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PARLIAMENTARY DEBATES
(HANSARD)

HOUSE OF LORDS
OFFICIAL REPORT

ORDER OF BUSINESS

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

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House of Lords

Tuesday 1 October 2019

2.30 pm

Prayers—read by the Lord Bishop of Newcastle.

Policy-making: Future Generations

Question

2.36 pm

Tabled by ***Lord Bird***

To ask Her Majesty's Government whether the interests of future generations are taken into account at every level of government policy-making and, if so, how.

Lord Laming (CB): In the absence of my noble friend Lord Bird, who cannot be here, I ask the Question in his name on the Order Paper.

The Parliamentary Under-Secretary of State, Department for Work and Pensions (Baroness Stedman-Scott) (Con): My Lords, accounting for the interests of future generations is a core consideration within the Government's policy-making. The Government require that all programmes, projects and policies demonstrate the costs, benefits and risks associated with the intervention over its whole lifetime, in line with the government *Green Book*. This includes the impact on future generations. Where the possible effects of an intervention being examined as part of an appraisal are long term and involve very substantial or irreversible wealth transfers between generations, *The Green Book* sets out the analysis that is required to estimate the long-term impact of the intervention.

Lord Laming: My Lords, I am very grateful to the Minister, who has vast experience in this area. But I ask whether the Government recognise that the budgetary cuts year on year on year have resulted in a marked reduction in family support and preventive services, especially for young people. Does she accept that there is a great deal of catching up to be done, which must involve the contribution of every government department, as is happening in Wales? How will the Government ensure that every department plays a part in this?

Baroness Stedman-Scott: I would be foolish to say that we have not got some catching up to do, but I assure all noble Lords that we wish to work hard to achieve this. In terms of cross-government working, I have been in the department only a short while, and I have met with people in other government departments to talk about things that we can do together to make the impact better. The principle is well understood, and I assure all noble Lords that we are completely committed to making sure that the resources we have are deployed well for the benefit of all generations.

Baroness Sherlock (Lab): My Lords, the Minister referred to *The Green Book* as being the means by which the Government decide how to adjudicate between the interests of different generations. But *The Green Book*, which is a Treasury document, sets out the tool for analysing or comparing policy objectives using things like net present social value or social time preference rates; you can work out how to judge those transfers. Will the Government publish the results of those analyses in the impact assessment along with everything else? More importantly, the young people I saw in Durham on the climate strike were convinced that we are not prioritising their interests. What tools can the Government use to assess damage done to the climate and to the planet—although, of course, there is no planet against which we can compare it?

Baroness Stedman-Scott: Well, there is an exam question! On the question of publishing the impact assessment, I will go back and ask my boss. Do not think that that is a cop-out; I do not actually know. I will ask my boss and then write to the noble Baroness, and everybody will receive a copy of his response through the Library.

On climate change, I think that we have done really well to be the first country to legislate for long-term climate targets. Between 1990 and 2017 we reduced emissions by 42%, so we are serious about this. I hope that the efforts of young people in this respect will help them realise that they are having a great impact on the activities of the Government to make that happen.

Lord Tyler (LD): My Lords, does the Minister accept that this Question has accountability to this and future generations at its core? Is there anybody in No. 10 who has any respect for our constitution and parliamentary democracy, let alone has made any assessment of the importance of our history in this respect? My ancestor, Jonathan Trelawny, was one of the seven bishops who defied James II's royal prerogative and then precipitated the Glorious Revolution of 1688. Does the noble Baroness accept that the Executive are answerable and accountable to Parliament, not the other way around? Has that not been the central, core constitutional principle for 330 years? As this is such a minority Government—

Noble Lords: Too long!

Lord Tyler: As this is a minority Government and the Prime Minister represents only a tiny fraction of that minority, surely the task he refers to is representing what Parliament is saying, rather than what he wants to do.

Baroness Stedman-Scott: The phrase "something vexes thee" comes to mind. The noble Lord is trying to get me into the territory of another subject that I do not want to get into today; I want to stick to what we are discussing. But I do not think there is any doubt that everybody understands about accountability. I do not think I can add anything, and speak on behalf of No. 10, other than to say that I am convinced that they understand that.

Lord Forsyth of Drumlean (Con): My Lords, we have all heard about the bank of mum and dad, but in considering the future of social care policy is my noble friend aware that we will rapidly move to the bank of son and daughter? When can we expect the Government

[Lord Forsyth of Drumlean]
to produce a response to the committee of this House's report on social care, or indeed the long-promised Green Paper?

Baroness Stedman-Scott: I understand about the bank of mum and dad—and about the bank of auntie, from which deposits are drawn on a regular basis. I understand the point my noble friend is making; it is a very important issue that impacts greatly on those who need social care now. Of course, coming future generations will want to know how this is all going to be done. I do not know about the timing of the documents, but I will try to find out and write to my noble friend.

Lord Berkeley of Knighton (CB): My Lords, when the Government are criticised over the lack of music in schools and on syllabuses, they point to the success of the music hubs. I salute that success, but these hubs are now financially at risk, with future funding not confirmed even for next year. Will the Minister confirm that funding will continue, and increase to cover inflation and increased costs, thus preventing the legs being cut from under music education in this country and, indeed, the Government's own flagship?

Baroness Stedman-Scott: I thank the noble Lord for his question. I do not want to seem flippant, but I do have not have my chequebook with me today, so I do not think I can help him there. Again, this is something I will need to find out about, but the point he raises about the importance of music is well understood.

Single-use Plastics

Question

2.44 pm

Asked by ***Lord Robathan***

To ask Her Majesty's Government what measures they are taking to reduce the consumption levels of single-use plastics.

The Parliamentary Under-Secretary of State, Department for Environment, Food and Rural Affairs (Lord Gardiner of Kimble) (Con): My Lords, we have banned microbeads on personal care products, reduced single-use plastic carrier bags and invested £100 million in plastics innovation. We are banning the supply of plastic straws, stirrers and cotton buds from April 2020; seeking powers through primary legislation to charge for specified single-use plastic items; and delivering our promises to introduce a DRS, provide consistent recycling collections and reform packaging waste regulations. Consumer single-use plastics will be removed from central government offices from January 2020.

Lord Robathan (Con): My Lords, plastics have been hugely beneficial to society and civilization, but sadly their misuse is now very detrimental to all of us. I welcome everything that the Minister has said, particularly the plastic bag tax, which has been a huge success, reducing consumption by 85%. I hope that this direction of policy will continue, but can my noble friend the Minister tell me, first, whether we are promoting research into whether we can get the embedded energy and the oils out of plastic and reuse them—that is a very complicated question—and, secondly, whether we can educate the public more so that they, particularly young people, do not go around with a single-use plastic bottle in their hand the whole time but use a renewable one?

Lord Gardiner of Kimble: My Lords, a lot of us are now very much using renewable bottles. I am pleased to say that, in the Year of Green Action, I have one in my office that is very useful. That is why I mentioned the £100 million of research in my original reply, because clearly there are still a lot of answers that we do not know and we want to do things better. That is why there is £20 million for the Plastics Research and Innovation Fund, a further £20 million for the plastics and waste investment fund and £66 million through the Industrial Strategy Challenge Fund. All of these are part of what we need to move to, which is reducing plastic, and, wherever possible where we have plastic—and we will, of course, need plastic for things such as medicine and medical facilities and so forth—ensuring that we reduce, reuse and recycle sensibly.

Baroness Jones of Whitchurch (Lab): My Lords, in her first Commons debate, the new Secretary of State, Theresa Villiers, repeated the mantra that the Government needed time to get the primary legislation on plastic waste right. Given that the Minister has repeated time and again to this House that he understands the urgency of this issue, has he persuaded his boss perhaps to speed up that legislation for which we have been waiting for quite some time, and might we get to see that legislation listed in the Queen's Speech?

Lord Gardiner of Kimble: My Lords, we have said that we will be introducing the environment Bill in the second Session. I very much look forward to it, if I am in position, and hope that this will be something on which we could all work, because that is one of the key features. When I make inquiries about whether we need primary legislation for some of things we need to do, I am advised that we do. That is why it will need to be done through the environment Bill. I absolutely take the point: we have a finite planet and the longer we wait, the more damage that we will have to deal with. We are still producing too much plastic; that is why we need to advance and why the Plastics Pact is so important in working with industry. We are starting to see success on that, but we need to do a very lot more.

Lord Geddes (Con): My Lords, would it not be highly advantageous if we were to follow the example of the National Trust and replace plastic wrapping with that made from potato starch, which is compostable?

Lord Gardiner of Kimble: I declare my membership of the National Trust, and indeed, my compostable bag was put on my compost heap over the weekend.

Lord St John of Bletso (CB): My Lords, at a time when it is estimated that we use in excess of 35 million plastic bottles a day, of which only 20 million are recycled, what additional measures are being taken to promote reusable bottles? What measures are being taken to prevent plastics being leaked into the oceans?

Lord Gardiner of Kimble: My Lords, the noble Lord is right to raise the oceans. As 80% of the waste in the oceans comes from the land, the first thing is to stop it getting there. I understand that currently in this country 70% of plastic drink bottles are collected for recycling. I mentioned the deposit return scheme because other countries which have reintroduced it have got up to over 90%. That is why we are actively working on the options and are having further consultations. These things take time, because industry will require new infrastructure to undertake this, and we want it to land well when it starts.

Baroness Bakewell of Hardington Mandeville (LD): My Lords, since the ban on plastic cotton buds and the use of microbeads in cosmetics, which the Minister referred to in his earlier Answer, there appears to have been a bit of a lull in action on plastics. Despite some manufacturers making changes to their products, we are still seeing a large number of plastic straws in pubs and bars, despite what the Minister said. Is it not time that the Government published a list of those who do not take this matter seriously and are still using single-use plastics?

Lord Gardiner of Kimble: The noble Baroness is right that a number of responsible companies have already started to remove plastic prior to the ban in April 2020. I encourage all manufacturers to think about this so that we achieve a ban with people stopping voluntarily. On lists, and more positively, if I had time I would read out the very long list of manufacturers and retailers that are engaging in this, on some of the issues such as black plastic or using alternatives. We need to work with industry and encourage it, and obviously some of the fiscal measures we are proposing are all about, for instance, reducing plastic packaging.

Baroness Jones of Moulsecoomb (GP): My Lords, one of the things my parents and grandparents used to say was, "Fine words butter no parsnips". If we have learned anything from the school strike and Extinction Rebellion protesters, it is that the Government are not acting fast enough. Why does the Minister keep telling us that it all takes time? We do not have the time—we must get a move on.

Lord Gardiner of Kimble: In fairness, if we want consistency of recycling in all local authorities, it will take time, because you have to build installations—they do not happen at the flick of a switch. As much as I agree with the noble Baroness that flicking the switch and getting it sorted is desirable, it is not practical, and we need to carry people with us. I therefore understand the frustration, and we want to get it done, but it is not possible overnight.

Influenza: People with Learning Disabilities

Question

2.51 pm

Asked by ***Baroness Hollins***

To ask Her Majesty's Government, in the light of Public Health England's anticipation of a particularly virulent strain of the seasonal flu virus, what steps they are taking to ensure that clinicians prioritise patients at the most risk, particularly individuals with learning disabilities given the potential lack of awareness amongst this group of people of the danger of influenza.

Lord Bethell (Con): Based on the latest intelligence from the WHO, Public Health England does not anticipate a virulent flu strain this season but remains vigilant. The Government are committed to extending the effectiveness of vaccinations, particularly for vulnerable groups. As a result, NHSE has advised GPs that all individuals with learning disabilities are eligible for the enhanced service specifications. To raise awareness of the opportunity for vaccination, PHE, in partnership with NHSE/I, produces a range of easy-read leaflets for individuals with learning difficulties.

Baroness Hollins (CB): My Lords, I thank the Minister for his reply and for the helpful conversation that we had earlier. There has been a recent government consultation about how to introduce mandatory training on learning disability and autism. Can the Minister advise when the Government's plans will be published and how soon they expect training to be offered? Everybody hopes that such training, especially co-delivered by people with learning disabilities, would lead to improved access to immunisations as well as health screening and health checks, and everybody hopes that that might lead to reductions in the shocking, avoidable and premature mortality experienced by people with learning disabilities and those with autism.

Lord Bethell: My Lords, I pay tribute to the extraordinary work of the noble Baroness, Lady Hollins, in this area, where she has worked so hard to improve the life chances of those with learning difficulties. The impact she has made is enormous. She is quite right that the life chances of those with learning disabilities are deeply hit by influenza. That is why the Minister of State for Care commissioned the mandatory training consultation. The response has been tremendous, with more than 5,000 submissions. It has taken longer than expected to work through this material, but publication is expected shortly. In the meantime, we are working with professional bodies and other stakeholders to reach agreement on the development of the core curriculum.

Baroness Walmsley (LD): My Lords, is the Minister interested in the views of the pharmacist I consulted yesterday on this Question? He said that his difficulty was identifying the local people with learning difficulties, because unless they have a physical problem that keeps

[Baroness Walmsley]
him and the local GP in contact with them, it is hard to get to know them and, therefore, to encourage them to have the flu vaccine. Does that not indicate the need for a major public information campaign in accessible terms to indicate the safety and efficacy of the flu vaccine and vaccines such as MMR?

Lord Bethell: The noble Baroness makes a very important point. The question of the learning difficulty register is undoubtedly one that affects this area enormously. Each GP should have a learning difficulty register where the names of those with learning difficulties are recorded, but it is recognised that those registers are not necessarily always up to date. At their board meeting on 27 June 2019, NHS England and NHS Improvement made a commitment to improve the quality of registers for people with learning disabilities for precisely that reason.

Lord Clark of Windermere (Lab): My Lords, as it stands, one of the major overseas suppliers of anti-flu vaccine is experiencing delays in getting the vaccine through to the UK. Is that likely to have any major impact on the supply of vaccinations?

Lord Bethell: The noble Lord makes an excellent point, and this is an area of concern, but I should like to reassure him that these are not delays; they are in fact phasing. What we learned from last year is that the identification of which particular flu strain is likely to hit the northern hemisphere is not always clear at the beginning of the season, so we have learned to phase the delivery of the vaccines in case the strain of the influenza virus changes or is not as anticipated. This is interpreted by some pharmacologists as a delay, but in fact it is a pragmatic decision made at the very highest levels.

Lord Hunt of Kings Heath (Lab): My Lords, one of the difficulties of encouraging flu vaccination among vulnerable people is that the rates among NHS staff themselves is disappointingly low. What action are the Government taking this coming winter to encourage NHS staff to take up the vaccine?

Lord Bethell: My Lords, it is entirely correct that the struggle to get NHS staff vaccinated is one that concerns the Government greatly. There is an in-depth education programme, and the offer of eligibility for NHS staff has been rolled out to a considerable degree already. Uptake is not as high as we would like it to be, and it remains an area of focus.

Lord Patel (CB): My Lords, the Minister reassured the House that the vaccine that we use in this country will be against the appropriate strain, as advised for the northern hemisphere, but we must accept that the vaccine that will be used in the southern hemisphere is against a different strain. It is not such a long time ago that using the wrong vaccine resulted in several thousand excess deaths in this country—it was two years ago. Can he further reassure the House that the vaccine that we use for the over-65s will be the aTIV one in order to administer a better precaution?

Lord Bethell: The noble Lord makes a very good point. The Government are aware that the 2019 Australian flu season had an early peak, and that has raised concerns that the Australian flu may be transferred to the northern hemisphere. To date, there is no evidence that the new drifted strains emerging in Australia have indeed crossed over. For that reason, we are holding steady in our prognosis. I assure the noble Lord that we will be giving the right vaccines to the over-65s.

Lord Blunkett (Lab): My Lords, I was not aware until yesterday that a separate strain was to be used in flu vaccines for those aged over 65. I discovered that, while the under-65s can be vaccinated within the Palace of Westminster through the health service, the over-65s cannot. We should be setting an example, not least at this end of the Corridor, or is there a cunning plan to implement the Burns review more quickly than intended?

Lord Bethell: If there is a cunning plan, they have not briefed me on it.

T-levels

Question

2.59 pm

Asked by ***Baroness Garden of Frognal***

To ask Her Majesty's Government what discussions they have had with Russell Group universities about whether they will accept T-levels as entry qualifications for undergraduate degrees.

Baroness Berridge (Con): My Lords, it is anticipated that 16 year-olds who undertake the new T-levels will mostly then go on to work. However, Her Majesty's Government also expect that T-levels will be acceptable as entry requirements to our most selective universities. I assure the noble Baroness that this issue was on the agenda at the last meeting of the higher education advisory group in the department in May. She will be aware that the group includes Russell group universities, such as Exeter, Southampton and Oxford, as well as the chair of the Russell group qualifications network. The department is also meeting one-on-one with individual universities and their admissions officers, but expects that formal admissions decisions will be made once the detailed content of T-levels is available in spring next year.

Baroness Garden of Frognal (LD): I welcome the noble Baroness to her appointment and look forward to working with her. T-levels were supposed to do all the things that well-established and highly respected BTEC and City & Guilds qualifications were apparently failing to do in respect of parity of esteem between academic and work-based qualifications; I declare an interest as a vice-president of City & Guilds. To bridge this divide, T-levels need recognition from universities. What input did universities have in the development of T-levels, and what are the Government doing to raise the profile of all suitable work-based qualifications as fulfilling entry requirements in order to expand diversity?

Baroness Berridge: The noble Baroness is correct that this is a moment where we can raise the parity of esteem. The selection of the name "T-level" enables us to raise the consciousness of there being parity with A-levels; that it is easily understandable. Industry has been involved intimately in developing the curriculum of these qualifications, which will begin in September 2020. Universities have been allowed to see the development and the progress of the content and to comment on it. We are determined to ensure that where it is relevant for a related degree, a T-level will be appropriate. However, some of the new T-levels—for instance, in design—will not be acceptable for English literature at Oxford. They will be specific to related qualifications.

Lord Watson of Invergowrie (Lab): My Lords, I also welcome the noble Baroness to her new post and her first Question as an Education Whip. Notwithstanding her Answer to the noble Baroness, Lady Garden, before universities decide whether they will accept T-levels as entry qualifications, the Government need to stop sending mixed messages and clearly explain their purpose. I am aware that they are not yet fully developed, but until then there is clear doubt, which was to some extent compounded when recently the post of Minister of State for Apprenticeships and Skills was abolished. That sends out the wrong messages. The £120 million announced yesterday by the Secretary of State, without consulting the sector, has also wrong-footed a number of people. Can the Minister say where she sees T-levels fitting into the new education landscape apparently envisaged by the Secretary of State?

Baroness Berridge: The new T-levels are part of the overall reform. It has been clear to noble Lords on all sides of the House that 16 year-olds who do not want to follow the traditional path into university have to make very complicated decisions. Outside of A-levels and GCSEs, there are more than 12,000 different qualifications to choose from. T-levels are part of bringing some crystallisation and clarity to the process. That is why there are a number of reviews going on, particularly into all post-16 qualifications. The Government are aware that some of those qualifications, such as BTECs, are well respected in industry. Therefore, there must be a two-stage review to make sure that, where qualifications overlap T-levels and we have decided not to fund them, it is done in consultation with business. As the Sainsbury panel made clear, it is high time that the 16 year-olds who are not going to follow the traditional path have a clear choice—A-levels or T-levels and apprenticeships.

Lord Addington (LD): My Lords, I welcome the noble Baroness to her new role. Will the Government take this opportunity to look at special educational needs in relation to T-levels? The guidance published last year said that the example of apprenticeships would be followed for English and maths qualifications for groups such as dyslexics. This is still a confused area and there are complaints about it. The academic way is clearer cut and more straightforward. Can the Government please clarify the situation and make sure that everybody involved knows what they are doing? I remind the House of my declared interests.

Baroness Berridge: My Lords, I am grateful to the noble Lord and am aware of his interest in this area. I will have to check but there is a £60 million capacity fund, and some of that money will enable students to do the industry placement. There are also plans for a transitional programme at 16, to enable students who need an extra year in order to succeed to do a T-level over three years. However, I will write to him specifically about how those with special educational needs, and particularly those with an education, health and care plan, will be incorporated into the new T-levels.

Lord Forsyth of Drumlean (Con): My Lords, is it not great news that the new Secretary of State has announced more emphasis on further education and on encouraging people to get qualifications other than the traditional three-year degree? Should the House not welcome this change of emphasis and the resources that have been put into it, of which T-levels are a part?

Baroness Berridge: I am grateful to my noble friend. Yes, it is about time that technical education in this country—outlined, I believe, by the noble Lord, Lord Hennessy, as one of the three top priorities that the Government should look at—finally got the parity of esteem that it deserves. The number of people studying for levels 4 and 5 qualifications in this country is woeful. It affects our productivity and, most of all, as the noble Baroness, Lady Corston, is aware, it affects the social mobility of many of our young people. I read with interest the response to the Augar report in your Lordships' House. This area is often referred to as the Cinderella of the education sector. I look forward to all noble Lords using all their pressure to put ideas forward, because I think that Cinderella is about to go to the ball.

Hong Kong Protests

Private Notice Question

3.06 pm

Asked by ***Lord McNicol of West Kilbride***

To ask Her Majesty's Government what assessment they have made of reports that police have used live ammunition against protestors in Hong Kong.

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

Earl Howe (Con): My Lords, the Government remain seriously concerned about the situation in Hong Kong, and today's shooting of a protester is a deeply worrying development. The Government are clear that there is no excuse for violence and we will continue to condemn it. This incident also underlines why a constructive dialogue that addresses the legitimate concerns of the

[Earl Howe]
Hong Kong people is so important. What is required now is calm from both protesters and the Hong Kong authorities.

Lord McNicol of West Kilbride: I thank the noble Earl for his Answer. After four months of protest, today's use of live rounds against protesters in Hong Kong marks a worrying escalation. I am sure that all noble Lords will share my concern at the spiralling levels of violence on all sides, which appear to be increasing on a near daily basis. Can the noble Earl say whether the Foreign Secretary has made any representations to the Hong Kong or Chinese Governments since the reports emerged earlier today and, if so, can he share any of their responses? Finally, in the light of today's events, can he confirm what further steps, if any, will be taken to support British national overseas passport holders in Hong Kong?

Earl Howe: My Lords, as I said earlier, I share the noble Lord's deep concern about the situation. However, we must be clear that the situation is fluid. We do not yet know the precise circumstances of this incident. No formal statement from the Hong Kong police has yet been issued, and it goes without saying that the situation is fast moving. Having said that, I can assure the noble Lord that we are in regular contact with the Governments of Hong Kong and China. My right honourable friend the Foreign Secretary spoke to the Chief Executive of Hong Kong on 9 August. He was due to have a meeting with Foreign Affairs Minister Wang Yi at the United Nations last week. He was called back for reasons that I do not need to explain, so the meeting did not occur, but he expects to speak to him in the coming days.

As far as the British nationals of Hong Kong origin are concerned, we are clear that the best solution for Hong Kong and the British national overseas passport holders who live there is full respect for the rights and freedoms set out in the Sino-British Joint Declaration. That will be the basis of any actions going forward.

Baroness Northover (LD): My Lords, it is clearly appalling that a protester has been shot while calling for their democratic rights. There is much that the People's Republic of China might celebrate today—its 70th anniversary—not least pulling millions out of poverty. But does the noble Earl not agree that promises made on both sides at handover must be kept? Reform must be moved forward. Surely, in this instance, the need for the UK Government to request that the Hong Kong Government instigate an independent investigation into violence in Hong Kong has become paramount.

Earl Howe: One of the most concerning features of the current situation is the loss of trust between the Hong Kong people and the authorities there. That trust has to be rebuilt, and to do that the Hong Kong SAR Government should establish a robust, credible, independent investigation into events. We note that the Independent Police Complaints Council is carrying out an inquiry and we look forward to further details on its scope.

Baroness Falkner of Margravine (Non-Afl): My Lords, in light of the ongoing protests in Hong Kong, have Her Majesty's Government made any attempt to speak to the other Commonwealth countries about whether visas and rights of residence will be issued across the Commonwealth to the young demonstrators in Hong Kong when and if action of that nature is required? In other words, will we live up to our obligations to provide safe harbour to them?

Earl Howe: My Lords, I share the noble Baroness's concerns on this issue. We are in dialogue with many of our friends and partners around the world. We have made our concerns about human rights clear to the Chinese Government. Earlier this week, my noble friend Lord Ahmad co-hosted an event in the margins of the UN General Assembly on the situation in Xinjiang, which remains an issue of serious concern.

Lord Cormack (Con): My Lords, does my noble friend realise that those of us who saw the chilling programme on Tiananmen Square last night are particularly concerned by today's reports? Because we have a legitimate interest, can the Foreign Secretary be asked to see the Chinese ambassador here in London and suggest that there should be a British judicial presence on any committee that is established? There is a precedent for that in what has followed the one country, two systems solution, and it would give great confidence around the world if that were the case.

Earl Howe: My Lords, I think it is important that we do not get ahead of ourselves here in a way that might make the situation worse. We are currently reliant on media reporting. As I have said, the situation is fluid. We do not yet know the precise circumstances of the incident that has been reported. It is difficult to confirm the reports in an independent way. We are monitoring the situation closely. I take note of my noble friend's constructive suggestion, but I think it is too early to go down that path.

Lord Campbell of Pittenweem (LD): While accepting the seriousness of the use of firearms, does the Minister understand that elements of those who wish to protest are using petrol bombs and Molotov cocktails? If such means are used to try to advance their interests, it perhaps creates a degree of fragility in which there is a very considerable risk that more serious exchanges will take place, including the use of firearms.

Earl Howe: The noble Lord makes an extremely good point. We have been clear all along that we condemn utterly any violence at all. It is essential that any protests that occur are conducted peacefully and within the law, and that the response of the authorities is proportionate.

Lord Campbell-Savours (Lab): Does the Minister not accept that any foreign interference will only make matters worse?

Earl Howe: There is a distinct risk of that, yes, my Lords.

Lord Craig of Radley (CB): Are the Government aware of the request of some 300 former members of the forces in Hong Kong, who are still resident in Hong Kong and who took an oath of allegiance to Her Majesty, that they be granted the right of abode in the United Kingdom? Many Members of the House of Lords and, indeed, of the other place, have raised this very reasonable request with successive Secretaries of State over the past three years and more, but they have yet to get an answer. Will the Minister encourage an answer?

Earl Howe: My Lords, members of the Hong Kong forces who were recruited from Hong Kong and, in most cases, completed their service in Hong Kong are in that respect different from other members of the UK forces who may have served in the UK. Those serving in Hong Kong before 1997 would not have qualified for British citizenship on the basis of their service. There are a number of existing provisions within British nationality law under which former Hong Kong personnel may apply for citizenship, subject to meeting the relevant criteria.

The Earl of Sandwich (CB): As the Minister will know, there are other human rights concerns besides Hong Kong, notably the situation of the Uighurs. Can he confirm that there used to be a regular human rights dialogue, and whether that has now been abandoned?

Earl Howe: My Lords, we lose no opportunity to express our views to the Chinese authorities on matters relating to human rights. Of course, those human rights are embedded in the Joint Declaration. However, I will have to write to the noble Earl about the extent to which regular talks on this subject occur.

Lord McNicol of West Kilbride: Perhaps I may come back on one of the points made by the Minister in his response to my supplementary question. He said that the Foreign Secretary last spoke to Carrie Lam on 9 August. That is getting close to two months ago now, which, with so many fast-moving developments, seems a rather long time. I wish to encourage Her Majesty's Government to have more dialogue and conversations.

Earl Howe: My Lords, I am happy to confirm that I will pass that recommendation on to the appropriate quarter.

Irish Border: Checks and Customs Arrangements

Statement

3.17 pm

The Parliamentary Under-Secretary of State, Department for Business, Energy and Industrial Strategy and Northern Ireland Office (Lord Duncan of Springbank) (Con): My Lords, with the leave of the House, and on behalf of my noble friend Lord Callanan of the Department for Exiting the European Union, I will now repeat in the form of a Statement the Answer given in the other place earlier today by my honourable friend the Parliamentary Under-Secretary of State for Exiting the European Union:

"Mr Speaker, we are committed to finding a solution to the North/South border which protects the Belfast/Good Friday agreement. We can best meet these commitments if we explore solutions other than the backstop.

The backstop risks weakening the delicate balance embodied in the Belfast/Good Friday agreement. This was grounded in agreement, consent, and respect for minorities. Removing control of the areas of commercial and economic life of Northern Ireland to an external body, over which the people of Northern Ireland have no control, risks undermining that balance. Any deal on Brexit on 31 October must avoid the whole or just part—that is, Northern Ireland—being trapped in an arrangement where it is a rule taker.

The Government intend to set out more details on our position on an alternative to the backstop in the coming days. In the meantime, I can assure the House that under no circumstances will the UK place infrastructure, checks or controls at the border. Both sides have always been clear that the arrangements for the border must recognise the unique circumstances of the island of Ireland and, reflecting that, be creative and flexible.

The Prime Minister's European Union sherpa, David Frost, is leading a cross-government team in these detailed negotiations with Taskforce 50. We have shared in written form a series of confidential technical non-papers, which reflect the ideas the United Kingdom has been putting forward. These papers are not the Government setting out our formal position. These meetings and our sharing of confidential technical non-papers show that we are serious about getting a deal, and one that must involve the removal of the backstop".

3.20 pm

Lord Murphy of Torfaen (Lab): My Lords, if there is an ounce of truth in the reports today that the Government's technical non-paper, or indeed a real paper, dealing with the Irish border is suggesting physical infrastructure or indeed anything that currently does not exist at the border, does the Minister accept that that could compromise the Good Friday agreement, that it flies in the face of the joint declaration of 2017 and that it would break the law as outlined in Section 10(2)(b) of the European Union (Withdrawal) Act 2018? Can he categorically tell the House that no such proposals have been considered?

Lord Duncan of Springbank: My Lords, the noble Lord speaks with wisdom on this matter and brings great experience to the question. I can be categorical: there will be no infrastructure at the border. That is the policy of this Government; it continues to be that, and it will be that going forward. As for the technical non-papers, those are matters for discussion with the EU and it would be inappropriate just now to talk further on them, but this House will have ample

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opportunity in due course to examine them in the thorough and careful detail that I know it will take to do so.

Lord Bruce of Bennachie (LD): My Lords, has the Prime Minister not acknowledged that there will be physical customs posts within striking distance of both sides of the border? Would that in itself, according to the reaction that we have seen across Northern Ireland, not be deemed by most people to be incompatible with the Good Friday agreement? Could the Minister respond to the freight industry's suggestion that any such proposal would require designated routes, which clearly would require restrictions on other routes across the border and therefore would in themselves be fundamentally disruptive of free movement across the border? This is a non-paper so presumably the Government are sounding the water, but do they not recognise that what they are coming up against is that there is no Brexit arrangement that will not deeply damage the economy and security of the people of Northern Ireland and indeed of the rest of the UK as well?

Lord Duncan of Springbank: My Lords, I had the pleasure this morning of waking up to the dulcet tones of my right honourable friend the Prime Minister on the "Today" programme. When he was asked about proposing a customs border five to 10 miles back from the border, he was very clear, saying: "That's not what we are proposing at all". I reiterate the point that there will be ample opportunity to discuss this very clearly. It is very difficult to discuss a non-paper when the non-paper is not available to discuss.

Lord Hain (Lab): My Lords, given that the Government have formally and legally agreed with the EU on no border, no hard-border-related checks or controls between Ireland and Northern Ireland, preserving an all-Ireland economy and the single market, and protecting North/South co-operation as part of the new Good Friday/Belfast agreement, can the Minister explain why they appear ready to present proposals in Brussels that achieve precisely none of those objectives—including by suggesting customs checks away from the border, as I heard the Prime Minister indicate today that they would do? Surely the Government are proposing to break the law again by contravening Section 10(2)(b) of the European Union (Withdrawal) Act 2018, which specifically bans,

"border arrangements between Northern Ireland and the Republic of Ireland after exit day which feature physical infrastructure, including border posts, or checks and controls, that did not exist before exit day and are not in accordance with an agreement between the United Kingdom and the EU"?

Lord Duncan of Springbank: The noble Lord raises a point that we must be very clear in answering. My right honourable friend the Prime Minister has been very clear: there will be no infrastructure, no checks and no controls at the border, and we will be in full conformity with our obligations under the law. With regard to the comments that have been floating around today regarding the dialogue with the EU, it will be easier to have a proper discussion on this issue when those documents are in the public domain, as they will be, to facilitate that very discussion and the interrogation by the Members of this House.

Lord Empey (UUP): My Lords, we are having a debate tomorrow on the European Union. Not only do we not have a non-paper; we do not have any paper. It is very difficult to negotiate, suggest or judge if you have absolutely nothing in front of you. I appeal to the Minister to implore his colleagues that if we have a general debate tomorrow, at some point immediately thereafter—whether next week or whenever—we actually put down proposals in black and white that this House can debate and, hopefully, share with the other place. We are running around in circles and arguing over language, one thing is contradicting the other, and this merely adds to and builds up the uncertainty that is so corrosive to not only our economic but our political existence.

Lord Duncan of Springbank: My Lords, it is important to stress that this House is not itself negotiating: the UK Government are negotiating with the EU. It is important in that negotiation itself to respect the conditions of the negotiation. Equally, it will be vital for this House and the other place to fully examine that which emerges from those negotiations, as it is right and proper to do.

Lord Adonis (Lab): My Lords, will the Minister confirm the point made by my noble friend Lord Hain that any new infrastructure at or near the border would be a breach of the European Union (Withdrawal) Act 2018?

Lord Duncan of Springbank: The UK Government will not breach that Act. As I have been very clear before, the discussions that we must necessarily have as a preamble to the negotiations will be fully transparent and available to all here and in the other place to interrogate, as I am sure they will, very thoroughly.

Lord Browne of Belmont (DUP): My Lords, will the Minister confirm that it is still the Government's policy that no new border checks will take place in the Irish Sea as a consequence of any deal being reached with Europe?

Lord Duncan of Springbank: I am very happy to offer that confirmation.

Lord Wigley (PC): My Lords, is it the Government's intention that goods coming from the Republic of Ireland to the United Kingdom via Holyhead will be subject to exactly the same sort of border controls as those in Northern Ireland, or is Northern Ireland being treated differently from the rest of the United Kingdom?

Lord Duncan of Springbank: It is not the intention of this Government to have Northern Ireland treated any differently from any other part of this, our United Kingdom.

Baroness O'Loan (CB): My Lords, in a situation where there is no technology to deal with the interface between the European Union and, in this case, the

United Kingdom, and recognising as the Minister does the need for the economic interests of Northern Ireland and the Republic of Ireland to be protected, there must be a mechanism to allow manufacturing and trade to continue uninterrupted on 31 October and 1 November. Surely the Minister has to agree that, in the absence of other ideas—and we have not really heard any—the compromise must be a time-limited backstop which does not keep us in the European Union indefinitely, without any power to withdraw unilaterally? As I hope that the Minister is aware, the risk of attack on any physical structure, no matter where situated, is very high. Dissidents are still active, and the UVF on Sunday announced that it would continue to fight if the situation deteriorates further.

Lord Duncan of Springbank: The important thing to stress right now is that my right honourable friend the Prime Minister has put to the European Union, in a series of clear technical papers, different approaches that can be considered in those negotiations. He will take the full position and present that to his European Union colleagues over the weekend. Thereafter it will come to this House and the other place for a full and careful consideration.

Lord Bowness (Con): Will the Minister please explain his advice to your Lordships that we will all have plenty of time to discuss this matter? Can he explain how, if the Prime Minister comes back with a deal in the middle of October, he is going to be able to comply with the provisions of Section 13 of the European Union (Withdrawal) Act 2018 and legislate for the actual withdrawal agreement itself, without requesting an extension of time from 31 October?

Lord Duncan of Springbank: My noble friend asks an important question, to which the answer has been straightforward. It is the intention of this Government to leave the European Union on 31 October.

Lord Redesdale (LD): My Lords, like the Minister, I have got information only from Radio 4 on what is going forward, but that seems to be common parlance. Excuse my ignorance of the situation, but my understanding is that a border between two countries is set as a line. However, the Minister is indicating that there will be no checks on the border, but the border zone could be 10 miles wide.

Lord Duncan of Springbank: Again, the Prime Minister made it very clear this morning, on the show which we all tuned in to, that that is not what he is proposing at all. There will be no new infrastructure on the border. I hope the negotiations which are taking place right now will lead to a successful conclusion which can be interrogated by this House in due course.

Lord Liddle (Lab): Could the Minister confirm that the Government are abandoning the solemn commitment that they made in December 2017 to ensure regulatory alignment on the island of Ireland?

Lord Duncan of Springbank: I am happy to respond simply to the noble Lord. We will continue to meet our obligations as we have set out before this House and the other place, and we will continue to do so throughout the negotiations themselves.

Homeless People: Prevention of Deaths

Statement

3.30 pm

The Parliamentary Under-Secretary of State, Ministry of Housing, Communities and Local Government (Viscount Younger of Leckie) (Con): My Lords, with the leave of the House, I will now repeat in the form of a Statement the Answer given to an Urgent Question today by my honourable friend the Parliamentary Under-Secretary of State for Housing, Communities and Local Government in the other place. The Statement is as follows:

"Mr Speaker, let me say first and foremost that every single death on our streets is a tragedy. Today's statistics have provided us all with a stark reminder that there is so much more to be done. Every death on our streets is one too many, and this Government will work tirelessly to ensure that lives are not needlessly cut short. The fact that an estimated 726 people—mothers, fathers, siblings; all somebody's loved one—died while homeless in 2018 will concern not only every Member of this House but everyone up and down the country.

As you will know, this Government are committed to putting an end to rough sleeping by 2027 and halving it by 2022. We changed the law to help make this happen. In April 2018, the Homelessness Reduction Act—some of the most ambitious legislation in this area in decades—came into force. We now have a year's worth of evidence, which shows that more people are being supported earlier, and this is having a clear impact on the prevention of homelessness.

Last year, the Government published the first rough sleeping strategy, underpinned by £1.2 billion of funding, which laid out how we will work towards ending rough sleeping for good. Indeed, last year we reversed the trend when we saw a reduction in rough sleeping. A key element of this was the rough sleeping initiative. A total of £76 million has been invested in over 200 areas. This year, the rough sleeping initiative will fund 750 additional staff and approximately 2,600 new bed spaces.

Next year, we are going further. We will be providing a further £422 million to tackle homelessness and rough sleeping. This is a £54 million increase in funding from the previous year—a real-terms increase of 13%.

The cold weather period is a particularly difficult time for those sleeping rough, so the Government have launched a second year of the cold weather fund. We are making £10 million available to local authorities to support rough sleepers off the streets. This will build on last year's fund, which helped relieve more than 7,000 individuals from rough sleeping over the winter.

These statistics have reminded us of the fateful impact of substance and alcohol misuse. We know that the use of new psychoactive substances—so-called NPS—is rising. These are dangerous drugs with unpredictable

[Viscount Younger of Leckie]
effects and that is why it is so important that people get the support they need. In 2019, we brought forward new training for front-line staff to help them engage with and support rough sleepers under the influence of such substances, and we are working with the Home Office to ensure that rough sleepers are considered in the forthcoming alcohol strategy, which will focus on vulnerable people.

There is so much more to be done. Our work is continuing, our funding is increasing, and our determination is unfaltering. We are committed to making rough sleeping a thing of the past".

3.33 pm

Lord Kennedy of Southwark (Lab Co-op): My Lords, first, I draw to the attention of the House my relevant interest as a vice-president of the Local Government Association. I thank the Minister for repeating the answer to the Urgent Question given in the other place earlier today.

We have seen a huge rise in rough sleeping. We can see it in in every town and city in this country. This simply was not the case 10 years ago. Just look at Westminster tube station—I come in via the tube station almost every day; I have been in this House nearly 10 years—and it just was not the case. Every day now there are more and more homeless people in the tube station. It is absolutely appalling and shameful in one of the richest countries in the world.

There is the widest possible agreement—from homeless charities to the National Audit Office to cross-party Select Committees—that government policy has not helped in this respect. Today's figures from the Office for National Statistics show that 726 homeless people died last year. That is up by half in the last five years.

I have two questions for the Minister. First, does he accept that the £10 million in respect of the cold weather fund will be insufficient and that further funds will have to be provided for this fund? Secondly, will he agree to meet me and a delegation of local government leaders and charities to discuss the inadequate levels of funding being provided for the Homelessness Reduction Act? It is a good bit of legislation, but we need funds to make it work.

Viscount Younger of Leckie: I agree with the noble Lord, Lord Kennedy, and the rest of the House that one death in this way is one too many. I am very sorry to report that there was one further death in Wiltshire last night, which noble Lords may have heard of.

I will answer the noble Lord's two questions. First, on the £10 million, we believe that this is enough; clearly this is such a serious matter that we will keep this very much under review, but this is a figure that has taken account of the statistics. Secondly, of course I would be very pleased to meet the noble Lord and anybody else he cared to bring along to discuss the level of funding for this important matter.

Baroness Pinnock (LD): My Lords, I draw the House's attention to my local government interests. While the Minister has used the example of the Homelessness Reduction Act as being a good start, which I would agree with, the Government nevertheless have failed to repeal the Vagrancy Act, a nearly 200-year-old Act, which is still being used by police forces up and down the country to remove rough sleepers from the streets. In March 2019 the Ministry of Justice reported that, between 2014 and 2017, 6,518 people were found guilty under the Vagrancy Act. Does the Minister agree that the Act ought to be repealed at the earliest opportunity?

Viscount Younger of Leckie: This matter has not particularly come up in my brief. It was discussed, but I do not agree with it. Having said that, the noble Baroness has raised an issue that I will certainly take back and consider. As she will know, of course we are talking about deaths here rather than pure homelessness. Homelessness is bad enough in itself, but, as has been mentioned, the reasons for the deaths are based largely —52%—on drug misuse and alcohol misuse, and this is an area that I think we urgently need to look at. We are already, and have been for some time, in touch with the Department of Health and Social Care and also the DWP. This, I think, is the real essence of the problem.

Lord Young of Cookham (Con): My Lords, I welcome the extra £54 million in last month's spending review to combat rough sleeping and homelessness, particularly as there is strong evidence that, where the resources of the RSI have been focused, rough sleeping has fallen much faster than elsewhere. If we are to make further progress in tackling rough sleeping, particularly among single people, I ask my noble friend to ensure that the local housing allowances are reviewed so that single people who are threatened with homelessness can find suitable, affordable accommodation in the area.

Viscount Younger of Leckie: I thank my noble friend for that. I believe that he raised this in a debate, I think last week. It is clearly a matter of concern to him, and also to us. I will take this matter back to the Treasury, and no doubt it will be put into the melting pot, as it were, for the next round.

The Earl of Listowel (CB): My Lords, the Government recognise in their strategy that 10% of rough sleepers in London come from a background of local authority care and they have set aside money for personal advisers to support young people leaving care who are at risk of rough sleeping and homelessness so that they do not arrive at that stage. But recent reports have highlighted that local authorities are under such pressure that too often young people leaving care are placed in supported accommodation that is often anything but that. Can the Minister tell the House how effective the Government's strategy has been so far in reducing the percentage of rough sleepers who come from a background of local authority care?

Viscount Younger of Leckie: The noble Earl makes a good point. It is very important that we have skilled people on the ground, because the only way to help people is to go to them individually, find out what

their problems are and help them. To answer the noble Earl's question, the number of households in temporary accommodation has increased by 5%. Good work is being done to take people off the streets and put them into temporary accommodation. The figure is actually 84,740—up from 80,720 at the end of March last year. It is small progress, but at least it is progress.

Lord Rooker (Lab): I do not have anything to declare, other than the period of 2003-05 when I had ministerial responsibility for this area. I inherited from my noble friend Lady Armstrong the scheme put together by Louise Casey that, between 1997 and 2010, led to the virtual elimination of rough sleeping in a very technical, measured, practical way, which I saw working at first hand over those couple of years. Can the Minister say whether all the new things he has just read out, with extra money for this, that and the other, will put the resource level back to what it was in 2010?

Viscount Younger of Leckie: I do not believe so. I take note of what the noble Lord said about his experience, but I do think that, putting aside these tragic deaths, because that is the focus of the Question, the rough sleeping initiative is showing some success in terms of homelessness itself. As I said, in 2018, the annual rough sleeping snapshot recorded a 19% reduction in rough sleeping since 2017, but as I also said, there is much work to be done. This is a really serious issue and we can see it ourselves outside Westminster tube and beyond.

Lord Roberts of Llandudno (LD): Does the Minister agree that we owe a great debt to the many voluntary organisations that are filling the gap that the Government are unable to fill? I have a link with the Whitechapel Mission. Last year it served 100,000 breakfasts. They are tremendous people and we say thank you to them, wherever they are, whatever they do.

The Minister praised the reduction in the number of rough sleepers in the last year. That total is 80 out of more than 8,000. It is not something we can be proud of. Today's figure, which has been referred to already, is that we are worse off than we were in 2010. The Government's strategy certainly is not generous enough to meet the needs of so many people, especially as the winter is coming on. For instance, I speak to people at these various places and they say, "Yes, we can provide breakfasts, showers and clothing, but we can't provide beds". I know that one particular part of London that used to have 37 places—I think I have the correct figure—where people who wanted to sleep could do so has had that reduced to two. I ask the Minister to do something to reverse this trend instead of just praising ourselves for something that just is not true.

Viscount Younger of Leckie: It is important to be clear on the facts. A reduction is still a reduction, but I am also very clear about the challenges we have. There is no question of pulling the wool over anybody's eyes about this. I think the noble Lord is being far too pessimistic, because the rough sleeping initiative investment for 2019-20 is estimated to deliver 750 staff on the ground, providing more than 2,600 bed spaces this year. That has not happened before and I think the noble Lord should be a little more generous in acknowledging that. I finish by saying that I too pay tribute to the number of local charities that help in this very difficult area, often working through the night.

Newcastle Upon Tyne, North Tyneside and Northumberland Combined Authority (Adult Education Functions) Order 2019

Motion to Approve

3.44 pm

Moved by ***Lord Agnew of Oulton***

That the draft Order laid before the House on 22 July be approved.

The Parliamentary Under-Secretary of State, Department for Education (Lord Agnew of Oulton) (Con): My Lords, this order will provide for the transfer of certain adult education functions and associated adult education budget to the combined authority and provides an opportunity for it to help its residents to reach their potential in life and contribute to the growth of the region.

As noble Lords will be aware, six orders are already in force in relation to the combined authorities of Greater Manchester, Liverpool City Region, West of England, West Midlands, Tees Valley and Cambridgeshire and Peterborough, for the academic year 2019-20. In 2018, a devolution deal was agreed between the Government and this combined authority. We made the commitment to fully devolve the adult education budget. This order will deliver on that commitment.

The order is made under the Local Democracy, Economic Development and Construction Act 2009 and will transfer certain adult education functions of the Secretary of State, which are set out in the Apprenticeships, Skills, Children and Learning Act 2009, to the combined authority for the academic year 2020-21 and thereafter. This transfer does not include the functions in so far as they relate to apprenticeships or those subject to adult detention.

Across England, the adult education budget, as part of the adult skills system, seeks to improve productivity, employment and social inclusion. It provides vital support to help adults, including those furthest from learning and the labour market, gain the skills they need for work, an apprenticeship or further learning. From August of this year, approximately 50% of the AEB has now been devolved to six combined authorities and delegated to the Mayor of London under separate powers.

The AEB supports three legal entitlements to full funding for eligible adult learners aged 19-plus, without the equivalent of a GCSE pass in English and/or maths and for young people aged 19 to 23 without a first full level 2 or first full level 3. The funding enables

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most flexible tailored programmes of learning to be made available to help eligible learners engage in learning, build confidence and/or enhance their wellbeing.

People are working longer. The OECD has reported that the average age of exit from the labour market is at its highest since 1970. Automation and technological change will increasingly change sectors and occupations. As people work longer and jobs change, they need to be able to adapt to changes in the labour market in order to stay and progress in employment. This means that the adult skills and lifelong learning education or training that people undertake once they leave formal full-time education becomes more and more important.

Post-16 education plays a crucial part in supporting future economic growth. In respect of leaving the EU, it is important that our homegrown workforce is skilled and able to make the most of the new opportunities that come our way. Devolution of the relevant functions and the associated adult education budget forms a key part of these reforms.

The Government are committed to ensuring that local areas have an active role in shaping the skills provision that is available in their area in order to meet their specific local economic challenges. In particular, departments across government, including the Department for Education, are working with the combined authorities and local enterprise partnerships covering England to help them develop their local industrial strategies. This has allowed us to prioritise the support required in their local economies, including adult skills and lifelong learning.

The DfE has set out expectations for local skills advisory panels behind local industrial strategies to ensure they are informed by robust skills needs analysis. SAPs aim to bring together local employers and skills providers, including colleges, independent training providers and universities, to influence local skills provision by providing high-quality analysis of local labour markets.

The order will transfer certain adult education functions of the Secretary of State in the Apprenticeships Skills, Children and Learning Act 2009 to the combined authority in relation to its area and enable the transfer of the relevant part of the AEB to the combined authority. In particular, the following functions will be exercisable by the combined authority instead of by the Secretary of State in relation to its area: Section 86, which relates to education and training for persons aged 19 or over; Section 87, which relates to learning aims for such persons and provision of facilities; and Section 88, which relates to the payment of tuition fees for such persons.

Conditions are set with relation to the transferred functions; in particular, that the combined authority must have regard to guidance issued by the Secretary of State and must adopt eligibility rules in accordance with any direction of the Secretary of State.

The DfE will transfer the relevant part of the AEB to the combined authority to undertake the functions. It will be the combined authority's responsibility to manage the overall AEB allocation efficiently and effectively to ensure that it delivers for local residents. Prior to this, the department has considered a business case from the combined authority for implementation funding in preparation for the transfer of functions. Through evaluation of the case, the department has agreed to provide appropriate implementation funding to support the combined authority's preparations and ensure that they can effectively prepare taking on those functions.

From academic year 2020-21, the combined authority will be responsible for providing funding for statutory entitlements for eligible learners in maths and English, up to and including level 2; first full level 2, which is learners aged 19 to 23; first full level 3 qualification—that is, learners aged 19 to 23—and the forthcoming digital skills entitlement. The combined authority will be able to shape the adult education provision that is available to its residents and ensure that the provision best meets local needs.

We talk about the northern powerhouse, and I think we can agree that skills is an essential driver for economic growth in any region. Devolution gives the combined authority the opportunity to address the skills challenges that it faces and to enhance economic growth in its area. The economy of the combined authority is founded on a strong tradition in manufacturing and engineering excellence. Although there has been a transition to a predominantly service-based economy, manufacturing continues to play an important role in both employment and defining the ongoing characteristics of communities. The scale of the challenges faced by the combined authority is significant, most particularly consistently higher unemployment than the national average, lower productivity than the national average, social inequality with pockets of deprivation and a lack of job opportunities in some areas.

Through the order, the combined authority can deliver a step change as part of its strategic skills plan by offering a second chance to learners aged 19 to 23 through first full level 3 academic or vocational programmes and by commissioning providers to deliver a curriculum mix that reflects the changing nature of the local economy and the skills needs in the area, including job vacancy-led programmes. Without this order, the combined authority would be much more limited in how it could address such challenges for its residents and bring about greater prosperity in its region. I beg to move.

Lord Beecham (Lab): My Lords, I refer to my interests as a Newcastle city councillor and as a vice-president of the Local Government Association.

For an area such as the north-east, with high levels of unemployment, enhancing the availability of adult education is an important objective. The more our residents acquire skills and education, the greater will be their confidence and that of employers in the region or those contemplating investing in it.

It is a matter of regret that this order is confined to the three North of Tyne authorities, given in particular the proximity of Gateshead and South Tyneside—that is not a choice of government; it is unfortunately a factor in the local government world of the north-east. Ideally, the authority should include the whole north-east

region, sharing as it does many of the same needs, not least given the likely impact of Brexit should we be unfortunate enough to suffer the Prime Minister's resolve to leave without the deal that he purports to be pursuing.

The current adult education budget for the authorities concerned is £22.7 million. Do the Government envisage increasing that budget and, if so, by how much and over what period? How does it compare per capita with other combined authorities or other individual local authorities providing adult education?

The North of Tyne Combined Authority intends to use the opportunity to make its own decisions in targeting resources and providing its residents,

"with the skills, education and confidence to benefit from the opportunities that will follow".

Drawing on the adult education budget, it aims to drive up educational standards by working with post-16 pupils and skills and training providers, and it sees it contributing to the north-east strategic plan and the local industrial strategy.

The combined authority has developed a strategic skills plan and is engaging with the providers of adult education. It has declared its expectation that providers will develop the curriculum and support they offer and focus on learning progression. The combined authority would like to see the Government go further, with a commitment to devolve other functions, especially an educational achievement challenge for the area, as exemplified in London between and 2003 and 2011. Perhaps the noble Lord will indicate whether that is something he would regard as worth pursuing.

The combined authority also seeks greater flexibility in the local provision of skills for residents and businesses. Will the Minister look sympathetically into these suggestions? Can he confirm that budgets will be maintained or, even better, enhanced, given the needs of the area, and will capital funding be protected or enhanced? Will the apprenticeship levy be reformed with a view to regional oversight of a more flexible skills levy?

Important though the provisions of this order are, we must not forget the enormous pressure our schools are under following years of cuts and the effective displacement of local authorities from the provision of the education service, and the enhanced role for academies, many of which have proved to fail their pupils and the communities they were supposed to serve. This was highlighted for me earlier this year when I approached a school in the ward I represent on the city council about a possible grant from a local charity. Expecting a request for something extra, I was dismayed by a request with which to buy books.

School budgets are under enormous pressure, as are staff members. The ratio of staff to pupil numbers has fallen, the proportion of staff making it to retirement has halved and working hours have lengthened. In Newcastle, in the period 2015 to 2019, 74 schools out of 85 have suffered cuts to per-pupil funding of £24.4 million, or a loss per-pupil average of £259. Unaccountable academies, many of which have failed abysmally, dominate the provision of the service in the area.

Welcome though the provisions of this order are, the Government have failed for nearly a decade to protect a key service—key to the life chances of our children and to the future of our economy and our country. Adult education should not be seen as a means of repairing the failings of an underfunded and overstretched school system. Having said that, I repeat the welcome for this provision, but it has to be seen in the context in which it takes place.

Lord Beith (LD): My Lords, I support this order but, as has been indicated by the speech your Lordships have just heard, it is founded on a far-from-ideal devolution scheme for Northumberland, Newcastle and North Tyneside. It was a scheme with the wrong boundaries, because it excluded Gateshead and South Tyneside. It had the wrong name; it was referred to, not even colloquially but officially, as North of Tyne, when two of the main towns in Northumberland are south of the Tyne—Hexham and Prudhoe. It came with an unwanted elected mayor, which was a price that Cornwall did not have to pay but we did in order to get any devolution at all. But it is what we have, and I hope that the additional control of resources for FE, which this order provides, will be put to good use.

I want to refer to the basic problem for rural and remote areas. Colleges, the main centres, are concentrated in the south-east of the combined authority's area, in Newcastle, Tyneside and Ashington. There is some FE provision in Berwick, in Hexham and at Kirkley Hall—where my son was an agriculture student. Berwick also has provision in areas, for example, related to the construction industry and in hairdressing, and there are now new initiatives for the performing arts centred on the Maltings theatre in Berwick. But for so many other courses, a 50 or 60-mile journey each way is a severe disadvantage and deterrent to taking part in further education. That is what students in Berwick or Bellingham face to get to Northumberland College or Newcastle College. Northumberland College has now merged with Sunderland College, which, of course, is outside the area—a merger that was pressed upon it by Ofsted in its very critical report.

A few years ago, the Liberal Democrat administration in Northumberland introduced free transport to Newcastle College, which was ended when Labour took over. I am glad to say that it has been reintroduced in a form by the current administration. This has led to a sevenfold increase in travel to further education on public transport. However, it is a scheme with limitations because there is a requirement to go to the nearest college. That does not really make sense if you can go to Newcastle in 45 minutes on the train or, slightly nearer, Ashington in about three hours by a series of buses. I also point out that Northumberland College does not offer A-levels or GCSEs at all, so a student needing A-levels not provided locally in order to get into higher education has to go to a more distant college.

These examples illustrate my concern that the combined authority, with its enhanced control of resources, must put behind it the competition and rivalry between neighbouring authorities and neighbouring colleges and set out to provide boundary-free access to further education, with particular regard to the transport needs of those in rural areas and more distant parts of

[Lord Beith]
its area. That should also include cross-border transport to Scottish institutions such as Borders College, which is much nearer to those in the north of Northumberland. There are serious inequalities in access between rural areas and the urban south-east of the area which need to be addressed by the combined authority.

The Explanatory Memorandum points out, at paragraph 14.1, that the authority has to engage in,
"an extensive programme of monitoring and evaluation",
which has to be agreed with Ministers. Has that programme yet been agreed by the Government, and if it has not, will it soon be agreed, and will it involve the department making sure that rural needs are addressed?

I support the order, but I want to make sure its powers are used to tackle the weaknesses in our present FE provision and in access to it.

4 pm

Baroness Garden of Frognal (LD): My Lords, I thank the noble Lord for introducing this order, which, as we have heard, provides for a number of adult education functions to be transferred from the Secretary of State to the Newcastle Upon Tyne, Tyneside and Northumberland Combined Authority, the name of which, as we heard from my noble friend, has been shortened to the North Tyne Authority, which is much less of a mouthful. It will operate from the 2020-21 academic year onwards. These functions relate to education and training for persons aged 19 or over; to learning aims for such persons and provision of facilities; and to the payment of their tuition fees. The exceptions are in relation to apprenticeship training or a person subject to adult detention. Will the noble Lord clarify why apprenticeships are not included, and who will have responsibility for the education of those in adult detention?

We can all agree with and support the function to encourage education and training for persons aged 19 or over, and the Liberal Democrats supported the creation of this new authority, although we regretted that the four councils south of the Tyne refused to take part. There are powerful combined authorities elsewhere across the north of England that have mayors. They give focus to strategic planning and to the delivery of growth, jobs, higher education and skills standards. The Minister has named those combined authorities.

We support the order and welcome the devolution of functions to local areas, away from central departments. This will allow the combined authority to support the skills that are needed in the local area and ensure that they are appropriate for the local economy, because, in addition to general skills, many parts of the country have local skills, often craft skills which should be encouraged, particularly where they draw local young people into continuing skills which might otherwise be lost. I do not know exactly what these would be in this area, but I think of such things as papermaking, basket weaving, glass-blowing and watchmaking, all of which have small numbers who keep long-standing crafts alive. At a recent Craft All-Party Parliamentary Group, we had demonstrations of these, along with neon light making. Local crafts for local jobs are an important part of the economy, as well as being important for our heritage.

How much funding will be allocated, and how does this compare with government funding for further education colleges more generally? How will more training and education be encouraged? How will the combined authority be held accountable for the functions that are being devolved? As my noble friend set out so clearly, this is an area with huge transport problems. Given those transport shortages and the long journeys students often have to make, what provision will the Government make to help with transport costs? I welcome the consultation that took place locally on the content of the order, I look forward to the Minister's reply, and I wish the order well.

Lord Watson of Invergowrie (Lab): I thank the Minister for introducing this order. As he said, it is of course similar to orders relating to six other combined authorities which we considered in your Lordships' House almost exactly a year ago. I do not intend to repeat what I said then—at least, not at the same length. I will repeat, however, that the devolution of powers and funding for adult education that this order introduces are welcome. I very much hope that it enhances the provision of adult education in the north-east.

I thank my noble friend Lord Beecham for his local knowledge and for setting out the region's funding cuts—sustained over the past decade—and what the new combined authority will face as a result. Much effective adult education provision is delivered locally, in line with the needs of communities. As the accompanying Explanatory Memorandum states, the transfer of those functions will assist in providing local areas with a role in,
"managing and shaping their own economic prosperity".

Spending on education and adult learning needs to be seen as an investment for the long term. To achieve a sustainable supply of skills with the flexibility needed to meet the ever-evolving needs of business, industry and the public sector, the UK must maximise the potential of its existing workforce. That means that all adults of working age, whatever their background or location, need every opportunity to upskill and/or reskill. Learning and earning will make the biggest and quickest difference for the learners themselves, to their families and to the communities they live in, as well as to employers and the wider economy itself.

A year ago, I referred to the possible unintended consequences of this transition from centralised to devolved funding. I highlighted the case of the Workers' Educational Association, a long-established and hugely respected organisation of 116 years' standing and the UK's largest voluntary sector provider of adult education. I said then and I repeat now that I need to declare an interest of sorts, as the WEA was my first employer after leaving university. More than 25% of the WEA's 48,000 students are in the combined authority areas, and many of them are from deprived communities that are furthest from the labour market. The devolution of funding could have the unintended consequence of diminishing this provision rather than enhancing it.

In last year's debate, the Minister recognised the work being done by the WEA and stated that it,
"has a major role to play in delivering adult education and fostering a culture of lifelong adult learning … It is vital that providers such as the WEA make contact with the MCAs"—

the combined authorities—

"and support them so that the local economy and workforce have the skills and expertise that they need for the future. We have provided some guidance to the MCAs for the transitional years".—[*Official Report*, 24/10/18; col. GC 85.]

I regret to say that, one year on, some of the WEA's fears have been confirmed. The organisation has adapted to the new landscape by securing grants and contracts in most devolved areas, though this has not been without the loss of provision in several areas either because it was unsuccessful in its bids or the new contracts did not support the same range of provision as the organisation previously delivered. As a national provider delivering locally, it remains in a difficult position, seeking multiple grants and contracts against different criteria, often on a year-by-year basis. It should surely be of benefit to combined authorities to acknowledge the level and impact of existing national provision in their area, not only as regards the WEA, and to seek a degree of continuity and gradual transition. It would help if the Government too acknowledged the role of national providers, thus safeguarding against the unintended consequence of destabilising provision, which is already having an impact on local authorities.

I want to raise a matter relating to the Explanatory Memorandum. Paragraph 12.1, under the heading "Impact", states that:

"There is no significant impact on business, charities or voluntary bodies".

It would be helpful—indeed instructive—if the Minister were to explain how such a statement could be included when, in paragraph 10.1, the memorandum states that no consultation was carried out. On what basis was it therefore determined that there was,

"no significant impact on business, charities or voluntary bodies"?

I ask this because the WEA is one of Britain's biggest charities and a voluntary body. It was not asked what the likely impact would be, although of course it made its representations and concerns known to the DfE in advance of the orders introduced last year. It is clear that the impact of this and the previous orders is certainly "significant" as regards its ability to continue its established delivery of adult education.

The meaning of "significant" is of course subjective. Can the Minister say whether his officials assessed the effect on providers such as the WEA and deemed that effect to be not significant? If so, we should be told what criteria were used and at what level the impact would have been deemed significant. I do not expect him to provide these answers today, but I ask him to write to me setting out explanations. For devolution to be fully effective, support must be offered to the full range of providers—local and national—especially those already working with the most disadvantaged.

As the Open University has reported, the real casualties from the 2012 funding changes in higher education have been part-time students in England, whose numbers have since dropped by around 60%. Those who have been most deterred from study by the trebling of tuition fees are not those aged 18 entering full-time higher education but older, especially disadvantaged, students. It is apparent that the biggest reason for the decline is the fees and funding policy in England because the scale of the decline in England, where tuition fees are much higher, is two and a half times greater than in other parts of the UK.

The key question regarding the future delivery of adult education concerns how much funding will transfer and how that will affect the ability of the combined authorities to deliver a full provision. The transitional funding in preparation for the full implementation of this order is not clear. The Minister said there was £6 million available in funding for the six combined authorities that were the subject of orders last year for 2019-20 and 2020-21, funded nationally by the Education and Skills Funding Agency. The combined authority for the north-east opted to begin its transition from academic year 2020-21, so will it also receive transitional funding for two years, including for 2021-22? How much will be made available annually?

The spending review announced £400 million for further education, which was widely welcomed within a sector that had been starved of adequate funding over the previous decade. Yesterday we had the unexpected announcement by the Secretary of State of £120 million for eight new institutes of technology. That was without consultation with the FE sector, which is already performing much of what he seems to envisage, so why reinvent the wheel? Simply fund FE colleges adequately and they will do the job that is necessary. But I am afraid that we now seem to have a rather macho Secretary of State who thinks that the role of a Cabinet Minister is not demanding enough, so he has abolished the post of Minister of State for Apprenticeships and Skills and subsumed that remit within his own. I have never been a Cabinet Minister but I am fairly confident that it is a full-time job. I am equally confident that any previous Minister of State for Apprenticeships and Skills would contend that that too is a full-time job. To downgrade that post and bury it within the Secretary of State's own portfolio demeans the importance of the skills agenda and the need to expand it, rather than the opposite. Labour will certainly reinstate the Minister of State post, while ensuring that apprenticeships and skills have the funding and the direction needed to play their part in building the economy that the country needs.

I may have departed somewhat from the order, but my final remarks are directly related to the devolution of adult education functions. The last thing required is mixed messages about how we ensure that we provide for the sustainable supply of flexible skills to which I referred earlier. This order is one part of the jigsaw, which is why we welcome it, but much more needs to be done.

Lord Agnew of Oulton: My Lords, I thank all noble Lords for their contributions to this discussion on the statutory instrument. I will endeavour to answer as many of the questions as I can.

The noble Lord, Lord Beecham, asked a number of questions on the size of the combined authority region itself. This came out of the devolution deal that was agreed in that part of the country. I am not familiar with the local politics in that part of the world, but there are some fairly fierce rivalries, and the area that we ended up with was about as good as could be

[Lord Agnew of Oulton]
created at the time. On the size of the allocated funding for this region and the plans for the future, that will be part of the spending review, and the details will be announced once we are aware of them ourselves. On the devolution of other functions, we are very much taking an incremental approach. We want to make sure that the functions we have devolved are improved upon, and if local authorities or combined authorities prove that they are good at it, I am sure that we will have a debate about whether more can move in the future. However, at this stage, we want to make this work.

The same applies to the apprenticeship levy, which will maintain as a central function. To answer the noble Baroness, Lady Garden, because this is a relatively new and very profound change to the way apprenticeships work, we wanted to make sure that it was run centrally until we had ironed out all the glitches. Again, I am sure that this will come up for discussion in the future.

On schools funding, I take issue with the noble Lord, Lord Beecham, on his rather gloomy view of the position. As I am sure he is aware, we announced a dramatic increase in schools funding only a few weeks ago of some £14 billion over the next three years—which I think is one of the largest single uplifts in funding for 10 or 15 years. That is before we take into account another £4.5 billion which is going into the teachers' pension scheme contributions for schools.

I should be very happy to look at the case of the individual school to which the noble Lord referred, which claimed that it could not afford adequate books for its pupils. As the Minister responsible for academies, I spend a great deal of time ensuring that schools are run properly, and perhaps may be able to shine a light on any issues in that particular school. The noble Lord is also somewhat unenthusiastic about academies. There have indeed been failures there, but it is worth reminding the House that the whole point of academies was to tackle entrenched underperformance in local authority schools that often had gone on for 10 or 20 years. Indeed, schools that I took over from the local authority where my academy trust operated had been failing for 15 or 20 years. In the academies programme, we move much more quickly if the academy trust proves unable to sort out the challenges that it undertook in the first place.

4.15 pm

Noble Lords will be aware of opportunity areas, and in this region we have recently created one called Opportunity North East. Again, the geography does not overlap exactly, but it certainly includes some of the areas to which the noble Lord referred. I chair the board of that initiative, and we are focusing on about 30 underperforming schools in the region, bringing together through the local board, which is assisting us, all the local voices—the LEPs, two universities and local employers—to try to deal with some of the bigger issues that sit outside this statutory instrument.

Turning to the concerns of the noble Lord, Lord Beith, about the remoteness of this area, I am certainly sympathetic. Where I live, my nearest motorway is in Holland, so I know a little about remoteness. It might be worth reminding him that this is specifically about the adult education budget; it does not relate to young people. I think older people are able to travel. I accept that they will not necessarily be well-off, but they are more likely to have cars and other available transport. I certainly take on board his concern about rural isolation and people's ability to participate in adult education.

To answer the noble Baroness, Lady Garden, I think I have addressed the matter of apprenticeships, but in terms of the accountability of combined authorities for their performance, we have issued guidance of which they must take notice. If it becomes apparent that a combined authority is not properly exercising its transferred functions, it may be appropriate for the guidance to be amended or supplemented. If there is evidence of underperformance that fails to comply with best value, under the exercise of the transferred functions the Secretary of State for Housing, Communities and Local Government has powers to act. We will certainly not tolerate it if combined authorities misuse their devolved powers. The whole thrust of this is to empower local authorities and give them the opportunity to do the job better than it has been done historically.

The noble Lord, Lord Watson, raised an issue close to his heart: the WEAs. I certainly make an offer to him which he can to take to them: if they have experienced particular difficulties in any of the regions that we dealt with last year where they feel that they have not had a fair hearing, if they write to me, I will certainly follow up on that. I am pleased to hear that they are making progress. I accept that it will probably be frustrating, because they are now having to deal with several different organisations where it would have been simpler in the past, but I hope that they will persevere and I am confident that they will make an ongoing contribution.

The noble Lord was concerned about the downgrading of the skills agenda in the department by the Secretary of State. To defend my Secretary of State, it was not his decision that a Minister was moved from the department to another part of government, but I would take a more "glass half full" approach, which is that it is because he believes it is such an important area that he has taken on a lot of the responsibility himself. I have also been given the oversight of the financial performance of further education colleges, so I am learning on that brief, too, but I assure the noble Lord that it is an extremely important part of our remit. As someone who never went to university, I know how important these colleges are for the education of young people.

Lord Watson of Invergowrie: I am intrigued by the noble Lord's comments. I unreservedly withdraw any suggestion that the Secretary of State might be acting in a macho manner—but it seems that somebody was. Can he enlighten us as to whose decision it was? If it was not the Prime Minister, my adjective might remain appropriate.

Lord Agnew of Oulton: I am afraid I am going to have to disappoint the noble Lord. Those decisions were taken above my pay grade. I can assure him that

the further education brief is given full support and impact in the department. I will need to write to the noble Lord on some of his more technical questions around transitional funding and so on, but I will be very happy to do that. We will continue with a watching brief on how this devolution is rolling out.

I reiterate that the order needs to be introduced to allow the combined authority to work with providers to tailor adult education provision for the academic year 2020-21. It will give residents the opportunity to reach their potential, improve their earnings and gain progression, and it will allow the system to deliver in a more flexible and responsive way and have the agility required to sustain a flexible economy. I commend the order to the House.

Motion agreed.

Terrorism Act 2000 (Proscribed Organisations) (Amendment) (No. 2) Order 2019

Motion to Approve

4.20 pm

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

That the draft Order laid before the House on 22 July be approved.

The Minister of State, Home Office (Baroness Williams of Trafford) (Con): My Lords, the Libyan Islamic Fighting Group—LIFG—was established in the early 1990s and aimed to replace the Gaddafi regime with a hard-line Islamist theocracy. The group mounted a terrorist campaign inside Libya in the mid-1990s, including a 1996 attempt to assassinate Muammur Gaddafi, before becoming part of the wider global Islamist extremist movement in the 2000s.

In 2008, the group formally merged with al-Qaeda. The LIFG has been proscribed as a terrorist organisation in the UK since October 2005. That decision was taken after extensive consideration and in light of a full assessment of available information, and was approved by Parliament. It is clear that the LIFG was concerned in terrorism at that time.

However, the group announced that it was disbanding in 2010. Some of its former members continued to be involved in terrorism, aligned to other groups, or have been involved in fighting since the 2011 Libyan revolution. Some are now involved in more moderate pursuits, such as mainstream Libyan politics or everyday occupations. The LIFG is now assessed to be defunct and no longer exists.

Under Section 3 of the Terrorism Act 2000 the Home Secretary has the power to remove an organisation from the list of proscribed organisations if she believes it no longer meets the statutory test for proscription. Having reviewed the information available about the current activities of the LIFG, after careful consideration the Home Secretary has concluded that there is now not sufficient evidence to support a reasonable belief that the LIFG is currently concerned in terrorism, as defined by Section 3(5) of the Terrorism Act 2000.

Accordingly, the Home Secretary has brought this order before the House and, if approved, this means that being a member of, or providing support to, this organisation will cease to be a criminal offence on the day that the order comes into force. The decision to deproscribe the LIFG was taken after extensive consideration and in light of a full assessment of available information.

As noble Lords will appreciate, it would not be appropriate for us to discuss any specific intelligence that informed the decision-making process. The Government do not condone any terrorist activity. Deproscription of a proscribed group should not be interpreted as condoning any previous activities of this group.

The British Government have always been clear that the LIFG was a brutal terrorist organisation when it existed. Groups that do not meet the threshold for proscription are not free to spread hatred, fund terrorist activity and incite violence as they please. The police have comprehensive powers to take action against individuals under criminal law. We are determined to detect and disrupt all terrorist threats, whether homegrown or international. Proscription is but one tool in the considerable armoury at the disposal of the Government, the police and the Security Service to disrupt terrorist activity.

The Government continue to exercise the proscription power in a proportionate manner in accordance with the law. We recognise that proscription potentially interferes with an individual's rights—in particular, the rights protected by Articles 10 and 11 of the European Convention on Human Rights on freedom of expression and freedom of association—and so should be exercised only where absolutely necessary. A decision to deproscribe is taken only after great care and consideration of the case, and it is appropriate that it must be approved by both Houses. If agreed, the order will come into force the day after the debate in the other place. I beg to move.

Lord Paddick (LD): My Lords, I thank the Minister for explaining the order, but I am a little confused. The Explanatory Memorandum accompanying the order states that in January 2019 an application was made to the Secretary of State for the deproscription of the Libyan Islamic Fighting Group—the LIFG. It also says:

"The Proscription Review Group (PRG), a cross-Government group … makes recommendations and provides advice … on the implementation of the proscription regime including the case for proscription and consideration of deproscription applications … The PRG",

as the Minister has just said,

"has assessed that the group is now defunct and no longer exists".

What is not clear to me, even after what the Minister has said, is who made the application for the deproscription.

We discussed the proscription of terrorist organisations at length during the passage of the Counter-Terrorism and Border Security Bill in December last year. We learned that very few organisations have applied to be deproscribed, not least because it is very expensive.

[Lord Paddick]
In one case that was referred to during that debate, apparently it cost £300,000 to secure deproscription. Presumably in this case the application was not made by the LIFG, a defunct organisation that no longer exists.

During the debate on the Counter-Terrorism and Border Security Bill, the noble Lord, Lord Anderson of Ipswich, attempted to reinstate and put on a statutory basis an annual review of the activities of proscribed organisations—something that apparently had happened routinely until four or five years ago—and the deproscription of those lacking a statutory basis for continued listing. Have the Government adopted the recommendation of the noble Lord, Lord Anderson, at least to the extent that they are now reviewing proscribed organisations to establish whether they meet the statutory requirement for proscription? If so, during that debate the noble Lord, Lord Anderson, also said that at least 14 of the 74 organisations proscribed under the Terrorism Act 2000, not including 14 Northern Ireland groups, are not concerned in terrorism and therefore do not meet the minimum statutory condition for proscription. If there has been a government review resulting in the proposed deproscription of this organisation, when will the other organisations to which the noble Lord, Lord Anderson, referred be deproscribed? I look forward to the Minister's response.

Lord Kennedy of Southwark (Lab Co-op): My Lords, the noble Lord, Lord Paddick, has largely raised all the points that I was going to refer to, so I will not detain the House for long. However, I was surprised about the application and just want to ask about a couple of further points.

First, what happens if this group, which we are told is defunct and no longer exists, reappears? Secondly, are any frozen assets held in the UK at present and, if so, will it be possible for them to be unfrozen and for people to get their hands on them? I would be very interested in hearing the answers to those two points and those raised by the noble Lord, Lord Paddick. With that, I will not detain the House further.

Baroness Williams of Trafford: I thank both noble Lords for their questions. To the best of my knowledge, who made the application for deproscription is not in the public domain. The law states that applications can be made by proscribed organisations or an individual affected by the group being proscribed.

The noble Lord, Lord Paddick, talked about cost. The cost of an initial application is only the cost of making an application. I think that the noble Lord is referring to the cost of an appeal. He also talked about the annual review. It was not put in the final Act brought before Parliament, but the Home Secretary keeps consideration under regular review. I am sorry to say that we do not comment on which organisations are being considered for asset freezes.

Motion agreed.

Legal Aid, Sentencing and Punishment of Offenders Act 2012 (Legal Aid for Separated Children) (Miscellaneous Amendments) Order 2019

Motion to Approve

4.31 pm

Moved by ***Lord Keen of Elie***

That the draft Order laid before the House on 22 July be approved.

The Advocate-General for Scotland (Lord Keen of Elie) (Con): This draft instrument makes provision for separated migrant children to be eligible for legal aid for civil legal services for non-asylum immigration and citizenship matters. This is important legislation that ensures access to justice for these vulnerable children.

For noble Lords not familiar with its provision, legal aid for civil legal services is available to an individual if the service is in scope—in other words, if it is described in Part 1 of Schedule 1 to the Legal Aid, Sentencing and Punishment of Offenders Act. In addition, legal aid may be available on an exceptional basis where there would be a breach or risk of a breach of the individual's rights under the European Convention on Human Rights or any enforceable EU rights. This is known as exceptional case funding or ECF. For in-scope matters and ECF, legal aid eligibility is subject to statutory means and merits assessments.

Under current arrangements, separated migrant children seeking to regularise their immigration or citizenship status in the United Kingdom can apply for exceptional case funding to receive legal aid for help with their citizenship application, immigration application form or subsequent appeal. Following litigation and engagement with key stakeholders including the Children's Society, this draft instrument will bring these matters into the scope of legal aid. This means that separated migrant children will no longer have to make ECF applications to receive legal aid for citizenship and non-asylum immigration matters.

I turn to the scope of the amendment. Officials have been working closely with other government departments and children's charities to finalise the terms of the amendment since 2018. The amendment makes provision for separated migrant children to be eligible for civil legal services in relation to their immigration applications for entry clearance, leave to enter and leave to remain in the United Kingdom under the Immigration Rules. The amendment also provides civil legal services in relation to separated migrant children's immigration applications for leave to remain where that application is made and determined outside of the Immigration Rules. This would include applications for discretionary leave to remain and leave to remain on medical grounds, as well as exceptional circumstances or compassionate or compelling factors, which may warrant a grant of leave outside the immigration rules.

Further, legal aid will be available to these children in relation to relevant applications for entry clearance, leave to enter or leave to remain made under the

Immigration Rules by another person, including family members and extended family members, and granted either under or outside the Immigration Rules. These applications are determined on the basis of exceptional circumstances under Article 8 of the convention, regarding the right to respect for private and family life, or on compassionate and compelling factors. This amendment includes legal aid applications for registration as a British subject or citizen, a British Overseas Territories citizen, and a British overseas citizen.

Some amendments relate to the procedures for applying for different forms of civil legal services. These are grouped into different categories: gateway work, controlled work and licensed work. The changes ensure that, for controlled work and licensed work, separated migrant children who require legal representation in proceedings before a court or tribunal covered by this regulation will be able to receive it. There are also some technical amendments to other instruments regarding the merits and financial eligibility criteria. The changes ensure that the tests applied to immigration matters currently in scope of legal aid are also applied to this regulation.

This instrument takes a normative definition of a "child", being any person under 18 years. Where the age is uncertain, the individual is treated by the director of legal aid casework and the legal aid provider making the legal aid determination as being under 18 years.

For the purposes of this regulation, a child is "separated" if they are not being cared for by a parent or someone with parental responsibility for them. It also accounts for children who are looked after by a local authority or are privately fostered, but for whom parental responsibility has not been determined. It also acknowledges that some separated children may be in other informal caring arrangements or, indeed, caring for themselves.

A Written Ministerial Statement was laid on 12 July 2018 outlining the Government's intentions to lay this legislation. Following this Statement, the Legal Aid Agency advised legal aid providers of interim amendments to the exceptional case funding guidance for applications made by, or on behalf of, separated migrant children for citizenship and non-asylum immigration matters. The guidance outlined reduced evidence requirements when making an application and that ECF caseworkers will operate on the basis that there is a strong presumption that separated migrant children require legal aid.

To conclude, the draft regulation before us today makes important changes to the scope of legal aid to bring citizenship and non-asylum immigration matters into scope of legal aid for separated migrant children. This is important legislation that ensures access to justice for a highly vulnerable section of our society. I beg to move.

The Earl of Listowel (CB): My Lords, I warmly welcome this regulation and the manner in which the Minister introduced it. As vice-chair of the All-Party Parliamentary Group for Children, I have sat in meetings with young people and children in the immigration system and in care, and have heard their concerns and uncertainties about the future. I very warmly welcome this regulation and the careful and sensitive way in which the Minister introduced it. The Children's Society, as the Minister pointed out, has been a prime mover in this area over many years; indeed, a consortium of charities has been working towards this goal. I am sure we all feel that it is a momentous occasion to have this legislation after so many years for these children—this access to justice for them.

Many of these children will have spent most of their lives in this country. They may well know few or no people in the country they come from. So there may be good humanitarian reasons why they should continue to live in this country. The theme from these meetings is that the earlier one can begin the process towards leave to remain or citizenship, the better—but so very often, these decisions get left until the last minute, when the child has just about reached the age of 18, which is very unsatisfactory. This regulation will make it much easier to act early in the best interests of these children.

I want to ask the Minister about what will become of care leavers. When these children pass the age of 18, or sometimes prior to that age, they become care leavers. They still have some responsibilities due to them from their local authority, but not as strong. I understand that the Government have given some commitment that there will be an expectation that the default position will be that the exceptional case fund will be applied in these cases, but can the Minister confirm that in his response to the debate?

Last year I, along with the noble Lord, Lord Storey, met three care leavers. One of them had experienced some periods in a mental institution; as we know, many care leavers experience a great deal of loneliness when they leave care, and the challenge for him of the uncertainty over his immigration status had damaged his mental health. Another young man was working as a taxi driver, illegally and under the radar, which was a very unsatisfactory state of affairs. These young people, who have had such a difficult start in life, could have their rights better protected by us. This regulation does exactly that, so I warmly welcome it.

The Lord Bishop of Newcastle: My Lords, I declare an interest as a vice-president of the Children's Society. I want to share my delight in the work of the Children's Society and other children's charities in helping to bring us to this point.

I warmly welcome the draft order amending the Legal Aid, Sentencing and Punishment of Offenders Act 2012 to bring immigration matters for unaccompanied and separated children within the scope of legal aid. That is a wonderful thing. Without this amendment, children outside their country of origin who are separated from their parent or care giver are at significant risk. The reinstatement of legal aid for separated children will be transformative for some of the most vulnerable children in our country.

However, welcome as the amendment is, it still leaves unresolved, as the noble Earl, Lord Listowel, has said, the needs of these vulnerable young people when they transition to adulthood if their immigration status at that point is still uncertain or temporary. On the day a young person turns 18, everything changes. Protections that have been in place can disappear

[The Lord Bishop of Newcastle]
overnight. This is particularly the case for children in local authority care who become care leavers. The noble Earl referred to this issue in an earlier Question on homelessness. Once children turn 18, immigration legislation kicks in. Where a young person in care has uncertain immigration status, they are particularly at risk of having support from local authorities withdrawn, and they can all too easily become destitute and homeless.

I ask the Minister to assure us that he recognises the vulnerability of care leavers at the age of 18 who have not been able up to that point to regularise their immigration status, and to assure this House that the Government still intend to introduce a presumption of exceptional care funding for care leavers so that they can access legal aid at this critical point in their lives.

Baroness Meacher (CB): My Lords, I too support the draft statutory instrument. I congratulate the Children's Society for bringing a judicial review against the Ministry of Justice following the passing of the Legal Aid, Sentencing and Punishment of Offenders Act 2012. It was of course that judicial review that led to the tabling of this draft SI.

We ought to note that it is deeply regrettable that for seven years separated children have too often suffered the loss of housing, education and employment, with many becoming destitute. These crises tend to occur as the child turns 18, and access to these services depends more heavily upon a person's immigration status. The Government were of course warned of the consequences in 2012, but unfortunately it took a judicial review to convince Ministers that the human rights of these separated children have to be respected.

I would like to ask the Minister a few questions, if I may. First, I have a concern about the funding of the services implied by the statutory instrument. The Government anticipate only some 800 children becoming eligible for legal aid under this SI, based on 2012-13 figures. The Children's Society estimates that a minimum of 12,500 to 15,000 children are potentially likely to become eligible for legal aid under this SI—and those figures do not even include groups such as trafficked children, for example. The Government estimate that the total cost of this SI will be only an average annual figure of £1 million, which of course probably fits about 800. I work that out as about £66 per child, if we take the Children's Society estimate. Can the Government explain the huge discrepancy between the anticipated numbers given by the Children's Society and the Government's own estimate? Have the Government allowed for an increase in the likely numbers of children since 2012-13, in particular taking account of the growth in immigration during this period, and were the 2012-13 numbers unnaturally low anyway, for some reason—because they seem extraordinarily low to me?

4.45 pm

Another question concerns care leavers, as others have mentioned. After young people leave care, they really do face difficulties in accessing state benefits, education and employment. Some may even face removal from this country, the only country they know. The need for legal advice is particularly critical as children transition to adulthood and become care leavers. As others have said, all sorts of things change and they become incredibly vulnerable; many in fact become destitute, which is deeply shocking in our very rich country.

It is very important to have a commitment from the Government to introduce a presumption—the word "presumption" is very important—that care leavers will receive exceptional case funding. Can the Minister give this House that assurance, using that rather precise term? It is not good enough to somehow suggest that we would like to think that children leaving care will have access to legal aid. Related to this question, can the Minister confirm that the right to exceptional case funding will not be affected if we leave the European Union? The Government's Explanatory Memorandum notes that in Section 10 of LASPO, exceptional case funding will be granted where a failure to grant it would breach the individual's human rights under the European Convention on Human Rights or another enforceable EU right. I hope that the Minister can reassure me that care leavers will be entitled to ECF and that this right will not be affected if we leave the EU.

Lord Marks of Henley-on-Thames (LD): My Lords, I, too, welcome this order and thank the Minister for introducing and explaining it. I also welcome the comments made initially by the noble Earl, Lord Listowel, regarding the position of care leavers and new adults, those points being echoed by the right reverend Prelate the Bishop of Newcastle and the noble Baroness, Lady Meacher.

As the noble Baroness, Lady Meacher, pointed out, the credit for this SI is due to the Children's Society, for the judicial review it brought last year challenging the lawfulness of the exclusion of legal aid in these cases. Credit is also due to members of the Refugee and Migrant Children's Consortium, who worked with the Children's Society and the Government to ensure that this SI came into being, making good on the Government's promise, given by Lucy Frazer MP, which was the basis on which the Government settled the Children's Society's case.

I can do no better in summarising the existing position and the reason for change than to quote from the statement of facts and grounds submitted by the Children's Society's legal team, led by Paul Bowen QC, with the consent of Mr Bowen:

He says:

"Where such children are involved in non-asylum immigration matters, with the very limited exceptions, these matters are currently considered 'out of scope' for the purposes of Section 9 of LASPO, and so will only be funded if an Exceptional Case Funding … determination has been made pursuant to Section 10 of LASPO.

These children are among the most vulnerable individuals in the country. They are at a heightened risk of abuse and exploitation as a result of their immigration status. The potential immigration processes and proceedings they face in an attempt to regularise their status in the UK are extremely complex. The consequences for these children if they do not or are unable to negotiate these processes and/or proceedings are fundamental and life-changing, ranging from a lack of access to further education, social services and healthcare to deportation. They have a consequent need for

legal advice and assistance. That need is not currently being met by the ECF system nor by any other means. This is unlawful for the reasons summarized in the argument".

The Children's Society rightly claims that it securing this change was,

"a significant achievement as so far it is the only cohort the government has agreed to bring back into scope for legal aid".

It wrote that:

"The change all our supporters and partners helped bring about will have huge implications for thousands of children who need this vital support"—

I repeat the point made by the noble Baroness, Lady Meacher, about the numbers affected—and that:

"It will ensure they can once again access the legal aid they so desperately need to live full and settled lives".

I also quote from paragraphs 34 and 35 of the Government's impact assessment, which state that:

"Separated migrant children have distinct vulnerabilities and needs, which can be made worse by uncertainty in their immigration status. This includes the risk of going missing from local authority care, and being subject to exploitation in private foster care arrangements. Further, if children do not resolve their immigration status during childhood, they can become ineligible for certain public services (like being able to work, find housing or continue with education) when they turn 18 … It is expected that professional legal advice from legal aid immigration solicitors on non-asylum immigration matters will help to ensure more robust initial decision making because the original application should make the best possible case, improving the quality of applications and appeals to the Home Office".

This case is absolutely overwhelming, so the Government must acknowledge that this change was long overdue and that the litigation should never have been contested, as it was for some time.

In welcoming this SI unreservedly, I remind the House that it is significant that this crucial reform was forced on the Government by judicial review. The review involved the courts considering a decision on judicial review as to whether the power in Section 9(2) of the LASPO Act should be used so as to bring unaccompanied and separated children's immigration cases into the scope of LASPO. I also remind the House and the Government that the LASPO Act includes the power to bring claims of different types back within scope. That was a power for which we argued before the Act was enacted.

As we now know, the LASPO Act has caused great hardship in denying legal aid to a number of vulnerable groups, who cannot afford legal advice or representation and are left unable to understand or take advantage of their legal rights and protections without it. We have argued for restoration within the scope of legal aid of much social welfare law, more housing law and more cases of debt, for easier access to legal aid in domestic violence cases and for a wider exceptional case funding scheme. I hope that with the precedent of this statutory instrument, itself of limited but very important application, we may see an approach to the scope of legal aid more generally that is fairer, more generous and more progressive.

Baroness Smith of Basildon (Lab): My Lords, like others, I unreservedly and wholeheartedly support the order before us today. However, I have to say that the congratulations should go not to the Minister but to the Children's Society. The noble Lord, Lord Marks, the noble Baroness, Lady Meacher, and the right reverend Prelate the Bishop of Newcastle made similar comments. I was pleased to see the Government recognise this in their impact assessment, which refers to the justification of their preferred option going forward:

"In order to meet the commitments made following litigation".

It is quite clear there and later on, in paragraph 4, why these have been brought forward:

"Following litigation from The Children's Society, the government agreed to bring civil legal services for separated migrant children's non-asylum immigration matters back within the scope of the legal aid scheme".

It should never have been taken out of the scheme.

It is in some ways an embarrassing—but I can tell that the Minister was not embarrassed—U-turn for the Government. We cannot hold the Minister responsible in this case for having found that he was wrong on this issue because it was before the noble and learned Lord entered your Lordships' House. Some of us will recall what were at the time very heated, at times unpleasant, debates during this legislation. It was coalition government legislation. Numerous votes took place. It was one of those Acts that many of us found very difficult. I am pleased to see that we are now addressing some of the injustices that were taken forward at that point.

Legal aid was taken away from some of the most vulnerable people—this was not the only case. I remember going home one evening extraordinarily upset because the Government had taken away legal aid from women who were victims of domestic violence. It was taken away from women who were contesting child custody cases as well. There were a lot of injustices, and I welcome the fact that this is one injustice that is being corrected. I hope we shall see many more.

The Minister already has a number of questions to address. Do the Government have any idea how many children have been affected negatively by losing the right to legal aid? It would be helpful to know how many got exceptional case funding. I think there were a few instances of that. How many children may have been deported because they were unable to get legal aid? How many children went missing from care because they were unable to get the support they needed? I think those are the kinds of figures the Government need to provide to fully understand the impact the legislation had at this time.

Does the Minister know how many separated migrant children are in local authority care, and could be expected to benefit from the change? I think that the noble Earl, Lord Listowel, and the right reverend Prelate the Bishop of Newcastle made very powerful points about the position of children when they turn 18. This is a problem for any care leaver, but I think it is particularly relevant to separated migrant children.

The Children's Society estimates that there are 144,000 undocumented migrant children living in England and Wales. The Government obviously have a responsibility now to make this change known to those children. How is this possible? What plans do the Government have to ensure that those who can benefit from this change will know about it?

There is a welcome point in the order, that, if there is a case going through, and a child turns 18 during the process of that application, they will continue to get

[Baroness Smith of Basildon]
legal aid until that application has been completed. I am looking at the Minister to see whether or not he understands the point I am making—he does. That is welcome, I am grateful for that, but if that separated migrant child is reunited with a relative during the process of that application, will the case be able to continue with legal aid?

This year is the 70th anniversary of legal aid, something that we in the Labour Party are very proud of, but the Government have been rather quiet during the anniversary. I think it would be a welcome opportunity to have a look back at other provisions in this legislation and see what other injustices have been done. This one has been a long, hard fight. I pay enormous tribute to the Children's Society and other children's charities which have ensured that this change has come about, but perhaps there is an opportunity now to look at other injustices in the legislation and see what more can be done, particularly with the spending commitments being made by the Conservative Party this week. This is a real opportunity to see whether we can address further injustices.

5 pm

Lord Keen of Elie: My Lords, I am obliged for the contributions from all sides of the House, to a greater or lesser extent. This is an important area and an important issue. I will begin by addressing generally some of the points that a number of different noble Lords raised.

First, the noble Earl, Lord Listowel, raised the very real question of those termed care leavers, who tend to be a cohort aged 18 to 25 years. It was a point raised by the Children's Society when we discussed this matter more generally, as the noble Earl and the right reverend Prelate will be aware. The position we are in regarding that cohort is that we have agreed to consider the position of care leavers and their access to legal aid via the exceptional case funding scheme in relation to immigration matters. That work is ongoing, but I cannot say more than that at the present time.

In addition, there is the question of separated children who applied for legal aid but turned 18 before the original immigration application had been fully determined. They will continue to be eligible for legal aid until the immigration or citizenship matter has been concluded. How it is concluded is a different matter, but if it is concluded through the immigration process, legal aid will continue to be available. I seek to reassure noble Lords on that point.

Very diverse figures were given regarding the number of children who might have been or may now be eligible for legal aid under this provision. It is very difficult indeed to identify precise figures. That might explain why such a diversity of figures is being quoted. So far as we are concerned, the most reliable figures are from 2012-13 because after that, as a consequence of LASPO taking these cases outwith the scope of legal aid, there are not reliable figures. That is why it has been necessary to go back to the last set of reliable figures pre the LASPO provisions themselves. That might be unfortunate in a number of respects, but that is where we are. We intend to monitor the figures, but clearly we will have an eye on the number of applications being made.

In that regard—to respond to the noble Baroness, Lady Smith—we are and have been engaging since July last year with legal aid agencies over the scheme for provision. Indeed, pending this order coming into force, we have been explaining to legal aid agencies that separated children falling into this category who still rely on exceptional case funding would be entitled to certain presumptions so far as their application was concerned, because their rights under Article 8 of the convention are clearly to be regarded as in play, if I can put it in those terms. There has also been an assumption that they are vulnerable and that they are not capable of carrying through these proceedings without the assistance of legal aid. That has actually simplified the exceptional case funding application process. Indeed, we are working with legal practitioners to review and simplify the exceptional case funding application forms and guidance, which we hope again might be of assistance to the cohort known as the 18 to 25 year-old care leavers.

Baroness Smith of Basildon: Just to clarify: if I have understood correctly, is the Minister saying that all children who currently get exceptional case funding will now get legal aid to complete their cases?

Lord Keen of Elie: If they already have exceptional case funding then they have legal aid, so there should not be any interruption regarding that cohort, who have already received it. I was seeking to stress that since this matter arose in July 2018—I acknowledge that that was because the Children's Society took steps with regard to judicial review—we have taken steps to try to simplify the ECF process for those separated children but as a result they have legal aid, so generically they have legal aid and that should not be interrupted.

Regarding the future position, ECF is not affected by our decision to leave the European Union. Of course, convention rights are already expressly covered by LASPO. There is also the question of retained EU rights under our domestic legislation. Therefore, there is no reason why the ECF scheme should be affected by that.

As regards the wider number of children who may have been affected by this, it is not possible to give figures. The noble Baroness, Lady Smith, referred to 144,000 undocumented children potentially being in the United Kingdom. The point to stress is that if they are undocumented, it is very difficult to determine how reliable that estimate is, where they are, what they are doing, where they have gone or where they have been. By the very definition of undocumented, we have an issue here which is surrounded by a penumbra of doubt and uncertainty and very little can be done with that.

However, I hope that with these regulations coming into force we will have a more meaningful ability to deal with these vulnerable children, to provide them with the support that we acknowledge they will require in future and which they have had in the past under

the exceptional case funding, but which we believe should now more appropriately be brought within the scope of Section 9 of LASPO.

Motion agreed.

Over the Counter Derivatives, Central Counterparties and Trade Repositories (Amendment, etc., and Transitional Provision) (EU Exit) (No. 2) Regulations 2019

Motion to Approve

5.05 pm

Moved by ***Lord Bethell***

That the draft Regulations laid before the House on 24 July be approved.

Lord Bethell (Con): As the House will be aware, the Government had previously made all necessary legislation, under the EU withdrawal Act, to ensure that, in the event of a no-deal exit on 29 March 2019, there was a functioning legal and regulatory regime for financial services from day one. Following the extension to the Article 50 process, new EU legislation will become applicable before 31 October and, under the EU withdrawal Act, this new legislation will form part of UK law at exit. Further deficiency fixes are therefore necessary to ensure that the UK's regulatory regime remains prepared for exit. The approach taken in this instrument aligns with those financial services exit statutory instruments already approved by Parliament, providing continuity by maintaining existing legislation at the point of exit, but amending where necessary to ensure that it works effectively after exit.

I shall turn to the substance of the instrument. The European Markets Infrastructure Regulation, usually referred to as EMIR, implements the G20 Pittsburgh commitment from 2009 to regulate over-the-counter derivative markets in the aftermath of the financial crisis. EMIR was reviewed by the European Commission in 2015-16, resulting in an update known as EMIR REFIT. EMIR REFIT makes a series of technical changes so that the framework for over-the-counter derivatives, usually referred to as OTC derivatives, applies in a more proportionate way. EMIR REFIT focuses on users of OTC derivatives. It does not make significant changes to the rules for central counterparties—CCPs. In particular, it provides exemptions from the requirement to clear trades in those derivatives through a CCP, because clearing is not always appropriate for all firms.

As the House will be aware, earlier EU exit legislation was used to address deficiencies in EMIR, as it will form part of UK law at exit. This instrument addresses new deficiencies which will arise as a result of the recent amendments made to EU legislation by EMIR REFIT, which came into force on 17 June 2019. After exit, the UK would be outside the EEA and outside the EU's legal and supervisory framework for financial services. The EMIR framework that will form part of UK law at exit therefore needs to be updated to ensure that these new provisions continue to work effectively.

This instrument will ensure continuation of the new provisions introduced in EMIR REFIT and will transfer new EU functions to the appropriate UK authorities. Many provisions in EMIR REFIT will continue to work effectively at exit without significant amendments—for example, the exemption for small financial counterparties from the requirement to clear trades through a CCP.

However, there are two key deficiency fixes in this instrument which are necessary to ensure that EMIR REFIT is workable in a UK context. First, this instrument ensures that UK pension schemes will continue to be exempt from the requirement to clear trades through a CCP. This is an important provision for industry and consumers; an exemption for pension schemes is needed because there is currently no approach to clearing that works without subjecting pension schemes to disproportionate cost, particularly the requirement to pay margin to the CCP. These additional costs would ultimately undermine the ability of pension funds to meet their obligations to pension holders. In the EU, EMIR REFIT currently includes a pension scheme clearing exemption which will last anywhere between two and four years. This instrument provides greater certainty and stability by ensuring that there is no ambiguity about the length of the extension. That extension will now last the full four years in the UK.

This fix is appropriate given the size and nature of the UK pension schemes, the vital role they play in pension provision and their crucial position as long-term investors in the UK economy. This instrument will provide the time to find a solution which balances the interests of pension schemes and CCPs, which will be particularly challenging in the UK context. The instrument enables the Treasury to extend the pension scheme exemption further, for up to two years at a time, if no appropriate solution for the UK market has been found. It also ensures that EEA pension schemes will continue to be exempted in the UK. This means that UK banks will still be able to trade derivatives with EEA pension schemes without using a CCP. Her Majesty's Treasury committed to this action on 21 February to avoid disruption to UK businesses offering derivatives to EEA pension schemes.

Secondly, the instrument transfers the function to suspend the clearing obligation from the European Securities and Markets Authority and the European Commission to the Bank of England. In EMIR REFIT, ESMA can recommend that the European Commission suspend the clearing obligation in three-month increments for up to 12 months. We believe that the Bank of England is the most appropriate UK authority for this function, in line with the responsibilities that Parliament has already conferred on the Bank for financial stability and CCP supervision. The Bank of England must secure the consent of Her Majesty's Treasury and inform the Financial Conduct Authority if it needs to suspend the clearing obligation in the UK. The Bank may decide to issue a suspension lasting for any period up to 12 months. Such flexibility will enable the Bank to reduce uncertainty for globally significant clearing members and clients based in the UK in the unlikely event that a suspension is necessary. Finally, this instrument

[LORD BETHELL]
ensures that all references to EMIR are up to date on exit day so that references in UK legislation after that point will refer to the right version.

The Treasury has been working closely with the Bank of England and the Financial Conduct Authority to prepare this instrument. We have also engaged the financial services industry extensively on it. The Treasury published the instrument in draft on 24 July ahead of the Summer Recess, to maximise transparency to Parliament and industry.

This legislation is necessary to ensure that EMIR legislation continues to function effectively in the UK from exit. In particular, it will ensure that UK firms are able to use the new provisions on proportionality introduced by EMIR REFIT, and that the Bank of England is able to take necessary action to safeguard financial stability where necessary. I hope that your Lordships will join me in supporting these regulations. I beg to move.

Baroness Bowles of Berkhamsted (LD): My Lords, I must declare my interest as a director of the London Stock Exchange plc and Prime Collaterised Securities ASBL, as these measures may affect parts of the businesses with which I am involved. As I am sure many noble Lords already know, I also have a personal affinity with these matters having either negotiated them or left them on my to-do list for the European Commission when I ceased to be chair of the Committee on Economic and Monetary Affairs.

On the OTC derivatives and, in particular, the pension funds exemption, I can add a little history. It was a UK issue that came up rather late in the day, so it had to be pulled out of my magic negotiating bag during trialogues to fix it; and because it was a UK issue, there were not necessarily a lot of people who wanted to fix it. One thing that helped me on my way was that I managed to mobilise the defined benefit pension funds that had been taken over by German businesses when they took over some of the car industry. They suddenly decided that they had a workforce that might be concerned. That is just one of the levers that I managed to pull.

5.15 pm

I am pleased that the extension is there. I do not mind the fact that it is not being done in increments, because I remember pressing that there should have just been an exemption—full stop—but there was a lot of concern at the time. The risk is still there, if you assume that there is risk with OTC. Of course, the thinking at the time was to exempt nothing, which is why there had to be the subsequent refit, among other things, to take out some of the smaller companies and so on. The way it was done—that it could be two years at a time—was so that there would be some incentive to find a solution. But, realistically, will any solution ever be found? If they are not geared up now to be able to post collateral as cash without a lot of expense, will that happen in the future, or is the way that clearing and collateral are received by the clearing houses likely to change? In these four years, are solutions actually going to be sought, or will this just be left on the shelf with the assumption that there will eventually be a permanent exemption? In a sense, it is said that, along with those other aspects of proportionality, that should not be covered. If a solution comes along in that four-year period, would it be applied? Is there any way that it could be cut short, especially if that was being done elsewhere?

There is a similar issue over time periods. Maybe here it is a little more relevant when it comes to the suspension of the clearing obligation in Part 4, where the Bank of England, with the consent of the Treasury, can suspend it for various good reasons, and there is no reason why there should not be a suspension. Personally, I can buy the idea of, instead of doing it in nibbles, giving large businesses time to plan and then saying, "Okay, we will go straight in and give the one-year extension". I can see the reasoning for that. I did not have time to remind myself of the full contents of EMIR, but the Bank is still limited to setting the period of suspension at no more than 12 months. Can it do that more than once? If, under Article 6a(1)(a), it is a specific class of OTC derivatives that are no longer suitable for central clearing in accordance with the criteria in Article 5, that seems permanent. Finding things appropriate for clearing has been a function that has gone on as ESMA has made the decisions. If you get to a decision that says, "Actually, we want to reverse that", then a one-year suspension is not long enough. I am just curious about what happens in that circumstance. Does it mean that another decision and change of law would be brought in, or, if I bothered to drag it out and have a look, would I discover that it was covered by Article 5 of EMIR? Just reading what is here, it looks like something is no longer appropriate for clearing, but it looks like it is going to be no longer appropriate for only 12 months, unless we can somehow fix that or keep on extending it. Is there any enlightenment there?

Finally, one other thing jumps out at me. I have looked at a lot of statutory instruments over the last many months, in the Secondary Legislation Scrutiny Committee and in the Moses Room, where we read the same thing about the close relationship on financial services that the UK seeks. That is looking ever less likely—in fact, I think it has been abandoned. To be honest, I never thought it was all that likely. It is not realistic to keep reiterating the same text in the Explanatory Memorandum when we have even had a change in Prime Minister and it looks ever more likely that there will be no deal, and certainly no financial services deal. I do not feel that the Explanatory Memorandum and the strength with which this close future relationship is iterated reflects the status quo at the time we are actually having to deal with this statutory instrument. A little rewriting of it to more genuinely reflect the situation before us would be appropriate, otherwise, I think it is a bit dishonest. Maybe that is not a word I am allowed to use, but I am sure that *Hansard* can find the right word. I think it is slightly misleading.

With that, I have no objection to this statutory instrument, because it is obviously a useful and necessary thing that needs to be continued for the benefit of the UK financial services industry.

Baroness Kramer (LD): My Lords, I agree with my noble friend Lady Bowles that the Explanatory Memorandum needs to be updated to reflect the current circumstances and the current attitude towards our future relationship with Europe. Frankly, that is necessary in order to be fair to the industry, which will be reading all this with a great deal of attention, because the various aspects of this statutory instrument obviously have a very big impact on its businesses, what they are able to do and how they need to adjust to cope with any kind of Brexit, should it happen. I want to pursue a slightly different direction from my noble friend, however, and ask about the divergence that seems to be embedded in this statutory instrument. I ask for a very particular reason: your Lordships will be well aware that the London Clearing House is now well set up in Paris as well as in London; that there has been a major shift by many of the big banks to centre a lot of their trading activity through Paris; and that undoubtedly, should Brexit happen, that will be enhanced and there will be increased activity in Paris covering essentially the same business range when it comes to derivatives and over-the-counter derivatives. There will be an equivalent central counterparty functioning almost as a rival body, so the embedded divergence in this statutory instrument becomes important, perhaps as a bellwether for the future, and I would like to probe the Minister on it.

It strikes me, first, that paragraph 2.8 explains:

"Some of the provisions of the REFIT amendment to EMIR do not become applicable until after 31 October 2019 … Therefore, this instrument does not make amendments to those provisions",

to incorporate those changes, as it were. I would love to know the content and significance of those amendments and how they will impact the shape of the industry. The CCPs or the regulators will need to behave in a different way if we have an embedded divergence that would come into effect in a matter of days. I would find that information rather helpful and perhaps the Minister would be kind enough to enlighten me.

That brings me to paragraph 2.16. As my noble friend Lady Bowles said, it states:

"EMIR, as amended by REFIT, allows the Commission to suspend the clearing obligation for up to twelve months in three-month increments".

The new equivalent power, to be handed to the Bank of England, chooses to allow the Bank to suspend for up to 12 months—in other words, not following the pattern of three-month increments. It sounds like a minor difference, and it possibly is, which raises the interesting question: why choose to embed a divergence? Could it leave us in the rather peculiar situation that one CCP in Paris—ironically, under the same ownership as the CCP in London—could be operating under different rules when it comes to suspending obligations? Is that a situation we want to see? Is this to be an area of competitive rivalry? What will the impact be? It seems to me that encouraging companies or funds to play regulatory arbitrage is never the healthiest strategy to pursue. Perhaps the Government could explain, because I would just like to understand it better.

There is another odd area where, apparently, inconsistency will remain in the future. Paragraph 2.17 explains that within the European Union,

"any suspension of the clearing obligation that impacts classes of derivatives with a trading obligation must result in the trading obligation also being suspended to avoid a conflict".

That seems entirely logical, but apparently that is not going to carry over into the UK. There will be no automatic suspension of the trading obligation. It sounds like the FCA will then be responsible and the Bank will then have to notify the FCA of its intention to make the clearing obligation suspension, rather than the link being an automatic one. It strikes me as cumbersome and inefficient and I wonder why it is being chosen.

Perhaps the Minister, as he finishes, will just explain this. Although the embedded divergencies are minor, they certainly can be played by financial institutions. Given the rapid growth of Paris, picking up business that was almost exclusively being done through London, it is probably best for this House to understand.

Lord Davies of Oldham (Lab): My Lords, I apologise to the noble Lord, Lord Bethell, and to the House for having missed the first couple of minutes of his significant words, but I think I could pick up from the way in which he developed his theme exactly the position of the Government on this complex area. The Minister's answers to the questions and anxieties of the two noble Baronesses from the Liberal Democrat Benches will certainly help us to understand his position.

I hope that the noble Lord is enjoying his Front-Bench debut on the EU exit SIs. It has been a fairly onerous task. As far as my own contribution is concerned, my noble friend Lord Tunnicliffe, who normally joins me in economic debates, is unfortunately not able to be here today, otherwise he would have added to the absolutely excellent work that he has done over a long period of time in successive discussions on these almost endless SIs. However, I thought it right that he should have a certain amount of time off, and he has gone to an event at which his wife is a star figure who is being given an award, so I am not surprised that he is on duty there rather than here today. However, he has had the advantage of having scrutinised about 50 of these Treasury SIs—and of course the Minister will have taken steps to catch up with all that.

This instrument makes several changes to both the Financial Services and Markets Act 2000 and relevant pieces of retained EU law to ensure consistency with the UK's obligations under the EMIR REFIT regulation, which came into effect earlier this year. We do not regard these changes as controversial, and therefore we support the instrument. However, we will look for elucidation and clarification of certain parts of how it will work. I am grateful to the noble Baronesses who have already spoken for having identified important areas in which the Minister needs to respond.

5.30 pm

As the Explanatory Memorandum notes, some parts of the REFIT regulation will not technically form part of retained EU law on the proposed exit day, as they will not have yet come into force across the bloc. Can the Minister confirm whether the department has considered the merits of applying these changes regardless of that fact? Certainly, both the noble Baroness,

[Lord Davies of Oldham]
Lady Bowles, and the noble Baroness, Lady Kramer, sought an update of the Explanatory Memorandum, and the Minister will be fully charged of that. Of course, on this issue of divergence, as each week goes past we are much more aware of the extent to which alternatives are being made by banks to locate themselves within the European Union while at present they exist in the United Kingdom, and it is terribly important that we understand how these divergences will work under the new regulation.

In the Minister's opinion, would the Government's failure to implement these changes introduce any risk that, in the event of a no-deal Brexit and the UK then seeking an equivalency ruling from the Commission, we would not be deemed to be at an appropriate level of regulatory alignment? That is a hypothetical question, posed against an uncertain situation, and I almost feel like apologising to the Minister for asking such a tangled question. However, it is a fact of the matter that we have to consider, and I wonder what the Minister's response to that point will be.

We found a further part of the Explanatory Memorandum particularly interesting. Paragraph 2.8 talks of making corrections to retained EU law "if" the UK were to leave the EU on 31 October. I know that this instrument was laid in July, and I know also that some Conservative Members of the European Parliament are advertising for staff in Brussels with a starting date of 1 November. So they at least either know what is going on or are taking an interesting plunge into the unknown. However, I wonder whether, despite the rhetoric of the Prime Minister, common sense is prevailing and the Government accept that a no-deal exit would be profoundly damaging to the economy. I sincerely hope that the Minister can confirm that that is the case.

While the Chancellor claims to have a plan in place to mitigate the economic effects of no deal, we know from numerous economic analyses that there would be a significant shock. The Yellowhammer documents confirmed our worst fears—that this shock would be disproportionally felt by the most vulnerable in our society. I therefore urge the Minister—I hope he will respond to this plea—to convey to his colleagues the previously stated view of this House that the Government must avoid a no-deal exit at all costs.

Lord Bethell: My Lords, I express my thanks for an informative debate on this technical but incredibly important measure. I give particular thanks to the noble Baroness, Lady Bowles, who gave us a good trot around the history of some of the regulations and described in very honest terms her central role in the background of some of these instruments. I remember well her front-line role in fighting for Britain's interests in this matter during a very difficult period.

I start by answering her question about whether the clearing suspension can be extended. The instrument allows the Bank of England to suspend the clearing obligation for up to 12 months, with the consent of the Treasury. This means that the Bank can decide to issue a suspension lasting for any period up to 12 months, based on its assessment of the situation. For instance, it may determine that a suspension for six months is the best option, but the suspension cannot be extended. However, if the conditions of the suspension of the clearing operation continue to be met, we would expect the Bank to institute a new suspension if necessary, which would again require the consent of the Treasury.

The question was asked: can the pension scheme clearing exemption be renewed or extended? This instrument allows the Treasury to extend that exemption for up to two years at any time by regulation, if no alternative can be found for the UK market. Importantly, this means that it could be renewed if no solution were to be found.

Will there be a permanent solution to the pension scheme exemption? Currently, requiring a pension scheme to clear trades in a CCP can lead to disproportionate costs, especially the requirement to pay margin on CCP in cash. A technical solution would address this problem: for example, it would involve finding a way for the pension scheme to meet its obligations to the CCP without turning long-term assets into cash. Any solution must not pose a risk to the CCP. However, currently the EU has been unable to find a solution which accomplishes that, and the Government will continue to work with UK CCPs and pension schemes on that important question. This will ultimately be decided according to what the technical solution will look like.

The noble Baronesses, Lady Bowles and Lady Kramer, and the noble Lord, Lord Davies, all raised questions about the Explanatory Memorandum. Their points were well made and the concerns behind them are completely understood, but I reassure the House that the Government remain utterly committed to doing a deal. However difficult that may seem, that remains the commitment, and that includes a deal on financial services. The Explanatory Memorandum continues to reflect the Government's policy, but of course we should be ready for all scenarios, which is why we are here today.

The noble Baroness, Lady Kramer, raised an important point on the question of divergence. I should like to reassure her on that. This SI aims to ensure continuity—that is its whole ethic and philosophy—and consistency with EU laws. This is not about divergence. I remind the House that the SI has been warmly welcomed by business after a long period of consultation, and if concerns about divergence were still outstanding, I am sure the industry would have voiced them.

The noble Baroness also asked about regulatory arbitrage, about which I should similarly like to reassure the House. Our onshoring approach aims to preserve existing regulation as much as possible. We also want to maintain maximum supervisory co-operation with the EU to avoid regulatory arbitrage of any kind. She also asked whether the trading obligation will be suspended automatically. I should like to reassure the House that in the EU, the trading obligation would not be automatically suspended. For the UK, we have made the trading obligation suspension automatic on suspending the clearing obligation. I hope that is understandable.

The noble Lord, Lord Davies, asked whether the Government will implement the remaining aspect of the EMIR REFIT and how that implementation would

happen. The purpose of this SI is to address deficiencies that will arise in UK law if the UK leaves the EU without a deal. It cannot address aspects of the EMIR REFIT which are not in application. We are working with regulators and industry to ensure that the remaining provisions in EMIR REFIT are implemented in an appropriate manner for the UK.

In conclusion, I reassure the House that every effort has been put into the consultation on these important regulations. Industry has lent an enormous amount of support to them and they have been laid before the House for a considerable time. In that spirit, I ask the House to approve these regulations.

Motion agreed.

Financial Services (Miscellaneous) (Amendment) (EU Exit) (No. 3) Regulations 2019

Motion to Approve

5.40 pm

Moved by ***Lord Bethell***

That the draft Regulations laid before the House on 15 July be approved.

Relevant document: 58th Report from the Secondary Legislation Scrutiny Committee

Lord Bethell (Con): In the previous debate, I explained how the extension of the Article 50 process had made some additional onshoring legislation necessary. This instrument fixes deficiencies in new EU legislation that will become part of UK law at exit and amends some EU exit provisions already made to account for the extension. It also corrects several minor errors or omissions in earlier EU exit instruments.

I note that, in its report published on 25 July, the Secondary Legislation Scrutiny Committee highlighted this instrument as of interest for what it called,

"the range and magnitude of the changes",

made by it. It also expressed concern about the scale of the challenge facing financial services firms in adjusting to the changes being made to financial services legislation generally.

While the instrument makes amendments to 15 pieces of legislation, the number of amendments is modest and their nature minor. They follow the same approach to fixing deficiencies in EU legislation as approved by Parliament in previous financial services EU exit instruments. They do not change policy or alter requirements on firms. The SLSC is of course right to highlight the challenges financial services firms will face in adjusting to changes introduced by exit legislation.

I reassure the House that minimising this challenge for industry has been central to the onshoring project from the beginning. The Treasury, under other secondary legislation approved by Parliament, has introduced a variety of measures to smooth the transition for businesses adjusting to the changes in EU exit legislation and changed circumstances generally. These measures include a range of temporary permissions and transitional regimes for EEA firms and funds. Parliament has also granted UK financial services regulators powers to phase in requirements that change as a result of EU exit legislation, giving firms the time they need to adjust in an orderly way. The regulators have consulted on their approach to phasing in these requirements, which involves broad use of their transitional powers. They have received a very positive response from industry.

We have also engaged with the industry on the development of all our EU exit instruments to give it as much time as possible to become familiar with the legislation. Given the minor and technical nature of the amendments in this SI, I will not cover every provision in my opening remarks, but I am happy to take questions on any of the individual provisions.

The provisions in this instrument cover three broad areas. First, they make changes to a number of pieces of EU legislation that have become applicable since the Article 50 extension and will therefore form part of UK law on exit day, but they are not substantive enough to warrant separate additional instruments. For example, the European Commission recently introduced measures to further promote the use of small and medium-sized enterprise growth markets. Those trading platforms are subject to more proportionate regulation, making it easier for SMEs to raise finance. The instrument makes minor amendments to fix deficiencies in the new EU legislation, ensuring that it continues to function in UK law after exit. Following the approach approved by Parliament in previous financial services exit legislation, this instrument gives UK regulators the job of fixing deficiencies in the new technical standards that have been adopted by the EU since 29 March.

Secondly, the instrument makes amendments to existing EU exit legislation that are required to take account of the Article 50 extension process. For example, it makes a change to the Solvency II exit legislation by amending the date from which the PRA will be obliged to publish certain technical information that insurance and reinsurance firms must use to value their liabilities. Previously, the PRA had been required to begin publishing this information from 10 April 2019. The instrument amends that date so that the obligation on the PRA does not commence until an appropriate date after the UK has left the EU.

5.45 pm

Finally, I will address the corrections that the instrument makes to earlier EU exit legislation. Although all the instruments laid under the European Union (Withdrawal) Act have gone through the normal rigorous checking procedures, as with any legislation, errors are made from time to time. However, in this instance it is important to keep a sense of perspective. The financial services onshoring effort has been an unprecedented legislative challenge, involving 57 EU exit instruments making amendments to more than 500 pieces of EU and UK financial services legislation. In that context, the errors that we are seeking to correct here are extremely minor and very small in number.

For example, the instrument makes an amendment to the Criminal Justice Act 1993 to ensure that UK individuals trading financial instruments in the EEA

[LORD BETHELL]
or Gibraltar are not guilty of insider dealing, which is a criminal offence, if they are compliant with the market abuse regime as it applies in those territories. This does not change the criminal offence of insider dealing but ensures that the scope of the offence remains the same and operates effectively in UK law after exit.

I have already referred to the scale of the onshoring challenge for financial services and I conclude by paying tribute to the hard work that has gone into preparing our regulatory regime for exit. The very constructive collaboration between the Treasury, our financial services regulators and our industry stakeholders has been highly effective. The legislation has been very positively received by the industry and has done a huge amount to provide confidence and reassurance that the UK's regulatory regime will continue to work effectively in all scenarios. I thank all those involved in this admirable effort. I hope that noble Lords will join me in supporting these regulations and I beg to move.

Baroness Bowles of Berkhamsted (LD): My Lords, again, I declare my interests as listed in the register—in particular, as a director of London Stock Exchange plc.

I shall start where the Minister finished, in the sense that he said that there had been constructive engagement with stakeholders and industry. I acknowledge that that is true, and I also acknowledge that HMT has, by and large, done a very good job with the full range of statutory instruments, a great many of which some of us have had the pleasure of looking at. However, I have a comment to make on the others, and I say this because the Minister is relatively new to his post. Previously, once there was a final version, this was sent to those of us who were engaged on the SIs with a little more notice than we have had in this case—perhaps to look up a few things and occasionally even to find a few more mistakes than we have been able to this time.

I recognise that this is an unusual time, with our having been dragged back when perhaps the Government had not expected that—although that was obviously the right thing to do—but if any more SIs are lined up, can the Government try to give us a little more notice of the final versions? That would make things far smoother for us. We are rather large stakeholders but are not really being consulted until it is in the final form. We sometimes have only a couple of days to look at it. The Government are giving far more time to the people who do not have to make decisions than those who do. In general with secondary legislation, it is very important that this can be done with much more time at our disposal.

I do not have a great deal to say. I agree that, by and large, these are relatively small changes. It gives us a nice list of things that I need to go and look at in the Criminal Justice Act—it raises my curiosity about what regulated markets are defined elsewhere. Obviously, if it is a question of bad behaviour, we want to catch that globally, not just within the EEA. I assume that we have some definitions of regulated markets, such as in the United States and elsewhere. Maybe that can be answered for me, but I will have to go and have a look.

Something jumped out at me slightly in the amendments to MiFID, where it is being redefined to refer just to the UK systematic internalisers, rather than reading "EU systematic internalisers". It says that that was previously a mistake and should have been localised to the UK. We have had several instances where things were deliberately UK-wide and EU-wide sometimes—the question was whether it would be a symmetric or asymmetric case. In some ways, this reflects back to the whole criminal justice thing: we are catching bad behaviour in the whole of the EEA and they presumably want to catch it in the UK, even if by an EU firm.

Was it previously a mistake that it covered the whole of the EU or has there been a slight change of policy from the UK's perspective? Are we saying, "Okay, we are going to narrow this down so that you have to do it in the UK, rather than allowing you to do it in a wider range of locations"? I would like to know that. We have previously picked up on things and asked, "Why are you allowing these to be EU-wide?". That is the only point I really have to make, other than repeating the fact that it would have been nice if the Explanatory Memorandum had been slightly updated.

Oh, yes—there was also a point on solvency. I note that the PRA becomes in charge of the risk-free rates. I hope that there will be some co-ordination there so that we do not end up having a completely different risk-free rate from the rest of the EU. That might be a rather difficult situation. I cannot resist saying that I hope the PRA makes a better job of the risk-free rate than the Government have of the discount rate.

Lord Deben (Con): My Lords, I remind the House of my declaration of interests, particularly my chairmanship of the association representing financial advisers.

I apologise to the House—but not to my noble friend, because he has not heard the comments that I have carried through all the debates on these statutory instruments. I would not like this statutory instrument to pass without us yet again making the point that this is rubbish. We should not be here. This is a nonsense. The more you read about it, the more you realise what a nonsense it is. The truth is that we are kindly giving other people the opportunity to do things that we have always done, and we will not be able to do them unless we are prepared to take the same rules as everyone else. So the whole thing is a nonsense. I am sorry that my noble friend the Minister has to present it. He will do so charmingly and nicely and will not be rude about it, but I do not want him to go without some people on this side of the House, as well as others, saying that we should not be here. We have spent hours and hours on debate. He very rightly thanked all the people who have helped him, but they should not have been wasting their time. We have spent an enormous amount of time doing something wholly deleterious to the United Kingdom. In the whole of my long life I cannot remember an occasion on which that has been so obvious.

This happens to be a worse Government than those who have preceded them in this situation, but the fact remains that we should not be here, because what is

being proposed is bad for Britain. We are not taking back control; we are putting ourselves into a position in which other people will have control and we will have no say in it at all.

That is the first point about this very small and unimportant series of amendments. The second point is this: as the noble Baroness has so often said before and has said again today, it is utterly impossible for people to keep up with the minutiae, or with the very fact that the Government has had yet again to make changes. I noticed a very elegant phrase that my noble friend used: "Like all legislation, when we went through it again there were things that we needed to change". Of course there are, if you keep on legislating entirely unnecessarily at great length in order to damage our country. That is what is so serious. Of course, it is true that we have found yet more examples. I imagine that the noble Baroness, Lady Bowles, with her considerable knowledge, will find some more, and we will go and tell the Government how nice it would be if they added all these other things.

The third reason I intervene is simply that the financial services industry is an important part of the United Kingdom's economy; it does some very important things. Over many years, it has become respected throughout the world for its knowledge and understanding. There have, of course, been occasions when things have gone wrong. I am the last person to defend that. But we have an established reputation throughout the world. I say to my noble friend the Minister that this is another example of us undermining that reputation for no good reason at all.

Of course, we will pass this and go through the motions yet again, but I resent having to spend good time on bad proposals. I resent it not just for myself, noble friends or noble Peers opposite; I resent it for all those decent civil servants who have spent their time not improving this country, not extending its influence, not making things better for Britain—but undermining it, in what I know they will have tried to make the least damaging way. The fundamental process is deeply damaging. I do not think that this House should pass these things without reminding the Government, including even so charming a Minister as we have, of the nonsense that we are engaged in.

Baroness Kramer (LD): My Lords, I am going to add a few words of comment. I suspect that the noble Lord, Lord Deben, has said everything that I would love to have said but I will narrow down and make a few more detailed comments. I want to pick up again the issue of divergence that I raised earlier. I fully understand that these are on the whole very minor changes to the statutory instrument and we are certainly not going to oppose them. I can see that they are tidying up.

However, two things struck me, one of which was addressed by my noble friend Lady Bowles: that we end up with a different risk-free rate within the UK from that being used, essentially, within the EU. I suppose people will say that that is a version of taking back control. As far as I am concerned, it is once again a mechanism for trouble and regulatory arbitrage. I am slightly worried that it does not seem to be accompanied—perhaps I have missed this—by any kind of mechanism to make sure that there is a great deal of common thinking and consultation around an issue like that. Choosing a different risk-free rate can rock the markets dramatically, quite frankly, and one can see that in the wrong hands there is a potential danger for this to be used as a competitive tool rather than as a tool to provide financial stability. I am just concerned that nothing in this SI really addresses that issue, though it has had the virtue of drawing our attention to the fact that this now becomes a pretty major problem.

6 pm

I turn to an issue where I do not understand quite what is going on. Paragraph 2.9 of the Explanatory Memorandum raises the issue of the EU's determination that a regulatory and supervisory framework for trading venues in Singapore is equivalent to the EU's framework —in other words, there is an equivalency recognition between the EU and Singapore, and that makes a great deal of sense. I am unclear from looking at this where the UK stands following Brexit, should it happen, in terms of an equivalence relationship with Singapore. Perhaps the Minister could help me. Is this a mechanism that extends our recognition of Singapore as equivalent? Does Singapore's recognition of the EU as equivalent carry over to us in our new separated role? Only a handful of markets carry on the same sort of global trading activities, so it seems important that we have some understanding and clarification around that.

Those are the only two issues that I wanted to raise. I again thank the noble Lord, Lord Deben, for really underpinning the fundamentals.

Lord Davies of Oldham (Lab): My Lords, there is not much else to say. It is the case, as the noble Lord, Lord Deben, indicated, that we have spent a considerable period of time dealing with the financial services industry on the question of a no-deal exit from the EU. He was absolutely right when he said we were in danger of diminishing the reputation of the industry, and of London, throughout the world. The most specific and important fact is that we are diminishing the position of London in relation to Europe just as we were absolutely clear that on the whole question of the development of financial services the British voice was heard with a great deal of sympathy in Europe. Just at the point when we were, if not taking control then showing the necessary leadership for the benefit of the whole of the European community and confirming and consolidating the position of the City of London, we take this step to end it all.

The Minister has probably not come totally armed with the facts of where we are with regard to the whole debate on Brexit, but now and again, prior to his accession to his position, he will have heard a few comments on where we are all at with regard to Brexit. It is the case that most noble Lords in this House who have taken a keen interest in the issue are absolutely shattered and exhausted by the amount of work that has been necessary, and of course the great danger is that so much of it is going to be utterly wasted and detrimental to the nation's interests.

[Lord Davies of Oldham]

The Minister will want us to concentrate rather more on the immediate issue of this instrument. The regulations were flagged as an instrument of interest by the Secondary Legislation Scrutiny Committee in its 58th report. The committee expressed its concern that while this instructment is presented as an innocuous tidying up exercise on past efforts, the exercise is actually fairly complex. This single statutory instrument makes changes to 15 items of legislation. The Minister already knows this, but he will not mind my reading it into the record. It includes a sub-delegation of powers and extends a ministerial power of direction. A saving grace is that the measure is subject to the affirmative procedure. That provides some safeguard, as the noble Baroness, Lady Bowles, indicated.

Financial services regulation is a complicated matter at the best of times. Amending legislation in this manner is of little help to anyone who is seeking to understand the rules of the game. Primary legislation, including the Financial Services and Markets Act, has been continually amended throughout its lifetime. This process has been repeated at the European level. Every time these changes are made, regulatory authorities such as the FCA and the Bank of England update their own guidance, adding another element of complexity. That is not to say that regulation is not important; we on these Benches would scarcely advance that argument. But we are dealing with a very complex field, and our job is not made any easier by the Treasury's approach to this exercise.

My noble friend Lord Tunnicliffe, who has played such a significant part with regard to the SIs relating to a no-deal exit, and of course those colleagues on the Liberal Democrat Benches who have also pursued these issues with great diligence, had a meeting with the Economic Secretary to the Treasury in late February to discuss the kind of concerns that have been expressed today. At that meeting, Mr Glen, the Economic Secretary, committed to producing a summary of the EU exit SIs passed up to that point, with what we hoped was a genuine commitment to a plain English explanation of the effect on key pieces of legislation and guidance. We do not know whether that document has ever been provided. Given the number of changes that have been made, I assume—or at least hope—that somebody in the Treasury has maintained an overview of the situation. Would the Minister, who of course comes new to all this, commit himself to chasing this up with the department? A great deal of work was invested in this and it reflected the sheer complexity of the issue and its significance for the industry that we are dealing with. The Minister will reap a reward for his time in taking advantage of the offer I have made to him, to which I am sure his civil servants will be only too glad to respond.

I know that the Treasury has worked with bodies such as the FCA and the Bank of England when drawing up these instruments, but I wonder whether the Minister could shed any light on what else the department is doing to assist regulators during these particularly challenging times, when so much is in a state of flux, yet people need clear, accurate and legal decisions. Complex the industry may be, but there is a great deal at stake in its welfare, and at the present time we are not sure that the Government are bent on the correct course at all.

Lord Bethell: My Lords, I would like to thank everyone for participating in a really meaty discussion about an SI that is incredibly detailed in nature. The discussion got under the skin of some very serious issues.

I shall start by tackling head-on the comments made by the noble Baroness, Lady Bowles, about the late notice or delivery. I completely sympathise and understand her point. With a mopping-up SI such as this, one wants to capture the latest changes that have been processed, and therefore there is a pressure to have the SI as up-to-date as possible and that mitigates against early delivery. However, I agree with her sentiment that it is preferable for these things to be delivered early, and I will try to ensure that the department achieves that.

I do not want to raise the curiosity of the noble Baroness, Lady Bowles, too much about the CJA—that could be dangerous for the department—but I reassure her that the concerns she had were just about an omission. We need to reflect that Gibraltar and the EEA will be separate jurisdictions but that market abuses will still be caught in the same way as now. The changes that refer to the CJA simply capture that.

I will try to provide some reassurance on systematic internalisers. As the House knows, this instrument amends MiFID legislation so that the ability to meet the shared trading obligation using a systematic internaliser requires such trades to be made through a UK systematic internaliser after exit. This change in scope is consistent with the overall onshoring approach; it does not try to create something different. Once we are outside of the EU single market and joint supervisory framework, UK regulation will need to reflect that.

The noble Baroness, Lady Bowles, also asked about Solvency II and the risk-free rate. I reassure her that the risk-free rate will be calculated on the same basis as now. The change is that it will be published by the PRA instead of the EIOPA. That will be the principal change from this SI.

The noble Baroness, Lady Kramer, asked about equivalence with Singapore. We will carry over all the EU's existing equivalence decisions, including that for Singapore. I can explain that we are speaking to Singapore about that jurisdiction recognising the UK in the same way. I understand that talks are progressing well, and I hope to be able to provide good news to the House at a future date.

The noble Lord, Lord Davies, asked about a plain English explanation. I reassure him that we provided an overview to noble Lords earlier this year, but I am happy to provide any further information that he may require and to chat about that at a later date.

The noble Lord, Lord Davies, also asked whether adjusting to all these changes is a substantial challenge for the industry. That is linked to the heartfelt and moving appeal about this entire process from my noble friend Lord Deben. I take my noble friend's comments on board, but I have a different perspective.

In life, you often have to spend a significant amount of your time providing for and protecting yourself against things that you hope will not happen. That is a basic fundamental in life. That view is shared by not just me but the financial services industry, which urges this House, Parliament and the Government to pursue these measures with great energy and in great detail, to ensure that there is full protection against a possible no-deal Brexit.

At times, it feels like a waste of energy and a distraction, but that does not detract from the value of the work that has been put in. I have not been sitting here for the 50 SIs and I do not have the scars on my back like many in this room, but I still value enormously the expertise, time and passion that have gone into making such a good job of this whole exercise. I endorse the work of Parliament, the industry and the officials working on all of this and reassure the House that it is taken extremely seriously by the Government. In that vein, I commend these regulations to the House.

Motion agreed.

House adjourned at 6.14 pm.

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