope.

Baroness Jones of Whitchurch (Lab): My Lords, I thank the noble Lord for his introduction to this SI and for arranging a helpful briefing beforehand. I also declare an interest as the chair of Rothamsted Enterprises, which is part of a research institute that does considerable research into plants and seeds.

When I read through this SI, I had a very real sense of déjà vu as, of course, these are issues we have debated before. I do not intend to repeat everything I said about the importance of biodiversity at that time. Many of those issues were captured expertly by the EU Energy and Environment Sub-Committee report, *Brexit: Plant and Animal Biosecurity*. The committee made the point:

“Geographical proximity means that the EU will always be a key source of biosecurity risks to the UK”,

and therefore argued that it was essential that the UK Government negotiate continued participation in as many of the EU’s notification and intelligence-sharing networks as possible.

The Commons European Statutory Instruments Committee also intervened to argue that the proposed SI should be upgraded to affirmative, because of its political and legal importance. We agree with that analysis. Could the Minister update the House on where we have reached in discussions with EU partners on shared intelligence and continued co-operation on biosecurity issues post Brexit? Can he update us on the plans for a UK database to capture biosecurity alerts and share information with the EU?

Turning to the substance of this SI, we accept that these amendments to the original SIs are necessary. However, we are also concerned that they are the product of what seems a rushed job, in which errors and unintended consequences will be inevitable. The original SIs were debated only a fortnight ago and now we are back here again, correcting new errors and omissions that have surfaced. I have to say that, for an SI intended to correct minor errors, there seem to be rather a lot of them.

Luckily, these have been identified before our potential Brexit day but, if a no-deal Brexit goes through, I am sure we will still be playing catch-up on other errors that come to light in months to come. Indeed, the Explanatory Memorandum makes it clear that since this SI went to the sifting committee, further changes have been made to the text. I wonder whether the sifting committee has been notified of that, because adding wording at that late stage, however minor it might be, seems a rather strange way to go about the process.

This is the inevitable consequence of civil servants and lawyers working under unreasonable pressure and parliamentarians not having enough time to review the legislation thoroughly. The Minister said that biosecurity concerns were paramount. Can he reassure the House that he is confident that our biosecurity will not be compromised by the need for these and other corrections, some of which may not even have been identified yet? Has an internal risk assessment been carried out to measure the threat of a biosecurity breach through incomplete legislative barriers?

Throughout this whole process, one of our major concerns has been the capacity to check materials coming across the EU border into the UK. We have

never been convinced that there are sufficient vets and inspectors to check imports into the UK thoroughly. Can the Minister assure us that all regulated plant material brought into this country via the EU from third countries will be checked for pests and diseases? Can he also update us on the controls that will apply for animal and plant products crossing between the Republic of Ireland and Northern Ireland?

On the specific changes, the Explanatory Memorandum addresses the regulation of seeds for unlisted vegetable varieties. The noble Baroness, Lady Bakewell, gave some interesting examples. It goes on to explain that the regulations provide an amendment to allow a two-year interim period for the marketing of these varieties. The reason given in paragraph 2.15 is that it is,

“for the purpose of gaining knowledge and practical experience during cultivation in England”.

When I read this, I thought it sounded rather patronising to horticultural specialists, implying that they need to build on their practical experience. It rather implied that they did not understand the nature of the seeds that they were cultivating. We have heard a little clarification of the purpose of that interim two-year break, but it would be helpful if the Minister could clarify a little more.

Paragraph 2.10 of the Explanatory Memorandum refers to another SI on plant health in which provisions are out of date, meaning that we will need another SI before Brexit day. This issue was raised by the noble Baroness, Lady Byford. Can the Minister update the House on the progress of this separate SI? Has it now been laid, considered and agreed by this House?

Finally, may I raise the territorial range of this SI? In his introduction, the Minister set out some of the explanation. I understand that different parts of the instrument apply differently—some to the whole of the UK, some to England and Wales and some to Northern Ireland. If only part of this SI relates to Scotland, are there good reasons why the Government have chosen to have a separate policy on some aspects of this? As the noble Baroness, Lady Bakewell, said, what is the justification for a pick and mix, which is what seems to be happening at the moment? What are the implications for businesses, which are having to operate under those separate regimes when some things are UK-wide and some are devolved? I understand that there is a framework agreement, but I do not think that on issues such as biosecurity it was ever intended that they should be mixed up in this way.

It would be helpful if the Minister could explain which sections refer to Scotland alone, and what steps are being taken to create a UK-wide biosecurity framework with shared powers and responsibilities. Are we providing leadership at a national level to try to ensure that happens? It is in everyone’s interest. I look forward to his response.

Lord Gardiner of Kimble: My Lords, I am most grateful to my noble friend Lady Byford and the noble Baronesses, Lady Bakewell and Lady Jones of Whitchurch. Many of us have been battling over these statutory instruments in so many areas. There may well be other opportunities, but I wish to record the enormously constructive way in which we have worked together, whatever our views,

[LORD GARDINER OF KIMBLE]

to get the right result for the statute book. Biosecurity in this area is absolutely paramount. I also say to the noble Baroness, Lady Jones of Whitchurch, that I accept responsibility for any errors. I am a person of detail. I do not like errors, but I am prepared to apologise and say I am sorry about it. The instruments have all gone through the normal checking process, including checks by Defra and other government lawyers as second and third eyes. They have also been scrutinised by the JCSI. Sometimes mistakes are made and I regret that, but a lot of the reason for having this discussion today is to ensure, as we always wanted to do, that what is on the EU statute book is accommodated in our own.

4.45 pm

I am very grateful that my noble friend Lady Byford opened her remarks on the question of buffer and demarcation zones, precisely because of the considerable section of this statutory instrument that deals with *Aromia bungii*—the red-necked longhorn beetle. It is a really damaging, wood-boring pest, native to Asia, that has arrived in Naples. We wanted to ensure that this provision was on our statute book. Looking through the SI, the majority of its pages are arrangements for the buffer zones and the demarcation, which is specifically lifted from the EU decision and statute on dealing with that pest. That is why it is a full package. I say to her that these are all the elements of what we will have at our disposal, in the European Union and in our country, to deal with this invader—although, of course, this is all designed to stop its arrival.

My noble friend Lady Byford asked about the reference to GMO. The reference is to ensure that any variety of potato that is a GM variety complies with the relevant GM legislation. There are no GM varieties of potatoes authorised for marketing in the UK, so this provision is to ensure operability after exit in that situation.

The question of passenger luggage is obviously important. There is no policy change but the clarity of the text is to provide that legal certainty. As we have said on a number of other areas, when we leave, on day one, there will be the same biosecurity risk from within the EU. But we want to ensure that our message is to encourage passengers always to be biosecurity-aware, wherever they are coming from, because of the arrival of pests and diseases.

My noble friend Lady Byford also mentioned the use of “extensive”. I am obviously interested in that word because, as I have sought to explain to your Lordships, of the intricacies and detail of these new points that have come in. The large, extensive area is to deal with the beetle; that is how I would interpret the word because I have described all the key elements involved in this statutory instrument.

The noble Baroness, Lady Bakewell, rightly raised the subject of her knowledge of the wild boar. What has happened in eastern Europe, and with the jump to Belgium, is that the disease has rapidly spread in the wild boar population. There is of course the concern for commercial pig production. In the commercial pig units in that area of Belgium, I am afraid that all the pigs had to be put down because of the concern about the spread of the disease. That is why it is absolutely

imperative—I assured your Lordships specifically on this—that we had the powers to deal with the matter. This goes back to biosecurity; the jump of African swine fever came when it arrived in the Czech Republic, with a weak connection to someone dropping a pork product. We do not have that confirmed but it is very likely to be the same in Belgium. That is why to raise awareness we have, for instance, put out a lot on the biosecurity imperative in the newspapers, in languages for people from eastern and central Europe, and about not bringing in pork products for all those reasons. I reassure your Lordships that our communications team is working with industry. In the pig industry, it is absolutely imperative that the personal biosecurity of everyone who works in a pig unit is of the highest order.

I also take the point made by the noble Baroness, Lady Bakewell, about accumulations of wild boar populations. Mature consideration about how we manage wild boar is needed, not only in relation to adjacent commercial pig production but in general. I know that there is widespread concern among communities in the Forest of Dean about how best to manage an increasing population of wild boar.

The noble Baroness, Lady Bakewell, raised a point about ash. I am very much aware not only of the travails of the ash here but of the threat posed by the emerald ash borer in Russia and the United States. That is why it is important that we have a systems approach. The wood must be debarked; it must be heat-treated and dried to strict specifications. This is an area where biosecurity in terms of the protocols around importing wood is so important; I say that to the noble Baroness, Lady Jones of Whitchurch, as well.

The noble Baroness, Lady Bakewell, spoke also about unlisted EU vegetable varieties. I am very pleased that she mentioned the kalette. We often see in shops nowadays all sorts of different produce that we might not have seen before, but it is a really important part of agricultural, horticultural and vegetable innovation and good-quality food. Many of these varieties are bred in the EU, particularly in the Netherlands. We want UK growers to have early access to seeds. In addition to kalettes, there are also lettuce varieties with resistance to downy mildews, for example. I say again that unlisting is not about any biosecurity concern; it is about where vegetable varieties have not been registered.

The noble Baronesses, Lady Bakewell and Lady Jones of Whitchurch, mentioned the devolved Administrations. I assure them that all four Administrations have co-operated. In many cases, the same changes have been made deliberately to avoid disruption to businesses. I think that it is fair to say that, in Scotland, seed potatoes are an iconic feature of production. If we have a devolution settlement, and if an Administration wish to bring forward their own arrangements, there are the frameworks and there is the work that we have all been doing to ensure a consistent approach. There is obviously merit in consistency but, if an Administration feel that they would like to put it on their own statute book in their own way, that should be seen as a force of how devolution settlements work.

The noble Baroness, Lady Jones of Whitchurch, raised an important point on systems. There is precedent for third-country access to EU notification systems,

which we will of course seek to negotiate. That is obviously desirable and I hope that we are successful but, in case we were to lose such access, we are developing our own database to capture details of interceptions. We have our own dedicated risk and horizon-scanning team. As noble Lords will know, we have a monthly biosecurity meeting with the Chief Plant Health Officer and the Chief Veterinary Officer.

We are absolutely rigorous in our own horizon-scanning. I accept that international collaboration, not only within the EU but around the world, is not only desirable but imperative, so we are negotiating, as I say. There are publicly available elements of all EU systems and we will continue to be able to access those. I see this very much as a mutual interest. Again, we in this country have some of the best scientists and advisers and we need to collaborate across the world. I am looking at the noble Baroness, mindful of Rothamsted and her knowledge of that great institution, but also of others and the innovation that is happening through agri-tech investment, public and private. That will be very important at home and abroad.

On the question of our own situation, I have mentioned before that we have our own publicly available plant health risk register. Unfortunately, more than 1,000 pests are currently recorded on the risk register. I also regret that the numbers are increasing, which shows how vigilant we must be. Through this screening process we are able to identify significant threats and prioritise our actions and resources accordingly. I endorse all the work that Defra, APHA, the Forestry Commission and our colleagues in the devolved Administrations are doing together on this.

A few years ago we were not as advanced in plant biosecurity as we were in animal health and biosecurity, but an enormous effort has gone into advancing it. The horticultural sector is very much more aware of it and Grown in Britain is important. Also important is biosecurity in the sources from which we buy our plants—this is something we need to work on with our friends and partners in the European Union, because it is where some of the loose connections have been in the past.

Turning to the issue of close collaboration, we are working extremely closely with all the devolved Administrations on the matters before us and more generally. I say to the noble Baroness, Lady Jones of Whitchurch, that we have arrangements in place for the additional training of official veterinarians and the arrival of certification support officers who are to assist them: we place great importance on that work and the whole biosecurity situation. As for APHA and the increase in the number of inspectors for transit goods, in terms of arriving sealed and the inspection, all this is predicated on our view that, on day one, biosecurity for trade within the EU is not going to change. That is why, quite rightly, we want to continue facilitating the import trade, but we are conscious of the need to keep a careful eye and scrutiny going forward. I would be very nervous of giving lectures to British horticulturalists or, indeed, to many of the gardeners I know, so this may not have been the best language to describe the fact that, although we have extremely experienced horticulturalists, we also think there are opportunities from elsewhere.

On the point in paragraph 2.10, this went through the negative route as business as usual. That enabled the amendments that we needed to bring forward in this instrument. I am sorry it is so convoluted.

I should perhaps have declared my farming interests—I apologise for the lateness; it just occurred to me. Although I do not grow vegetables or have pigs on the farm, it is appropriate I declare that connection.

I will look at *Hansard* to see whether there are any specific points I may not have covered. I do not resile from the point that biosecurity is paramount. Lack of biosecurity has in the past caused great damage in our country. Biosecurity is a global matter; a lot of problems have arisen because, in my view, we all need to concentrate more on biosecurity around the world, as I have said to Ministers within our European friendship. It would be disastrous if the travails with xylella in Italy and parts of Spain and Portugal came here. We must do all we can. This is a very useful further instrument.

Motion agreed.

Electricity Capacity (No. 1) Regulations 2019

Motion to Approve

5 pm

Moved by Lord Henley

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

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

The Parliamentary Under-Secretary of State, Department for Business, Energy and Industrial Strategy (Lord Henley) (Con): My Lords, the capacity market is a key element of the Government's strategy for maintaining the security of electricity supplies in Great Britain. Britain's current security of electricity supply is robust. The forecast electricity margin for winter 2018-19 is over 11%, the highest for five years, showing that the capacity market works.

This draft instrument will help maintain a strong security of supply position into the future. It contains modifications needed for the operation of the capacity market, pending fresh state aid approval by the European Commission, and makes arrangements for a positive or negative state aid decision.

Before I go into detail on the draft instrument, it may be helpful to provide some context and background on the capacity market. The capacity market ensures that there will be sufficient electricity capacity in Great Britain during periods of peak electricity demand. It secures the capacity required through awarding capacity agreements in competitive, technology-neutral auctions held four years and one year ahead of delivery. Those who win agreements—known as capacity providers—commit to providing capacity during periods of system stress in exchange for receiving capacity payments. The revenue from capacity payments incentivises the necessary investment to maintain and refurbish existing capacity and to finance new capacity. It also ensures that those able to shift demand for electricity away from periods of greatest scarcity are encouraged to do so.

[LORD HENLEY]

In November 2018, the General Court of the Court of Justice of the European Union annulled the European Commission's state aid approval for GB's capacity market and introduced a standstill period until the scheme can be reapproved. The judgment was based on the procedure the Commission followed when it approved the capacity market, not the substance of the capacity market itself. The judgment prevents the UK Government making capacity payments unless and until the scheme has state aid approval. It changes neither the Government's commitment to delivering secure electricity supplies at least cost to consumers, nor our belief that capacity market auctions remain the most appropriate way to do this.

The Commission is investigating the scheme's compatibility with state aid rules and recently confirmed it is moving on to the next phase. We are working with it to ensure that it has everything necessary to reapprove the scheme as quickly as possible. We are confident that the scheme will be approved and payments to agreement holders that have met their obligations during the standstill period will be allowed.

The Department for Business, Energy and Industrial Strategy published a consultation proposing modifications to allow the capacity market to operate as far as possible during the standstill period, following the General Court's decision in December last year. Sixty-one responses were received, from a wide range of stakeholders, and there was significant support for the majority of the proposals raised.

The House of Lords Secondary Legislation Scrutiny Committee highlighted uncertainties associated with the state aid process. We are confident that the draft instrument helps address those uncertainties.

I will briefly expand on the provisions of the draft instrument itself. First, to maintain industry confidence, the instrument includes modifications that ensure that capacity payments currently prevented by the court's judgment can be paid to capacity providers after state aid approval is obtained. These payments will remain linked to capacity providers' performance of their obligations under their capacity agreements. Secondly, in recognition of the disruption caused to capacity providers, this instrument adds flexibility to termination, penalty and credit cover requirements during the standstill period. Thirdly, the instrument sets the conditions for rearranging the one-year-ahead auction that was originally planned for earlier this year, securing the capacity required for winter 2019-20. Agreements awarded by this auction will be conditional on state aid approval, allowing the auction to be run before there is state aid approval.

Moving on, this instrument allows the settlement body to hold payments made by suppliers to fund the scheme where suppliers choose to pay during the standstill period. It also enables the collection of all outstanding supplier charges for the standstill period upon receipt of state aid approval. This provides certainty that, upon state aid approval, capacity payments will be paid promptly.

Finally, in the unlikely event of a negative state aid decision or no decision by October 2020, the instrument will terminate capacity agreements without any entitlement to receive capacity payments, and will require supplier

payments held by the settlement body to be returned. We have also laid complementary amendments to the capacity market rules, which govern the technical and administrative procedures relating to capacity market operation.

These regulations are necessary to provide legal certainty and confidence to industry about how the capacity market will operate until state aid approval is received, and I commend them to the House.

Lord Tope (LD): My Lords, I am grateful to the Minister for a full and clear explanation of both the regulations and the need for them, which arises from the CJEU ruling. As he has said, the majority of the industry clearly supports these regulations, they are necessary, and they go a considerable way to reduce uncertainty. Therefore, we certainly will not oppose them and will support them.

First, on the theme of uncertainty, the Secondary Legislation Scrutiny Committee, to which the Minister referred, concluded its report to your Lordships by referring in paragraph 18 to the "considerable uncertainty" and suggesting that we might wish to explore further how the Government propose to deal with it. I will be brief, because this is not my subject. Can the Minister tell us specifically how the Government will continue to engage with the industry—I am sure they will wish to reassure the industry that that will be the case—and what steps they will take to try to perhaps restore and certainly to keep the confidence of the industry and investors at what is inevitably a very uncertain time?

Secondly, probably the greatest uncertainty at this precise moment, which is not particular to this industry, is our place within the European Union. The regulations are brought forward at this stage on the assumption, quite rightly, that we are members of the European Union and that we will remain members of the European Union during the implementation period of a negotiated withdrawal agreement. The inevitable question comes: what if that is not the case? We may all hope—I certainly do—that that is the case; indeed, I hope that we remain members of the European Union, full stop. But at this moment, many would argue that the most likely scenario is a no-deal withdrawal, not in weeks but days. That may happen. Can the Minister give us any guidance as to what preparations have been made and how ready the Government are to deal with that scenario if, unfortunately, it actually happens?

My third point was raised in the other place when it debated the regulations yesterday. There was strong doubt whether the CJEU ruling was based solely on procedural grounds, as the Minister said and the documents on the regulations state. It was suggested that other grounds were included in the ruling; it would be useful to know whether the Government recognise that to be the case and, if so, what steps they are taking to deal with those other concerns.

I thank the Minister again for bringing the regulations to the House. They are necessary in the light of the ruling and the uncertain times we are in, and I wish them a fair way for such time as they are needed.

Lord Stunell (LD): My Lords, first, I support what my noble friend said and pick up in particular his final point about the scope of the judgment in the European Court.

I thank the Minister for his reply to my Written Question last week. I am pleased to have had the Answer, although not so pleased with what the Answer was. The point I was raising, which I want to raise now, is that in looking at the capacity market, the UK Government have not made sufficient allowance for demand reduction strategies. They have looked purely at providing capacity to fulfil forecast future electricity demand.

We know from the predictions made over the past decade and the reality of electricity consumption that those predictions have, year after year, been wrong, assessing an electricity demand that has not been reached. In other words, electricity demand is not rising as rapidly as the predictions, and the calculations being used by the Government in drawing up state aid do not provide a level playing field between cash available to those delivering additional capacity and cash available for those who have strategies to reduce the demand for electricity.

My Question sought to explore that point, but the reply I had was that that was not the case: there is an allowance for demand reduction and, if I understood the reply, it would be possible, at least in theory, for those with a strategy to reduce demand to draw on the same aid as is available for those who would provide additional capacity to meet demand. Is that the case? In particular, is the calculation of the time period over which a capacity building strategy is calculated and over which a demand reduction strategy is built the same?

The point being made to me by those who might be willing to provide a strategy to reduce demand is that it is not a level playing field. My understanding of the European court decision is that it was not just a technical and procedural point: the court believes that the British Government are fiddling the figures and not providing a level playing field for both sides of that equation. I would like the Minister to provide a more complete answer than the one he gave me last week and perhaps he will explain to noble Lords how in the future the requirements of the European court judgment will be met and how the calculations will be put on a more even footing so that we can do what is surely more sensible, which is to spend taxpayers' money on reducing demand rather than spend it on fulfilling capacity commitments which are in fact unduly onerous and pessimistic.

5.15 pm

Lord Grantchester (Lab): I thank the Minister for his introduction and explanation of the regulations before the House. They are necessarily very technical and controversial as they involve the capacity market, state aid and a judicial review of the actions being taken by the Government.

This instrument was the subject of a lengthy report from Sub-Committee A of your Lordships' Secondary Legislation Scrutiny Committee. The Government are embarking on a high-risk strategy and the committee's 20th report concludes with the recommendation that, "the House may wish to explore further how the Government are proposing to ensure that the Capacity Market can continue to operate in the future".

The noble Lord, Lord Tope, raised this issue among his concerns.

As the Minister has explained, the situation arises following a case brought by a demand-side response provider, Tempus Energy, to the European Court of Justice that the construction of the capacity market discriminates against its interests. The European Commission has suspended the state aid clearance following the ruling, producing what may possibly be a lengthy standstill position that will impact on delivery year T1 2019-20, which is due to begin on 1 October 2019 and could continue beyond October 2020. Does the Minister agree that a delay of this magnitude beyond 2020 could bring about a complete suspension, or indeed termination, of the capacity market mechanisms with a high degree of certainty that that may result in unwinding the whole scheme, which has been in place since 2014? What is the Government's risk assessment of that outcome?

I appreciate that the Minister is in severe difficulty as this period brings into play the interplay between the UK's exit and the complexities around the state aid regimes of the EU and the UK post any implementation period and deal or no-deal scenarios. The Government seem to be making risky assumptions that not only will the ruling be swift but that this is only a procedural issue on the implementation of the state aid approvals. Does the Minister agree that the judicial review case negates those assumptions and that the robustness and fairness of the capacity market is secure?

The noble Lord, Lord Stunell, has raised serious issues in relation to this situation and the way the Government have implemented the scheme. Perhaps I may further underline the contention that the capacity market has not been entirely equal in the Government's assessment to providers and that the Government appear to be adjusting the mechanisms as they consider their approaches to the first five-year review? Would not a safer and less risky strategy have been to halt all auctions and bring forward the review of the workings and results of the capacity market against the original objective; namely, that the capacity market was set up to bring forward long-term new technological capacity to reform the energy market away from fossil fuels?

As the Minister has explained, the UK has an 11% capacity margin and these T1 auctions are mostly short-term capacity builders. Can he outline how and why a suspension pending these reviews while the ruling is being reconsidered could be interpreted to undermine more longer-term solutions coming on board? I appreciate that the confidence of industry investors is crucial, but what is the rush? This shadow system outlined in the Minister's remarks at the beginning, on the assumption that the ECJ ruling is merely procedural and confirmatory, appears to have the backing of industry generally. I am grateful for the considerations on the issue from Simon Markall on behalf of Energy UK.

I appreciate that continuity and consistency of the capacity market is important to industry and that competition between technologies could be maintained through policy evolution. Any perceived lack of level playing field in winning CM contracts could be solved while maintaining the working capital and cash-flow stability of the market through these shadow, deferred, contingent mechanisms under the instrument. Labour would not wish to undermine either the security of

[LORD GRANTCHESTER]

electricity supplies or the market that relies on this scheme. We understand that, over the longer term, industry confidence in the capacity market as an investable mechanism is an important driver for change, with cost savings and value for money overall. Nevertheless, there are concerns that the transfer from fossil fuels towards renewable and nuclear fuels is not proceeding at pace—as the debate yesterday on the climate emergency revealed.

The capacity market has brought forward essentially only one combined-cycle gas plant of 400 megawatts against recent open-cycle gas plants, which are more polluting. The Government have given contracts to diesel generators—more polluting than coal—when they refused to set a decarbonisation target for 2030. The response that the nuclear industry is in turmoil despite a sector deal agreement underlines the situation. The 2 gigawatts of new interconnectors is slightly beside the point.

I assure the Minister that I appreciate that progress has been made. I welcome the share of electricity from low-carbon sources now reaching 56%. Nevertheless, the issue is not being taken seriously enough or the necessary pace of change being achieved. I ask the Minister to commit to publishing the Government's five-year review of the electricity market reform this summer and for it to include a full review of the capacity market. Can he assure the House this afternoon that the Government have a full appreciation of all the risks by outlining all the discussions the Government have undertaken with the Commission? With that assurance and the assurances that the Treasury will guarantee all the conditional payment obligations to be underwritten, that his department will continue dialogue with all parties on this review and that this instrument is supported by industry, I am happy to approve it today.

Lord Henley: I am grateful to the noble Lord, Lord Grantchester, for his support for this instrument, and I look forward to that support in a few minutes when I conclude my words. At the same time, he called for a halt. Since we are talking about security of supply, I simply cannot go along with him. It is the Government's view, widely supported by the industry, that the capacity market is the best way to deliver security of electricity supply at the lowest cost to consumers. We will debate this matter tomorrow at Question Time. It is important that we have security of supply and that we have it at the best price. As I said in my opening remarks, our current security of supply position is robust. I cited the figure that we reckon the margin this winter will be—over 11%, the highest for five years. That shows that the market works.

A number of concerns have been raised and a number of questions put, and I hope I can deal with them. I will first get on to the question of uncertainty and engagement that the noble Lord, Lord Tope, raised, echoed by the noble Lord, Lord Grantchester. It is important to recognise that there is uncertainty. We appreciate that any judgment of the Court of Justice of the European Union creates uncertainty and potential difficulties for the industry.

As I made clear, the Commission is investigating the scheme, and recently confirmed that it is moving on to the next phase. This is an important step as we work to reinstate state aid approval for the capacity

market as soon as possible. We are working with the Commission to ensure that we have everything necessary to reconsider the scheme as quickly as possible. I assure the noble Lord, Lord Tope, that we will continue to engage regularly with stakeholders; we will provide them with updates on progress and the re-notification process, and clarity on arrangements during and following the standstill period.

We are confident that the Commission will approve the scheme following its investigation. We hope that that investigation will conclude ahead of October 2019, the start of the 2019-20 delivery year. We consider it very improbable—although it is possible—that the decision will be delayed into 2020. In the unlikely event of a negative state aid decision, or no decision, by October 2020, the instrument will terminate capacity agreements and, as I said in my opening remarks, any entitlement to receive capacity payments. Supplier payments then held by the settlement body will also be returned, which will ensure that supplier payments cannot be held indefinitely.

The noble Lord, Lord Tope, asked about the position after a no-deal Brexit. The Government have made it clear that no deal is exceedingly unlikely. However, while the UK remains a member state or is subject to an implementation period following a negotiated withdrawal, the current state aid regime will apply and the Commission will need to approve the scheme. The Government intend there to be a domestic state aid regime after the UK leaves the EU. The draft State Aid (EU Exit) Regulations 2019 are currently before Parliament. In a no-deal exit, the UK will be subject to a domestic state aid regime, for which the Competition and Markets Authority, rather than the Commission, will be the regulator. This assumes that the draft State Aid (EU Exit) Regulations are agreed by both Houses and made. If, at the time the UK leaves the EU, the Commission has not yet approved the scheme, it will then be a matter for the CMA to investigate and approve that scheme.

The noble Lord, Lord Tope, asked whether the decision of the court itself was purely procedural. This question was echoed by the noble Lords, Lord Stunell and Lord Grantchester. The court gave examples of where the Commission should have had doubts and should have investigated them, but it did not rule that the design was incompatible with state aid requirements. We have carefully considered each issue raised through that court judgment and remain confident that the design of the capacity market is compatible with the state aid requirements. We cannot pre-empt the outcome of the Commission's investigations, but we are confident that the scheme will be approved by the Commission following investigation, not least because it has approved six other capacity markets since 2014.

The noble Lord, Lord Stunell, asked whether the capacity market did not sufficiently support demand-side response. As I made clear, the purpose of the capacity market is to ensure security of supply, at least cost, for the consumer—something we all desire to achieve. It is technologically neutral and allows all types of capacity, including DSR, to participate without discrimination.

The design of the capacity market provides for features that support demand-side participation, including lower credit cover, participation as price takers and

three metering options. The Government are also taking broader action to support DSR, as set out in the smart systems plan. The five-year review of the capacity market, which the noble Lord, Lord Grantchester, asked about, will also explore further ways in which DSR participation can be supported.

The noble Lord, Lord Grantchester, also asked about the judicial review and the case raised by Tempus. We are confident about our position. The Government will robustly defend this challenge and, as I said, we are confident in the steps we are taking to reinstate the capacity market and to operate the scheme to the fullest extent possible during the standstill period within state aid constraints.

Turning to renewable generation and carbon reduction, the noble Lord, Lord Grantchester, implied that we were not serious about switching to low-carbon electricity generation. As he will be aware, we are committed to switching away from coal. We have announced that we will be giving up coal in 2025 and increasing the share of renewables and gas in electricity generation while reducing the cost of renewables. We have seen a dramatic reduction in the cost—I recently cited the figures for offshore wind—and we have invested £92 billion in clean energy since 2010. We have quadrupled our renewable electricity supplies since 2010 and the share of electricity generated from low-carbon sources reached a record high of 56% in the third quarter of 2018, with 33% from renewables. I hope the noble Lord will accept our commitment in that area.

Lord Stunell: I thank the Minister for what he has said so far and for his shopping list of money well spent. I do not wish to challenge that but is he satisfied that the Government's investment is rightly balanced between generating new capacity—renewable or otherwise—and demand reduction? He said that the system takes account of DSR but he did not answer my point about whether there are equal investment opportunities to reduce a kilowatt hour as there are to increase capacity by a kilowatt hour.

Lord Henley: My Lords, I am satisfied but I will consider carefully what the noble Lord has said and look again at the Written Answer to which he referred, which I sent to him last week. If I can elaborate on it and provide him with further examples of how we have taken DSR sufficiently into account, I shall write to him on that if I feel it necessary. However, I do not accept his basic premise that there is not a level playing field.

I believe I have answered all the questions put to me. This is an important statutory instrument and I commend it to the House.

Motion agreed.

Flags (Northern Ireland) (Amendment) (EU Exit) Regulations 2019

Motion to Approve

5.33 pm

Moved by Lord Duncan of Springbank

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

Relevant document: 20th Report from the Secondary Legislation Scrutiny Committee (Sub-Committee B). Debated in Grand Committee on 25 March.

The Parliamentary Under-Secretary of State, Northern Ireland Office and Scotland Office (Lord Duncan of Springbank) (Con):

My Lords, the purpose of this instrument is to remove the legal requirement for Northern Ireland government and court buildings to fly the union flag to mark Europe Day after we leave the EU. While in Wales, Scotland and England the designated flag-flying days for government buildings are covered by guidance issued by the UK Department for Digital, Culture, Media and Sport, in Northern Ireland the rules concerning such flag flying are set in statute; namely, the Flags Regulations (Northern Ireland) 2000. The power to amend this regulation is contained in the EU withdrawal Act and, subject to the will of Parliament, it will be made only after the UK has left the EU.

In considering this order, a number of issues need to be borne in mind. The order relates primarily to the flying of the union flag, not the EU flag. Only where a building has two flagpoles is the EU flag flown. For information, none of the principal government or court buildings in Northern Ireland has two flagpoles. That includes headquarters buildings, such as Stormont Castle and Dundonald House, as well as the Royal Courts of Justice. Since our discussion in Grand Committee, my department has undertaken an investigation to determine how many relevant buildings have two flagpoles. Thus far, fewer than half a dozen have been identified. The withdrawal Act confers no powers to add to or adjust any other parts of the Flags Regulations (Northern Ireland) 2000. On that basis, I beg to move.

Amendment to the Motion

Moved by Lord Bruce of Bennachie

At the end insert “but this House regrets that the draft Regulations are unnecessary as there is no value in prohibiting the flying of flags in Northern Ireland on Europe Day, which celebrates peace and prosperity in Europe.”

Lord Bruce of Bennachie (LD): My Lords, I thank the Minister for his introduction and for the update after the debate we had in Grand Committee last week. He said then that he thought there were only a small number of relevant buildings.

There are two important points behind this. The first is about the flying of a flag to mark Europe Day and the specifics of when that flag should be the Europe flag. This statutory instrument removes permission to fly the Europe flag, even on those five or six buildings, apparently on the grounds that it would cause offence. I do not know whether that is the implication.

The second and serious point behind this is that there seems to be an assumption that because the UK may be about to leave the European Union, if we leave before 8 May—if we do leave—it would be illegal to fly the Europe flag on a public building in Northern Ireland. This seems to be unnecessary legislation with which to detain the House at all, as well as undesirable.

[LORD BRUCE OF BENNACHIE]

I will develop the arguments that I put in Grand Committee last week. I completely understand that the flying of flags in Northern Ireland is highly sensitive and contentious. We saw how contentious it was when the flying of the union flag in Belfast was limited. It led to riots and the destruction of the office of our sister party, the Alliance Party, so of course I understand the sensitivity of the flying of flags, although I have not heard that flying the Europe flag has caused that kind of reaction in Northern Ireland.

The history of the flag is that it is the Europe flag. Is it the flag of the European Union, but it is not only the flag of the European Union; it is also the flag of the Council of Europe. Much more to the point, it was originally designed as the flag of the Council of Europe. It was commissioned and brought into use in 1955, a year before the European Community came into existence. That being the case, I point out to the House that there is a serious issue here because Britain was a founder member of the Council of Europe and Britain is not leaving the Council of Europe. The flag is the flag of the Council of Europe, and on that basis there is every good reason why we should show how European we are by flying the flag on Europe Day.

There is an issue about when Europe Day is. The EU designates Europe Day as 9 May, whereas the Council of Europe designates it as 5 May: 5 May was the date of the foundation of the Council of Europe in 1949 and 9 May was the day in 1949 when Schuman made his declaration to commemorate peace in Europe.

There is something fundamentally disturbing about the Government actively wanting to remove any consideration that there might be a flag flying somewhere in the UK, certainly in Northern Ireland, that gives the impression that we have not left the European Union—assuming that we have left—and I would like to turn that on its head.

The reason I have brought my amendment to the Chamber, as well as introducing it in Grand Committee, is that, as the Minister himself said, the guidelines issued by the Department for Digital, Culture, Media and Sport for the rest of Great Britain follow the same pattern, the difference being that in the rest of the UK they are just guidelines, whereas in Northern Ireland it is a matter of law. Nevertheless, the recommendation is that the Europe flag should cease to be flown in the UK, should we leave the EU. I think that I have articulated why this flag, as a Europe flag, should continue to be encouraged, and allowed, to be flown. It is to prove a point that Ministers repeatedly make—that we might be leaving the European Union but we are not leaving Europe. Of course, the Minister has also acknowledged that if we have not left the European Union by 9 May—in other words, if the date of 22 May comes into effect—the flags can fly this year. That also suggests to me that this legislation is not urgent in that context.

Therefore, I ask the Government to reconsider the basic thinking behind the idea that the Europe flag should disappear from public buildings in the UK if we leave the EU. My contention is that the Europe flag still has a place in the UK. I would not mind if the date were changed to coincide with the Council of

Europe's Europe Day to make the point. I gather that there is some difficulty in changing the date but I am sure that, if the will were there, it could be done.

Finally, what is the point of Europe Day in the first place? I think that there is an underlying misbelief that it is a day to celebrate the creation and extension of the European Union. However, it is not and never was. It is a day to celebrate peace in Europe and the continuation of that peace. I would like to think that the British people would want to continue to celebrate the fact that we achieved peace in Europe and that we want to continue to promote peace in Europe, regardless of our detailed relationship with our European partners. Let us remember that there are 47 member states of the Council of Europe, against what will be the 27 member states of the European Union.

Let us also remember, in case of misunderstanding, the design of the flag. As I said, it pre-dated the creation of the European Economic Community. People seem to think that the 12 stars represent the member states—which would be an odd choice because there were originally six—but the 12 stars have nothing to do with the number of member states. They are supposed to be a symbol of perfection. They commemorate the 12 tribes of Israel, the 12 apostles, the 12 labours of Hercules and the 12 months of the year. They are supposed to be a symbol of universal perfection and the flag is supposed to be a symbol of peace in Europe. I find it extremely disturbing that the Government are taking time to pass a law saying that we should no longer fly a flag that marks peace in Europe and Britain's continuing commitment to the people of Europe. For that reason, I believe that we should not accept the spirit behind this statutory instrument.

Lord Deben (Con): My Lords, I was present in the original debate in the other House when we agreed on the rules for Northern Ireland. Therefore, I hope that nobody will suggest that I am not extremely sympathetic to the concerns about flags in the north of Ireland. There is no doubt that the union flag was being used as a sectarian flag rather than a union flag, and therefore we passed regulations saying that the flag could be used only on certain dates. We also passed an arrangement that enabled us to change that. It is a very clear arrangement which means that a change can be made only with all-community agreement.

That is my first problem with this proposal. When we discussed it with the Minister, he said that we cannot change the date when the flag is flown to the 5th in order to make it clear that it is for the Council of Europe because that would need the agreement of all the communities—but we can stop the flying of the flag without the agreement of all the communities. That seems to be a very odd decision. He will say, of course—and he has—that that is what we said in the withdrawal Act. Well, we can make mistakes. I do not think that anybody in debating the withdrawal Act thought that the Government would specifically bring forward a Motion that does not have the proper assurance of all the communities in the north of Ireland.

5.45 pm

My first point, therefore, is that it is entirely unsuitable for the Government to take it upon themselves to suggest that Parliament should support a fundamentally

divisive decision, which takes from the due course the right to make the list of days on which the union flag may be flown. I perfectly well accept the Minister's statement that only five flagpoles are affected by the flag of Europe. I am rather pleased that the noble Lord raised this and brought it back to the House, otherwise we would never have made that calculation. The Government seem to think that this is a perfectly reasonable thing to pass and does not really need a discussion.

Of course, we are not talking about a large number of occasions, or a large number of flagpoles—but we are talking about a fundamental issue. We fought for that decision in the teeth of opposition of many Unionist Members of the House of Commons. We fought for it, we were called all sorts of names, but we thought it right because it was important for all the communities to make those decisions. We are now overriding that.

I admit that this was passed by a Labour Government—in fact, it was brilliantly introduced by the noble Lord, Lord Mandelson. It was one of the best speeches I have ever heard him make and he carried the House in a most remarkable way. It was passed, and passed in a way that seems to me to be affronted by this proposition, which means that we—unilaterally, without the agreement of the community—are going to make the change.

My second point is that, in the north of Ireland, the community obviously thought rather differently from people in other parts of the United Kingdom. They voted to remain within the European Union—leave alone supporting Europe in general or the European Council. So it seems particularly important that all the communities should be consulted. It is not good enough for the Minister to tell us—as no doubt he will—that this is very difficult because there is no Northern Ireland Assembly. It may be difficult, but it is one of the things you just have to live with.

This is not a controversial issue in any real sense, unless we invent a real sense—the Minister has that look, but it is pretty difficult to make a controversy about allowing something to continue as it was. This is pretty uncontroversial, particularly as we are not even forcing them to do it; we are merely saying that this is a day on which it would be proper to do it. I doubt whether anyone will be prosecuted if they do not fly the flag on that day. The real issue is that they would be prosecuted if they were to fly a flag on a different day. So it would have been perfectly possible for the Government not to have brought this forward and, even now, they could decide that it is not worth having the argument.

The next important thing is that it is extremely likely that we will be flying the flag, because it is extremely likely that we will—happily—still be in the European Union when this occasion happens. So the Government have more than a year to think about this issue. It would be much better for them to say, “We understand; we think this ought to be decided by the whole community and, as a gesture towards the whole community, we will remove this because we do not think it is necessary”—and it is very hard to believe that it would be necessary. So why can we not be a bit generous?

That brings me to a point that I feel very strongly about. All over the island of Ireland there are memories of the lack of generosity of the British Parliament, and particularly of this House. We have a very sad history in the way in which we have treated people of all sorts in Ireland. We therefore have to be particularly careful about being generous about even the smallest things. I say to my noble friend that this is even more important for Conservatives, because our history is significantly worse. We have behaved appallingly on many occasions on this subject. We have a tiny opportunity just to say that we are not going to be pushed into this and will in fact withdraw it.

Lastly, perhaps the Minister will do this for me. He might just say to the Department for Digital, Culture, Media and Sport that that bit of advice might have been thought through rather more carefully. If we are trying to reunite a divided nation, we need to remember the 48% as well as the 52%, particularly as that 48% may well now be nearly 60%. Let us just remember that. Let us remember, too, that there is a very much higher proportion among the young people in whose hands our future as a nation lies. In those circumstances, we are choosing not to celebrate peace in Europe but to put two fingers up to what has been, in both the Council of Europe and the European Union, the great achievement of the last 50 or 60 years—that we have no longer had the civil wars that were part and parcel of our history. We are saying simply and blithely, without any real consideration, that because we think we might be leaving the European Union we are going to do these petty, silly, stupid, tiny things, instead of trying to seize the opportunity to make a difference.

Why has DCMS not put out guidelines that in future we will fly the European flag on 5 May? It would not need legislation but it would require a generous and understanding heart. The fact that it has not done so shows the level to which we have now descended. We seem totally unable to understand what you do to bring communities together. We would do much better in the north of Ireland we did not make this particular regulation but left it and thought about how to discuss this with all the communities in the system that is laid down, and we would do much better in the rest of the United Kingdom if we recognised that a willingness to celebrate peace on our continent would be much better than a miserable little guideline like this.

Lord Touhig (Lab): My Lords, tomorrow is a very important day: we are going to celebrate and commemorate 70 years since the founding of NATO. NATO has helped to keep the peace, helped to deter and helped to make us enjoy a better life here in Europe. This year also happens to be the 70th anniversary of the founding of the Council of Europe, another organisation that has helped to keep the peace and kept us working together on this continent. I declare an interest because I am a member of the Parliamentary Assembly of the Council of Europe. Noble Lords will be busy doing something else next week but I shall be in Strasbourg with colleagues, dealing with matters there.

That forum offers us the opportunity to continue partnership, dialogue and friendship with people right across our continent. What I find objectionable is that the flag that we are talking about—the European flag,

[LORD TOUHIG]

as mentioned in the regulations—is in fact the flag of the Council of Europe. Here we are, at a time of celebration of the peace of NATO and of the foundation of the Council of Europe, deciding that we want to be offensive as far as the issue of flying this European flag is concerned.

I think the Government have made a big mistake here and have not really thought it through. When I talk to colleagues in Strasbourg next week, we will be working together and looking for ways to find common benefits for all the people living on our continent. However, here we are, debating these petty little regulations.

Of course, I recognise the importance and sensitivity of flags in Northern Ireland. When we debated this in Grand Committee, Members were overwhelmingly opposed to this statutory instrument, with the exception of the noble Lord, Lord Browne of Belmont. It was right that he made that point, because he lives in Northern Ireland; it was right that we heard the point of view of someone from the Province.

I am very sorry that we are having this debate and that the Government have brought this forward. I have only one question for the Minister. When these regulations were first conceived, did the Government realise that this is the flag of the Council of Europe, not necessarily the flag of the European Union? We are not leaving the Council of Europe. Was the work done? If it was not, it should have been. If it was known that this is the flag of the Council of Europe, why did we want to insult colleagues from 46 other countries across Europe by saying that this flag should not be flown at certain times?

I really cannot believe that we have this daft and stupid statutory instrument before us. It is rather shameful that, when we are celebrating the 70th anniversary of NATO and the 70th anniversary of working in the Council of Europe, we are debating this matter in this Parliament.

Lord Alderdice (LD): My Lords, I listen with interest to colleagues speaking about the importance of the statutory instrument and the difficulty of it for people here, saying that there might be people in Northern Ireland who are pressing for this. I want to bring the contrary view that this could in fact create real problems in Northern Ireland.

The Minister mentioned the number of flagpoles, which is a lot less important than the placing of them. There is one rather important building that has two flagpoles: the Parliament Buildings at Stormont. I know that rather well because, when I was Speaker there, I had to negotiate the question of flags, particularly whenever Her Majesty was coming. I was able to make the point to republicans and nationalists that, if they wanted recognition when a Head of State came from the Republic of Ireland, they had to be prepared to give recognition when the Head of State from the United Kingdom came.

What does this flag mean to people in Northern Ireland? Of all the absurd and nonsensical things I have heard in the last little while coming out of the Northern Ireland Office, this is one of the worst. The Explanatory Memorandum says:

“Consultation is not considered necessary, as the instrument is making a minor, technical change resulting from the United Kingdom’s withdrawal from the European Union”.

Only the Northern Ireland Office could regard the question of flags in Northern Ireland as a minor, technical question. It shows how utterly out of touch it is with pretty much everything going on in the Province. However, it is at one with a number of the statements from the Minister’s right honourable friend in another place.

When—I assume it is “when”—the United Kingdom leaves the European Union, Ireland will still be a member. One of the decisions that was emphasised in the Good Friday agreement and subsequently was that those of us who live in and come from Northern Ireland have a right to both an Irish and a British passport. I have an Irish and a British passport, as do my wife, my children and all my grandchildren. What does that mean? It means that for those people who have that passport, and therefore remain part of the European Union, any sense of their European identity will be wiped out by this silly piece of nonsense.

However, it gets worse. Many have been prepared to set the question of the flags to one side for the moment—people from the nationalist and republican communities, and many who support the Alliance Party, too. We are saying to them: not only can you not have the flag of the nation state you identify with but you cannot have the European flag, despite the fact that all of us have emphasised that the Good Friday agreement comes out of a process informed by the European project, encouraged by the European Union and inspired by the developments that have taken place in Europe. How many times have we heard John Hume talking about the French still being French and the Germans still German, but them being able to be Europeans together? All that gets blithely pushed to the side. By the way, we do not worry too much about dates in Northern Ireland. The Battle of the Boyne took place on 1 July, but we celebrate it on 12 July, and also have a mini 12 July on 1 July. We do not worry too much about the dates, as long as people do not stop folk celebrating the things that matter to them—and I think this does matter.

bpm

Does the Minister have any reason to believe that if this question were to come to a reformed Northern Ireland Assembly, it would get majority support and be passed? I can tell him, with a fair degree of certainty, that it would not be passed. One of the difficulties about this being passed now is that if it was passed and taken up in the Northern Ireland Assembly, I have absolutely no doubt that some colleagues—even those represented in this House—would put down a petition of concern to block it from being returned to the place where it currently is.

This is not just some minor technical question. Flags are a matter of huge symbolic importance. One may not be able to eat a flag or even keep warm with a flag, but there are people prepared to fight and die for a flag. This must be an extremely difficult debate for the Minister, because he is a Scotsman. He understands entirely the importance of symbolism north of the border, and understands very well, I have no doubt, the symbolism of flags north of the border in Ireland too.

I seriously ask him whether he will not take on board what my noble friend Lord Bruce of Bennachie has said. This is damaging. It is not just petty, it is not

just foolish, it is not just misplaced, it is not just mistimed—we do not need to do anything about it until this time next year at the earliest. We need to think seriously about whether Her Majesty's Government might be wise not to create even more problems. There is an old saying: when you are in a hole, stop digging. I do not think there is anybody in this House who thinks that the Government are not in a hole, but please, do not dig it deeper in respect of Northern Ireland. We got through many difficulties over flags when we had the devolved Assembly—when it went into suspension there were issues about flags. It was really only one flagpole on Belfast City Hall that created the trouble. Please, can we pull this back, and pull ourselves back from a very foolish initiative by the Government?

Lord Cormack (Con): My Lords, my noble friend the Minister is a big man in every way, and he has shown that many times in debates in this House. He is a man who listens and he is sensitive. If he is going to live up to his well-deserved reputation, he really must listen to the eloquent pleas of the noble Lord, Lord Alderdice, my noble friend Lord Deben and the noble Lord, Lord Touhig. They are absolutely right.

This is a small, irritating, unnecessary, bureaucratic measure which does nothing for this House, shouldered with the burden because of the inability of the people in Northern Ireland to come together in their Assembly. In debates on Northern Ireland in recent months, I have often talked about the desirability of calling the Assembly, even if there is not an Executive. I know that is something which the noble Lord, Lord Alderdice, agrees with, as do many other colleagues in all parts of the House. Why can the Minister not just take this away? It is not worthy of him. It is not worthy of us. It is a good reason to summon an Assembly and let it make the decision. I have little doubt what it would be.

At the time of possibly the greatest national crisis this country has ever had, the answer to “What did you do in the war, Daddy? What did you do on the eve of the cataclysm?” is that we decided a particular flag could not be flown on one day in May in Northern Ireland. What a nonsense. I really beg my noble friend to heed the words that have been uttered in your Lordships' House today, take this silly little measure away and not trouble himself or us with it again.

Lord Dykes (CB): My Lords, I am following five scintillating speeches which call into question the nonsense of these regulations. I thank the noble Lord, Lord Bruce, for his ingenious amendment, which is fair in dealing with the technical points but also had a historical background. We have had messages from all parts of the House asking the Minister, with his excellent Scottish credentials, to think again and withdraw this instrument now before it is too late.

I was not able to take part in the Grand Committee at the end of March on this subject because of other duties, but I very much followed it and agree with what has been said today. I particularly thank the noble Lord, Lord Deben, for reminding us of the historical background, too, and the painful history of this country's relationship with and attitudes towards the Republic of Ireland—the Irish Free State, as it was initially after independence.

There was a famous Irish ambassador in London a few years ago called Joe Small, who was a friend of mine. He was rather small. I once had occasion to phone him and ask, “Joe, can you tell me when you think that the note of condescension disappeared from English and British voices when they talk to Irish people?” He said, “I tell you what, I'll put that in my computer and come back to you in 10 minutes”. He did that and said, “It was five years ago, when incomes per capita in the Republic of Ireland overtook those in Britain”. That was a pretty good example of things getting back to normal after the painful history that we have had.

The noble Lord, Lord Deben, referred to the nonsense in the details of these regulations in some detail. I will not go into that now but conclude with a few remarks relating not to the flag as it is—it was originally the Council of Europe flag, as the noble Lord, Lord Touhig, said—but to the flag of the European Union, which is now our precious asset in emotional and practical terms. I suggest that the noble Lord, Lord Bruce, has today, maybe unwittingly, found reason number 293 for us staying in the European Union and not leaving after all. It is a very good one so perhaps it should be higher than 293 and closer to the top, since flags are so important.

On the wider background of the UK I have always found it very painful that, as a member state of the Union for a long time, this country was one of the larger ones that routinely never flew the European flag on government buildings. That is why I introduced my rather tedious and boring EU information Bill when I first came into the House of Lords; it included a clause about the flying of the European flag on government buildings. It is really painful to see this daft anti-European sentiment growing in Britain, particularly in the last few years. The European flag has never been flown on government buildings; on hotels, yes, and of course on embassies of other countries in the European Union—and sometimes on others as well. Aspirant countries such as Albania are applying to join. When I went there last spring, it was full of European flags. Albania is very enthusiastic about being a member of the European Union.

By the way, although it is not strictly relevant to the subject, the flag of the European Union is a precious asset and I pay tribute once again to the activities of the flag wavers outside, who have now been there for well over two years. Now they are there from 10 am until 8 pm, or later; they now have European flags with lights on them so they can show them at night. Their poles are getting taller and they have had tremendous publicity. Last Friday, we had the pleasure of honouring Steve Bray, the chief flag waver, at a function at the National Liberal Club when we said thank you to him and all his colleagues for staying there in bitterly cold weather and never deviating. The only day they stayed away, wisely and sensibly, was when the antis came on 29 March to register that they were leavers—with some high-temperature elements, I think. It was a sensible idea for them to stay away that day to avoid any trouble.

My EU information Bill is still on the list for a Committee of the Whole House in due course. It is not making much progress but does not now include flag-waving, which would have sounded illogical in view of the attitude in this country. I would love to be able to

[LORD DYKES]

put that provision back in later on, if only we could. The Minister could give us all a psychological boost by withdrawing these regulations in view of the excellent speeches already made today.

Lord Empey (UUP): My Lords, I never thought I would see the day when we would be having a debate on flags in this context. I must correct slightly the noble Lord, Lord Deben. There was another reason for the decision of the noble Lord, Lord Mandelson, to introduce this legislation: it was discovered that nationalist Sinn Féin Ministers did not want to fly the union flag on their ministry headquarters. One of the inputs to the decision was that factor.

The practicalities of it are that nobody sees the European Union flag on government buildings for the simple reason that, by and large, there are none where they are available; the one or two buildings where it is flown, are, if I remember correctly, probably not open to the general public anyway because of where they are physically located. To some extent, it is much ado about nothing in that regard.

However, there is a psychological point, because, as with everything else, once you are told you cannot have something, everybody wants it. Here we are again, with people suddenly saying, “We want this flag”, even though they did not even know that it flew. If you had a vox pop in any town in Northern Ireland and asked people what day is Europe Day or what day is Council of Europe day, I doubt you would trouble your arithmetical capabilities to figure out how many. The fact is that, by and large, nobody knows.

However, there is a wider point, which the noble Lord, Lord Alderdice, touched on: you have to be sensitive about these things. Let us remember that this is primarily about the flying of the union flag on all such buildings—not the European flag—because all the courthouses, departmental buildings, jobcentres and government offices around the country will fly the union flag. In the majority of cases, this measure will remove the union flag. That is the irony of it all.

I see where the Minister is coming from and I am looking at it just on the practicalities; namely, what would be the rationale for celebrating Europe Day if we were no longer in the European Union? I accept and understand that logic. While there may not be a way around the regulations, there is perhaps a solution. The fundamental, bedrock legislation for the regulations is out of date, because of deaths of members of the Royal Family, marriages that have taken place and various other things that need to be tidied up. I could not see any objection to amending that legislation in due course to include Council of Europe Day—this would come into effect only if we left the European Union—and to replace one with the other. Therefore, celebration of Europe in the wider scope of some 47 countries would be done, but it would be in the context of something of which we remained a member. Therefore, the Europe flag would, or could, still be flown.

It is up to local authorities what flags they fly, because they control their own buildings. It is up to the Assembly Commission in Parliament Buildings in Stormont what flags it flies. It has been traditional

to fly the European flag. St Patrick’s flag has been flown alongside the union flag on St Patrick’s Day. That happened in local council buildings, City Hall used to do it, and so on.

There are solutions to all these things and I think we are reading too much into this measure, which is designed simply to reflect the fact that we are not actually celebrating or commemorating our membership of the European Union on that day. There is no reason—indeed, I think there is a practical rationale for this—why the Minister could not say to his colleagues in the Northern Ireland Office that the flags order itself needs updating, and I see no reason for any objection to including Council of Europe day in that. If you asked people in the country, “What is the flag of the Council of Europe?” many would say, “We didn’t know it had a flag”. That is the reality. Because of the activity outside this building and others, people now see that flag as part of another dispute, and that is something we do not need more of: we have enough of them as it is.

6.15 pm

So I suggest to the Minister that, while I am perfectly content with the SI and understand the reasoning for it, he could take back to his right honourable friend in the other place—if indeed anybody in the other place is listening to anything at the moment—that the resolution to this would be to change the flags order to include Council of Europe day. That would mean that, while the date might change by a few days, that will be commemorated. As the noble Lord, Lord Touhig, said, there was a debate about NATO and other things. That could be commemorated with Council of Europe day, the union flag would fly as well and it would be a national celebration. Indeed, the sensible thing would be for the Department for Digital, Culture, Media and Sport to introduce the same advice at the same time.

That solution would resolve the problem neatly throughout the United Kingdom: we would bring the order of the noble Lord, Lord Mandelson, up to date and include the Council of Europe in it. It would not in any way prevent the Minister pursuing his SI today but I like to think it would be an excellent solution. It means that people who identify themselves in a European context will still be able to do so and get official commemoration right across the United Kingdom if the Department for Digital, Culture, Media and Sport were minded to do it. The Minister might also speak to his right honourable friend the relevant Minister there. It would be good to have a cross-departmental solution happening simultaneously and I hope that would avoid any disputes.

Lord Browne of Belmont (DUP): My Lords, my remarks shall be rather brief. I welcome this having been a serious debate on the flying of flags in Northern Ireland and I am pleased that it is taking place in these peaceful surroundings. However, I still find it a little bizarre that we would continue to fly the flag of an organisation that we will, eventually, have left. I point out that the general public in Northern Ireland can, if they so desire, continue to fly and display the European flag, just as we have regularly witnessed the display of

many European flags outside this building. Also, local councils in Northern Ireland, if they agree the policy, can fly the European flag on their civic buildings on 9 May.

People in Northern Ireland often point out, when discussing the flying of flags, that there is one arrangement whereby, for example, City Hall and Parliament buildings fly a flag but a different arrangement exists for the flying of flags on government buildings and, indeed, the Royal Courts of Justice. They are governed by quite different provisions. Does the Minister accept that this can often lead to a degree of confusion over why a certain flag is flying on a particular building but not on another? Does he agree that, for this reason, in future we may need a more uniform approach?

Finally, I once again regret that there is no functioning and workable Northern Ireland Assembly to consult on these matters. I hope that will not be the case for much longer and remain optimistic that, with political will on all sides, talks about reforming, workable institutions in Northern Ireland can resume soon. I am happy to support this statutory instrument and I concur with the decision made by the other House.

Lord Murphy of Torfaen (Lab): My Lords, it is estimated that 3 million to 4 million people are currently watching BBC Parliament. I rather fancy that today their attention will be drawn to the other place, and that they will have to listen to our proceedings, as they generally do, at about 2 or 3 am. If those insomniacs—who occasionally include myself—switch on, they would I suppose be bewildered that we are discussing flags in the Chamber of the House of Lords while the whole world is collapsing around us because of what is happening on Brexit.

They would of course be mistaken, because flags are a hugely sensitive issue in Northern Ireland. The unfortunate author of the Explanatory Memorandum, which says that this is a “minor, technical change”, would have to listen to only the last hour in this Chamber to realise that it is a lot more than that. I recall thinking about a quarter of a century ago, when I first started going to Northern Ireland as a shadow Minister, that only the union flag and the Irish tricolour were flags of general interest and controversy in Northern Ireland. That was until I happened to see on one occasion the Israeli flag and the Palestinian flag also flying in parts of Belfast. I had no idea what the relationship was, but apparently unionist or loyalist areas would fly the Israeli flag and nationalist or republican areas would fly the Palestinian flag.

It is a huge matter, and my noble friend Lord Mandelson, when he was Secretary of State, introduced—as the noble Lord, Lord Deben, has told us—this important piece of legislation. I wonder—and the noble Lord, Lord Deben, referred to this also—whether sufficient consultation has occurred on this matter. Again, the Explanatory Memorandum says that:

“Consultation is not considered necessary”,

because this is a minor technical matter. It is necessary, because people have different views on flags. I am told by some that the last time the negotiators in Belfast talked about flags the discussions went on for 11 weeks just on that issue. Flags symbolise things in a very special way in Northern Ireland. They go to the heart of the

issue of identity. They go to the heart of the problems that the other place is discussing today—the Northern Ireland/Ireland border and the issue of the backstop. All that is about identity, and flags symbolise it. It is an important issue.

These particular regulations of course refer to the union flag no longer flying on government buildings on the day commemorating the European Union. However, the noble Lord, Lord Bruce, and my noble friend Lord Touhig have eloquently told us that the flag is not simply that of the European Union—it is the flag of the Council of Europe as well, a much earlier institution. If we are trying to wipe the importance of Europe in the peace process from the public memory of Northern Ireland, we should remember that it brought much-needed funding through Objective 1 status and other schemes, and that the common membership of the European Union of the Republic of Ireland and the United Kingdom meant that we were able to be successful over 20 years in that peace process. We have been reminded tonight that a majority of people in Northern Ireland—in any event 56%—voted to remain in the European Union. If we think that taking away the right to fly the flag on 8 May also takes away the public memory of the benefits of being Europeans, we are gravely mistaken. No—the Government should think again. We have been given some interesting ideas. The noble Lord, Lord Empey, tells us, quite rightly, that we ought to think in terms of the whole of the legislation affecting flags in Northern Ireland in a fresh way, which would include the Council of Europe flag being flown. The noble Lord, Lord Alderdice, told us the same thing.

Cannot the Minister therefore just withdraw this Motion for the time being? It does not matter about this year, because it is extremely likely that on 8 May we will still be members of the European Union. The Northern Ireland Assembly and Executive should be deciding these matters—I hope, please God, that by this time next year, those bodies will be up and running and will be able to discuss this. Rightly and properly, it is for them to decide what happens on public buildings in Northern Ireland, and how important Europe is to them.

Therefore, there should be a rethink. People should understand the significance of the symbolism of flags and should remember what Europe, both in the form of the Council of Europe and the European Union, has done to make peace in that part of the world.

Lord Duncan of Springbank: My Lords, I will take your Lordships back a little further, to 21 March 1943; I suspect that many noble Lords were not here then. Sir Winston Churchill gave a speech on the radio and talked about peering,

“through the mists of the future to the end of the war”.

He spoke of the need for there to be a great council of Europe and said that it would be “a stupendous business”. He recognised its value. He saw the future not as one where we marshalled armies across the continent but where we marshalled arguments across a debating chamber. He recognised the value that came from discussions and was instrumental in founding the Council of Europe—indeed, its building is named after him.

[LORD DUNCAN OF SPRINGBANK]

Since its foundation, the Council of Europe has continued its important role, and it has, sometimes to its own frustration, been confused from time to time with the European Union. I have spoken with a number of members of the Parliamentary Assembly of the Council of Europe who are sometimes a little critical, saying, “No, no—we are different”. It is important to remember that they have different roles but common values, and the values of the Council of Europe and the European Union are important to us.

I spent several years as a member of the European Parliament, and, to be frank, I was always disappointed that on Europe Day it was hard to get anybody in the United Kingdom to notice. The fact that flags were flown on public buildings was not the reason why they noticed that there was a Europe Day to be celebrated at all. Noble Lords who have spoken of Europe Day as a symbol of peace and of recognition of what we have done and achieved are absolutely right—that is an important achievement. However, I am very conscious that we are now more aware of Europe Day because of where we are than we ever were during our membership either of the Council of Europe or of the European Union. That is a great sadness to me but it is a truth, and we need to reflect upon it carefully.

Across Europe, 9 May is an important day, because it is a recognition of what the EU has achieved. However, it is also important to recognise that this debate is not perhaps on its widest basis about Europe alone. It is, rather, about a situation in Northern Ireland, where, as we are fully aware, flags have made a difference and created a problem.

I will go through some of the issues which have been raised today. I will be able, I imagine, to critique them, to try to refute them and to do all those things, but that is not what matters today. What matters is perhaps the point raised by the noble Lord, Lord Empey, and my noble friend Lord Deben: a recognition again that in Northern Ireland, and across the whole of the UK, there may be a need in the future for us to recognise how important is our membership of the Council of Europe. It may well be that we should have a wider discussion on that point, and that in this House and in the other place we will do that very thing. I would not be in any way averse to that being a proper discussion, but that is for a future time when I hope we can do that and recognise the achievements of the Council of Europe; to be frank, sometimes they are not given due recognition. I am aware that a number of Members of this place are members of the Parliamentary Assembly of the Council of Europe and do sterling work. Therefore that point may come, but that is not what is before us this afternoon.

6.30 pm

It would not take more than a small stroll outside this building to be awash with European flags: of that there is no doubt. There is no question but that people may continue to fly the European flag as they see fit and when they wish to do so. That is not what the Bill is about; nor is it about the notion of flags flying on public buildings because, in truth, this does not concern all public buildings. It concerns only government buildings and court buildings in Northern Ireland. We should be conscious of that.

Several Members have spoken about the importance of the situation in Northern Ireland. I was curious about this, so I went back to the records to find the last time this was discussed and exactly what the conclusion was. Perhaps I may explain to your Lordships why this remains a contentious issue. In 2015, the Assembly Commission, which was the body tasked by the Northern Ireland Assembly, amended its flag-flying policy from one that followed the 2000 regulations to one that instead observed the DCMS list of designated dates. In coming to this decision, the commission split—unsurprisingly, perhaps—along party lines. The DUP proposed instead flying the union flag every day of the year. Sinn Féin wanted both flags—the union flag and the Irish tricolour—to be flown or none at all. The Alliance Party backed following the DCMS list of designated days as a reasonable compromise. Ultimately, when put to a vote in the commission, the DUP and the UUP also backed the DCMS approach.

Flags remain a challenge in Northern Ireland, and it is important to recognise that when these matters are discussed, compromise is often how they are resolved. The notion in that instance was to adopt the guidance used by the DCMS. There is much discussion about its role in this, but it is important that where the parties wanted to be at the beginning of the discussion and where they ended up was quite different.

The noble Lord, Lord Empey, is correct to note that the current list of designated flag-flying days is not up to date. The last time it was amended was when the Queen Mother and Princess Margaret passed away and their dates were removed from the flag-flying days. But there have been happier times for the Royal Family, and there are now days that would be added were this to be discussed. Noble Lords, especially those who sat through the discussion in the Moses Room, will be aware that to do that involves a sitting Northern Ireland Assembly, whose participation in that process allows there to be additions to the existing list. It is important, as a number of noble Lords have said, that we get to the stage where there is an Assembly which can take these matters forward. We do not have it.

Another important issue was raised when the matter was previously discussed on the Floor of this House. There is no doubt, as the noble Lord, Lord Empey, reminded us, that the noble Lord, Lord Mandelson, looked at this very carefully to try to find a compromise which would allow all in Northern Ireland to broadly agree. It was not an easy challenge, and a number of noble Lords have made the point that this was perhaps one of his greatest achievements. When it was discussed here the last time, back in November 2000, the noble and learned Lord, Lord Falconer of Thoroton, said:

“It is entirely consistent with the principle of consent that the Union flag be flown at government buildings in Northern Ireland, as it is flown at government buildings throughout the rest of the United Kingdom ... The regulations, therefore, go no further than is necessary to reflect practice in the rest of the United Kingdom”.—[*Official Report*, 2/11/00; col. 1193.]

Your Lordships might argue that that is a sophist’s argument—that we have already changed that by changing the guidance—but there is a notion and understanding that the flag policy in Northern Ireland needs broadly to reflect the flag policy in the rest of the United Kingdom.

I have no doubt that there will be adjustments to the wider flag policy. It is important to note, to cite the same debate, that the flags regulation has been largely successful in neutralising any controversy over the flying of flags at government and court buildings. Neutralising any controversy is important here. Let us move away from what might be controversial.

I come to the point made by the noble Lord, Lord Alderdice. He always brings in a very different perspective and is right in this instance. We need to be cautious about how we move this matter forward, because the risk is that this is not simply a minor, technical matter—my noble friend Lord Deben made this point too: how dare we treat this as a technical matter? I am conscious that it is very easy as a Government to cast these issues aside as if they are technicalities and need not be discussed.

I am reminded that the House of Commons European Statutory Instruments Committee, which examined this, said that,

“as a matter of policy, there is nothing contentious in the amendments proposed by this instrument”.

The issue here is that it is easy to see why it can quickly become contentious. In truth it does so because we are engaged in a great debate not only about flags in Northern Ireland but about the future of our country and our purpose; where we are heading. This is perhaps emblematic of that discussion and we need to treat it with care and caution. That is why I will take back to my right honourable friends in the other place the very points which have been raised in this debate. We need to recognise our contribution to the Council of Europe and that we should have an opportunity to find a time when we can celebrate our European achievements. We are not leaving the continent of Europe and we are not resigning our membership of the Council of Europe. Those things will be important.

My noble friend Lord Deben was right about the notion of generosity and I will take away his words in that spirit. We need to recognise where we are as a member of the continent of Europe and the shared values that we have and will continue to have after we depart from the European Union. I do not know what the date for that will be; indeed, depending on what happens in the other place, I have no great understanding of when we might know ourselves. We may not be in any way involved with this issue this year but the point remains that, once we have exited the European Union, we need to reflect carefully on what we are and who we are as a people, and on our European heritage. We have been a noble and constructive participant in building that heritage.

My noble friend was also right to reflect on our own history as a party in Northern Ireland and perhaps our history as a House in Northern Ireland. On that basis I look to the House of Commons, which has passed this instrument, which is why it has arrived here. Again, the democratic House has examined it and has reached a particular conclusion. It is not easy, as we consider the issue, to try to divorce it from what is going on in the wider context, but that is what I am seeking to do today: to bring it back to the issue of Northern Ireland. It would be easy for me to say that it involves only five flagpoles, so what is the problem?

But that would miss the point. The flags are about identity. They are about the bigger picture. They are about how people wish to see themselves and how they wish to be seen. That is why I do not doubt that in the cities of Northern Ireland and more widely, flags will continue to be flown which represent a whole wealth and breadth of passion and of identity. Within that identity will be a European identity. Whether that is in celebration of the Council of Europe or indeed of the European Union, we may never know, because whenever we see the flag we will not know which one it is that people seek to celebrate. As we go forward, we must find a way of making sure that Northern Ireland is treated with respect. That is why I hope, when we consider the future flags policy, that we will do so as observers, not as participants. This will be taken forward by the Assembly in Northern Ireland where it must and should be done. Only by doing that can we truly observe the addition of those flags which would reflect Council of Europe day, should there be a desire to do so.

I do not know if in these remarks I have done justice to the points which have been made. I will note certain points in a brief commentary—I do not seek to critique anyone because the passions which have come out today are important and we need to reflect on them. The noble Lord, Lord Touhig, asked whether we have reflected on the fact that the flags play different roles. Yes, of course that was done. There is a recognition that the day itself is what we are talking about because it is a designated flag-flying day. To all intents and purposes, on 9 May the flag that is flown is the flag of the EU. That is not because it is a different flag but because the day on which it is flown is in essence Europe Day as defined by the European Union and established in 1985. It is not an attempt to try to conflate the two. I know that some countries do so but that is on the understanding, as I have said before, that the Council of Europe and the institutions of the European Union are so similarly named that there can be far too great a degree of confusion.

I hope that my noble friend Lord Deben appreciates that I am not trying in any way to undermine anything he has said. His passion is clear and his advocacy is correct. I hope he will appreciate that I will take his remarks away to my honourable and right honourable friends in the other place and do all I can to ensure that they reflect on the importance of the Council of Europe as something that is worthy of celebration. I hope that we can do that.

I note that I have written under the name of the noble Lord, Lord Alderdice, “When you are in a hole, stop digging”. I guess that I am getting close to that point. Let me say again, in reflection of noble Lords who come from Northern Ireland, that they will know better than anyone the importance of flags in terms of what they represent and their symbolism. It is therefore important to ensure that we are not simply seen as using Northern Ireland and its people as a surrogate for other arguments we wish to make. I am conscious that sometimes that is indeed what we do. As we step outside the House later tonight, I do not doubt that we will continue to see the area awash with European flags. They will be flown around this building for as long as these issues detain us and for as long as we are involved in a serious discussion about them.

[LORD DUNCAN OF SPRINGBANK]

Northern Ireland is a special place and it has needs that need to be reflected upon just now. If noble Lords are content that I will take away to my right honourable friends the need to reflect on our future flag-flying policy and our understanding of the Council of Europe and its significance, I believe we can make some progress. I hope that would enable us to move forward. On that basis, I hope I can move this forward this evening.

Lord Bruce of Bennachie: My Lords, I thank the Minister for his reply, which, as always, was thoughtful and courteous and took full account of the arguments. He was constructive in his response to the suggestions from the noble Lord, Lord Empey.

I think this problem did not start in Northern Ireland—it started in the Department for Digital, Culture, Media and Sport, which took a decision with maybe less thought and less consideration; we are now stuck with the view that, because DCMS has issued guidelines, we have to change the law in Northern Ireland. That is the fundamental problem and the fundamental flaw.

I am glad there are noble Lords here who are not particularly focused on Northern Ireland but who focus on the UK Government and the guidelines for the flying of flags across the whole of the UK. I completely agree that the Europe flag has not normally inspired passion, but it certainly does across the street now and maybe it will in future for those reasons. I accept that the flying of the Europe flag in Northern Ireland is not the fundamental here, but the thinking behind this is fundamental.

The problem I have with what the Minister said—which is extremely constructive and, I am quite sure, genuinely sincere—is that it is on the basis that we pass this instrument tonight. The noble Lord, Lord Alderdice, made an important point: this decision should have been made by the Northern Ireland Assembly but that is not functioning. The noble Lord, Lord Deben, made the point that it required complete consensus across Northern Ireland; we do not know whether that exists. The point from the noble Lord, Lord Alderdice, is that if and when there were an attempt to reverse the decision, somebody would raise a petition of concern that would make it impossible to reverse it. So the problem confronting us is effectively a direct-rule statutory instrument that I think has been inspired by thinking outside Northern Ireland. Passing it tonight would create a problem that will not easily be resolved and would create further difficulties in Northern Ireland.

I understand the Minister's concern—to say I have sympathy would be patronising—because I have a feeling that if he were the Secretary of State he might well withdraw this statutory instrument now and say, “I will go away and consult with DCMS”. It is not urgent—we are really all hoping, in any case, that we will be in the EU at least until 22 May, if not beyond, which means the flag can still be flown—so we could forget about this statutory instrument, rethink it and bring it back in a few months. I wish that were possible. I think the Minister has got as close as he could to saying that, but I feel it is not close enough. With double regret—as it is a regret amendment—I wish to test the opinion of the House.

6.42 pm

Division on Lord Bruce of Bennachie's amendment

Contents 55; Not-Contents 115.

Lord Bruce of Bennachie's amendment disagreed.

Division No. 1

CONTENTS

Addington, L.	Lee of Trafford, L.
Adonis, L.	Ludford, B.
Alderdice, L.	Maddock, B.
Alton of Liverpool, L.	Masham of Ilton, B.
Barker, B.	McDonagh, B.
Beith, L.	McNally, L.
Benjamin, B.	Morgan, L.
Berkeley of Knighton, L.	Morris of Handsworth, L.
Bragg, L.	Murphy of Torfaen, L.
Brinton, B.	Newby, L.
Brookeborough, V.	Nye, B.
Bruce of Bennachie, L. [Teller]	Parekh, L.
Burt of Solihull, B.	Purvis of Tweed, L.
Collins of Highbury, L.	Puttnam, L.
Cormack, L.	Randerson, B.
Cotter, L.	Rennard, L.
Deben, L.	Rowlands, L.
Desai, L.	Sandwich, E.
Dholakia, L.	Shipley, L.
Dubs, L.	Shutt of Greetland, L.
Dykes, L.	Storey, L. [Teller]
Garden of Frogna, B.	Stunell, L.
Glasgow, E.	Suttie, B.
Golding, B.	Touhig, L.
Greender, B.	Tyler, L.
Hamwee, B.	Watson of Richmond, L.
Humphreys, B.	Whitaker, B.
Hussein-Ece, B.	

NOT CONTENTS

Agnew of Oulton, L.	Finkelstein, L.
Altmann, B.	Finn, B.
Anelay of St Johns, B.	Fookes, B.
Arran, E.	Fraser of Corriearth, L.
Attlee, E.	Gadhia, L.
Barran, B.	Gardiner of Kimble, L.
Bates, L.	Gardner of Parkes, B.
Berridge, B.	Garnier, L.
Bethell, L.	Geddes, L.
Bew, L.	Glendonbrook, L.
Blackwood of North Oxford, B.	Goodlad, L.
Bloomfield of Hinton Waldrist, B.	Greenway, L.
Borwick, L.	Hameed, L.
Brabazon of Tara, L.	Hamilton of Epsom, L.
Bridgeman, V.	Haselhurst, L.
Bridges of Headley, L.	Haskel, L.
Browne of Belmont, L.	Hayward, L.
Buscombe, B.	Henley, L.
Byford, B.	Hodgson of Abinger, B.
Caine, L.	Hodgson of Astley Abbotts, L.
Caithness, E.	Holmes of Richmond, L.
Callanan, L.	Hooper, B.
Colgrain, L.	Hope of Craighead, L.
Colwyn, L.	Howe, E.
Courtown, E. [Teller]	Hunt of Wirral, L.
Crathorne, L.	Jenkin of Kennington, B.
De Mauley, L.	Jopling, L.
Dixon-Smith, L.	King of Bridgwater, L.
Duncan of Springbank, L.	Kirkham, L.
Empey, L.	Kirkhope of Harrogate, L.
Evans of Bowes Park, B.	Lindsay, E.
	Lingfield, L.

Lytton, E.
 MacGregor of Pulham
 Market, L.
 Magan of Castletown, L.
 Manzoor, B.
 Marland, L.
 McInnes of Kilwinning, L.
 McIntosh of Pickering, B.
 Meyer, B.
 Montrose, D.
 Morris of Bolton, B.
 Neville-Jones, B.
 Neville-Rolfe, B.
 Newlove, B.
 Nicholson of Winterbourne,
 B.
 Norton of Louth, L.
 O'Loan, B.
 Patel, L.
 Pickles, L.

Popat, L.
 Porter of Spalding, L.
 Price, L.
 Rana, L.
 Rawlings, B.
 Reay, L.
 Renfrew of Kaimsthorn, L.
 Robathan, L.
 Rogan, L.
 Sater, B.
 Scott of Bybrook, B.
 Seccombe, B.
 Selkirk of Douglas, L.
 Sheikh, L.
 Shephard of Northwold, B.
 Sherbourne of Didsbury, L.
 Smith of Hindhead, L.
 Stedman-Scott, B.
 Stroud, B.
 Sugg, B.

Taylor of Holbeach, L.
 [Teller]
 Taylor of Warwick, L.
 Tebbit, L.
 Thurlow, L.
 Trenchard, V.
 Tyrie, L.
 Vere of Norbiton, B.

Wakeham, L.
 Whitby, L.
 Wilcox, B.
 Willetts, L.
 Williams of Trafford, B.
 Young of Cookham, L.
 Younger of Leckie, V.

Motion agreed.

Mental Capacity (Amendment) Bill [HL]
Returned from the Commons

The Bill was returned from the Commons with amendments.

House adjourned at 6.54 pm.

Volume 797
No. 284

Wednesday
3 April 2019

CONTENTS

Wednesday 3 April 2019
