Vol. 797
No. 299

Monday
13 May 2019

PARLIAMENTARY DEBATES
(HANSARD)

HOUSE OF LORDS

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

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House of Lords

Monday 13 May 2019

2.30 pm

Prayers—read by the Lord Bishop of Portsmouth.

Saudi Arabia: Torture of Political Detainees

Question

2.37 pm

Asked by ***Baroness Blackstone***

To ask Her Majesty's Government what representations they have made to the government of Saudi Arabia about recent reports of the use of torture on political detainees in that country.

The Minister of State, Foreign and Commonwealth Office (Lord Ahmad of Wimbledon) (Con): My Lords, we are concerned by the allegations of torture of political detainees, including women's rights defenders, in Saudi Arabia. The UK Government unreservedly condemn torture and cruel, inhumane or degrading treatment or punishment. It is a priority to challenge this behaviour wherever and whenever it occurs. We regularly raise our concerns at a high level with the Saudi authorities, including during the Foreign Secretary's visit to Saudi Arabia in March 2019.

Baroness Blackstone (Ind Lab): My Lords, I thank the Minister for his reply, but I am a little disappointed by it, given the extraordinary and appalling human rights record of the Government of Saudi Arabia, where there are political prisoners suffering from beatings, burns, electric shocks and malnutrition. At the recent mass executions, evidence was allowed in court based on confessions extracted under torture. Could he tell the House a little more about when and with whom his and the Government's concerns have been raised, what the response of the Saudi Government was, and what the UK Government intend to do next about this appalling situation?

Lord Ahmad of Wimbledon: I agree with the noble Baroness: the reports we have seen and the recent events that unfolded with the mass executions of detainees were horrific and of deep concern. Many of the people executed were Shia Muslims. The noble Baroness asked at what level we have raised this issue. As I already indicated, my right honourable friend the Foreign Secretary raised it during his visit with his counterpart in Saudi Arabia. Most recently, at the end of April, Saudi's Foreign Minister, Adel al-Jubeir, was in London and these issues were raised with him directly.

Turning to the next steps, notwithstanding what we are doing on bilateral relations, the noble Baroness will know that I am Minister for Human Rights and that we are a signatory to the 7 March joint statement from the UN Human Rights Council, which raised significant concerns about not just the reports of the detentions already in play but the arrests that are still taking place. I assure the noble Baroness that we continue to raise this issue at all levels, and we are working through international partners and will continue to do so. I hope to visit the Kingdom of Saudi Arabia later this year in my role as Human Rights Minister.

Baroness Northover (LD): My Lords, in March 2018, the Minister said:

> "We will continue … to implore reform",—[*Official Report*, 7/3/18; col. 1173.]

from Saudi Arabia. What progress does he think the Government are making, given the cases of torture and the public executions that we have just heard about? In light of this and of actions in Yemen, is it not time for the Government to stop saying that they are taking adequate precautions on arms sales, and to stop arms sales to Saudi Arabia?

Lord Ahmad of Wimbledon: My Lords, on the latter point, the noble Baroness will know that we have a very rigid arms enforcement arrangement and process in place. That continues to apply to Saudi Arabia, as well as to any other international partner we engage with on defence contracts. On the specific issue, she is quite right. She quoted my use of the word "implore". I assure her that in all our engagements we continue to remind Saudi Arabia of its important commitments to human rights. She will be aware of the 2030 vision, which is all about economic and social reform. Notwithstanding the tragic events that have taken place, including the issues surrounding Jamal Khashoggi, we continue to work with Saudi Arabia on opening up society and the country, and its continuing focus on and progress towards greater rights, particularly for women.

Lord Green of Deddington (CB): My Lords, having spent seven years in the British Embassy in Riyadh, I feel there is something familiar about this discussion. Clearly, we face a very difficult situation there and it is highly unsatisfactory. Does the Minister agree that it is slightly better to avoid a direct head-to-head with the Saudis on these things? They believe, and probably will also say, "These are not British citizens; it's not your business". It is much better to tackle it from the point of view of the very strong relationship we have with them in a range of important fields, and to use the flak rightly coming out of Parliament to indicate that it will be increasingly difficult for us to maintain that very important relationship if there is no visible progress on some of the matters mentioned by noble Lords.

Lord Ahmad of Wimbledon: The noble Lord speaks with great insight on the Kingdom of Saudi Arabia, and I agree with him. We have a very important and balanced relationship with Saudi Arabia that is realistic in terms of what is achievable and attainable in our exchanges, and that is because of the nature of the engagement. As I said, we do not shy away from raising human rights bilaterally or, as has been demonstrated, in partnership very publicly through vehicles such as the Human Rights Council.

Lord Collins of Highbury (Lab): My Lords, the Minister talks about the programme of reform. Certainly, since the incident in Turkey, we have seen a different attitude. The report on torture arose from Saudi Arabia's own internal examination of these issues, and with a new ambassador in the US and here, the Saudis seem to be on a charm offensive. But the reality is that there

[LORD COLLINS OF HIGHBURY]
are still huge human rights abuses and more executions than ever before. Will the noble Lord tell us a bit more about not only what the Government are saying to the Saudis but what we are doing with our allies to ensure we can exert pressure, so that, instead of the current PR exercise, we confront the reality?

Lord Ahmad of Wimbledon: My Lords, the noble Lord raises important points. But the fact that the Kingdom of Saudi Arabia is deploying a "charm offensive", as he calls it—I would also call it a diplomatic offensive—to change the way it is viewed on the global stage reflects the important fact that progress is being made. On working to get specific action, it is acutely aware of the action we are taking through international fora such as the Human Rights Council, and we will continue to do so.

Lord Roberts of Llandudno (LD): My Lords, according to the last figure I saw, we export £80 million-worth of arms to Saudi Arabia and nil to Yemen. Does that not make us complicit in a lot of the work that is going on there?

Lord Ahmad of Wimbledon: I have already answered, in part, the question on arms exports to Saudi Arabia, which, as I said, are managed in the most robust manner. The noble Lord mentions that we do not export arms to Yemen. He and all noble Lords will know all too well that the conflict in Yemen is not just about the Yemenis themselves. There are external partners in play, and the last thing we should be doing is fuelling that conflict by exporting arms to a country that is torn by civil war and that has external players who are in part fuelling that war.

Mobile Phones: Public Alert Systems
Question

2.45 pm

Asked by ***Lord Harris of Haringey***

To ask Her Majesty's Government, further to the remarks by Lord Young of Cookham on 5 July 2018 (HL Deb, cols 766–770), what progress they have made on the introduction of public alert systems for mobile phones in the event of an emergency.

Lord Young of Cookham (Con): My Lords, the Government recognise the potential benefits of an emergency alerting scheme that sends text messages to mobile phones. The Cabinet Office has undertaken further work to address some of the technical and operational issues of implementing such a scheme on the UK's communications networks, and is working across government and with emergency responders to explore the potential benefits and opportunities further.

Lord Harris of Haringey (Lab): My Lords, I am grateful to the Minister for his Answer, but not a lot seems to have happened in the year since I last asked him about this matter.

It is seven years since Australia adopted a location-based text alert system, since when there have been no bushfire deaths. It is five years since the Cabinet Office published its report on the three successful trials it had carried out of these systems. It is three years since my report on London's preparedness, which made recommendations in this area. It is two years since the Grenfell fire, when, had the technology been in use, residents in the tower could have been advised of the change in evacuation advice. That would have saved lives. It is two weeks since the Indian authorities sent 2.6 million text alerts warning people in the path of Cyclone Fani, possibly saving thousands of lives. Can the Minister tell us what exactly the problem is in this country, and when UK residents are going to get the protection that is available elsewhere in the world?

Lord Young of Cookham: I understand the noble Lord's impatience, and commend him for the regularity with which he has addressed this issue. Ministers have made it absolutely clear that doing nothing is not an option. Two weeks ago, there was a workshop of the Cabinet Office, the Home Office and the police to identify more accurately the precise specifications of the scheme that the noble Lord refers to. Later this year, the Environment Agency will be launching a trial scheme using cell broadcasting, and testing the 4G technology to compare it with existing alerting capabilities. The previous trials in 2013 which the noble Lord referred to, were disappointing, but they were based on older technology and the 2G network. Since then, things have moved on.

Finally, the noble Lord referred to the cyclone in India. Most of the existing schemes are used to warn people of tsunamis, flooding and fires. His report used it against a background of terrorism. That raises different issues, in that it is impossible to forecast exactly what is going to happen, and also, in the case of terrorism, the protagonists are also receiving the message alerts. That means that one requires a slightly different approach if one is to use it for those purposes rather than the purposes it is normally used for abroad.

Lord Paddick (LD): My Lords, as the noble Lord, Lord Harris, has just said, on 28 October 2016 he launched his report on improving London's terror preparedness. He recommended the installation of hostile vehicle mitigation barriers and the wider installation of protective bollards in areas of vulnerability around London. Sadly, no action was taken before the terrorist attacks on Westminster Bridge and London Bridge, the first being six months after the publication of the report. Does the Minister accept that any unnecessary delay to the implementation of the recommendations made by the noble Lord, Lord Harris, regarding the introduction of public alert systems could result in preventable loss of life?

Lord Young of Cookham: I agree. One of the themes that came out of the debate in July, which the noble Lord participated in, was the importance of getting the message right and of any message coming from an alerting system being compatible with what the BBC, Sky and social media are doing—all of which may have more on-the-spot responses. This is why, as I said,

it requires a slightly different approach to the schemes that are already up and running. On the issue of the bollards and other obstructions, I will of course take that up with the relevant government department.

Lord Cormack (Con): My Lords, will my noble friend assure the House that no alert system will ever be capable of foreign intervention? I know that many Members, in all parts of both Houses, are acutely concerned about this.

Lord Young of Cookham: One of the advantages of cell broadcasting technology as opposed to SMS texting, which is the alternative scheme, is that cell broadcasting is better proofed against the risks that my noble friend has referred to.

Lord Watts (Lab): My Lords, is there something fundamentally wrong with this Government? Even when they want to do something, it takes years for them to actually act. Should we not review the way that the Government are proceeding on these issues, so that we do not have ongoing issues that last for years without being resolved?

Lord Young of Cookham: Again, I understand the noble Lord's impatience which, for all he knows, may be more widely shared than he thinks. What has changed over recent years is that previous trials were based on an outdated technology, 2G. Now that we have 4G and the arrival of 5G is imminent, it is possible to have a scheme which was not possible three or four years ago. As I said a moment ago, we are testing a public trial of cell broadcasting later this year, which could then be developed into the sort of scheme proposed by his noble friend.

Baroness Hamwee (LD): My Lords, one problem which is common to terrorist attacks and environmental disasters is the anxiety of friends and family about those whom they are concerned might be affected. Their phone calls, using mobile systems as well as landlines, put a load on the whole system. That was obvious in 2005. Does the work which the Government are doing take account of the need to ensure that that load is minimised?

Lord Young of Cookham: Cell broadcasting does not run the risks of congestion on the network that the previous system, SMS, did.

Lord Foulkes of Cumnock (Lab Co-op): My Lords, confession is good for the soul, even for Ministers. Can the Minister be absolutely precise about whether the workshop to which he referred was planned before or after my noble friend Lord Harris tabled his Question?

Lord Young of Cookham: I am flattered that the noble Lord thinks that I have such influence that the moment a Question is tabled to me, I immediately ask for a workshop to be established. The workshop was planned before the noble Lord tabled his Question.

Apprenticeships
Question

2.52 pm

*Asked by **Lord Fox***

To ask Her Majesty's Government how many people are currently registered as undertaking (1) Intermediate, (2) Advanced, (3) Higher, and (4) Degree apprenticeships.

The Parliamentary Under-Secretary of State, Department for Education (Lord Agnew of Oulton) (Con): My Lords, in the first half of 2018-19, there have been 214,000 apprenticeship starts: 38% were at intermediate level, 44% were at advanced level, and 18% were at higher level. Included in the latter were 14,000 level 6-plus and degree apprenticeships, representing 7% of apprenticeship starts. Our apprenticeship reforms are raising the quality of training and assessment at all levels. They are providing the skills that employers need and creating life-changing opportunities for apprentices.

Lord Fox (LD): I thank the Minister for his Answer. We should all congratulate the people participating in these apprenticeships, but there are still not enough of them. Today, two dozen significant bodies have written to the DfE asking for more time to spend the money generated by the levy. Only 9% of the money raised last year was actually spent on workplace programmes, and if that money is not spent it goes to the Treasury. I am sure that everyone, with the possible exception of the Treasury, wants the money that is set aside for training apprentices to be spent on training them. Will Her Majesty's Government respond positively to the spirit in which these organisations have laid out their request to the DfE? Will the DfE provide them with the flexibility so that they can provide the training for future workers?

Lord Agnew of Oulton: As the noble Lord is aware, we have listened consistently to feedback from employers since the scheme began two years ago, which is why we extended the time that employers could use their levy from 18 to 24 months. We have also increased the amount of money they can pass down their supply chain. We continue to engage regularly with all employer groups.

Lord Baker of Dorking (Con): My Lords, I thank the Minister for his personal support of university technical colleges. Some 30% of students from these 48 colleges become apprentices each year. The one at Sellafield had 80% apprentices last year, which compares with an average of only 6% from ordinary comprehensives in England. All technical education is being squeezed out of pre-16 education, because it is being asked to follow EBacc. EBacc should be scrapped if you want more apprenticeships.

Lord Agnew of Oulton: I disagree with my noble friend on EBacc, but applaud all the work he has done on UTCs and their role in the apprenticeship programme.

The Earl of Listowel (CB): Can the Minister say how many children in care and care leavers get on to and complete apprenticeships? He may prefer to write

[The Earl of Listowel]
to me. Does he agree that it is a priority to ensure that such young people access apprenticeships and are supported to sustain them?

Lord Agnew of Oulton: I will write to the noble Earl with the exact figures, but there is good news; I have come reasonably prepared for this question. The percentage of BAME apprentices—black, Asian and minority ethnic—went up from 9.9% in 2011-12 to 11% last year. Importantly, the number of apprentices with learning disabilities has gone up from 7.7% to 11.9%.

Lord Watson of Invergowrie (Lab): My Lords, one of the causes of the Government falling so far short of their laudable target of 3 million apprenticeship starts by next year is that not enough young people are directed towards apprenticeships in schools. A recent survey showed that only 9% of current apprentices found out about theirs through their teacher, and just 6% through a professional careers adviser. That is totally unacceptable. When will the Government start enforcing the requirement introduced last year for all schools to have a designated careers leader and—under the Baker clause of the Technical and Further Education Act—for head teachers to allow outside speakers to come in and inform young people of the rewarding alternatives to the academic route after they leave school?

Lord Agnew of Oulton: The noble Lord is right that schools are still not engaging enough to encourage apprenticeships. I accept that as fair criticism, but we are improving. We have just had the Youth Voice Census back for 2019, which shows that the percentage of children learning about apprenticeships has gone up. For example, specifically for engagement at FE level, "meaningful encounters" with sixth-form colleges have gone up from 52% to 60% and with FE colleges from 52% to 58%, and independent training provider engagement has risen from 29% to 34%. The work is ongoing.

The Lord Bishop of Portsmouth: Is the Minister aware—and, if not, I and perhaps other noble Lords are ready to give examples—of the bureaucratic burdens and delays being experienced? For universities, the added obligation to report to and share data with the Education and Skills Funding Agency, as well as the three usual reports, is exacerbated by an identical reporting requirement for levels 2 and 7, NVQ and postgraduate. The burden seems disproportionate. For large levy-payers, there are unexplained delays in approving new apprenticeship standards. Will the Minister urgently address these to improve take-up?

Lord Agnew of Oulton: On the right reverend Prelate's first point about universities, I encourage him to write to me and I will pass that to the Universities Minister. We have put a tremendous impetus behind the universities sector to engage particularly with areas of lower attainment. It now spends £800 million a year trying to reach areas where university access has previously been low. We now have 440 standards approved and another 50 in the pipeline.

Baroness Garden of Frognal (LD): What steps are being taken to incentivise schools to encourage young people into apprenticeships? The league tables currently encourage GCSE and A-level results. Could schools not be given formal recognition for their young people who go into apprenticeships?

Lord Agnew of Oulton: I refer the noble Baroness partly to my earlier answer where I spoke about the surveys that we are carrying out with schools. For example, the Compass data encourage seven meaningful encounters with employers. The apprenticeship programme is very much part of that.

Baroness Bloomfield of Hinton Waldrist (Con): My Lords, we should focus on the quality as well as the quantity of apprenticeships. With this in mind, will my noble friend join me in congratulating the UK Atomic Energy Authority, which in partnership with the Science and Technology Facilities Council is building a new training centre at Culham that will provide up to 150 high-quality apprenticeships in engineering, science and technology?

Lord Agnew of Oulton: I agree. It is interesting to note that, for example, a level 2 apprenticeship can boost earnings by 11% and a level 3 apprenticeship by 16%, so these are career-changing opportunities.

Social Care: Green Paper

Question

3 pm

Asked by ***Baroness Wheeler***

To ask Her Majesty's Government what assessment they have made of the costs and effects of the delay in publishing their green paper on social care.

The Parliamentary Under-Secretary of State, Department of Health and Social Care (Baroness Blackwood of North Oxford) (Con): My Lords, the Green Paper remains a priority for the Government, and we will publish it at the earliest opportunity. Despite the delay in publication, the Government are committed to improving adult social care. We recently launched our social care recruitment campaign, Every Day is Different, and continue to support the sector by distributing £12 million a year through the workforce development fund. The Government have also given councils access to up to £3.9 billion of funding for social care for 2019-20.

Baroness Wheeler (Lab): My Lords, the Green Paper was first promised in 2017, when the Government said that,

"we cannot wait any longer—we need to get on with this",—[*Official Report*, 6/7/17; col. 987.]

and pledged to publish by the end of that year. I remind the House that this was a year after they abandoned the Dilnot provisions on future care funding, which had cross-party support under the Care Act and were due to start in 2016. The Alzheimer's Society has estimated that, over the past 26 months, there have been more than half a million delayed transfers of care for people affected by dementia; nearly 3 billion hours of unpaid care have been provided; and, at any one point, more than 120,000 people with dementia in England receive no help from social care or family carers. Emergency cash injections do not address the

chronic underfunding of local services, change the eligibility criteria or help people plan for future care needs. When we finally get the Green Paper, can the Minister promise the House that it will address these issues and provide the major, immediate and long-term funding that is urgently needed?

Baroness Blackwood of North Oxford: I thank the noble Baroness for an extremely important question. I know that she will agree that decisions on future reforms must be aligned. That is precisely why the long-term plan and the upcoming social care Green Paper have been considered alongside each other. Some important measures within the long-term plan are already beginning to improve social care; for example, the enhanced health in care homes model, which will ensure stronger links between primary care networks and local care homes; the comprehensive model for personalised care, which will put the individual at the centre of services; and personal health budgets. However, the noble Baroness is also right that we have to make sure that we get funding reform right—that is why we have increased funding from £3.6 billion in 2018-19 to £3.9 billion in 2019-20. She is also right that we must ensure that we build on the carers action plan and put carers at the heart of social care. Finally, we must ensure that we recruit, retain and build on workforce development at the heart of the social care Green Paper. That is what we will do, and I look forward to the debates in this House when we bring it forward.

Lord Forsyth of Drumlean (Con): My Lords, is my noble friend aware that the Economic Affairs Committee is conducting an inquiry at the moment into social care? One of the manifestly obvious conclusions is that we will not be able to address this important issue unless we are able to get a degree of consensus between the Opposition and the Government? Would it not be a good idea for the Opposition to take a constructive approach when the Green Paper is published?

Baroness Blackwood of North Oxford: I think that the noble Lord speaks for the whole House when he calls for consensus on social care. One reason why it is taking slightly longer to bring forward the plan is that we are doing a lot of work on consultation and collaboration to ensure that we produce a robust proposal which can command the support of the House and be delivered effectively and implemented well. The Government are committed to ensuring that everyone has access to the care and support they need, but we need to be clear that there should continue to be a principle of shared responsibility and that people should expect to contribute to their care as part of preparing for later life. The Green Paper will bring forward ideas for including an element of risk pooling in the system to help protect people from the highest costs. We look forward to support from the Opposition on those proposals.

Baroness Brinton (LD): My Lords, in 2009 there was a proposal that we should all work together, cross-party, for social care, started by the then Labour Government. All three major parties signed up to it, and then one party withdrew, making it undeliverable—it was neither the Labour Party nor the Liberal Democrats. The Minister said all the warm words that we want to hear about support for health and social care integration, but the new Health for Care coalition of 19 major health organisations is very clear that, while it is doing all it can for social care services and the NHS working together, and integration is improving, it can go only so far when services are being placed under so much strain. It points out that we would need an annual increase of 3.9% to meet the needs of an ageing population and an increasing number of younger adults. Seven hundred days since the social care paper was first promised is too long: when will it actually be delivered?

Baroness Blackwood of North Oxford: I share the noble Baroness's impatience for progress on this. She is absolutely right that there is no point in bringing forward the proposals if they are not properly costed and funded. That is exactly why these proposals have been developed in collaboration with the long-term plan and the social care plan. We have to ensure that the right funding for social care is agreed alongside the rest of the local government settlement at the forthcoming spending review. That is partly why this process is taking the route that it is.

Lord Laming (CB): My Lords, I feel sure that the noble Baroness will agree that this has become an embarrassingly long-running saga. I am sure the whole House will agree that the people who depend upon these services are the most vulnerable in our society and have such high-dependency needs that they ought to have the security of knowing that their well-being and safety is being properly attended to. Will the noble Baroness use all her influence to make sure that these people get the security and peace of mind that they deserve?

Baroness Blackwood of North Oxford: I am absolutely delighted to offer the noble Lord my assurance that we will work as hard as we can to deliver the most effective and most deliverable Green Paper we can. He is absolutely right that the most vulnerable people within our society depend on the effectiveness not only of social care services but the integration of social care services with our public health services and the long-term plan. That is why it is encouraging that social care sits right at the heart of the long-term plan and why it is well integrated with the other commitments within the plan to improve outcomes for major diseases and including measures to support older people, through more personalised care and stronger community and primary care services. These will improve outcomes and reduce the demand on social care, and that is exactly the kind of holistic approach that we want to see.

Iran and Gulf Security

Private Notice Question

3.07 pm

Asked by ***Lord West of Spithead***

To ask Her Majesty's Government, in the light of the fact that the Government of Iran have given 60 days' notice that they intend to withdraw from the Joint Comprehensive Plan of Action and restart their nuclear weapons programme, what steps they are taking to mitigate the increased risk of conflict in the region.

Lord West of Spithead (Lab): My Lords, I beg leave to ask a Question of which I have given private notice.

The Minister of State, Foreign and Commonwealth Office (Lord Ahmad of Wimbledon) (Con): My Lords, we note with great concern the statement made by Iran on 8 May concerning its commitments under the Joint Comprehensive Plan of Action. We are analysing the detail and are in close contact with the other parties to the deal. We urge Iran not to take further escalatory steps and to stand by its commitments. Should Iran cease meeting its nuclear commitments, there would be consequences. While Iran keeps to its commitments, so too will the United Kingdom.

Lord West of Spithead: My Lords, I thank the Minister for his Answer. Things are extremely dangerous and it is interesting that Mike Pompeo is not going to Moscow today but has gone to Brussels to speak to EU Foreign Ministers. Our Foreign Secretary said:

"We are very worried about the risk of a conflict happening by accident and … escalation that is unintended".

There is no doubt that there are powerful factions within Israel, Saudi Arabia and the US that feel that an attack on Iran would be a good thing, believe it or not. They think that they would very quickly be able to suppress the enemy capability and then there would be regime change. They are wrong. It would be an absolute catastrophe. The passage of any shipping through the Straits of Hormuz would be problematic for weeks, there would be an outbreak of terrorist attacks throughout the region and there would possibly be some missile attacks. Bearing that in mind, are we going to give any warning to UK citizens in the region? What is the state of preparedness of our own forces there, bearing in mind that when action is taken in response to an attack, Iran will not think that we are not involved in it? They will; therefore, we need to be ready for such a thing.

Lord Ahmad of Wimbledon: My Lords, the noble Lord is quite correct that a meeting is taking place in Brussels. My right honourable friend the Foreign Secretary is part of that meeting of the EU three, and all of us are very much committed to keeping the JCPOA alive and on the table. He is also seeking, as we have done over the last few days, continued and close contact with Secretary of State Pompeo and other leading members of the US Administration.

I also agree with the noble Lord that the last thing the region needs now is a conflict of the nature of the one that is developing on the horizon. My right honourable friend the Foreign Secretary said that that would further destabilise the region, and I assure the noble Lord that we are working hard to ensure that that will not be the case. The noble Lord will know from his own experience that I cannot go into any detail on deployments. However, the safety and security of British citizens are of paramount importance to the United Kingdom Government and we are working to ensure that all people are informed, in particular through our various embassies in the region.

Lord Howell of Guildford (Con): My Lords, my noble friend will be aware that your Lordships' International Relations Committee has taken detailed evidence on this agreement and the American attitude to it. While it is patently clear that a breaking of the agreement is bound to lead to further proliferation of nuclear weapons in the region—a great danger, as the noble Lord, Lord West, has already said—it is equally clear that the information we are getting on American intentions is not really satisfactory. I will ask my noble friend the same question I asked last week: what explanation are we getting from our American allies of their intentions in the whole region? Are we just to take the views of Mr Pompeo that we should be threatened with cutting off intelligence unless we follow the American line, or are we developing a joint strategy that will mitigate some of the enormous dangers that clearly lie in this situation?

Lord Ahmad of Wimbledon: My noble friend raises an important point about the US-British relationship. I assure him that we are in constant dialogue and contact with our US counterparts; the discussions between Foreign Secretary Hunt and Secretary of State Pompeo on this issue are ongoing. Recent statements on US intentions in the region from the US State Department—including from Secretary of State Pompeo—clearly show that it is not seeking to destabilise the region but wants to see a change in Iran's behaviour. We have a view that part of ensuring peace and stability in the region is keeping the JCPOA alive, and we continue to make that point together with other European partners to the United States.

Lord Campbell of Pittenweem (LD): My Lords, it is not just about what the Americans are saying but what they are doing. America has, after all, deployed a carrier strike group and B-52 bombers. I associate myself with the analysis provided by the noble Lord, Lord West, and presume to offer three things for the Government to say to the United States. First, belligerence will not bring Iran to heel; if anything, it will simply stiffen the resolve of its leaders. Secondly, if America's objective is regime change, then, drawing on our own recent experience, we are not in support of that. Finally, whatever it does, it should not listen to Mr Netanyahu.

Lord Ahmad of Wimbledon: My Lords, US deployments remain a decision for the United States. In more general terms, we share the concerns of the United States and others about Iran's influence in the wider region. That said, as I have already stated a number of times—including last week on this very question—the United Kingdom believes that any kind of conflict with Iran will further destabilise the region. We are making that point consistently. We are continuing to engage with not just the United States and our European partners but directly with Iran. That dialogue is extremely important, not least at this particularly fragile time.

Lord Hannay of Chiswick (CB): My Lords, does the Minister recognise that one of the factors that will weigh most heavily with Iran is the attitude of China and Russia, who are co-partners in the JCPOA? What steps are we taking to concert with those two countries on ways to discourage the Iranians from reneging on their commitments? Does the Minister not find it a little rich that someone in the entourage of the American Secretary of State referred to the Iranian statement last week as "blackmail"?

Lord Ahmad of Wimbledon: The noble Lord's final point is very much a matter for the United States Administration; it would not be appropriate for me to comment on the entourage of the Secretary of State. On the noble Lord's wider point, I agree that it is imperative that all parties to the JCPOA are involved. He named both China and Russia; I assure him that we are working with all parties and continue to implore both China and Russia to use their influence to ensure that Iran stays at the table and that the JCPOA stays live for the region. As I have said a number of times, it is important not just for Iran and for the region but for the whole world.

Lord Collins of Highbury (Lab): My Lords, this tit for tat that we have seen is clearly something that we were discussing last week. It is clear that there are also elements in Iran who would like to see the agreement fall because of their own ideological commitment. The noble Lord keeps referring to "our side of the bargain" and "their side of the bargain". Can he tell us a bit more about how we are meeting our side of the bargain, as he said, not only with our European allies but with other co-signatories, so that we can say to the US, "We will continue to meet our side of the bargain"?

Lord Ahmad of Wimbledon: As the noble Lord knows, we are not only committed diplomatically to the JCPOA but have been working in co-operation with our European partners on the special purpose vehicle. That is part of our side of the bargain—to coin a phrase—to ensure that there is sanctions relief for the Iranian people. Our fight—or anybody's fight—is not with any citizen or country, and nor should the United States view it as such. Indeed, Secretary of State Pompeo has repeatedly emphasised the importance of keeping in mind the Iranian people. That is why we are committed to ensuring that the work that is being done on the special purpose vehicle continues—because it provides a degree of respite for the Iranian people.

Lord Hamilton of Epsom (Con): My Lords, the Question asked by the noble Lord, Lord West, refers to Iran restarting its nuclear programme. Does he really believe that Iran abandoned its nuclear programme altogether?

Lord Ahmad of Wimbledon: What was important in the Question from the noble Lord, Lord West, was that Iran stopped further development of its nuclear programme. The letter from President Rouhani made clear their intent that after 60 days they would restart their efforts in that regard. We need to ensure that we avert that threat, and we continue to work to keep the JCPOA alive. This was not a perfect deal; as I have said before, issues around ballistic missiles were not covered. However, it is the best deal we have, it has kept the peace, and it has kept Iran from progressing on its path to obtaining a nuclear weapon. That is why the United Kingdom, along with other international partners, remains committed to it.

Lord Browne of Ladyton (Lab): My Lords, the principal objective has to be to stop Iran getting a nuclear capability, and we were in that place with the deal, as the noble Lord rightly says. So the only way of keeping the Iranians in the deal is to get the special purpose vehicle and the financial scheme to work—but they are not working. How do the Government and their European allies intend to ensure that this contribution to making the deal continue works?

Lord Ahmad of Wimbledon: The short answer to why the vehicle is not working is that it is not yet operational. However, we are working with our European partners to ensure that all elements continue to function, including regulatory compliance, on the Iranian as well as the European side. We are focused on getting that SPV up and running.

Census (Return Particulars and Removal of Penalties) Bill [HL]

Second Reading

3.19 pm

Moved by ***Lord Young of Cookham***

That the Bill be now read a second time.

Lord Young of Cookham (Con): My Lords, I am delighted to present this Bill today. This may be some noble Lords' first encounter with the census legislative process. I have an advantage, in that I was responsible for taking through the legislation in another place to enable the taking of the 1981 census. I now have the pleasure to present a Bill that paves the way for new questions in the 2021 census, 40 years later.

The purpose of the Bill is very simple: it will remove the penalty for not responding to new census questions on sexual orientation and gender identity. This means that the questions will be voluntary. Given the sensitive nature of these questions, they will be asked only in respect of those aged 16 and over in the 2021 census.

This delivers on the proposals set out in December 2018 by the White Paper *Help Shape our Future*. The Office for National Statistics undertook an extensive three-year programme of research and evidence-gathering, including a large public consultation on the 2021 census, and the White Paper sets out its recommendations. This includes new questions on sexual orientation and gender identity to help decision-makers monitor their services and provision. The White Paper also recommends that nobody should have to disclose their sexual orientation or gender identity if they do not want to.

To make these questions voluntary, the Bill amends the Census Act 1920 to remove the penalty for not responding to them. As some noble Lords will recall, this reflects the approach taken in the Census (Amendment) Act 2000, which removed the penalty attaching to a failure to answer a question on religious affiliation in future censuses.

The Bill also extends to Northern Ireland by amending the Census Act (Northern Ireland) 1969 to ensure that there is a consistent statutory basis across the UK for asking voluntary questions on sexual orientation and gender identity. The Bill does not direct either question to be asked in Northern Ireland but extends the voluntary nature of both questions, should it be decided to

[LORD YOUNG OF COOKHAM]

include these questions in this or a future Northern Ireland census. Without an amendment to the census primary legislation for Northern Ireland, questions on these topics would remain subject to a penalty for non-response. Following consultations with the Northern Ireland Office and the Northern Ireland Statistics and Research Agency, we are therefore extending this Bill to Northern Ireland. Noble Lords may wish to note that the Scottish Parliament has separately introduced a Bill to make new questions on sexual orientation and transgender status and history voluntary by removing the penalty for failing to answer these questions.

The census provides an opportunity, once every 10 years, to build a detailed and comprehensive picture of the nation. The 2021 census will be a primarily online census for the first time. This will help to improve data quality and pursue the Government's aim of increasing the provision of public services online.

Confidentiality remains paramount. All personal data collected by the census will be stored confidentially and will not be released for 100 years. In 2021, respondents will be provided with a unique access code and anyone aged 16 years and over will be able to request a code, or individual paper form, if they wish to respond privately. This will enable people to answer these questions without having to tell the householder that they have done so. This is vital, given the clear need for this data.

The research and consultation conducted by the Office for National Statistics to inform the recommendations for the 2021 census showed a clear need to collect data on sexual orientation and gender identity. National and local organisations have confirmed that need, including the Government Equalities Office, the Department for Health and Social Care and Sport England. There has also been significant consultation with stakeholders in the voluntary sector, which I know the ONS values, and which will continue throughout the census.

The Office for National Statistics recommends new questions or changes to questions only where its consultations and research has shown a compelling case to do so. Data on sexual orientation, down to local authority level, is not currently available and there is no official data at all in this country on gender identity. This has a direct impact on the provision of public services. The NHS has highlighted that the absence of reliable gender identity information is a challenge for its provision of gender dysphoria services, and local authorities have sought the information to tackle homophobic incidents in the night-time economy. Without robust data on the size of the LGBT population at a national and local level, decision-makers are operating in something of a vacuum. They are unaware of the extent and nature of the disadvantages LGBT people may experience and, critically, they are unable to design and monitor the effectiveness of policies to address these issues.

I have written to my noble friend Lord Blencathra, of the Delegated Powers and Regulatory Reform Committee, to set out the delegated powers memorandum accompanying the Bill. The Bill includes no new delegated powers but will have an effect on existing ones as they operate in England and Wales. Copies of the memorandum have been made available.

The Bill ensures that, in delivering on the White Paper's proposals, the Office for National Statistics can arrange to include new questions on sexual orientation and gender identity in the 2021 census on a voluntary basis, ensuring that the penalty for not responding to these questions is removed. It ensures that robust data can be collected to inform policymakers in the planning and provision of vital public services to support citizens across the UK. I therefore urge noble Lords to join me in supporting this simple, worthwhile legislation. I beg to move.

3.25 pm

Baroness Hayter of Kentish Town (Lab): I thank the Minister for introducing the Bill and for repeating his 1981 gig. I do not know whether he will do this every 10 years from now on. I also congratulate the Government on using our spare Chamber time on a useful piece of legislation, for once. Perhaps we could also now have the public service ombudsman Bill, the Grocott hereditaries Bill or some Law Commission Bill to put our otherwise rather idle hands to good use.

We on this side of the House welcome and support the Bill for the very reasons the Minister articulated. We believe that the timing is right to include the two new questions, not only to ensure that services and policies are appropriate but to help with the development of rights and the removal of discrimination. I say this particularly as an old campaigner—first and foremost, one needs good evidence to measure problems and monitor progress in order to formulate responses and make a strong case.

However, I confess that my enthusiasm for the census comes also from speaking as an historian. A plethora of data going back more than 200 years provides us historians with a rich treasure trove. Along with other noble Lords, I am delighted that the Government still believe in the census given that, in July 2010, the then Cabinet Office Minister, Francis Maude, called it,

"an expensive and inaccurate way of measuring the number of people in Britain",

and planned to replace it with existing public and private databases, including credit reference agencies. That would have been awful for historians and today's users of data, since those sources are neither as comprehensive as the census nor as rich in detail and depth. We are delighted that the Government did not follow that idea.

Planners clearly need extensive data, including on children, if they are to cater for future needs. The census is the only time when everybody in the country is counted; it is therefore used by the Government to determine spending priorities and track population movements. Without accurate data, it is nigh on impossible to distribute resources effectively or target them where they are most needed. As the Minister reflected on, it is similarly important for those monitoring the impact of legislative, demographic or policy changes. Whether for campaigners, historians, faith leaders, planners or politicians, the census must be comprehensive, consistent and credible, and provide confidence that it will be used correctly, that personal data will be kept private and that its oversight will be thorough and in the public interest. To achieve accuracy, we need very high compliance. That requires confidence in the process

and a willingness to participate, so the questions must have public acceptance. Their wording therefore needs extensive consultation and testing, as well as explaining nearer the time to build trust in the process.

We on these Benches consider that the White Paper and the Bill have correctly judged that the moment is right to add these two questions and to ensure they can be voluntarily answered. We might discuss some details in Committee and seek assurance on the degree of consultation, but we are very supportive of the proposals. However, I will ask a couple of wider questions about the 2021 census.

The first is about the homeless. For the census to be complete—that is, a picture of everyone in the UK on that Sunday in March two years hence—it needs to count those who are homeless as well as those who are housed. This is important both to measure the impact of demographic or policy changes and to plan services for this vulnerable group—to say nothing of the future needs of historians—but, as we know, this group is currently underrepresented on the returns. Last year Shelter met the relevant ONS team and made suggestions to improve the situation. In particular, it argued that the key to achieving an accurate count by including homeless people is really just trying harder to reach them. That might mean providing extra reassurance to the homeless about dealing with officials and stressing to every local authority the importance of that. Without accurate numbers, there is little chance that services to help those experiencing homelessness will be fairly and adequately delivered. This issue is particularly important and relevant to the debate today, given that the Bill is about groups that we know have a higher propensity to homelessness. Particularly given the broader move to an online approach, what discussions has the Minister's department had with the ONS on ensuring that the census captures those experiencing homelessness?

Secondly, I want to ask the Minister about the Royal British Legion's "Count Them In" campaign, which seeks the inclusion of a question to make good the patchy data on the Armed Forces community, which leaves statutory and voluntary service providers unable fully to meet the needs of that cohort at the moment. Parliament would need to approve such an addition. At the moment, nobody knows the size or demographics of the Armed Forces community resident in the UK. The legion estimates it to be about one in 10 of the population: some 2.8 million veterans, perhaps 2.1 million dependants, another 1 million dependent children and perhaps up to 250,000 hidden ex-service personnel in care homes. In 2007 the MoD estimated that there were 2.4 million veterans. These are large numbers to be left so vague, especially five years after the Armed Forces covenant was enshrined in legislation. That covenant recognises the sacrifices that the Armed Forces community makes and pledges that no one should face disadvantage as a result of their service. Local authorities have promised to deliver the principles of the covenant, but they need data to do that.

Of course, the other recommendation in the White Paper was that there should be such a question. I know the Government have agreed to add something about past UK service. While the wording has yet to be decided, it would be helpful if the Minister could update the House on this. If I have understood it, it would not be in the voluntary section and that is why it is not included in this Bill. What thought was given to not excluding it and dropping it into the voluntary section?

I will just check with the Minister whether a couple of things that appear to be from a previous era remain. Is the approach taken in the census still that there is a "head of household", which sounds a little not of our time? I hope the question on "issue born in marriage" is no longer there. Maybe the Minister can just update us, to make sure that the language and questions are appropriate for the 21st century. For the moment, though, we very much support the Bill and look forward to its helping to produce useful and relevant data on important human rights issues in due course.

3.34 pm

Baroness Barker (LD): My Lords, I thank the Minister for introducing the Bill and thank him and his team for the briefing they gave Peers the other day. He is right: this is the first time I have been involved in census legislation. My previous experience of considering the census in great detail was in 1971, when my mum was an enumerator. Most enumerators were women because it was short-term work that working mums could do. She was an enumerator in a working-class area of the west of Scotland. I guess in those days we did not bother to ask about people's religion because everyone knew what everyone else's religion was, and if in doubt asked which school they went to.

I am pleased with the provisions of the Bill, which I hope will command general agreement. It is high time our data gathering became more inclusive. The LGBT community has suffered over time, particularly in the provision of public services, because there has been no basic data from which service planners have been able to work. All the information we get these days—patchy though it is—about LGBT people's use of the NHS is not population data but data about our use of the NHS. That is all there is to go on, whereas for the rest of the population there is basic data from which projections can and should be made.

It is right that the Bill will ensure that it is not compulsory to answer that question—it is voluntary—and that there should be no penalty for not doing so. For many people it is still a matter that they wish to remain private. Other people cannot divulge their sexual orientation because they fear for their safety in the communities in which they live. It is therefore right that we should do this in the way that we will.

I was pleased to read the White Paper and about the great care that has gone into the preparation of the whole census and many of the questions. However, it is not what the Bill is trying to do that is important but what is not said in it. It is not clear what the questions will be and how they will be framed, and that is crucial. My understanding is that while the sexual orientation question has been subject to consultation, the gender identity one has not. I hope there will be extensive consultation with people likely to have to answer that question.

I understood from our briefing the other day that the sex question is likely to be, "What is your sex? Male or female?"—to be answered by everyone over 16—but the gender identity question is likely to be, "Is your

[BARONESS BARKER]
gender the same as the sex you were registered under at birth? Yes/No. Please write in the gender or 'Prefer not to say'". Working from that, the assumption would be that a transgender woman would tick "Female" for the sex question and tick "No" and write in "Female" for the gender identity question. A non-binary person would tick the sex that they most closely identify with in the sex question and then tick "No" and write "Non-binary" in the gender identity question. A cis person like me would tick the sex assigned at birth in the sex question and "Yes" in the gender identity question. That is the basis on which I am working.

The standard sex question being left as it has been since 1801 causes a problem for people from three different groups: trans people, non-binary people and intersex people. First, trans people have for many years been filling in the census and have done so in their lived-in identity. Is it anticipated that that will happen from now on and that a trans person will respond in their lived-in identity? We have to bear in mind that the Government are currently consulting on a review of the Gender Recognition Act and these two proposals may come in at the same time. Let us remember that gender recognition is a legal process, not a medical process.

Secondly, what do the Government expect non-binary people to do? Whatever the Government expect them to do will have to be written into the guidance that goes along with the question. How are the Government going to consult on that?

The most difficult question, however, is about the smallest group of people: intersex people born with the characteristics of both sexes. As a result of the current way of not legislating properly for intersex people, they are currently assigned a sex at birth to have their birth recorded. Subsequently their sex may be changed. What are those people supposed to do? I know this all sounds horrendously complicated but I have talked to a number of people involved and they are aware that they are filling in a legal document. They want to do it properly. They do not want to deceive; they just want to know what to do, so it is critical that we get the guidance on this right.

That leads me to my next point, which will perhaps be raised by others, and is about privacy. I understand from the briefing the other day that the data will not be released for up to 100 years. As the Minister will know from our meeting, there is a fear, particularly among the trans community, that while at the moment our society is broadly well disposed towards its members, it may not always be. We are in the middle of a very vicious anti-trans campaign, orchestrated by one or two of our main media outlets. It may be that in 100 years' time, people may not wish this information about their family to be released. Will the Minister say what might be done with this information in future? It needs to be handled with as much sensitivity as that afforded to religion.

I have two final two points. First, this will only ever give us a minimum number because there will be all sorts of reasons why people do not respond to the question. When the statistics are released and show that there are far fewer people than we thought, let us not be surprised about that and let us not base public service provision on what will inevitably be a small number. I took the point made by officials that the census is kept as simple as possible to obtain information that cannot be obtained from other sources. That is why we do not ask every question that people would like to ask.

Secondly, I return to the point I made to the Minister the other day. There is another group of people—men who have never had children—about whom it is extremely difficult to find data. It is possible to work out which women have not had children through their medical records. Why is it important? Currently, 1 million people over the age of 65 do not have children, and we have a health and social care system predicated on the fact that your kids will look after you. It is estimated that by 2030 there will be 2 million people with no children. The trouble is that, because we cannot count them with any degree of accuracy, this significant emerging public policy issue is being ignored. I realise that this matter does not come within this Bill, and I realise, from questions, that the Minister will instantly go away and appoint a working group to look at what I have said. I thought I would throw it in on the off-chance, because I believe it is a significantly overlooked point of public policy. With that, I welcome the Bill very much.

3.45 pm

Baroness Finn (Con): My Lords, I thank the Minister for introducing the Bill. He and the Government, in their 2018 White Paper, have laid out a clear case for the introduction of these questions to the census, as well as the rationale for them being optional. Historically, there has always been pressure to include more questions and response options in the census than can be accommodated without putting an unacceptable burden on members of the public in completing the form. However, I think that the Government have the balance right in introducing these two questions.

The surveys by the Office for National Statistics indicate that a large majority of the public—over 70%—find it acceptable to ask the questions, and only very low percentages would elect not to answer them. Although—again, according to ONS data—1% of the population claim that they would refuse to complete any aspect of the census questionnaire if the questions were to be included, this consideration is, I believe, outweighed by the utility that these questions will provide to the Government in fulfilling their obligations under the Equality Act 2010 and the Well-being of Future Generations (Wales) Act 2015. The fact that there is currently no official data about the size of the transgender population, for example, speaks volumes. The time is right for these questions to be included in the census.

In debating the 2021 census, I pay tribute to the Government's work and to their success in acting on the recommendations endorsed by my noble friend Lord Maude when he was Minister for the Cabinet Office. During the coalition, we called for modernisation of the census. The Government recognised its value but believed that it was outdated in its current form and could be more effectively and more cheaply delivered. This is the first census to be predominately online, with an ambition for 75% of responses to be online.

This will not only save a great deal of money but allow for the data to be processed faster and put to use while it is still fresh, rather than no less than 16 months old, as was the case after 2011.

I note also that steps are being taken both to help people complete the survey online and to provide offline materials for those for whom that is not possible. I hope that these efforts to get people online will also enable them to unlock the tertiary benefits of access to online governmental resources other than just census forms. Are the Government confident that they will meet their 75% online target or even exceed it? Can the Minister also confirm whether there are plans to offer help to people to get online that go beyond simply completing the census?

During the coalition, we encouraged government use of complementary data, and I am pleased to see that this is being undertaken. The ONS is working with tax data from HMRC and benefits data from the Department for Work and Pensions to develop census-type income data that can be integrated with the data collected on the 2021 census. The Office for National Statistics is also developing approaches to integrate 2021 census data with health and social care data, government surveys and administrative sources such as benefits data. This, in turn, will produce new research which will help to describe the health of the population in innovative ways and with greater depth and precision.

If the 2011 census was calculated to provide £500 million per year to the economy, I trust that the benefits of the 2021 census, with a more modern rollout, asking more useful questions and capable of being processed much faster, will be far greater. I commend the work of the Government and the ONS in their efforts to improve the 2021 census and their collaborative and open approach when conducting the work.

On a final note, however, I also ask the Minister to confirm that the 2021 census will be the last traditional census. During the coalition, we agreed with the ONS that it would run the next-generation census based on continuous use of administrative data for a couple of years before 2021 to ensure that the two processes were aligned. I look forward to receiving his response.

3.49 pm

Lord Lipsey (Non-Afl): My Lords, I am a facts geek. I chair the All-Party Parliamentary Group on Statistics with Kelvin Hopkins in the Commons and am vice-chair of Full Fact, the fact-checking charity, so naturally I welcome the Bill because it is going to provide more facts.

I also welcome something that is slightly more unusual to welcome: that there is such a short speakers' list. I think that, if we had been debating this 30 years ago, there would have been a large number of noble Lords deploring the normalising of homosexual orientation through this kind of action. Indeed, not much more than 30 years ago the Prime Minister of the day cancelled the NatCen sexual survey, then very important in the combating of AIDS, out of just such prejudices. One of the things that give me comfort in the difficult world that we live in has been the huge advance in the acceptance that people's sexual orientation is a matter for them and no one else.

There is, however, a question about the use of the census for this purpose. Many of the facts that we have at our disposal do not come from the census, which asks the questions of everyone; they come from various forms of sample survey. Obviously, that is less intrusive and requires less work, so could we not do it for sexual orientation? Well, I do not think you get very good numbers that way. Just over 10 years ago, in 2008, the ONS did an analysis of all the sample surveys that had been done into sexual orientation, and it found that the proportion of homosexual people in the community varied from 0.3% to 3% depending on the survey—a factor of 10. So they do not mean much.

Surveys are not very good for very small numbers. I came across another survey on the prevalence of out-of-control gambling; it was a big sample, but I would not trust the figures further than I could throw them since they jerk about all over the place. The reason for that is that sample surveys do not work well when you are trying to identify small groups of people. That is even truer of much smaller groups such as transsexuals, so I would not much trust the accuracy.

There are yet other estimates. An opinion poll recently found a figure for homosexuals of 4%, while the ONS's latest estimate is 2%. These figures are all over the place. Some people think that the census figures will be all over the place too because many will refuse to answer but, for the reasons that I have already given regarding the change in society, they will probably turn out accurate enough. The ONS itself is testing its questions really thoroughly in an attempt to ensure accuracy.

The census is the only thing that tells you facts regarding a relatively small geographical area. Samples can give you national figures and sometimes regional ones but very rarely constituency-wide figures, let alone local authority-wide figures or figures for wards. There are areas in this country where the gay population happens to be very concentrated and, as the noble Baroness, Lady Barker, said, those areas may require something quite different from other areas by way of services. I would not push this too far, but they probably do not need quite as many schools for primary-age children, for obvious reasons. So it is going to be of extraordinary value to local authorities and others in the planning business to have this definitive statement of what percentage are gay in particular areas instead of having to rely on national figures and trying to interpret from there.

Culturally, this move represents an important step forward in the recognition that homosexuality is a perfectly natural human condition and accepting that condition with complete equanimity. I therefore welcome the Bill with unusual warmth.

3.54 pm

Lord Wallace of Saltaire (LD): My Lords, as my noble friend Lady Barker has made clear, we on these Benches also welcome this Bill and the proposed new census questions. This takes us into a broader debate on the 2021 census which we will undertake over the course of the next year. I recognise that this is barely the soup course of that—it is certainly not the main course—so perhaps the Minister could start by telling us, either now or during further consideration, when we

[Lord Wallace of Saltaire]
may expect publication of the census order and the full consideration provided by taking it through the House. It is very tempting to ask about wider issues at this point, such as the integration of census data with other government data—household surveys and the like—and the discussions within government since the passing of the Digital Economy Act on how one begins to provide for administrative data replacing the survey data of the census in the next 10 years, as chapter 9 of the White Paper suggests. Clearly, when we discuss the census order, we will need to include debate about the future of the census and government management of public debate post 2021.

I cannot resist pointing out in passing that there seem to be some limits on UK sovereignty in the census process. Paragraph 1.29 of the White Paper notes that,

"the census in England and Wales aims to align with international standards set at global and regional level".

I think that is code suggesting that we are aligning our national census with European standards. I am sure that many on the Conservative Benches think that is entirely improper and that we should move as far away from them as possible.

I have some specific questions. I also received a note from the British Legion about the Armed Forces questions. If I understand the difference between its note and what is in the White Paper, the question is about how far one includes the dependents of members of the armed services, and veterans and their families, in the survey one undertakes? I very much hope that the Minister will tell us more about that, either now or in Committee.

I noted with interest the discussion on questions of national identity from paragraph 3.115 of the White Paper on. In particular, it spends some time on whether or not one should allow Cornish identity to be written in. I give notice to declare that we would of course wish to insist that Yorkshire identity is also allowed to be written in under those circumstances. I was a little puzzled that it appears not to allow for multiple identities. As we know from the rather complex discussion we have had about different identities—English, Scottish, English and Scottish, British, European—these are out there in the public and it may be time to take some of them on board.

I also noticed the delicate discussion on whether or not one allows the Somali community, which has very particular needs, as discussed in the White Paper, to be identified separately from other African communities. It seems that, in public policy terms, there are some quite important questions about identifying particular communities. I once happened to canvass in a part of London which had a remarkably strong Congolese community. They were very surprised to know that I understood that some of them spoke Lingala and other languages; they did not expect a white person to understand anything about the Congo at all. There are good public policy reasons for wanting to identify certain communities, and I was puzzled about why that had been left out.

I was also slightly puzzled that there was no question on digital skills, given that we are moving towards a digital census. I am aware from discussions with the social housing association and other authorities in Bradford that there are some pockets where there are a remarkably large number of people who lack digital skills. Again, perhaps we might return to that in Committee.

As far as the new questions are concerned, I recognise their sensitivity but also their great utility. As a Liberal, I am in favour of open information as far as possible in an open and tolerant society and in the maximum transparency. We are, after all, talking about our preference for evidence-based policy, as against the myth-based policy that has unfortunately taken hold in British government in recent years. Perhaps the Minister could remind us, either now or in Committee, which other questions on the census are voluntary. I noted in the White Paper that the question about religion is voluntary. I am not sure whether there are others. It would be helpful if that was provided to be sure that we understand the categorisation taking place.

I also noted the question on heads of household filling in questionnaires. I wonder whether that is still appropriate and, although very convenient, whether it still provides something of a problem in some parts of the United Kingdom when it comes to sensitive questions such as sexual orientation and gender identity, thus discouraging full returns. I wonder whether there is a particular problem with heads of household in Northern Ireland.

I am torn on the question of privacy. I know that some within the LGBT community are concerned, as my noble friend Lady Barker suggested, about allowing this information to become public even 100 years after it was provided. Again, as a Liberal, I am in favour of making as much information public as soon as possible. I remember the exchange we had in this House when I was in government about the information in the Denning report and Lord Denning's promise to those whom he interviewed that their answers would never be made public. The position I took as a junior member of the coalition Government was that, at the point when all of those who had been involved in that particular scandal were dead, it would be time to release those answers. I am in favour of limiting the length of privacy, but we should hear the concerns of those worried about it and do what we regard as necessary to allay them.

I welcome the Bill and the proposals. I look forward to further detailed examination in Committee and on Report.

4.02 pm

Lord Kennedy of Southwark (Lab Co-op): My Lords, as my noble friend Lady Hayter of Kentish Town said in her opening remarks, the Opposition welcome and support the Bill before the House. There are, however, other pressing needs that require parliamentary time, and I hope we will see a few Bills to address those matters as well.

We have had a census in a form we recognise, providing useful data for Governments, local authorities and a whole range of other organisations, for the past 200 years, collected every 10 years, except in 1941, for very understandable reasons. I understand that the 2021 census will largely be conducted online, as the noble Baroness, Lady Finn, referenced. That is a sensible

move, but where people are unable to complete the form online, then a paper-based option should remain available for use since there are still a number of people in this country who are digitally excluded. I am sure that that is an issue of concern to the Government and I very much support the suggestion from the noble Baroness, Lady Finn, that the Government should look into how we can get more people to complete the form online.

The census provides a whole range of data that would be almost impossible to collect in such a comprehensive form through any other method. As my noble friend Lady Hayter of Kentish Town said, it must be accurate, complete, comprehensive, consistent, credible and provide confidence that it will be used correctly.

I very much welcome the two new categories that the Bill allows to be asked on the census. I agree with the noble Lord, Lord Lipsey, that it is very welcome that we have made such strides in the acceptance of people's sexual orientation. There is always more to do, but I think we have made tremendous progress in recent years.

I am also very pleased that the Government have, through this Bill, ensured that there will be no financial penalty for respondents who do not complete these questions. It is regrettable that we still have no functioning Executive or Assembly in Northern Ireland. In the absence of such institutions, it is right that the Government have legislated to ensure that the same questions are asked in Northern Ireland, and that there will be no penalty there either for anyone who does not respond.

The noble Baroness, Lady Barker, raised several points that I wish to support her on. I hope that the noble Lord, Lord Young of Cookham, will be able to give satisfactory replies when he responds to the debate shortly. In respect of the sex question, where an individual is asked to pick either "male" or "female", can the noble Lord tell the House how trans people should answer that question? Is it their sex at birth, their sex now, or should they respond in a way outlined by the noble Baroness, Lady Barker?

Can the noble Lord say something about the guidance that will accompany the gender identity question? Can he say something about how intersex births are to be recorded? On the question of publishing de-anonymised data in 100 years' time, I understand that there is the ability, through an instrument, to extend that period further, if it is thought necessary or desirable. Can it be extended only once, or can it be done many times? Has the noble Lord's department looked at this question, and can he provide information on this matter?

It is important that we get the same data for the United Kingdom, so I am pleased that the Scottish Government are also legislating on these matters, and that a legislative consent Motion is being sought from the Welsh Assembly.

Like many other noble Lords, I received the excellent briefing from the Royal British Legion, and while the issues raised are not directly the subject of this three-clause Bill, I will refer to them—as others have done—and hope that the Minister can provide the House with some information. First, I pay tribute to the work that the Royal British Legion does generally, supporting veterans and their families. Data is invaluable for the Legion in its campaigns—as it is for the Government and for local authorities. The Armed Forces Covenant is enshrined in statute, and has also been adopted by many local authorities in the United Kingdom. The Legion calls and campaigns, and the Government have an obligation that no member of the Armed Forces is left disadvantaged because of their service. To deliver that objective, the Legion is reliant on uniform data.

I very much support the Legion's campaign for a new topic to be included in the 2021 census that concerns military service and membership of the Armed Forces community. I look forward to the final details of the question that will form part of the census coming forward for approval in 2020, but anything that the Minister can say now is most welcome.

My noble friend Lady Hayter of Kentish Town also raised the issue of homelessness. In terms of the census, how do we reach these people and get as accurate a picture as possible? Again, it would be welcome if the Minister could say a little about what he expects the Government will say to encourage local authorities to do everything possible to collect data from this important group who are difficult to communicate with. There are several voluntary projects that could help. In Lewisham, where I live, the 999 club could certainly help the local authority. We must find ways to get to these people. For all local authorities to go the extra mile, they have to feel that the Government really want this data to be collected and will support them in doing so.

In conclusion, I confirm that the Opposition support this Bill and will work constructively with the Government to enable its passage through this House and on to the statute book.

4.08 pm

Lord Young of Cookham: My Lords, I am grateful to all those who have taken part in this relatively short debate, and particularly welcome the broad support for the legislation we have brought forward. I will try to answer the questions that have been raised, but if I do not, I will ensure that noble Lords have the answers before the Committee stage.

I am grateful to the noble Baroness, Lady Hayter, for her support. The business managers will have noted her suggestions that there are other pieces of legislation—some of them controversial—that should be introduced. She set out why we need firm data in order for the public services to be effectively targeted. The census will be trialled later this year in a number of places, including Tower Hamlets, and there will be further consultation on the detailed questions.

The noble Baroness and the noble Lord, Lord Kennedy, asked a key question about how homeless people will be counted. I agree that it is vital that those who face severe challenges in their lives are reached when we assess how public services are to be delivered. Since 2011, further research and engagement with charities have been undertaken to understand how people without a fixed place of abode can make a census response, so the ONS is planning to make forms available in night shelters and day centres, with practical help for filling them in. The ONS continues to work with these centres and other groups to ensure that people who may attend them only on a given day will also be able to take part.

[Lord Young of Cookham]

The noble Baroness, Lady Hayter, and the noble Lord, Lord Kennedy, also asked about the Armed Forces and veterans. We will consult the Royal British Legion and others on the detailed question or questions, which will be determined by secondary legislation later this year. There was a question about whether the veterans' questions should be voluntary. I do not think they raise quite the same sensitivities as the two questions that will be voluntary, so they will be part of the compulsory section. In response to the noble Lord, Lord Wallace, the only voluntary question is the one introduced in 2001 on religion and the two questions being dealt with today. All the others are voluntary.

Noble Lords: Oh!

Lord Young of Cookham: Sorry, did I misspeak? All the questions are compulsory, apart from the religious question and the two questions before us today—corrigendum.

The new question on past service in the Armed Forces is proposed for the 2021 census to identify those who are 16 and over and who are veterans. This will enable us to serve those who have served their country and keep the commitment which we made to them when they joined the Armed Forces. As I said, the detailed question will be determined later in the year.

The term "head of household" has not been used since 1991, so the argument that some noble Lords on the Cross Benches have with their wives as to who is the head of household is unnecessary. It has gone to a more neutral form, either "householder" or "joint householder".

On the 100-year rule, there is such a rule but of course Parliament could always change that if it wanted to. It has 100 years in which to come to that decision if some of the concerns voiced by the noble Baroness, Lady Barker, took place. The noble Baroness asked a number of questions and I will do my best to answer them. One was about what intersex people do. The ONS is recommending that there be a note on the sex question, to advise that a gender question follows and include guidance that those who wish to can use the free-text box on gender identity to write "intersex" or another identity. Engagement by the ONS with the intersex community has not shown any objection to this proposed approach. She asked what we will do with this data and how it will be protected. Public confidence in the security and confidentiality of all information given in the census is paramount, including in particular on the questions that we have referred to today.

The noble Baronesses, Lady Barker and Lady Hayter, asked whether we were going to consult on the guidance. The guidance for the online and paper versions of the census is in development and being informed by research and testing with members of the public, and by input from stakeholders. On an additional point raised by the noble Baroness, Lady Hayter, we do not use "issue born in marriage" in the census. Just to clarify, responsibility for completion now falls to the householder or joint householder, as I said, which is defined as the person who owns or rents the property, or is financially responsible for day-to-day expenses.

A homeless person would use the address of the establishment—the day or night shelter—where they fill the form in. I am grateful to my noble friend Lady Finn, who worked in the Cabinet Office and helped to move a number of public services online, as that has made the forms much more convenient for the citizen to fill in.

Yes, we have an objective of 75%, which I will come on to in a moment. My noble friend also referred to the value of cross-referencing census data to other data to build a more granular picture of society as a whole.

The 2021 census is part of a wider modernisation programme to transform ONS data collection to provide improved population statistics. As part of this programme and by using data-sharing provisions in the Digital Economy Act, the ONS is exploring how administrative data could replace the need for a decennial census after 2021. As to whether this is the last census, the UK Statistics Authority will make its recommendations on the future of the census in 2023. The ambition remains as set out in 2014: censuses, after 2021, will be conducted using other sources of data and by providing more timely statistical information. How will we hit the 75% target? ONS will provide assistance, including in-person support sessions, for example in schools and libraries. There will be a dedicated census contact centre working with community groups, and also work by census field staff on the doorstep.

Along with the noble Lord, Lord Kennedy, and me, the noble Lord, Lord Lipsey, welcomed this being a non-controversial debate. I suspect that, had I introduced this provision in 1981 in another place, the debate would have lasted slightly longer than it lasted today. I welcome the support of the noble Lord, Lord Lipsey, as a statistician, particularly for his reference to the value of data at a ward level.

The noble Lord, Lord Wallace, asked when we will get the order. We hope to debate it towards the end of the year, around October. "Later in the year", my briefing tells me—that is perhaps a broader definition than the one I just used.

A person can tick as many national identity boxes as they like and write another. The noble Lord, if he wants to, can identify himself as English and Yorkshire. I think I have addressed most of the issues raised in the debate.

Baroness Barker: On exactly that point, I put two questions to the Minister to which he has not responded. How do the Government expect non-binary people to respond? Are trans people expected, as they do now, to reply to questions going by their lived-in experience? Perhaps the Minister will write to me about the interrelationship between this and the Gender Recognition Act.

Lord Young of Cookham: In so far as the compulsory question is concerned—the binary question of male/female—the guidance is minded to say, "Fill in what was on your birth certificate". If you have changed your gender and have a gender certificate, you would put in that gender. The noble Baroness's question underlines the importance of the guidance being right, and we propose to consult on it. If she agrees, I will write to her on the other question. Having said all that, I beg to move.

Bill read a second time and committed to a Grand Committee.

Tessa Jowell Brain Cancer Mission

Statement

4.18 pm

The Parliamentary Under-Secretary of State, Department of Health and Social Care (Baroness Blackwood of North Oxford) (Con): My Lords, with permission, I shall repeat a Statement made by my right honourable friend the Secretary of State for Health and Social Care in the other place on the Tessa Jowell brain cancer mission. The Statement is as follows:

"Mr Speaker, I would like to update the House on the significant progress that we have made in tackling brain cancer, including a new innovation that is now available across England. For far too long, tackling brain cancer has been too much in the 'too difficult' box. We are determined to change that.

I pay tribute to the Petitions Committee, which did so much work on this; to the Member for Mid Norfolk, who drove this subject in government as Life Sciences Minister; to the Member for Castle Point as former chair of the APPG, which brought parliamentarians together; to the Member for St Ives as the current chair of the APPG; and, of course, to Baroness Tessa Jowell, who campaigned passionately and tirelessly while battling the illness herself and sadly passed away last year.

Brain cancer is the most common cause of cancer-related death in children and young people under 19. Baroness Jowell called for all patients to benefit from 5-ALA, or 'pink drink' as it is otherwise known, a dye that makes cancerous cells glow under ultraviolet light, thereby making it easier for surgeons to target the right areas. Trials have shown that, when the dye is used, surgeons can successfully remove a whole tumour in 70% of cases, compared to 30% without.

I am pleased to inform the House that we have now rolled out this ground-breaking treatment across England, with the potential to save the lives of 2,000 patients every year. This is all part of the £33 billion investment that we are making in the NHS long-term plan. This medical procedure will now be expanded to every neurological centre in England. It is a fitting testament to Tessa's memory.

It is worth pausing for a moment to remember Tessa's courageous words urging us to rise above our differences. She said that this,

> 'is not about politics but about patients and the community of carers who love and support them. It is … about the NHS but it is not just about money. It is about the power of kindness'.

Tessa represented the very best of our democracy and of our Parliament. On behalf of all those who have died, all those who have campaigned—children and adults alike—and all those seeking to do research, of which there must be more to come in future, we are acting.

I want to mention three areas in detail. The first is research. During the past year, the Government have made available an unprecedented £40 million to fund cutting-edge research of new treatments and drugs through the NIHR. This will build on the UK's outstanding reputation for neuroscience and oncology research, and increase the quality, quantity and diversity of brain cancer research. The funding was further enhanced by Cancer Research UK committing an additional £25 million to support brain tumour research. The size of these pledges will cement the UK's position as a leading global centre of research into brain cancer.

The second area is our NHS cancer workforce. We now have a record number of specialist cancer staff in the NHS and that number is set to grow as we put a record £33.9 billion into the NHS over the next five years. Health Education England's cancer workforce plan and our upcoming NHS people plan will set out in detail the steps that we are taking to recruit a world-class cancer workforce. We made an additional investment of £8.6 million in the cancer workforce last year. We aim to have 300 more radiographers starting training by 2021.

The final area is empowering patients. My department has worked closely with the brain cancer mission, Jess Mills and others to ensure that patients are at the heart of all our efforts. The mission brings together government, the NHS, researchers, pharmaceutical companies and patients. Together, we are working to ensure that data is shared and disseminated so that more patients in the UK and internationally can benefit from what is learned. Due to the complexity of brain cancer, we must provide joined-up care that meets each patient's unique needs. The NHS is focusing on improving care for brain cancer patients to ensure that they have access to dedicated out-patient clinics and consultations wherever they live.

I hope that the whole House will recognise the important progress that has been made over the past year in rising to the challenge set by Baroness Jowell and the families of those who have lost loved ones. This has been possible only through the collective efforts of patients, the NHS, charities and industry. The work has, and will continue to be, collaborative.

In her final speech in the other place last January, Tessa said:

> 'I am not afraid. I am fearful that this new and important approach may be put into the "too difficult" box, but I also have such great hope'.—[*Official Report*, 25/1/18; cols. 1169-70.]

That hope was an inspiration to us all, and it still is. We must keep striving, and keep rising to the challenge that she and those families have set us. I commend this Statement to the House".

My Lords, that concludes the Statement.

4.24 pm

Baroness Thornton (Lab): My Lords, I thank the Minister for repeating the Statement. Of course, it is a matter close to the hearts of many noble Lords here, particularly those of us who took part in the debate when Tessa Jowell spoke in this House for the last time. Who could forget Tessa's determination to fight for change, so that in the future people would not die of brain tumours but that research would lead to prevention, early detection and more effective cures, and that these would be available to everyone throughout the NHS, without being dependent on where you live? I pay tribute to Jess Mills, Tessa's daughter, and her family for their continuing commitment to fulfilling the challenge that Tessa set to all of us, as the noble Baroness quite rightly said.

We know that brain tumours are indiscriminate; they can affect anyone at any age. What is more, they kill more children and adults under the age of 40 than

[BARONESS THORNTON]
any other cancer, yet historically just 1% of the national spend on cancer research was allocated to this devastating disease. We all welcome the progress made so far by the Government; we congratulate them and support the fact that treatments are now available across the country that were not available when Tessa spoke to us in this House. However, we also know that the NHS faces a cancer diagnostics crisis. Cancer Research UK has pointed to chronic shortages in the diagnostic workforce, with more than one in 10 positions unfilled nationally. Hospitals are reliant on outdated equipment and some of the lowest numbers of MRI and CT scanners in the world. The UK is fourth from bottom in a league table of OECD countries with the lowest number of CT scanners per million inhabitants.

As the Minister rightly said, this is a question of both resourcing and staffing. In today's Statement, we have been given sight of the key points that have been touched on and we are pleased that it references the upcoming workforce plan. However, it would be useful if she could expand on this point, specifically around the need for a global scientific workforce and the plans for immigration in relation to the research community. Because without the right skills and technical staff in place, a lot of the research funding and momentum achieved in the past year will not amount to very much. She will be aware that a mix of domestic and international scientific talent underpins the UK's position as a world leader in life sciences. The 2018 immigration White Paper was not fit for purpose, in the view of those on this side of the House. The £30,000 a year salary threshold would have had a devastating impact on the recruitment of junior research capacity. and the increased cost and bureaucracy requirements of the visa system. Indeed, the British public recognise the importance of an international research workforce to the UK. Ninety per cent of the public think scientists make a valuable contribution to society and 86% want to increase or maintain the level of immigration of scientists.

While I absolutely accept that progress is being made in the noble Baroness's department, this question applies across government and I should like some reassurance that that is understood and action is being taken. Neurosurgery is no exception when it comes to the problems of cancer targets. In March 2019, the 18-week completion target for referral to treatment pathways stood at 81.3% for neurosurgery, 5% lower than the average for all specialties. This made neurosurgery the worst-performing specialty, almost certainly because of staffing shortages in these areas. Therefore, while I absolutely welcome the Statement and the progress being made, we all have to accept that we have some way still to go to fulfil the ambition and the targets that Tessa Jowell set us.

Baroness Jolly (LD): My Lords, I thank the Minister for repeating the Statement. I had the honour of responding to Baroness Jowell's maiden speech on 23 May 2016. I looked it up in *Hansard* this morning. She recalled Seamus Heaney's injunction to his wife:

"'Noli timere'—'Do not be afraid'".—[*Official Report*, 23/5/16; col. 167.]

As it turned out, we did not have long to wait for her to show how fearless she could be. I responded to her maiden speech by saying that I felt sure she would make her mark very soon. Sadly, she did not have as huge an amount of time to make her mark as I had expected—but nobody who was in the Chamber for her valedictory speech in January 2018 will ever forget her demonstration of total fearlessness.

5-ALA received FDA approval for use in the USA on 3 July 2017, just over a year after Baroness Jowell joined your Lordships' House. Use in the UK was given NICE approval on 10 July 2018, just two months after she died. I clearly welcome today's announcement, but I have some questions for the Minister about 5-ALA and its rollout. What weight does NICE give to treatments that have received approval by the FDA? Is it usual for a treatment that is so obviously effective to wait nearly a year before being used routinely? Will it be universally available to all those who stand to benefit from it?

Baroness Blackwood of North Oxford: I thank the noble Baronesses, Lady Thornton and Lady Jolly, for their very important and moving contributions to this debate. I will start by responding positively to the points made by the noble Baroness, Lady Thornton; of course she is right that maintaining a strong and vibrant life sciences ecosystem is absolutely a cross-government endeavour. She is also right that the mobility of scientists, from the technical and research level up to neuroscientists and neuro-oncologists, must be the business of the whole of government. We take that as a core aspect of the life sciences strategy and shall continue to do so.

Both noble Baronesses were absolutely right to say that workforce is key. As I said in the Statement, our upcoming NHS people plan and the cancer workforce strategy will ensure that there is a holistic plan to ensure that the technical workforce—including radiologists, as I already mentioned—is in place. HEE is also leading on specific work to ensure that we recruit and train an appropriate level of neuro-oncologists. This has been identified as necessary going forward.

To make sure that we make progress, we must go forward in four specific areas: research, early diagnosis, delivering on the long-term plan commitment to see 55,000 people a year surviving cancer for five years by 2028 and, as the noble Baroness, Lady Jolly, rightly pointed out, ensuring that when those people are diagnosed they have access to the best and most innovative treatments. That is exactly why we announced the boosting of the accelerated access collaborative—to ensure that we are identifying the best and most innovative treatments and getting them through the regulatory testing and uptake systems of the NHS much more effectively than before.

We have been putting in place a number of proposals to do this, and the mission has been playing an absolutely core strategic role in bringing together key individuals across government, the NHS, charities, industry and patients. I do not think that we could ever have imagined seeing such impressive progress. We can only thank it for that, particularly for the work it has been doing in research to develop the BRAIN-MATRIX trial. It is exceptional, and the mission should be given credit for that work. Through that research we will see earlier diagnosis and delivery of the commitments and targets that we have under the long-term plan to see more people diagnosed, treated effectively and surviving cancers.

4.33 pm

Lord O'Shaughnessy (Con): My Lords, a year ago yesterday we lost somebody who was a colleague, a friend and an inspiration to us all. I do not think that any of us who were involved in the debate that Lady Jowell initiated in January last year, whether they had known her for a long time or were only just getting to know her, will ever forget the extraordinary courage and leadership that she showed that day. As my noble friend pointed out, the impact has been truly profound, including through the brain cancer mission set up in her name, of which I am proud to be a patron. I am delighted that the Government have chosen this anniversary—an unwanted one, of course—to give us an update on the very important progress that they have made.

I am delighted by the news on the pink drink, which was one of the issues that Lady Jowell highlighted that day, as well as with other progress. As well as paying tribute to my noble friend and colleagues in the department, I join other noble Lords in congratulating the brain tumour charities, Cancer Research UK, patient groups, and of course Jess and her family for keeping up pressure and momentum so that we can make a difference on this dreadful disease.

Of course, the work of curing brain cancer is one not of months but of years and even generations. While I absolutely welcome the announcements today, can my noble friend give a commitment—which I am sure she will be happy to do—that the support the Government are providing will never waver during the long periods when we have to go through research and have to change things to improve outcomes, and that that commitment will always be there for this Government and any future one?

On a specific point, it is good to hear my noble friend talking about adaptive trials through BRAIN-MATRIX, and about Health Education England training a new generation of neuro-oncologists. Is she able to give specific details about the kind of support that the Government and others are prepared to offer for those? For untreatable cancers, having highly specialised staff as well as different ways of carrying out trials is critical to keeping people alive for longer—which is of course what Tessa's speech and the leadership she showed was all about.

Baroness Blackwood of North Oxford: I thank my noble friend for his comments and in particular for the leadership he showed in responding to Tessa's call to arms to improve outcomes for those with brain cancer diagnoses. I can absolutely give him the commitment that the Government's commitment to the mission will not waver, and there is a very good reason for this. The outcome we are already seeing is so significant; over the last 12 months there has been the launching with partners of the mission and the making available of funding that has resulted in 24 brain cancer research proposals—the highest number ever—with a further four under active consideration. In addition, progress has been made on moving towards new service and staffing models, with commitments in the long-term plan and the life sciences sector deal. This will deliver exactly what my noble friend is talking about: namely, better care and support for patients, targeted to the kind of diagnoses they have, which is exactly what the brain cancer mission has recognised, and exactly the specialist advice which government needs to tailor care for patients in the most appropriate way when they most need it.

Lord Lansley (Con): My Lords, the update is most welcome. I will say two things to my noble friend. First, as part of the update, would she be able to update us on outcomes, particularly one-year and five-year survival rates, which are what we most want to see moving consistently in the right direction? Secondly, my noble friend will recall that about eight years ago we in the coalition Government agreed a programme for investment in positron emission tomography—PET—scanners. One of the particular reasons we did so was that patients in this country through the NHS were not accessing a form of radiography that would be particularly relevant for those with brain cancer, because of the minimisation of collateral damage to tissue around the tumour site. What my noble friend was saying about the identification and targeting of tumours is true not just for surgery but for radiography. Can she update us also on the availability of PET scanners through the NHS?

Baroness Blackwood of North Oxford: I thank my noble friend for his question. He is absolutely right that we want to focus on outcomes. That begins with earlier diagnosis, shorter waiting times and access to treatment. However, when it comes down to it, we want to know that we have better survival rates. Cancer is a priority for the Government so that we can improve that, and the quality of care for patients. I am pleased to report to the House that survival rates are at a record high: since 2010, rates of survival from cancers have increased year on year. However, we know that there is more to do, and we will never have any measure of complacency about this. That is why in 2018 the Prime Minister rolled out a package of measures to see three-quarters of cancers detected at an early stage by 2028—the current figure is just over half. The plan is to radically overhaul screening programmes to provide new investments in state-of-the-art technologies to transform the process of diagnosis and boost R&D. My noble friend is absolutely right that one of the areas that we must focus on is ensuring that treatment has the lowest burden of side-effects possible. The proportion of cancer survivors living with long-term disabilities as a result of treatment is high, so having more targeted treatment is absolutely a priority within our cancer strategy. I will be delighted to write to my noble friend with a specific update on where we have got to with PET scanners.

Baroness Jay of Paddington (Lab): My Lords, I echo noble Lords who have said what a fitting and appropriate tribute it is to Tessa that, on this anniversary of her death, we have heard this encouraging update from the Minister. It was a great sadness to me that I missed her final speech in your Lordships' House because I was abroad, but having worked with Tessa for more than 20 years in many different roles, I found it unsurprising that she showed her characteristic determination, courage and campaigning skills, which she carried on with absolutely to her final days. It is extraordinarily good to know that her daughter, Jess Mills, carries on this work today, as my noble friend Lady Thornton said.

[Baroness Jay of Paddington]

I make two points that I know that Tessa would have emphasised. The first is the importance of what one might call translational research, as the Minister said. I know that one problem that Tessa had as an individual was that she could not find out, except by exercising her characteristic energy and skill with the computer, what was going on. It is very important that in developing both treatment and research in these difficult areas of cancer—the glioblastoma from which she suffered being one of the most intractable—individual patients have the opportunity to know more broadly what is available.

That is why it is particularly important that the announcement today reveals not only new treatment but emphasises that it will be available in all cancer centres across the NHS, because not all of us are blessed with Tessa's energy and ability to find things out. Particularly when people are feeling very vulnerable when they are diagnosed, their need for clear available information is paramount. It is very good to hear that that will be more available in future.

Baroness Blackwood of North Oxford: I thank the noble Baroness for her comments and think that she has hit the nail on the head. I think I can say that Tessa's characteristic verve is being carried on and honoured by those involved in the mission: I have been in post for a relatively short time, but I have already met the mission and Jess twice, and they have nailed me down on commitments and ensured that I follow through on commitments that my predecessor, my noble friend Lord O'Shaughnessy, had made. It helps that he is still involved in pushing them forward.

One of the key principles of the mission is that it provides a convening function, bringing together government, the NHS, charities, industry and patients in working together to identify and drive through progress on areas that need improvement. One key area that has been identified is patient care, support and communication. As the noble Baroness said, Tessa was passionate about ensuring that patients can get rapid access to new treatments and know where they may be. That is one of the principles behind the brain cancer matrix. Separately, we have introduced the accelerated access collaborative programme to try to bring in other treatments that might be complementary to patients as quickly as possible through the NHS system, recognising that the NHS, while incredibly innovative, can be low and slow at times in adopting those innovations across the system in a consistent way. We want to make that better.

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

Motion to Approve

4.44 pm

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

That the Regulations laid before the House on 5 April be approved.

Relevant document: 58th Report from the Joint Committee on Statutory Instruments (special attention drawn to the instrument)

The Parliamentary Under-Secretary of State, Department for Environment, Food and Rural Affairs (Lord Gardiner of Kimble) (Con): My Lords, I hope that it will be helpful to your Lordships if I speak to both the Animal Health, Alien Species in Aquaculture and Invasive Non-native Species (Amendment) (EU Exit) Regulations 2019 and the Animal Health, Plant Health, Seeds and Seed Potatoes (Amendment) (EU Exit) Regulations 2019, given the close connection between the two instruments.

It may also be helpful to explain why we are debating the Animal Health, Plant Health, Seeds and Seed Potatoes (Amendment) (EU Exit) Regulations 2019 again when it has already had your Lordships' full consideration. We are doing so because timetabling issues in the other place led to a delay in the instrument being made; that meant that it was necessary to withdraw the instrument and make it under the emergency procedure, under which we are now debating it. Both statutory instruments were made under the emergency procedure as both were required to support the UK's application to the European Commission for third-country listed status for animal health purposes. As the Government have made clear, we are seeking a negotiated deal with the European Union, but we are taking responsible action to prepare for other scenarios.

The European Commission called a meeting of the relevant committee—SCoPAFF—on 9 April to consider the UK's third-country listing application and made it clear that it required all relevant animal health legislation to be in place by that date. Both SIs therefore had to be made in a very short window of time as both contain amendments to animal health legislation. By using the emergency procedure to make the SIs, the UK was able to assure the Commission that all relevant legislation had been made, enabling member states to vote unanimously on 9 April to list the UK as a third country. This would have enabled the export of animal products and most live animals from the UK to the EU to continue in the event of a no-deal scenario on 12 April. The Government have taken care to avoid using the emergency procedure under the EU withdrawal Act, but we considered use of this procedure to be appropriate in this instance.

I want to make it clear that our biosecurity controls for animals and plants are paramount and that these instruments continue to contribute to ensuring that we will have the most robust arrangements in place to protect public health and the environment. The instruments make technical operability amendments covering animal health, plant health, aquaculture, invasive non-native species, seed marketing and seed potatoes, and will contribute towards ensuring that the legislation protecting our biosecurity is fully operable.

As the first statutory instrument has been debated in this House previously, I hope that it will be helpful if I summarise it. The amendments made by the instrument concern recent updates on animal health control measures relating to African swine fever in certain member states. Retaining this EU decision requires the appropriate Minister in the UK to display public information notices regarding the importance of biosecurity measures to prevent this pig disease being brought into the UK; it also prohibits the movement of live feral pigs.

On TSEs, a reference to a function of the European Commission in the Transmissible Spongiform Encephalopathies (England) Regulations 2018 has been amended to refer to the Secretary of State instead of the EU Commission.

Part 3 of the statutory instrument covers plant health. It amends the Plant Health (Amendment) (England) (EU Exit) Regulations 2019 and the Plant Health (EU Exit) Regulations 2019 to recognise arrangements with the Crown dependencies and deal with new EU plant health decisions, including controls on the red-necked longhorn beetle. I remember with some affection the debate we had on this particularly difficult beetle. As I said before, this is a damaging pest and a threat to a range of fruit and ornamental species in the UK, including cherry, peach and plum.

Regulations 4 and 5 recognise the arrangements with the Crown dependencies, following planned meetings concluded early in 2019, that will continue to facilitate the import and movement of regulated plants and plant products into the UK. The changes made by this instrument give effect to those arrangements. Regulation 5 also provides for the import of ash wood from the United States of America and Canada to continue under the same stringent derogation provisions after exit, ensuring continuity of supply for UK businesses without—I emphasise this—any compromise to biosecurity.

The Plant Health (Amendment) (England) (EU Exit) Regulations 2019 are also amended to enable UK plant passports to contain certain details in relation to the marketing of fruit plant propagating material and fruit plants. This is intended to avoid the need for dual labelling.

Part 4 of this statutory instrument covers seed marketing and seed potatoes, and applies to England as this is a devolved matter. Indeed, in the previous debate we considered the importance of consistency but also of respecting the devolved arrangements, which have worked particularly well. These regulations are amended to ensure that growers in England have continued access from the EU to new varieties of vegetables and a continued supply of seed potatoes for an interim period after EU exit. I remember the noble Baroness, Lady Bakewell, talking about the kalette during that element of our considerations. This instrument is required to attend to a number of elements of retained direct EU legislation to ensure operability and appropriate functioning.

I turn to the Animal Health, Alien Species in Aquaculture and Invasive Non-native Species (Amendment) (EU Exit) Regulations 2019. This instrument amends four previous EU exit statutory instruments to ensure that the previous instruments work fully as intended. At this moment, I again extend my regrets and apologies, and I take responsibility if errors are discovered, but—as I have said before—given the pressures, I understand how these errors have been made. I put on record that I regret having to bother your Lordships with a piece of business about errors. I am open, transparent and straight about that, but I regret it.

The invasive non-native species instrument is amended to correct a small number of drafting and typographical errors that have been identified. An amendment has also been made to Regulation 7(3)(e) of the invasive species instrument to ensure consistency with the Invasive Alien Species (Enforcement and Permitting) Order 2019. The order provides for recovery of enforcement-related costs from importers by enforcement authorities, and this amendment provides certainty that importers are responsible for these costs.

The two aquatic animal health and alien species in aquaculture instruments have been amended to allow cross-references in the legislation to be more readily understood. I agree with that. Both instruments contain reference to an article in EU directive 2006/88 that has since been implemented by a more recent Commission decision, making these references redundant. These references have therefore been omitted from both SIs.

The instrument relating to the import of and trade in animals and animal products is amended as it revoked a 2006 Commission decision in error, instead of revoking a single article from that decision. This decision imposes the import requirements of fruit bats, cats and dogs from peninsular Malaysia and cats from Australia—intended to prevent the introduction of the Nipah and Hendra viruses—and is now correctly reinstated as EU retained law. The UK does not import any fruit bats, but a number of cats and dogs are imported from these countries and so it was clearly imperative that this situation has been rectified. Again, we are clear that there is no intention to weaken biosecurity standards and, again, I regret that this occurred. I am extremely pleased that, on further scrutiny, this was discovered and we propose through this instrument to sort it out.

Additionally, within the same instrument, lists of animal product commodities that require checks at UK border inspection posts are being amended to make the additional removal of products from the list an administrative function. The import conditions for animals and products remain in the legislation and so, again, there will not be a lowering of any standards.

I emphasise that this corrective instrument makes purely technical changes to these four existing EU exit instruments to ensure that they will operate correctly when we leave. This instrument does not introduce new policy but simply amends the original instruments so that they operate as originally intended.

The decision to use the urgent procedure was not taken lightly. It was deemed necessary in order to protect the biosecurity of the United Kingdom and to prevent financial losses and maintain trade by ensuring that the UK was able to achieve EU third-country listed status in the event of leaving the EU without a deal on 12 April. These instruments will ensure that our strict biosecurity controls with regards to animal health, plant health, aquaculture, invasive non-native species, seed marketing and seed potatoes are maintained. I beg to move.

Baroness McIntosh of Pickering (Con): I thank my noble friend for introducing these two statutory instruments but regret the circumstances that he has set out. I welcome the opportunity to consider them and I have a couple of questions.

Mindful of the fact that we are on the eve of the Chelsea Flower Show, I wish to press my noble friend on the comments he made in relation to inspections

[Baroness McIntosh of Pickering]
and the role of the import controls. When these were considered in the other place on 9 May, our honourable friend David Rutley said:

"Notifications will be required for live animals, Germplasm and animal by-products not for human consumption, and high-risk food and feed are subject to vet checks".—[*Official Report*, Commons, 9/5/19; col. 13.]

This raises a question not only about plants but about who will be responsible for the inspection for beetles. Will it be the responsibility of the UK border inspection or the importer? Will the importer pick up the cost of these inspections?

Page 44 of Statutory Instrument 2019 No. 809, refers to the policy on GMO and food and feed regulations. My noble friend has said that these two statutory instruments have been brought forward today in case there is no deal. It would be welcome if he could reassure me that our policy on GMO will not change in the event of no deal.

On a separate matter, I am keen that we use the same language as is used in this and other statutory instruments and regulations from my noble friend's department, whether it relates to the import of plants, animals, potato seeds or other items within the remit of these two statutory instruments. We successfully amended the Trade Act, but I am concerned that the wording used in that amendment related only to plant and animal health. I would argue that it should extend to food safety. I realise it does not fall entirely within the remit of these statutory instruments, but I would welcome the opportunity to discuss this at greater length with my noble friend if we have the opportunity to do so. I am very keen that the language used by the Department for Environment, Food and Rural Affairs is the same as that used by the Department for International Trade to make sure that, when we look at these issues across departments, we entirely understand what is being considered.

My final question relates to my noble friend's comments on Statutory Instrument 2019 No. 813. Page 3 refers to the import of fruit bats, cats and dogs. As he explained, we have no imports of fruit bats, for what purpose are they in the regulation before us today?

5 pm

Lord Deben (Con): My Lords, first, I commiserate with my noble friend who has to introduce these statutory instruments. I am sure the whole House understands. What we do not understand is why we are doing this at all, as it is manifestly barmy. It just reminds us why we should not be trying to leave the European Union. It really has to be said again and again. When we are talking about invasive species, I can think of one or two whose names will be on the ballot papers when we come to the European elections.

I want to question my noble friend a little about the African swine fever element of this. I declare a family interest. It is not just a question of making sure that there is no spread of invasive African swine fever at our borders but of making sure that it does not spread inside our borders. I am sure my noble friend will not mind me saying so but there is a degree of unhappiness about the large and growing number of wild boars in this country—I refer to the animal species—and the danger that African swine fever will therefore be very difficult to control. Will the Minister take this opportunity to tell the House what measures we are taking internally to complement the external measures he has outlined?

My second point is fundamental. Can anyone imagine circumstances in which we would have different animal and plant health arrangements from the rest of Europe? I cannot imagine circumstances in which, divided as we are by only 22 miles of water, with enormous movement backwards and forwards—unless, of course, we get ourselves into a situation in which it all stops—we could have a system that was not a common system because we are a common area irrespective of our political arrangements. I hope my noble friend, on behalf of the whole Government, will apologise to all the civil servants having to do all this knowing perfectly well that it is a futile exercise because there is no way we can imagine a Britain divided from our nearest and sometimes dearest—sometimes not—friends in the rest of Europe and had different policies in these areas. This is a means of protecting ourselves from a common enemy, and that common enemy is disease spread by the movement of plants and animals.

In case my noble friend feels I am being entirely negative on this matter, the third point I shall raise with him is that the reason it is important for us, even in a repeat debate such as this, to remind people of the futility of the exercise is that, so far, that message has not got out as far as it should. People still do not understand that we are bound so closely to our neighbours that we either have a sensible arrangement between us called the European Union or we have a much more difficult arrangement in which, from piece to piece and from time to time, we try to sort these matters out.

I accept my noble friend's very understandable apology for reintroducing these regulations and I in no way criticise him, but I just want to say that it is yet again a misuse of this House and these parliamentary procedures. We would never have been here if anyone had behaved sensibly and recognised that, in the end, if the people were presented with the alternatives and were able to make a sensible decision, they might indeed ask why on earth no one had explained that much of what we do here we have to do anyway, and all we are doing is making life more complex, more difficult and more illusory. We are pretending to do something—pretending to take back control—and I really am fed up with being part of a pretence.

Lord Hylton (CB): My Lords, I declare my interests as stated in the register—in particular in forestry. We have to learn from past sad experience—for example, over Dutch elm disease, which has wiped out the great majority of all the elms of southern England. At this very moment, we are grappling with ash bud disease, which can make the timber of ash completely useless, except as firewood. Other, lesser infections and importations have affected chestnut trees, oak and larch, and one hopes that they are not spreading or getting more serious. Invasive weeds have been mentioned, notably by the Minister, and on quite a few occasions your Lordships have discussed Japanese knotweed, but I will say no more about that.

I notice that of course the regulations are unamendable —incidentally, I apologise for not having been present when they were discussed earlier—but I trust that the Government have devised the very best possible protection. As an island, we are better placed than those with land frontiers to protect our stock of plants and trees, but we should try to benefit from our natural advantages and devise the very best possible protection.

Lord Elton (Con): My Lords, my noble friend was emphatic about the stringency of the controls over the import of ash wood to this country. I take it that that means that no leaf and no centimetre of bark will come in. However, would he take this opportunity— alternatively, perhaps he would write, as I have given no notice of this question—to compare the progress of the disease in Britain and the United States and to compare the methods of control of the disease in those two countries?

Lord Hope of Craighead (CB): My Lords, perhaps the Minister could say a little more about the process by which these errors were discovered. I think he used the phrase "further scrutiny", particularly in relation to what we find in the animal health, alien species regulations regarding fruit bats, dogs and cats coming from Malaysia and Australia. Some of the things that have been corrected seem, at a glance, to be almost typing errors. We are asked to substitute for the words "set out in" the words "as set out in", and elsewhere to substitute for the word "Law" with a capital "L" the word "law" with a small "l". It looks as though someone is taking great care to look at these regulations again to check that something which may have been done under great pressure is being corrected so that it is absolutely accurate. I applaud that if it is what is going on, and I sympathise entirely with the Minister and all those in his department having to deal with such an enormous quantity of material in great detail. It would be interesting to know what the process is and whether more of these instruments may come forward as further errors are discovered. If so, for my part, I would regard that as a consequence of this very punishing exercise, which is putting great strain on many people.

Baroness Bakewell of Hardington Mandeville (LD): My Lords, I thank the Minister for his very full introduction to these minor amendments and, as the noble and learned Lord, Lord Hope, has pointed out, corrections. We previously debated these statutory instruments on 20 February and 3 April. I do not want to bore the House by running through the comments that I made then or rehashing the debate that we had. The EU requirements on 9 April for changes in order to accommodate the UK's third-country status ensure our biosecurity and that of the producers, and that is the right step forward. I agree with virtually all the comments made by the noble Lord, Lord Deben.

I want to refer to African swine fever, which is a really major concern for national pig breeders. There are areas of the land with huge populations of feral pigs, and the disease is a threat to pig farmers as there is little monitoring of the health of the feral pigs. It is important that we protect legitimate pig breeders from African swine flu. There does not seem to be any way to monitor how the feral pig population is doing and whether or not the pigs are carrying African swine fever.

That apart, I think it is a pity that we are having to make minor corrections to important pieces of legislation. However, I am quite content for it to be dealt with under the emergency procedures, and I support the amendments.

Baroness Jones of Whitchurch (Lab): My Lords, I am grateful to the Minister for setting out why the SIs that we are debating today have been subject to the affirmative procedure under the European Union (Withdrawal) Act. Like other noble Lords, while we accept that this is necessary, we share the frustration that we could be doing something much more constructive in taking these issues forward rather than revisiting the past. This feels like a bit of a futile exercise; nevertheless, we understand that the Minister has to do what he has to do.

I am grateful for the helpful briefing with the Minister's civil servants prior to this debate. I declare an interest through my involvement with the Rothamsted institute, which carries out scientific research into the areas that we are debating today.

I have a couple of general points about the process being used. In his letter of 4 April, the Minister explained that the procedure was being used because the EU had asked for a specific reassurance that these measures were in place to support the UK Government's application for third-country status, and he has repeated a similar explanation today. Of course we understand why that third-country status was necessary, but when we met the Minister I asked whether the EU had been consulted over the wording of the SI prior to the deadline for it to consider that third-country status. I was told that that was not the case and it had not been consulted in advance. I find that a bit odd; I would have thought that, in the spirit of co-operation and particularly because we wanted its goodwill over our application, it would have been beneficial to keep the EU in the loop on what we were proposing, including the proposed wording for this SI before the decision was made.

I suppose that that raises another question: if the EU does not see the SIs in advance, does it simply take the Government's word on trust that this legislation is in place? If that is the case, some of the corrections to errors that we have been considering may not even be necessary because we can just promise that the legislation is in place and not actually have to justify it.

The Minister apologised and I think we all understand that this is not his fault, but we are concerned about the number of errors that are coming to light after the SIs have been considered and agreed. As he said, this is the case here. Like the noble and learned Lord, Lord Hope, I wonder how these errors came to light. Were the SIs being double-checked specifically in preparation for our EU third country application? In other words, did someone go back through them before we reassured the EU that they were all in place? Does that mean that many of the other SIs which we have already agreed and signed off may also contain errors which have yet to come to light? Is there another batch of error-ridden SIs which will be brought before us and updated in due course when someone goes back and double-checks them?

5.15 pm

Does the Minister agree with the Green Alliance that a lessons-learned exercise should be held on the whole process so that we can address the unintended consequences of the errors that will undoubtedly have crept on to our statute book? Indeed, are there lessons to be learned about how we could have better used stakeholders at an earlier stage to highlight and double-check some of these issues, so that we could have more confidence in the ultimate product?

Regarding the SIs before us, I accept that the Animal Health, Alien Species in Aquaculture and Invasive Non-native Species (Amendment) (EU Exit) Regulations 2019 are basically a tidying-up exercise and I do not have any specific points to make beyond those I have already made about the errors. We have already debated the Animal Health, Plant Health, Seeds and Seed Potatoes (Amendment) (EU Exit) Regulations 2019, and I do not intend to repeat what I said last time we considered them.

The Minister will know that, since then, the JCSI has raised a question about how we define the exceptions—small quantities in travellers' baggage. I know that the department had an answer to that, but it would be helpful if the Minister could put the outcome of that dialogue on record, given that it has been raised by the JCSI, and so that we are clear on the department's answer.

Lastly, of course, we all recognise the importance of robust biosecurity measures. It is something we have flagged up time and again and we cannot say that too often. The Government seem far more intent on getting a trade deal than they do on securing continuing involvement in the EU-wide intelligence gathering and disease notification systems, and the co-ordinated research institutions. The noble Lord, Lord Deben, is absolutely right that our future is a common cause and we need a common strategy on all these issues. If we cannot get information sharing and a common strategy on biodiversity in place, we will be the loser.

Can the Minister clarify what progress is being made in the talks with the EU to guarantee that we will not face greater biosecurity risks and that we will maintain alignment with the EU, including sharing scientific advances and information about new threats without delay? Can he also reassure us about the Government's plan for future biosecurity collaboration with the EU post Brexit? I look forward to hearing his response.

Lord Gardiner of Kimble: My Lords, I am most grateful to all noble Lords. Curiously, this is quite a timely debate, because this week is Invasive Species Week. Tomorrow, after a meeting in the morning chaired by the noble Lord, Lord Teverson—I very much hope that some noble Lords will be present—I will be spending a few hours digging up American skunk-cabbage in Kent. If any of your Lordships would like to join me, I am sure that we can provide wellingtons and spades.

It is timely also because only this morning I had a meeting with the Chief Plant Health Officer and the chair of the Forestry Commission relating to the Chelsea Flower Show, which my noble friend Lady McIntosh referred to, and in particular on the resilience garden that Sarah Eberle is designing to record the importance of resilience and biosecurity. Perhaps it would be of interest to all your Lordships who have spoken if I were to send a note on some of the enhanced biosecurity arrangements being undertaken by the Royal Horticultural Society. For instance, because of oak processionary moth, oak will not be part of any display at Chelsea. There is an enhanced feeling about quarantine and the importance of these matters. I am very pleased that this has been a very determined point taken by Chelsea and the Royal Horticultural Society.

I will go through some of the points made by noble Lords. My noble friend Lady McIntosh asked about the fruit bat. This is before your Lordships because the EU legislation contains reference to fruit bats, so it would not be within the legal powers of the EU withdrawal Act to remove this from the instrument, despite the fact that we do not import fruit bats. The truth is that we are bringing over all the legislation. That is why many of your Lordships have had to consider such a range of issues.

My noble friend also raised the issue of GMO. It is absolutely right that we have very high food safety standards, and there are strict controls on GM crops, seeds and food. All GM products must pass a robust independent safety assessment before they can be marketed, and approved products have to be clearly labelled. These standards will not be watered down when we leave.

My noble friend referred to potentially compromising on food safety. I am prepared to say again that maintaining safety and public confidence in the food we eat remains of the highest priority and that any future trade deal must work for UK farmers, businesses and consumers. Any new products wishing to enter the UK market must comply with our rigorous legislation and standards. I say yet again that this is strongly felt in the department, and I understand why your Lordships raise this frequently.

My noble friend also raised new plant health costs and businesses. Consistent with the existing policy of recovering the cost of providing plant health services through charging those who use the services, fees will apply for any inspections undertaken. For example, documentation and identity checks, which will be required on regulated material from the EU, are charged at £9.71 in total per consignment. Checks on third-party material that enters the UK via the EU will be charged in the same way as third-country material that enters the UK directly.

Inspection of plants, which again my noble friend raised in respect of Chelsea, is an area where we have opportunities to think about heightened biosecurity. It is why, for instance, Grown in Britain is an important concept—not because, as great plant lovers, we have found that many of our plants are not native, but because the issues of biosecurity and pests and diseases have made us have to think more strongly, as we should, about the sourcing of plants from around the world and absolutely not permitting plants from certain parts. This is why, for instance, the EU, with the encouragement of Defra and the Secretary of State, moved very much more strongly on plant movements in those areas with xylella, for instance, with the buffer zones, precisely because it would be so devastating.

My noble friend Lord Deben, the noble Baroness, Lady Jones of Whitchurch, and other noble Lords are absolutely right—I do not for one minute see our leaving the European Union as signalling that we can put a barrier up. I say candidly that, although I have great sympathy with what the noble Lord, Lord Hylton, said—I will say more on this in a moment—22 miles is not wide enough. Yes, we should use the advantages of the sea, but the truth is that all eastern counties have ash dieback in the numbers that they do because of the spread across the continent. Cautiously, I say to my noble friend Lord Deben that I am afraid one of the lessons we should be learning is that the rigour of dealing with invasive species within certain countries of the European Union has not been as immediate.

I will give the example of the Asian hornet—of which we have had zero tolerance. Our rapid deployment force has eradicated every single one, because they are very damaging to our bees, and we rely on our bees and pollinators for so much to do with food production, and because they are a vital part of the eco-system. The Asian hornet arrived in a consignment from China, which is why immediate action had to be taken. The Channel Islands are having great problems because they are nearer to France. When the oak processionary moth arrived in an oak tree specimen, we did not immediately deal with it. That is why we are now seeking to contain the very damaging oak processionary moth in London and Surrey, pending better understanding through research.

Lord Davies of Stamford (Lab): The whole House knows of the noble Lord's expertise in this area, and of his genuine personal commitment to environmental protection and the avoidance of environmental harm. He says that other countries in the EU are not carrying out the existing EU rules on that subject as robustly as we are. Perhaps the rules themselves need to be strengthened. The matter is very important indeed. Does he agree that in those circumstances the best thing is to have very tough rules in the EU that are imposed effectively, and that states which fail to live up to their legal obligations be penalised? For that purpose, would it not be very desirable if we remained part of the European Union?

Lord Gardiner of Kimble: I rather thought that the noble Lord might take me in that direction at the end of his comments. He is absolutely right in his opening remarks about international collaboration. Whether within the European Union or the whole international family, we are subject to many conventions, and are considered world-leading. We have not got it all right. There are many lessons to be learned. I am very keen that we heighten biosecurity. Candidly, I see our mission on this as a global reach. Yes, our partnership with our very close neighbours and friends is going to be absolutely crucial as we all deal with invasive species, pests and diseases, because these species do not respect any border. That is precisely why our next set of instruments deal with a single epidemiological unit on the island of Ireland. This is a subject I could get a little carried away on.

I say to my noble friend Lord Deben that I absolutely understand about African swine fever. I receive regular commentary on its devastating impact, not only in central and eastern Europe and into Russia, but in China. It is a very dangerous and damaging disease, and the noble Baroness, Lady Bakewell, is right to say that all pig producers in this country are very worried indeed about it. That is why we are raising awareness through the newspapers and magazines in many languages for workers from eastern Europe, saying that they must not bring pork products back with them, for instance. We must raise awareness of personal biosecurity because of the outbreaks in the Czech Republic and Belgium. Although it has not been confirmed in the Belgian outbreak it is certain that, as I have said before, in the Czech Republic it was a loose connection to someone discarding a pork product. We need to be absolutely clear on that.

5.30 pm

The Forestry Commission and others are absolutely seized of the imperative of managing the wild boar population because much damage is being done to ecosystems. Much damage is also being done to people's properties, to playing fields and graveyards; there are all sorts of examples where a population that is not managed or properly controlled is causing damage. I think that many local residents who so applauded the arrival of the wild boar are now deeply concerned about this. I therefore assure my noble friend Lord Deben, who referred to internal measures, that, yes, we see the responsibility for that. This would not be just about African swine fever; can one imagine an outbreak—pray God it does not happen—of foot and mouth in west Gloucestershire? As I said in a previous debate, we need to think maturely about how we deal with that.

The noble Lord, Lord Hylton, referred to Dutch elm disease and ash dieback. The great thing is that the research undertaken by John Innes at Norwich gives us some hope about the ash. It has a much wider DNA and genome, and there is more confidence that people will be able to find tolerant strains. Although, very sadly, there will be a large number of losses over time we should remain hopeful about how we can deal with retaining the ash in our landscape. Regarding Japanese knotweed, the noble Lord, Lord Greaves, has tabled a Question on that for Thursday and I look forward to it. However, I agree with the noble Lord, Lord Hylton, that we should take advantage of the buffer that we have; we should undertake that with rigour.

My noble friend Lord Elton asked about the progress of disease in the United States and the UK. I will use this opportunity to say that I am not aware of precisely what work is being undertaken in the United States. The point about the instrument before us is to reassure your Lordships that the rigour of the heat treatment, and all the treatments required for ash coming in from Canada and the United States, is retained and will be most important.

The noble and learned Lord, Lord Hope of Craighead, and the noble Baroness, Lady Jones of Whitchurch, raised an important point which I ought to go through. Instruments go through the normal checking process for draft SIs, including having second and third pairs of eyes checking them, involving Defra's and other government lawyers. They are also then scrutinised by the JCSI. All government departments have rigorous

[Lord Gardiner of Kimble]

checking procedures for EU-exit SIs and, as I have said before, Defra regrets that these errors have arisen despite its checking process. I can say to the noble and learned Lord and the noble Baroness that Defra's legal director is working with colleagues on any lessons that we can learn. Clearly, we want to prevent any similar errors. As I have said, I take responsibility for those errors so far as your Lordships are concerned, but I also have a responsibility to ensure that the statute book is correct. I cannot give a cast-iron guarantee that there will be none in these instruments and, conceivably, in business-as-usual instruments in the future. I am afraid that it is part of the human condition that perfection is sometimes difficult to achieve. All I would say is that your Lordships were very generous in a previous debate about how much work had gone into this enormous range of statutory instruments.

The noble Baroness, Lady Jones of Whitchurch, asked about the "small quantity" issue. These amendments contain exemptions for prohibitions and requirements in the Plant Health (England) Order 2015 and the Plant Health (Forestry) Order 2005, allowing a person to bring a small quantity of regulated plant material into England from the EU, in their passenger baggage. The amendments are based on the current exemptions for plant material from the EU and intend to replicate the current exemptions only. The meaning of "small quantity" is not defined, and the JCSI noted that relying on "small quantity" to define the scope of the exemptions makes it difficult to know, with certainty, when the exemptions will apply and, therefore, whether a person is committing an offence. The JCSI also accepts that the department is entitled to reach the view that it is outside the scope of the powers conferred under Section 8(1) of the European Union (Withdrawal) Act.

In referring to the Be Plant Wise campaign and "check, clean, dry", I am keen that we return to this issue. As I have been saying, not only to your Lordships but more widely at biosecurity events, my strong advice is not to bring anything back. This is the legislation, and what we are bringing back to make it operable. I raise the point of the noble Lord, Lord Hylton: are these not areas of the regime that we should think of addressing, whatever happens? The numbers on the plant risk register are increasing, because of the way the global market and biosecurity work. We need to think strongly about that.

The noble Baroness, Lady Jones of Whitchurch, made a number of points. If I have missed any or their spirit, I will return to them by letter. On access to EU systems and information-sharing, all these areas within the EU, United Kingdom and the world must inter-relate, because we are not a citadel. We want to trade. We need a market for our goods and those coming in. In managing that, there is precedence for third-country access to EU notification systems. It is something we seek to negotiate. Our own UK-wide horizon-scanning team will continue to gather intelligence on risk. The noble Lord, Lord Davies of Stamford, was generous on this area.

I will say tomorrow that I am "ferocious" about these matters. We need to look at this much more stringently within this country, with our friends and partners in the European Union and more widely. Great damage has been done by invasive species. Great damage is done by plants and animals with diseases. That is why we have a strong protocol and want to continue to have it. I am most grateful to all noble Lords for their generosity.

Motion agreed.

Animal Health, Alien Species in Aquaculture and Invasive Non-native Species (Amendment) (EU Exit) Regulations 2019

Motion to Approve

5.38 pm

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

That the Regulations laid before the House on 5 April be approved.

Motion agreed.

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

Motion to Approve

5.39 pm

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

That the Regulations laid before the House on 5 April be approved.

Relevant document: 24th Report from the Secondary Legislation Scrutiny Committee (Sub-Committee B)

The Parliamentary Under-Secretary of State, Department for Environment, Food and Rural Affairs (Lord Gardiner of Kimble) (Con): My Lords, these instruments relate to biosecurity in Northern Ireland. Given their interconnection and for the convenience of your Lordships, they have been grouped together to enable co-ordinated scrutiny. They relate to trade in animals and related products, plant health, seeds and potatoes, and extend to Northern Ireland only.

The first two instruments, relating to trade and plant health, are among a small number of measures that have been made under the urgent procedure. Due to the importance of having them in place for exit—initially, 29 March and then 12 April—the timeframe did not permit us to lay them via the normal route. It was of the utmost importance that we were in a position to assure the European Commission that we had a complete statute book in advance of its consideration of the UK's application for third-country listed status in the event of exit.

The third instrument, the Animal Health, Seed Potatoes and Food (Amendment) (Northern Ireland) (EU Exit) Regulations 2019, was debated in the House of Commons on 23 April under the affirmative procedure. As it does not contain legislative amendments that would be critically needed to be in operation on exit day, it has not been subject to the urgent procedure.

These three statutory instruments largely mirror the amendments contained in instruments amending the corresponding legislation for Great Britain, which have

already been considered by your Lordships. As with those instruments, the amendments presented today are technical and designed to ensure continued operability of legislation.

On checks on imports from the EU, these instruments do not introduce any change of policy and, in particular, do not impose any additional regulatory controls on imports from the EU, including those entering Northern Ireland from the Republic of Ireland. Importantly, they recognise that biosecurity risks associated with animals, animal products, plants and plant products from the EU will not change immediately on exit. They do not introduce any checks on the Northern Ireland border.

However, to ensure compliance with international obligations, the relevant instrument provides for some operational changes to the import arrangements for regulated plant and plant product materials. In essence, this would mean that the need for an EU passport for these regulated commodities would be replaced with the relevant certificate required under international law. As such, it is not expected that this would place an additional burden on industry. Controls on plants and plant products moving into Northern Ireland from the EU that do not currently require an EU plant passport would not change.

On checks on direct imports from non-EU countries, the same rigorous import controls that are currently applied in respect of animals, plants and associated products which enter Northern Ireland directly from a country outside the EU will continue.

On checks on imports from non-EU countries that transit the EU, all three instruments provide that there is no gap in controls in relation to animals, animal products, and plant and plant products that would present a risk to Northern Ireland's biosecurity. The instruments debated do not—I emphasise "not"—in any way adversely impinge on the established partnership arrangements on animal and plant health matters on the island of Ireland, which is recognised as a single epidemiological unit. The noble Baronesses, Lady Jones of Whitchurch, Lady Bakewell and Lady Parminter, and I have all been fortunate enough to have exchanges with Northern Ireland officials from DAERA. I can safely say that they are clear that these measures are needed in terms of Northern Ireland's responsibilities for the whole island.

The Trade in Animals and Related Products (Amendment) (Northern Ireland) (EU Exit) Regulations 2019 amend Northern Ireland legislation relating to imports, transit through the EU of live animals, including horses, animal products, reproductive material used for animal breeding and bees. They also amend legislation regarding the movement of pet animals, which is clearly an important issue in Northern Ireland given the land border.

The instrument makes necessary technical corrections to the Trade in Animals and Related Products Regulations (Northern Ireland) 2011, a key piece of Northern Ireland legislation that sets out requirements for trade in live animals and genetic material with the EU and imports of animals and animal products from outside the EU. This instrument makes no policy changes to the 2011 regulations. It makes technical changes: for example, it replaces references to "EU" with references to "UK" and "legislation of the EU" with "retained EU law" where appropriate. It also removes provisions which would be inappropriate to retain following exit without an agreement. These include references to the tripartite agreement on movements of horses, which will cease to have effect here on exit, and provisions which stipulate EU requirements for the intra-Community movement of animals and genetic material and provide for the automatic circulation in the UK of animals and products that have cleared EU border inspection posts. It also provides for the transfer of the power to approve border inspection posts in Northern Ireland from the European Commission to Northern Ireland's Department of Agriculture, Environment and Rural Affairs. This is achieved by amending the existing definition of a border inspection post in the 2011 regulations. Overall, this instrument ensures that the veterinary controls and other import conditions that the 2011 regulations provide can continue to operate with the necessary protections for animal and public health.

5.45 pm

Furthermore, this instrument makes the changes needed to ensure the operability of two pieces of legislation that regulate the non-commercial movement of pet animals into Northern Ireland. These include amendments to the term "another Member state" and the removal of a provision which expressly provides that representatives of the European Commission can attend DAERA inspections. It also ensures that UK air carriers, as well as Union carriers, can land recognised assistance dogs following exit. This instrument also provides the necessary technical corrections to other Northern Ireland trade-related legislation which addresses references to terms such as "another Member state" and "intra-Community" or "intra-area trade".

I now turn to the Plant Health (Amendment) (EU Exit) (Northern Ireland) Regulations 2019. This instrument provides for some operational changes for businesses arising from the importation of third-country goods transiting the EU. They are necessary to ensure that biosecurity is maintained. First, regulated plant material currently entering Northern Ireland from the EU requires an EU plant passport. The instrument will replace this after exit with a phytosanitary certificate issued by the official national plant protection organisation, in line with international obligations. Therefore, this does not place an additional burden on businesses. These consignments must be pre-notified to the relevant plant health authority. For direct imports into Northern Ireland, importers must register with the UK plant health authority responsible for the point of entry.

In order to maintain the flow of goods, this regulated plant material from the EU will not be subject to checks at the border. However, remote documentary checks will be undertaken in alignment with UK plant health authorities. Secondly, direct imports of plants and plant products from non-EU countries that transit through the EU and have not been checked and cleared in the EU will require statutory three days' pre-notification to DAERA as well as documentary checks and inspections at approved places of inspection within Northern Ireland. This instrument also extends the application

[LORD GARDINER OF KIMBLE]
of an existing offence to non-compliance with the additional operational import requirements that will arise should the UK leave without an agreement.

I now turn to the Animal Health, Seed Potatoes and Food (Amendment) (Northern Ireland) (EU Exit) Regulations 2019. This instrument amends five pieces of Northern Ireland legislation. First, it makes minor and technical operability changes to three pieces of legislation relating to the control of salmonella in poultry, broilers and turkeys. Secondly, it amends beef and veal labelling-related legislation to ensure operability following exit. Thirdly, it amends EU references in the Seed Potato Regulations (Northern Ireland) 2016 and provides for a one-year interim period during which EU seed potatoes will continue to be recognised for production and marketing in Northern Ireland to ensure continuity of supplies of seed potatoes.

Biosecurity and trade are of significant importance to Northern Ireland and the wider UK economy. While operating within a UK framework, biosecurity in plant and animal health will remain essential to the recognition of the island of Ireland as a single epidemiological unit. This will continue to secure the vital close co-operation between Northern Ireland and Republic of Ireland officials on a wide range of trade, disease and biosecurity matters.

I have been privileged to attend and chair some of the British-Irish Council meetings set up as part of the Good Friday arrangements, where the Republic of Ireland, Northern Ireland, the three other parts of the United Kingdom, the Isle of Man, Jersey and Guernsey all meet to discuss these matters, biosecurity, invasive species and their impacts—in fact, for the heightened recognition of the latter, Invasive Species week will be taking place across all those countries and jurisdictions. I thought it important to conclude these remarks on that, as Defra is undertaking these regulations on behalf of Northern Ireland because of the lack of an Executive there. It is important to record firmly that this is an area where there is established and continuing close collaboration. I beg to move.

Baroness McIntosh of Pickering (Con): My Lords, I have just one question for my noble friend. In referring to the trade in animals and related products regulations, he mentioned that the tripartite agreement will cease, which is absolutely true. He also mentioned that this first statutory instrument will refer to the movement of horses between Northern Ireland and southern Ireland. That begs the question of the status of the tripartite agreement. Are we expecting a statutory instrument that will replace it as regards movement of racehorses and other horses between France, Britain and Ireland? This is obviously a matter of great concern among the racing community, and we now have the time to negotiate an agreement. What form will it take? Will it come before the House?

Baroness Parminter (LD): My Lords, I thank the Minister for his introduction. As he said, we have discussed a number of these issues on previous SIs, looking at them in the context of our whole country, but there are obviously particular issues here given the land border between Northern Ireland and the Republic of Ireland. I thank the Northern Ireland civil servants for their assistance on this as I tried to grapple with some of the issues of operability, particularly the resource implications of some of these changes should we be in the unfortunate situation of either leaving the European Union or ending up with a no-deal exit.

First, can the Minister confirm my understanding that there will be a significant increase and strain on the number of inspectors that the Northern Irish team will need? I understand it will need more than double the number of horticultural inspectors, which is a significant number in terms of both cost and finding them in a short time. That gives an indication of the scale of the challenge that the Northern Ireland plant health team will have to face.

Furthermore, as the Minister rightly said, plants and plant products coming into Northern Ireland from non-EU countries will need to be checked at an authorised trade premise or designated point of entry. The most likely route for that would be arriving on a roll-on, roll-off at Dublin and then travelling overland to Northern Ireland, yet I understand that currently no businesses have registered as authorised trade premises, so the only designated point of entry for those checks would be Belfast port.

In an earlier debate on this SI, we had a fairly full and frank discussion on this, when the noble Baroness, Lady Young of Old Scone, who is not in her place, talked about our fear of "trailing pestilence" across our country. There is an issue for those of us who worry about transporting unchecked consignments to designated premises outside individual ports for checking. Having said that, at the moment there are no designated points of entry for checks in Northern Ireland other than Belfast port. Are the Government seeking to encourage stakeholders to become authorised trade premises to relieve the burden on Belfast port, and if no business premises are approved, is the Minister confident that Belfast port can deal with all the checks likely to be needed?

I have concerns, too, for Northern Ireland farmers in the event of no deal. It is clear from discussions on the SI on trade in animals and related products that if we leave without a deal, farmers will be obliged to have any livestock they are sending to the EU enter via an EU border inspection post. If the Government fail to reach an agreement with the EU, we could see Northern Ireland farmers and their livestock having to be transported greater distances, with all the risks to their welfare that that entails, because they have to go first to an EU border inspection post before onward transportation. What indications has the Minister had from the EU of where those EU border inspection posts might be in the event of no deal?

As the Minister rightly said, an issue of social concern in Northern Ireland is the movement of pet animals because of its land border with the EU member state of the Republic. I will not repeat our exploration in previous SI debates of the additional costs, delays and administrative burdens for owners wishing to take their pets into the EU should the Government fail to secure listed status in the event of no deal, but clearly this will be a big concern for Northern Ireland given its land border. Can the Minister give any update on

discussions with the EU on this issue which might mitigate the considerable extra burdens that Northern Ireland pet owners would face in the event of no deal?

Lord Browne of Belmont (DUP): My Lords, I thank the Minister for all the additional work he has had to undertake with regard to Northern Ireland. Unfortunately, this has come about because, as we know, there is no Northern Ireland Assembly or Executive to discuss and pass these Motions. However, I think all of us here hope that the ongoing talks taking place in Stormont will prove successful, and that might relieve the Minister. It is vital, however, that these Motions are agreed to protect animals and plants in Northern Ireland from disease, which can be imported from other countries, so I very much welcome the regulations. Northern Ireland has some of the best policies that defend animals and plants from imported disease. When the European Union certificate is replaced by the phytosanitary certificate, it will obviously involve additional administration. Can the Minister say who will bear the additional cost: the importer or the exporter, or will it be passed on to the public? Once again, I thank the Minister for all his work and for keeping the Northern Ireland Peers so well informed about these matters.

Lord McCrea of Magherafelt and Cookstown (DUP): I shall follow on from my noble friend. The Minister talked about the consultations between officials from Defra and the Irish Republic. Can he tell the House what consultations have taken place with the Ulster Farmers Union and the other groupings that represent farmers in Northern Ireland, and do they agree with the regulations before the House this evening?

Also, do any of these regulations have any connection with the backstop being demanded by Europe in the present negotiations? If they relate to the present negotiations and the backstop, which is opposed by many within Northern Ireland, certainly my colleagues in the Democratic Unionist Party will have to look afresh at these recommendations.

My noble friend also asked about the burden being placed. Do any of the proposals place a greater burden on the agricultural and business community in Northern Ireland than those in the rest of the United Kingdom? Who will bear the financial responsibility for that?

6 pm

Baroness Jones of Whitchurch (Lab): My Lords, I thank the Minister for his introduction to the SIs this afternoon and for arranging a useful briefing for us beforehand. I particularly thank our Northern Ireland departmental colleagues, who joined us online and were particularly candid about some of the challenges facing cross-border trade, with which they are grappling at the current time. Their briefing and insight was extremely helpful. It is clear that close co-operation with the south is essential although, as I understand from an earlier letter from the Minister, it is not possible to have specific bilateral talks on trade between the UK and EU member states, such as the Irish Republic, in advance of us leaving.

Whatever happens as a result of the Brexit negotiations, it is fairly obvious that trade across the Irish border will become more bureaucratic and less free-flowing in future. There will, for example, be a need for phytosanitary certificates for plants crossing the border. There will be a new need for importers to be registered and new offences arising from the new requirements to take goods to an approved place of inspection. At a minimum level, this will require a huge communication initiative to ensure that farmers, food manufacturers and retailers are made aware of the cross-border import issues. Can the Minister assure us that all of those affected by these changes have been made aware of these new rules?

On the trade in animals SI, the Minister will know that when this was considered by the Secondary Legislation Scrutiny Committee, it expressed surprise that the regulations had been delayed after being cleared for consideration by the House. The reason given was that the Department for Agriculture, Environment and Rural Affairs chose to delay it pending negotiations on third-country status. As a result, we are now dealing with it under the "made affirmative" process. I shall not make heavy weather of this, but it seems the wrong way round to proceed. Surely, the UK Parliament should have considered the content before the issue was included in the package for conclusion with the EU on those third-country negotiations. Having said that, we accept that the SI is largely technical in nature. It is clearly important that we can continue to import the goods covered by it post Brexit with the minimum of disruption at the Irish border, and it would be helpful if the Minister could reiterate that there will indeed be no additional checks at the border—although I think he has made that point clear.

On the plant health SI, these regulations are very similar to those which we have already debated covering England. Again, the presence of the land border between the north and the Republic brings these issues into starker focus. As the Minister explained, goods entering from the EU that currently require a plant passport under EU rules will now require a phytosanitary certificate, which can be checked digitally rather than at the border.

However, there seems to be a real challenge in managing goods coming from a third country. In our earlier briefing with Northern Ireland officials, it was initially suggested that goods from third countries would arrive via Belfast port or Belfast airport and could be checked at those entry points—the noble Baroness, Lady Parminter, raised this issue, although I have put a slightly different emphasis on it so clarification would be helpful. In our earlier discussions, it became clear that the other obvious route for third-country goods to arrive was via Dublin airport; there was an expectation that they would then be driven across the border. If that were the case, surely border checks would be necessary. Perhaps the Minister can clarify how goods will be handled when they arrive at Dublin airport en route to Northern Ireland. If I am right in what I am saying, is there a danger that, once this route becomes known, many more importers might opt for it because no checks on the border would allow importers to avoid additional checks? Either there will be checks on the border, which everybody says is completely undesirable, or goods coming via Dublin airport will face no checks, in which case there is a danger of goods being imported illegally. I would be

[BARONESS JONES OF WHITCHURCH]
grateful if the Minister could explain how he thinks those journeys will take place and what checks will take place.

Can the Minister also explain more about the new offences created in this SI, which seem to include unlimited fines for failing to take goods to an approved place of inspection? Is that indeed the case? Is there ever a limit to an unlimited fine? How will that be calculated? Too prohibitive a fine could mark the end of business for some importers. Will importers be given adequate notice of this new provision? Does the Minister feel that it is proportionate, given the significant changes in import arrangements with which businesses will be grappling? Will these new fines be phased in, or on what date are they due to be applied? It would be helpful for importers to know that. Has any estimate been made of how many businesses will be affected by this new measure?

As the Minister knows, the animal health, seed potatoes and food SI was debated in the Commons on 23 April. During that debate, my noble friend Sandy Martin MP—the Defra shadow spokesperson—pointed out what he thought were other technical and grammatical errors in the text of the SI. At the time, the Minister gave an assurance that he would look at these possible errors and correct them if necessary. Were his concerns checked and corrected before the SI came before us?

When we met with officials, it also came to light that our exit from the EU would have a major impact on seed potato growers in Northern Ireland, as 50% of their seed potatoes are exported to the Republic and the EU bans the import of seed potatoes from third countries. What steps are being taken to mitigate the impact of this loss of trade on Northern Ireland businesses?

These issues aside, we accept that the SI is broadly technical in nature. We are therefore happy to approve it in all other respects.

Finally, it continues to be a considerable political failure that these devolved issues do not have a Northern Ireland Assembly to scrutinise them—a point made by noble Lords on the Cross Benches. I very much hope that this will be rectified soon.

Lord Teverson (LD): My Lords, I have been very impressed by the debate. I remind Members of the House that there will be a debate on Wednesday afternoon on Brexit and biosecurity, which goes through this whole issue and applies much more broadly. The speakers' list is still open. I am sure that the Minister and I would very much appreciate further participation.

Lord Gardiner of Kimble: I entirely agree with the noble Lord, Lord Teverson. I am very much looking forward to the debate; I rather think I am looking at a number of the participants already. I am most grateful to the noble Lords, Lord Browne of Belmont and Lord McCrea, for participating and emphasising that we wish this matter were being dealt with elsewhere. That should be the right way forward—it is the way mature politics needs to proceed—so I very much endorse what the noble Lord, Lord Browne of Belmont, and the noble Baroness, Lady Jones of Whitchurch, have said. In my view, the responsibility is really on everyone in the public service to ensure that these talks are productive and successful. Alas, as we all know, we are talking about people's lives and communities. We want a better time for Northern Ireland—what a great place it is—so, although I should not be doing this, it is a privilege and we are seeking to do the right thing for Northern Ireland.

My noble friend Lady McIntosh hit on a vein: I think she and many of your Lordships know that I am rather keen on the horse. Obviously, the Government recognise the value of the equine sector to the UK economy. I also know—declaring an interest in that my wife's family breed horses in County Tipperary—that it is of great importance to the rural economy of Northern Ireland and the Republic. We therefore need to do all we can to ensure the movement of horses between the United Kingdom and Ireland—and indeed France; across the piece—and to ensure that in some way we can continue what was the tripartite agreement. We need to work on some arrangement to ensure the free movement of horses, particularly bearing in mind biosecurity. We do not want any future arrangements to jeopardise something that is absolutely crucial, particularly in that thoroughbred end—racing—where pest diseases, viruses, et cetera, are absolutely kept to a minimum by high biosecurity.

How to find an arrangement to best succeed the tripartite agreement is something for negotiations. We all recognise—the UK Government and, I think, the Irish and French racing interests as well—that what we had was of value, and we need to see how we can work. This is why the British Thoroughbred Industries Brexit Steering Group is collaborating with Defra officials. We absolutely need to see what we can do for a very important part of the rural economies of the Republic and our country.

The noble Baroness, Lady Parminter, rightly raised a number of points about the resource implications and so forth. My understanding of the sort of numbers under a new regime is that the five inspectors would need to be increased to 11—a doubling. All consignments of regulated—that is, high-risk—plants and plant products currently imported from the EU under the existing EU passport system would require pre-notification, to be accompanied by a phytosanitary certificate and subject to remote documentary checks in the event of exit without an agreement. This plays into a point that I emphasised and that the noble Baroness, Lady Jones of Whitchurch, acknowledged: this is precisely because neither we in this country nor the Republic want to have checks at the border. We think there are ways in which these matters can be checked. As we said in the previous debate, we should not be nervous of thinking about the best ways of heightening biosecurity. Making this the responsibility of a country's plant health authority has that strength and imprimatur. If we import something from Italy, say, it will be the Italian plant health authority that has to signify the phytosanitary certificate. We should not be fearful of some elements of this new arrangement because they are about what we increasingly need to look at.

6.15 pm

The recent survey suggests that these checks include a significant number of consignments which are subject to existing plant passport checks, and make an additional

provision to undertake phytosanitary certificate checks that may be required to accommodate some trade in smaller consignments. Furthermore, these checks are likely to continue to be undertaken in the existing border inspection posts.

It is estimated that each documentary check would take approximately 10 minutes to complete and DAERA's resources will, as I say, need to increase to 11 inspectors to facilitate this eventuality. This equates to a maximum of 17 checks per inspector to be carried out within their daily duties. I quizzed officials about whether this was manageable and within the scope of what the 11 could undertake, and they were sure that this amount of people would be able to undertake that important work.

The noble Baroness, Lady Parminter, raised an important point about pets. This instrument simply proposes to maintain the current standards and requirements for pet animals travelling into the UK from the EU using pet passports and other documentations if the UK leaves without an agreement. We have made a proper response: biosecurity will not be put in jeopardy by keeping the same arrangements immediately post exit. I have no agenda and the question of whether we have the right level of biosecurity is for the future and, perhaps, for the debate of the noble Lord, Lord Teverson, later in the week.

EU law imposes additional requirements on pet movement into the EU from third countries, the extent of which depends on the category of listing. The United Kingdom has already made its application for listed pet travel status precisely to mitigate potential burdens, and the agreed extension on the date of EU exit provides a good opportunity to progress this application further. Defra officials are working closely with those in Northern Ireland so that we can further those discussions. We understand that people feel strongly about this issue.

The noble Baronesses, Lady Parminter and Lady Jones of Whitchurch, referred to the important issue of authorised trade premises. It is correct that no business has, as yet, applied to become an authorised trade premises. However, future applications will be facilitated by DAERA. For goods entering Northern Ireland directly from third countries, the established border inspection posts currently accommodate the trading level of 500 annual consignments. DAERA is engaging with stakeholders about the implications of the regulations for each sector. This bears out what the noble Lord, Lord McCrea, said about discussing and raising the issue with Ulster's farming unions and so forth. Clearly it is essential that there is a continuing dialogue with stakeholders, because there will be a number of requirements that they will need to attend to.

The noble Baroness, Lady Parminter, also raised the issue of animal welfare consequences. This is an area where DAERA and Defra are working on all contingency plans to minimise any disruption in the event of leaving with no deal. We are working with APHA to ensure that transporters have the most robust contingency plans. We clearly need to ensure that. I have to say that these SIs cover imports to the UK only as we cannot legislate about how the EU will choose to treat exports from the UK. That is why negotiations and a deal are what we all desire.

The noble Baroness, Lady Jones of Whitchurch, raised the question of delay. We wanted to ensure that the policies we had developed would work within the unique circumstances of Northern Ireland. On 13 March this year the UK Government confirmed their policy of having no new checks or controls on goods at a land border between the Republic and Northern Ireland if the United Kingdom were to leave without an agreement. This enabled these instruments to proceed, ensuring the important controls to protect the biosecurity of the island of Ireland, while managing without checks at the land border.

The noble Baroness, Lady Jones of Whitchurch, raised the question of increased bureaucracy. The intention is that regulated plants and plant products imported from the EU will be subject to remote documentary checks. They will not be subject to physical inspection following entry. We must not be fearful of this. A phytosanitary certificate gives an extra handle. We have discussed biosecurity with DAERA and Defra officials, and this is a constructive and important way forward.

The noble Lord, Lord Browne of Belmont, raised the issue of the cost of plant health checks and their costs. They are consistent with the existing policy of recovering the cost of providing plant health services through charging those who use the services. Fees will apply for any inspections undertaken. Our policies and plans for day one seek to maintain current high levels of plant health biosecurity. We also want to preserve the flow of trade in plants and plant products, and we are seeking to minimise new impacts on businesses.

The noble Baroness, Lady Jones of Whitchurch, referred to plant materials transiting through the Republic of Ireland. This may have come up in our earlier considerations. Regulated plants and plant products from third countries that transit the EU en route to Northern Ireland are currently subjected to plant health checks at the first point of entry into the EU to ensure biosecurity protection. Cleared goods can then circulate within the EU and are assigned the same status as EU goods. Regulated plants and plant products from third countries transiting the EU en route to Northern Ireland which have not been cleared in the EU would be subject to regulatory controls under this instrument. They require all imports of regulated plants and plant products from third countries transiting to Northern Ireland via Dublin or anywhere in the EU to provide DAERA with three days' pre-notification of any consignment's arrival in Northern Ireland. The pre-notification provides relevant details of the goods and their expected date of arrival at a DAERA-authorised approved place of inspection within Northern Ireland where documentary and physical checks are completed. Goods will not be subject to plant health checks at the Northern Ireland border. The instrument also requires that the goods be accompanied by a phytosanitary certificate issued by the appropriate authority in the country of origin. This instrument gives the same assurance for third-country goods transiting the EU to Northern Ireland as is provided by the corresponding Defra instrument in respect of Great Britain.

I am very conscious of seed potatoes. I am aware of the historic interest in them, particularly in Scotland, where seed potatoes are very important—and, of course,

[LORD GARDINER OF KIMBLE]
Northern Ireland sells seed potatoes to the Republic. At present, annually the Northern Ireland seed potato sector produces 4,000 tonnes, which are marketed in the EU, Great Britain and third countries. In 2017 approximately 50% of certified seed potatoes produced in Northern Ireland were exported to the Republic of Ireland, and the market in the Republic was valued at £525,000 annually. So seed potatoes are very significant for Northern Ireland farmers in this sector.

It is envisaged that without an agreement there would be a curtailment of outlets for seed potatoes grown in Europe in markets including the Republic. That is why we need to work on getting an arrangement, and it is an example of precisely why this Government are seeking a deal rather than no deal.

The noble Baroness also raised the importance of areas of legislation. Biosecurity is of paramount importance. We are clear that our aim is to have a fully functioning statute book from exit day to ensure that we continue to protect public health and the environment. All relevant powers and provisions covered by EU legislation will still be available. Our intention to retain relevant EU legislation inevitably meant that it was not possible to include everything in earlier SIs, as EU legislation is updated frequently. Obviously, I cannot guarantee that there will not be further updates in this area that we will need to attend to.

If I may, I will return with further information about some of the consultations that I know have taken place with stakeholders in Northern Ireland. The noble Lord, Lord McCrea, in particular raised that point. I will also come back to your Lordships if there is any further information about ports and docks. Certain owners of business premises may now be reflecting that going to the dock or the airport is not the most sensible thing to do. Clearly, trade premises need to be of a sufficient standard. I absolutely take the point that there must be no way in which these arrangements permit pests, diseases and other problems to travel from the point of entry to the inspection point. Again, I assure noble Lords that I have been ferocious on that point.

I will look at *Hansard* because there might be some details that I have not covered sufficiently.

Motion agreed.

Plant Health (Amendment) (Northern Ireland) (EU Exit) Regulations 2019

Motion to Approve

6.28 pm

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

That the Regulations laid before the House on 8 April be approved.

Special attention drawn to the instrument by the Joint Committee on Statutory Instruments, 58th Report. Relevant document: 24th Report from the Secondary Legislation Scrutiny Committee (Sub-Committee B)

Motion agreed.

Animal Health, Seed Potatoes and Food (Amendment) (Northern Ireland) (EU Exit) Regulations 2019

Motion to Approve

6.28 pm

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

That the draft Regulations laid before the House on 3 April be approved.

Motion agreed.

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

Motion to Approve

6.29 pm

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

That the Regulations laid before the House on 9 April be approved.

Relevant document: 24th Report from the Secondary Legislation Scrutiny Committee (Sub-Committee B)

The Parliamentary Under-Secretary of State, Department for Transport (Baroness Vere of Norbiton) (Con): My Lords, these instruments will be needed if the UK leaves the EU without a deal and are important in ensuring clarity, certainty and confidence for the rail industry and its customers. I shall provide some background. These three instruments make corrections to several pieces of EU and domestic legislation covering rail safety in Great Britain and rail safety, train driver and operator licensing, access and management and cross-border rail workers' rights in Northern Ireland.

I turn first to the Rail Safety (Amendment etc.) (EU Exit) Regulations 2019, which I will refer to as the GB rail safety instrument. This instrument will make technical corrections to the Railways and Other Guided Transport Systems (Safety) Regulations 2006 and the Railways (Access to Training Services) Regulations 2006. These sets of regulations, which transposed EU law, set out among other things the requirement to obtain the appropriate safety certificates or authorisations before operating vehicles or managing infrastructure on the railway in Great Britain.

I turn to the two Northern Ireland instruments. Rail is a transferred matter for Northern Ireland, and in the absence of a Northern Ireland Executive, it has been agreed that the UK Government will be responsible for the necessary Northern Ireland EU Exit legislation at Westminster. In preparing these instruments, officials from the Department for Transport have worked closely with their counterparts in the Department for Infrastructure in Northern Ireland.

The first of the two Northern Ireland instruments, the Railways (Safety Management) (Amendment) (EU Exit) Regulations (Northern Ireland) 2019, which I will refer to as the Northern Ireland rail safety regulations, is similar to the GB rail safety instrument. It will correct deficiencies in the Railways (Safety Management) Regulations (Northern Ireland) 2006, the regulations that established the legislative regime

for managing railway safety in Northern Ireland. The second of the two, the Railways (Amendment) (EU Exit) Regulations (Northern Ireland) 2019, also known as the Northern Ireland composite regulations, will correct deficiencies in three pieces of Northern Ireland rail legislation. Among other things, those regulations established a common regulatory regime for licensing and certifying train drivers and operators on the railways. They also implemented rules on aspects of the working conditions of rail workers engaged in interoperable cross-border railway services.

These instruments will correct deficiencies in legislation as a result of the UK leaving the EU. The vast majority of these corrections are minor and technical—for example, removing references to "member state". It is important to emphasise that the GB rail safety instrument will preserve the status quo, including the requirements and procedures for obtaining safety certificates and authorisations as well as the requirements for rail operators to establish and maintain common safety management systems. The Government's highest rail priority is to maintain safety and our highly effective safety regime, which is one of the safest in Europe. The regulations secure that regime.

The GB rail safety instrument will remove certain requirements placed on the Office of Rail and Road to share information with the European Union Agency for Railways. However, there will be a power for the ORR to provide certain safety information to EU bodies on a discretionary basis so we can continue to contribute to a safer European railway.

Safety certificates issued in EEA member states will continue to be recognised in Great Britain after the UK's exit from the EU. However, it is the Government's intention to lay a second instrument that will limit that recognition to a two-year transitional period after exit or until the relevant certificates expire, whichever is the sooner. This is consistent with previous rail EU exit instruments that have introduced a similar recognition period for train driver and operator licences, and it strikes a balance between allowing for a reasonable transitional period and enabling greater control over the rail safety framework.

The equivalent regulations for rail safety in Northern Ireland will mirror the GB safety regulations, with the exception that Northern Ireland institutions have no plans to introduce a two-year recognition period for EEA licences and certificates, recognising the greater role of cross-border services in Northern Ireland. These documents will be recognised indefinitely in Northern Ireland to enable the continued recognition of licences and certificates issued in the Republic of Ireland.

As well as making minor changes—for example, removing references to "member state"—the NI composite regulations will preserve the status quo for rail operations in Northern Ireland. In short, that means that operators and train drivers in Northern Ireland will have clarity and confidence about the regime.

It should be noted that the EU has adopted a regulation that will provide a temporary extension to the validity of authorisations, certificates and licences required to run cross-border services. This contingency measure is applicable for nine months in the event that the UK leaves the EU without a deal in place and supplements the extensive efforts already made by the Government and rail operators to secure these important services. While the Government very much welcome the EU regulation, this alone does not provide the necessary certainty for industry which these instruments provide.

These instruments were originally laid under the negative procedure in February of this year. The House of Commons European Statutory Instruments Committee agreed to the use of the negative procedure, but in March the Secondary Legislation Scrutiny Committee of your Lordships' House recommended that the affirmative procedure should apply as noble Lords might wish to debate the potential impacts on cross-border rail services and those that operate them.

While the Government accepted the committee's recommendation to lay the instruments under the affirmative procedure, using the standard draft affirmative procedure would almost certainly have meant that the instruments would not have come into effect in time had the UK left the EU on either 29 March or 12 April. Therefore, the Government concluded that, to ensure the instruments were in place for the day expected at that time to be exit day, using the "made affirmative" procedure was appropriate. The Minister responsible for the railways wrote to the chairs of the committees in April to explain this decision and the reasons behind it.

Noble Lords will be aware that, while the Joint Committee on Statutory Instruments has cleared without comment the GB rail safety and the Northern Ireland composite instruments, it has drawn the special attention of your Lordships' House to the Northern Ireland rail safety instrument on two minor instances of "defective drafting".

Specifically, the JCSI identified three missing words in a definition relating to the Northern Ireland Department for Infrastructure's monitoring of safety targets, namely the term "risk to whole". The committee identified that the term,

"risk to society as a whole",

appears in paragraph 12(3)(f) of Schedule 7 and it is this term that should have been defined in paragraph 2, in place of "risk to whole".

The committee also considered that the words,

"risk to society as a whole",

should have been set out in full in the table in paragraph 14 of Schedule 7, rather than using the label "whole society". This table sets out how accidents to various categories of person—employees, passengers, et cetera—should be calculated, with the label "whole society" indicating the need to show the total number of serious accidents and fatalities across all those categories; namely, across society as a whole.

I am grateful to the committee for its work and for drawing these points to the attention of the House. The Government do not consider that there will be any real impact on the practicable operation of these provisions or that there will be any possibility for confusion by the Department for Infrastructure. It remains very important that the Northern Ireland rail safety instrument, dealing as it does with a critical area, stays in place as law so as to provide the necessary confidence and certainty that the rail industry and

[Baroness Vere of Norbiton]
travelling public need. I can therefore confirm that the Government will address these minor drafting points in a subsequent instrument that will be laid in advance of this instrument coming into effect on exit day. I beg to move.

Baroness Randerson (LD): My Lords, I start by expressing my regret that we are discussing Northern Ireland legislation at all. I would have hoped that the Assembly would be up and running again by now. I am not apportioning blame within this Chamber but simply making it clear that I believe it is a great disadvantage to Northern Ireland that the Assembly is not sitting.

These three SIs are being made by an unusual procedure, as the Minister has made clear. The Secondary Legislation Scrutiny Committee recommended that the originally intended negative procedure should be upgraded to the affirmative procedure because of the impact on cross-border operations, especially in Northern Ireland. In the event, because these SIs were not laid until 18 February, it was too late for the usual procedure to be followed, and instead they have been laid under the urgent "made affirmative" process, rather than the usual draft procedure. Northern Ireland deserves better than this. I realise it was not the Government's intention to have run this as close to the wire as they have, but why was it left so late to lay these SIs? I know that the Government had intended to use the negative procedure, but the fact is that the committee has the right to recommend a change of procedure, and regularly does, so it is the Government's job to anticipate a change such as that and to allow as much time as possible.

Of course, the irony is that we did not leave the EU on 29 March, and it does not look as though we are going to be leaving any day now. So, in fact, the Government had time to do it by the usual procedure. The Government rather overstate the amount we have to do in this House and in the other place. Business is actually fairly leisurely. Therefore, it could have been done in the usual way, if only everyone had been able to anticipate the situation.

My second question is my usual one. I am concerned once again that the obligation to share information, in this case on safety issues, is being removed and replaced with a power to share information. These three SIs all deal with issues of safety, and my view is that we should not be playing politics with issues of safety and should not be risking the possibility that, either intentionally or unintentionally, safety information will be held back. I ask the Minister: when a safety certificate issued in the UK is revoked by the ORR, what about a rail company that operates in both the UK and the EU? Would the Government then still have a legal obligation to inform the EU?

As the Minister mentioned, there are temporary arrangements to carry the industry over the period after exit. My concern is that EU Part A safety certificates would be recognised for a maximum of two years after Brexit or until they expire. This procedure has been used for other transport-related SIs, and I have previously raised my concern that there is unnecessary uncertainty about this. Some safety certificates will last for two years and some will not, because they will run out earlier. There is uncertainty there.

Meanwhile, the EU has adopted regulation 2019/503, which allows UK certificates to continue to be valid for nine months after exit. My concern is that we are talking about two years in Britain and nine months for British certificates in the EU, so we do not have a consistency of approach. The EU provision appears to apply only to the Republic of Ireland and France, so I ask the Minister: what about Belgium and the Netherlands? They are regularly in receipt of trains which start in the UK, so if these provisions will not apply in Belgium and the Netherlands—as I understand from the Explanatory Memorandum—then what about those trains going beyond those two countries?

6.45 pm

Turning to Northern Ireland, cross-border services are particularly important there, being extremely frequent and regular. Part A safety certificates issued in the Republic will continue to be recognised in Northern Ireland. This is a very pleasing piece of common sense, although I wonder what the DUP Members will think of it, since they have a basic principle that Northern Ireland should not be treated any differently to the rest of the UK. In this piece of legislation we are adopting a different principle. Northern Ireland being given a different solution to the rest of the UK was a particular issue for the Secondary Legislation Scrutiny Committee's sub-committee.

The third of these SIs deals with train drivers' licences, which are much more numerous than the safety certificates issued to train companies—there will only be a handful of those, but there will be hundreds of train drivers' licences. Once again, we have a duty to share information replaced with a power to share information. I am very concerned that in practice this will lead to mistakes or omissions. It is easy to imagine a case where a train driver not having the appropriate licence is overlooked and not appropriately reported, since we are dealing with a power to share rather than an obligation to share. It could be the case that, because the legislation says that someone does not have to share that information, there is nothing anyone can do about it. I have serious concerns that this could undermine safety, so my question to the Minister in relation to the regime for licencing and certifying train drivers in Northern Ireland is whether, in respect of the principle that there will be continued recognition of licences issued in other EEA states, this will be a permanent situation or is it envisaged to be time-limited. It may not specify that it is time-limited in the SI, but it might be that the Government intend to change that system in due course. I would be grateful if the Minister could clarify that.

As usual, consultation has been minimal. The first of these SIs, which the Minister referred to as the GB rail safety instrument, includes provisions that in practice are applicable only to Great Britain, but it includes other provisions that are applicable to the UK and some that are applicable to Northern Ireland, so it is actually a very long and complex SI. Paragraph 10.4 of the Explanatory Memorandum for that SI says:

> "Over 300 industry bodies were invited to participate in the … consultation",

and that only eight responses were received. Can the Minister say whether those responses were all positive and supportive?

I conclude by saying once again that the Government are attempting to provide a continuation of the status quo while removing the obligations on passing information to the EU and the Commission. I understand their intention to do so, but I believe that it has inevitably led to a cobbled-together approach—a hotchpotch of inconsistent and cumbersome solutions. In the case of these three SIs, there is of course the additional inconsistency of having a different approach for Northern Ireland than the rest of the UK. I shall listen with great interest to the answers from the Minister. If she is not able to give me a reply this evening, because I am aware that I have asked a number of questions, I would be grateful if she could write to me.

Lord Rosser (Lab): I too thank the Minister for explaining the content and purpose of these three statutory instruments, and for convening the meeting last week on them. We are not opposed to these SIs and their purpose, in view of the need to address the mess that the Government have got us into on our current and future relationship with the EU.

The three SIs are intended to address what are described as the deficiencies that would arise if our departure from the EU occurred with a certain degree of suddenness and without a withdrawal agreement. The "deficiencies" are referred to in the Explanatory Memoranda. The SIs amend the 2006 regulations and directly applicable tertiary legislation which brought into being requirements on EU member states designed to create a common regulatory framework for railway safety throughout the European Union. This has led to a harmonisation of the regulatory framework of member states on rules governing safety, the process of certifying railway undertakings, the roles and work of national safety authorities and the procedure for the investigation of accidents. The SIs also amend Northern Ireland regulations to correct deficiencies in the domestic Northern Ireland legislative framework.

According to the Explanatory Memorandum, the current railway safety directive is due to be repealed very shortly indeed—I think it is next month. No, I am sorry; the railway safety directive is due to be repealed in just over a year's time. It is the new recast safety directive that is required to be transposed into the domestic law of EU member states next month, but with scope for this date to be extended for a year. Consequently, this recast rail safety directive has not been transposed into UK law. Bearing in mind that we have not yet hit intended dates for leaving the EU, will the Minister clarify that the date for transposing the new directive into our domestic law has been extended for a year until June 2020? If that is the case, can she also say by how far in advance of June 2020 we would have had, in reality, to start the process for transposing the new safety directive into our domestic law to meet the June 2020 deadline?

The EU also has a recent regulation on aspects of railway safety and connectivity in the light of our intended withdrawal from the EU, to provide for a temporary extension for nine months if we leave without a withdrawal agreement, and to enable the continuation of cross-border services between the UK and the relevant EU member states, namely France and the Republic of Ireland. When does that nine-month temporary extension start? Is it from the date we leave the EU without a withdrawal agreement, if that is what eventually happens, or another date?

Paragraph 2.10 of the main Explanatory Memorandum states that:

> "The amended 2006 Regulations will preserve the status quo".

The Minister has already confirmed that that is the case, but can the Government say what preserving the status quo actually means? At present, the regulatory framework of EU member states is harmonised. Does preserving the status quo mean that will continue after our withdrawal, to the extent of adopting subsequent amendments and changes to the regulatory framework made by the EU? If not, in what circumstances do we see ourselves not adopting changes and amendments made the EU? Alternatively, in what circumstances do we see ourselves making changes and amendments of our own that do not apply to EU member states?

Paragraph 2.10 of the Explanatory Memorandum refers to the removal of the requirement on the UK to share information with the European Commission or agency, then refers to an EU regulation to which I have already referred, which imposes,

> "requirements on the holders of safety certificates and authorisations to share certain information to continue to benefit from the temporary extension of validity".

The Explanatory Memorandum then says that:

> "The UK Government fully expects all holders of applicable documentation to do so".

Does that statement apply to continuing to share information generally with the EU, as is required at the moment, or only to the regulation providing for a temporary extension of validity?

Paragraph 2.12 of the main Explanatory Memorandum refers to a subsequent piece of legislation providing for the time-limited recognition referred to in paragraph 2.11, and says it will be brought forward "in due course", which is as long as the proverbial piece of string. When in fact is that piece of legislation or instrument expected to appear?

Paragraph 10.4 of the Explanatory Memorandum refers to the over 300 industry bodies that were invited to participate in the informal consultation. It does not specifically mention the trade unions, so I ask the Minister if the trade unions were included in the informal consultation.

I mentioned earlier that we did not hit intended EU withdrawal dates. The Secondary Legislation Scrutiny Committee recommended that these regulations be subject to the affirmative procedure, because of the potential impact of the proposed changes on cross-border rail operations, including on Northern Ireland, for which one set of regulations specifically maintains the train operator and train driver licensing regime in Northern Ireland. Could the Minister say more specifically than is set out in the relevant Explanatory Memorandum why it is necessary, under these SIs, to allow for the indefinite recognition of these licences in Northern Ireland, whereas in Great Britain the intention is to recognise them for just two years after exit day or until they expire, whichever is the sooner? We have not had a full explanation of the necessity for that difference.

[LORD ROSSER]

The Department for Transport accepted the sub-committee's recommendation that these regulations be subject to the affirmative procedure, but the department has laid these instruments under the urgent "made affirmative" procedure designed to ensure that the regulations come into force by exit day which, at the time these instruments were made, was 12 April. It has also been necessary for the instruments to come into force less than 21 days after being made, which is contrary to the usual practice. On the face of it, it does not look as though the department has dealt with these SIs and their scheduling with the same attention to detail and timescales that it would expect the railway industry to deliver on the safety issues to which these SIs relate. Consequently, as I understand it, these instruments are already in force, although to remain in force they have to be approved by Parliament within 28 days—presumably 28 sitting days, otherwise we are already out of time—beginning with the day on which the instrument was made.

It is clearly preferable if the "made affirmative" procedure is not used, since it negates the purpose of the affirmative procedure, which is that instruments should have parliamentary approval before they come into force. So as a final question—on the same lines as that of the noble Baroness, Lady Randerson—will the Minister explain why it was not possible to bring forward these instruments in time to enable the normal affirmative procedure to be applied, including in a situation where they were laid as proposed negative instruments but where the Secondary Legislation Committee recommended that they be subject to the affirmative resolution procedure? I do not think that we have had a proper explanation of why the instruments were not brought forward in time to go through the full, proper affirmative procedure process.

7 pm

Baroness Vere of Norbiton: I thank the noble Baroness, Lady Randerson, and the noble Lord, Lord Rosser, for their comments and for agreeing to meet me before discussing the regulations today. That was extremely helpful. Some of the issues I knew would come up; others, not so much. If I do not respond to all of them, I shall of course write.

I share the regret of the noble Baroness, Lady Randerson, that there is no functioning Northern Ireland Executive; I think that we all hope that one will be in place as soon as possible. A theme raised by both the noble Baroness and the noble Lord was the timing of the SIs and why noble Lords are here today to discuss them under the "made affirmative", or urgent, procedure.

As has been pointed out by a number of people, these SIs are quite complex, particularly in terms of the legislation relating Northern Ireland. It took a while to make sure that they were right. The noble Baroness said that Northern Ireland deserves better; I would say that actually it deserves the best. We wanted to make sure that the complexities surrounding these issues were absolutely nailed down before we laid the regulations. Timing was slightly against us—but, then again, the regulations were laid as negative; we did not expect them to be upgraded to affirmative. When they were upgraded and we looked at the parliamentary timetable, we realised that there might not have been time from that point until 29 March—there could have been time, but, as noble Lords will know, a number of committees need to consider these things—and decided that the best way forward was to lay the instruments as "made affirmative". The noble Baroness was right to say that it is unusual, but it is not unique—I am sure that many noble Lords were here for the two debates preceding this one; they, too, were for "made affirmative" SIs. There were a number of SIs which, as we approached exit day, it was necessary to consider within the "made affirmative" procedure.

The noble Lord, Lord Rosser, asked me about 28 days—it is indeed 28 sitting days.

Lord Rosser: The Minister says quite rightly that the regulations are complex, but this is not the first set of complex regulations that has appeared from a department. Neither surely is it the first time that a department has suggested that it should be dealt with by the negative procedure and the committee has said that it should be the affirmative, and the department has agreed and it has still been done in time to put it through the proper affirmative procedure. So I ask again: why could this not be done by the Department for Transport? There is nothing unique about their being complex; there is nothing unique about a department saying that they should be negative, the committee saying that they should be affirmative and there still being time to do it through the proper affirmative procedure.

Baroness Vere of Norbiton: I completely accept what the noble Lord says. In certain parts of the organisations that had to deal with these things, the pressure on resources was quite significant. I am not prepared to say much more on that.

Safety and data sharing were also rightly raised by noble Lords. As the noble Baroness, Lady Randerson, pointed out, they are critical. The Government have no intention of compromising the safety of our rail network—or, indeed, anyone else's. The Office of Rail and Road will be sharing data and we already have a very good relationship with it. I should like to go into tiny bit more detail about this, because it is important. EU member states already have a number of cross-border rail arrangements with third countries covering a wide variety of arrangements, including border arrangements, sharing information about cases of accidents, the responsibilities of train operators—all sorts of things. For example, there is one between Croatia and Bosnia-Herzegovina and one between Poland and Russia, and both have negotiated bilateral agreements on cross-border rail arrangements. We anticipate that, as our relationship with the EU develops, we too will have these sorts of relationships. In the short term, the Office of Rail and Road will work very closely with its counterparts, as it already does, to enable it to continue to share information with EU and EEA member states. In particular, it is extremely important that we work closely with our immediate cross-border neighbours, France and the Republic of Ireland. Our engagement is going very well and we aim to sign a memorandum of understanding with both countries to enshrine co-operation agreements so that they can continue.

The noble Baroness asked what would happen if the ORR revoked a safety certificate belonging to an operator established in the EU and the UK: would the UK have a legal obligation to inform the EU? If the ORR issued a part B certificate based on an EU part A safety certificate, the ORR would be required to inform the EU safety authority that issued part A if it went ahead and revoked part B. She mentioned safety certificates that run out earlier. I believe that there is only one—most will be able to go up to the two-year sunset clause, and that organisation will be able to apply to the ORR for a new safety certificate.

Turning to the question of nine months, we have a new agreement with the EU, which has said that for nine months regulations will stay where they are. This obviously relates particularly to the Republic of Ireland and France, those being the countries we send most of our rail to, and I believe that nine months is a first step: there will obviously be more discussions to be had. The nine-month clock will start on the day we leave the EU. The noble Baroness raised an interesting point about operators going beyond France, for example. Operators are making their own arrangements to operate services beyond, and they have in place EU-issued operator licences, so I believe that people have already thought about that and are taking the appropriate steps.

The issue regarding Northern Ireland is interesting and important. It is a transferred matter and, in the absence of a functioning Northern Ireland Executive, it is right and proper that we preserve the status quo as much as we can. We therefore took the decision, given the connectedness of the network in Northern Ireland and the implications of that, that a different time limit was appropriate. Indefinite recognition of the various certificates in Northern Ireland is essentially the status quo. In the future, as it is a transferred matter, if there is a functioning Northern Ireland Executive that Executive will be able to make its own decisions. For the time being, however, it was agreed that this is the best way forward for Northern Ireland. Conversely, within Great Britain a decision has been made to match the sunset clause for these items to the sunset clause already in place for other types of rail licence.

The noble Baroness mentioned the consultation. We have carried out a fair amount of consultation. We wrote to 300 industry representatives and, as the noble Baroness mentioned, we had eight responses. I have not seen them but I will certainly write if they raised any particular issues. Workshops were also held and a technical notice came out on 12 October. The noble Lord, Lord Rosser, asked whether the unions were involved in the consultations. I believe that ASLEF was invited to the workshop but was unable to attend.

The noble Lord, Lord Rosser, mentioned the next railway package—the fourth railway package, otherwise known as the recast safety directive. There are two issues here: first, what happens if we have a deal; and secondly, what happens if we do not have a deal. During any implementation period that comes into force under the withdrawal agreement, the UK would be required to meet its EU obligations. This would include the transposition of the fourth railway package. We would obviously proceed with that in the implementation period to have it done by June 2020. If the withdrawal agreement is not ratified and the UK leaves without a deal, we will need to decide whether we will transpose the technical pillar of the fourth railway package. The decision will be made on what account to take up the fourth package as regards, for example—this is the important bit—cross-border services with the French. We will need to look at where we are and what needs to be implemented to make sure that those cross-border services can continue. There will obviously be sufficient time on both of these for scrutiny by your Lordships to ensure that these matters are conducted accordingly.

Work has already commenced on the rail safety directive. We have started the underlying work to transpose the recast safety directive as part of our existing obligations as an EU member state. As I mentioned, we expect to implement by June 2020 and have already notified the EU Commission that we will be doing this.

Will this be for ever? Status quo does not mean matching the EU. The issue is that we may—or we may not; it is not certain—want to take our safety regime in a different direction. That does not mean that our safety will be any less important to us, or that the safety of our passengers will be compromised in any way at all. However, it might mean that, if we diverge in the future from EU law because doing so might present opportunities for the UK to shape our railways in the way we want, the safety outcomes will be the same but our law might say something different. I am not saying that this will definitely happen; I am not saying that this is even remotely likely in the short term. But status quo certainly does not mean being in lockstep with the EU on the rail safety legislative framework in perpetuity.

I am sure there are a few questions I have missed. I will look at *Hansard* and make sure that I have all the responses to any remaining questions from both the noble Baroness and the noble Lord.

Motion agreed.

Railways (Safety Management) (Amendment) (EU Exit) Regulations (Northern Ireland) 2019

Motion to Approve

7.12 pm

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

That the Regulations laid before the House on 8 April be approved.

Special attention drawn to the instrument by the Joint Committee on Statutory Instruments, 58th Report. Relevant document: 24th Report from the Secondary Legislation Scrutiny Committee (Sub-Committee B)

Motion agreed.

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

Motion to Approve

7.13 pm

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

That the Regulations laid before the House on 8 April be approved.

Relevant document: 24th Report from the Secondary Legislation Scrutiny Committee (Sub-Committee B)

Motion agreed.

House adjourned at 7.14 pm.

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