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PARLIAMENTARY DEBATES
(HANSARD)

# HOUSE OF LORDS

## OFFICIAL REPORT

*ORDER OF BUSINESS*

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

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

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# House of Lords

*Wednesday 23 October 2019*

*3 pm*

*Prayers—read by the Lord Bishop of Salisbury.*

## Sharia Law: Marriages

*Question*

*3.07 pm*

*Asked by* ***Baroness Cox***

To ask Her Majesty's Government what progress they have made in implementing the first recommendation of *The independent review into the application of sharia law in England and Wales*, published in February 2018, in order to protect Muslim women in Islamic marriages which are not civilly registered.

**The Advocate-General for Scotland (Lord Keen of Elie) (Con):** My Lords, the review recommended creating an offence that would apply to celebrants of religious marriages that do not confer legal rights. We continue to explore across government the practicality of such an offence among other potential options and whether it would achieve the change of practice intended.

**Baroness Cox (CB):** My Lords, I thank the Minister for his reply, but we have seen no evidence of any progress on this crucial issue, which causes so much suffering to so many Muslim women in this country. Is he aware that many noble Lords were deeply concerned by his response to a similar Oral Question in July, in which he suggested that the plight of Muslim women, "is more of a social issue than a legal one"?—[*Official Report*, 4/7/19; col. 1516.] Given the recommendations of the sharia law review, the Casey review and the Parliamentary Assembly of the Council of Europe, and the number of Private Member's Bills that I have submitted since 2011, will the Minister give an assurance that the government legislation will at last be introduced with great urgency, as so many Muslim women are suffering in ways which would make our suffragettes turn in their graves?

**Lord Keen of Elie:** My Lords, I fully understand the concern about this issue in relation to marriage law. We do not agree with the recommendations in the sharia review. The Council of Europe's view on this was, I regret to observe, inept in so far as it used the concept of "civilly registered", which is not a legal concept in the context of the marriage laws of England and Wales. On 29 June, it was announced that the Law Commission would undertake work in relation to the law on how and where marriages may take place in England and Wales. The commission will not consider directly the sharia review's recommendations, but it will consider rationalising the system of offences within marriage law.

**Lord Anderson of Swansea (Lab):** My Lords, the Minister may understand the concern, but the question is what the Government are going to do about it, having set up this commission. Are they content with a situation where, under sharia courts, women are constantly discriminated against in terms both of inheritance and particularly evidence, the weight of their evidence being half that of a man's?

**Lord Keen of Elie:** My Lords, we do not recognise sharia courts in this country; we do not recognise sharia law in this country. It is necessary that people carry through their relationships in accordance with the law of England and Wales. However, the Government do not prevent individuals seeking to regulate their lives through their religious beliefs.

**Lord Cormack (Con):** My Lords, as one who has supported the noble Baroness, Lady Cox, and admires her persistence and courage, I ask my noble and learned friend to ensure that action is taken soon to give these women—I have met some of them with the noble Baroness—the basic equality that they are denied, and which everyone in this country deserves.

**Lord Keen of Elie:** My Lords, one is clearly concerned where equality of treatment is not available as it should be under our law, but I repeat a point that I made on a previous occasion, albeit the noble Baroness, Lady Cox, may take issue with it: this is as much a social issue as it is a legal issue. Many people in this country choose to cohabit rather than go through any form of marriage but, within the Muslim community, cohabitation is severely frowned upon. It is for that reason that we find that many go through this informal form of marriage, which is not recognised under our law.

**Baroness Hussein-Ece (LD):** My Lords, religious marriages that are not legally recognised is an issue that affects women and girls from many faiths and backgrounds. A third of cases dealt with by the UK's Forced Marriage Unit involved children under the age of 17. The Minister will be aware that, under existing law, children can be married and, shockingly, an adult marrying a child in this way is not in itself a crime; it is simply not legally binding. Will the Government take action to close this loophole by increasing the minimum age of any marriage to 18 and protect all children from all backgrounds?

**Lord Keen of Elie:** My Lords, forced marriage is a criminal offence in this country and has been since 2014. Indeed, in 2017 we introduced lifelong anonymity for the victims of forced marriage to encourage more people to come forward and report it. The age of marriage is 16 but, in the period from 16 to 18, marriage can of course be carried out only with the consent of the parent. There are no immediate plans to increase the age in respect of marriage.

**Baroness Flather (CB):** My Lords—

**Baroness Afshar (CB):** My Lords, are the Government aware that these courts deprive Muslim women of not only their rights but their Islamic rights? They do not give them the rights that the Koran gives to women: to

[Baroness Afshar]
independence, to charge for housework and to charge for motherhood. It is high time that someone who is familiar with the Koranic teachings of Islamic rights intervened to prevent this façade of sharia courts imposing absolutely unjust and unlawful demands on women. What will this Government do about that?

**Lord Keen of Elie:** My Lords, we do not recognise sharia courts and we do not recognise sharia law. We recognise the law of England and Wales, and it is that to which we must look for protection of rights and to which individuals must have recourse. Of course, I understand the social inhibitions that exist in parts of the Muslim community in seeking to vindicate their rights. That is why, for example, we introduced anonymity in the context of forced marriage.

**Lord Elton (Con):** My Lords, the Government may not recognise the courts but a great many people in this country do, of whom a large proportion cannot speak, read or understand the English language. Do the Government realise that there is a huge barrier around this problem, which needs to be solved quickly to avoid terrible injustice?

**Lord Keen of Elie:** My Lords, I entirely concur with the observations of my noble friend. There is a very real need for education and information in this area. If we can achieve that, we can take strides to deal with this inequality and injustice, which we readily recognise, but which is more difficult to cure than to identify.

## EU Settlement Scheme

*Question*

*3.15 pm*

*Asked by* ***Lord Greaves***

To ask Her Majesty's Government what assessment they have made of the effectiveness of the EU Settlement Scheme.

**The Minister of State, Home Office (Baroness Williams of Trafford) (Con):** My Lords, the EU settlement scheme is performing well. This is demonstrated by the latest internal figures, which show that there have been more than 2 million applications. The Home Office is processing up to 20,000 applications a day and most complete applications are being processed in around five days.

**Lord Greaves (LD):** My Lords, on 1 June 2016, just before the referendum, the following statement was made:

"There will be no change for EU citizens already lawfully resident in the UK. These EU citizens will automatically be granted indefinite leave to remain in the UK and will be treated no less favourably than they are at present".

That was over the signatures of Michael Gove, the present Home Secretary Priti Patel, and Mr Boris Johnson. Is it not the case that these promises have been systematically broken in some large and many small ways? At present, European Union citizens who are offered settled status in the UK possess legal rights as European Union citizens. In future, they will simply have permissions that can be withdrawn any time. Is this not a total breach of the promise made by these people and is the answer not to scrap the present system and replace it with a simple system of registration?

**Baroness Williams of Trafford:** I could not agree less with the noble Lord. First, the EU settlement scheme is free; secondly, it provides a route to settlement that gives people the same rights as any other British citizen; and, thirdly, it is also a proof of status. I really cannot understand what the noble Lord is saying. He talks about registration: I presume he means a declaratory system. In a declaratory system, we have seen the lessons of Windrush: in years to come people might not be able to prove their status, so I think the EU settlement scheme is the best route forward.

**The Earl of Listowel (CB):** My Lords, what progress is being made to ensure the rights of children in local authority care, who may have uncertain citizenship? Is support being given to make sure that they get their entitlements in good time?

**Baroness Williams of Trafford:** The noble Earl asks a very good question. There are two issues here. First, they might not realise that they can apply to the scheme. Secondly, they might be in local authority care, but we are cognisant of that. We are working with Liverpool University to ensure that children are communicated with and that they can retrospectively apply if, say, through no fault of their own their parent or carer did not manage to apply in time for June 2021.

**Lord Rosser (Lab):** A Government Minister has apparently said that EU citizens living in Britain risk being deported if they fail to apply by the deadline for settled status. It is highly unlikely that all will apply on time, simply because of the large number of EU citizens affected—I think the figure is some 3 million. What do the Government think this threat of deportation of potentially significant numbers of EU citizens will do to strengthen the position of British citizens living in an EU country who wish to remain in that country? I declare a family interest in this issue.

**Baroness Williams of Trafford:** My Lords, the word "deportation" is crucial here. EEA citizens who do not apply to the EU settlement scheme by the deadline will not be acting unlawfully in the same way that clandestine entrants, arrivals or overstayers do. They will not have knowingly entered the UK in breach of the UK Immigration Acts or overstayed their leave. From 2021, EEA citizens will need to hold either an EUSS leave, a Euro TLR or an immigration status under the new immigration system.

**Lord Cashman (Non-Afl):** My Lords, the evidence given to the EU Justice Sub-Committee on this very issue outlined the deep concern that members of this settled scheme will not have physical proof—a card or anything else—that proves that they are a member of

this scheme. Following Windrush, they are deeply concerned that their only proof will be online, and they will not have any access online other than to refer to such a registration.

**Baroness Williams of Trafford:** I have heard this concern time and again. I can understand how some people might feel that a physical document was somehow more secure and better proof of status. However, in actual fact everyone gets a letter or an email, and the digital status—or token, if you like—is actually a far more secure way of proving status. I acknowledge the concerns that arise when people do not have a physical document in front of them, but they do receive a letter.

**Viscount Waverley (CB):** My Lords, I declare that I have been registered as a resident in Portugal for the past 30 years. The question of reciprocity potentially becomes centre stage given that no deal is still on the table. Can the Government give an absolute surety that the UK will not jeopardise the rights and privileges of UK citizens on the continent with that still a possibility?

**Baroness Williams of Trafford:** The noble Viscount will of course be aware that as the United Kingdom, we have done our duty by EU citizens in the UK. We have done that unilaterally. We hope that the EU would do the same; therefore, we are reliant on that good will on both sides. But I am satisfied that we now have over 2 million applications out of a cohort that I estimate to be about 3 million.

**Lord Wallace of Saltaire (LD):** My Lords, as the Minister just said, therefore 1 million people have not yet applied. What steps are the Government taking to ensure that they are aware that they now need to apply, and their applications can be got in in good time?

**Baroness Williams of Trafford:** The noble Lord will probably be quite pleased to hear that we are processing applications at the rate of about 20,000 a day. People are applying. However, it is crucial that the harder-to-reach people are aware of their rights and aware that they should be applying. In the event of a deal, they have until June 2021 to apply; there is a lot of advertising; and some of the advances in how people can upload their photo and so on have been made easier by the fact that the iPhone 8 and more up-to-date versions will be able to upload people's details.

## Yazidis: Attempted Genocide

*Question*

*3.23 pm*

*Asked by* ***Lord McConnell of Glenscorrodale***

To ask Her Majesty's Government what steps they have taken to secure justice for the Yazidi people of Northern Iraq, following the genocide attempted by the so-called Islamic State.

**The Minister of State, Foreign and Commonwealth Office (Lord Ahmad of Wimbledon) (Con):** My Lords, the United Kingdom has played a crucial role in galvanising international efforts to secure justice for the Yazidi people and the many other victims of Daesh's crimes in Iraq. This includes leadership in ensuring that the UN Security Council unanimously adopted Resolution 2379 to establish a UN investigative team for the accountability of Daesh—UNITAD. The UK has now contributed £2 million to UNITAD, whose mandate was recently extended on 20 September for a further 12 months.

**Lord McConnell of Glenscorrodale (Lab):** I thank the Minister for his Answer and also for the work that he and UK diplomats have done to try to take this issue forward. However, the reality is that, more than five years after thousands of Yazidi women and girl children were enslaved for the purposes of daily rape and beating by IS fighters, and nearly two years since the supposed defeat of Islamic State in Iraq, there have been no prosecutions in the United States, the United Kingdom or most European courts of nationals, or their return for prosecution to their own countries. There have been no victims' statements or charges for these crimes in the Iraqi courts that have tried some IS fighters for terrorism, and, as a result, there is a desperate feeling among the Yazidi families and the returnees that there has been no justice for them that would deter similar incidents in the future. Will the UK support the proposal for a hybrid court, perhaps set up through treaty between the Iraqi authorities and the United Nations, that would ensure that at least the most senior ISIS figures who were involved in these depraved crimes could be put on trial and a record could be set that might deter others from carrying out such horrific acts in the future?

**Lord Ahmad of Wimbledon:** My Lords, I first pay tribute to the work the noble Lord is doing in this respect. He and I have had various conversations on this issue and on the wider issue of stability in Iraq. I am sure that on his visit to Iraq, the noble Lord was pleased to see the contributions we are making in provinces such as Sinjar. Through UNITAD and other programmes, we have contributed extensively to ensuring the return of the Yazidi community to their provinces. There are about 98 projects, of which 56 have been completed.

The noble Lord is right to raise the issue of justice and accountability. He will know that is a priority for the UK Government. We continue to work with the High Judicial Council, and counterterrorism investigative judges, to assess the current capability of the Iraqi judiciary. The noble Lord will be aware that, when it comes to crimes of sexual violence, the best accountability is local accountability. We are lending our support to ensure that there is national accountability. At the PSVI conference, scheduled for 18 to 20 November, we will be exploring other international mechanisms to hold the perpetrators of these crimes to account.

**Baroness Northover (LD):** My Lords, is the Minister aware that a number of Yazidi villages in northern Syria have been under attack because of the Turkish invasion, and that a number of these people have now fled to Iraq? They are obviously extremely worried about ISIS fighters escaping from camps. What protection are we offering them? What work are we doing with any of our allies to support them?

**Lord Ahmad of Wimbledon:** The noble Baroness is quite right. She and many other noble Lords will recognise the porous nature of the border between Syria and Iraq. That has a posed a challenge, notwithstanding the incursion by Turkey, to the Iraqi Government as they seek to build stability. She is also right to raise the issue of Daesh fighters. Concern has been expressed directly to the United States and Turkey by the United Kingdom, including in conversations that my right honourable friend the Prime Minister has had with the President of Turkey on the very issue she raises. We continue to work very closely with the Iraqi Government to ensure that they have the systems of protection and the intelligence available to ensure that those who have perpetrated crimes previously, or who seek to re-establish Daesh in any part of Iraq, can be dealt with constructively, with the Iraqi Government, to ensure that they do not take root again, particularly in Iraq.

**Lord Alton of Liverpool (CB):** My Lords, given the recent discovery of mass graves and the knowledge that we now have of the horrendous crimes that have been committed against Yazidis and other minorities in Iraq, and now potentially in north-east Syria, will the Minister take the opportunity to reaffirm our commitment as a signatory to the 1948 convention on crimes of genocide, and our duty to prevent, to protect and then to punish? Will he say what we will do to support Germany, Norway and Sweden in their efforts to create a regional tribunal, to be established in Iraq, so that some of those responsible for these crimes will at last be brought to justice? Will he give consideration to the Private Member's Bill that was given a First Reading in your Lordships' House last week on efforts to prevent genocide from taking place in the first place?

**Lord Ahmad of Wimbledon:** First, I reassure the noble Lord that, as signatories to any international convention, we uphold our obligations in that respect. He raises valid issues. The noble Lord and I have had various discussions about regional tribunals. It is very important to recognise that, before we can have a successful prosecution, we need the evidence base. We have been pleased to support the UNITAD mission on the ground, which is now collecting, sustaining and protecting the evidence that will allow for successful prosecutions. That is an important first step.

The noble Lord talked about the discovery of war graves. Again, the UNITAD mission was central to that, together with the Iraqi Government. Let us not forget that the survivors should be at the heart of finding a resolution to this challenge and ensuring accountability. Nadia Murad, a Yazidi survivor, has been working very closely with the Government on this agenda.

**Baroness Eaton (Con):** Is any support being provided for the mental health of individuals damaged by these dreadful experiences?

**Lord Ahmad of Wimbledon:** The short answer is yes. Directly through the UNITAD mission, we now have established female expertise to deal directly with psychosocial issues as well as offering immediate medical assistance.

## ISIS: British People

*Question*

*3.29 pm*

*Asked by* ***Lord Dubs***

To ask Her Majesty's Government what proposals they have regarding British people who joined ISIS and are now being held in custody by the Kurds.

**The Minister of State, Home Office (Baroness Williams of Trafford) (Con):** My Lords, I hope that the House will indulge me for a moment: I am sure that I speak for the whole House in saying that our thoughts and prayers are with the 39 people killed today in Grays, and that we wish to convey our condolences to the families of those who have lost their lives.

Those who have fought for or supported Daesh should, wherever possible, face justice for their crimes in the most appropriate jurisdiction, which is often in the region where they committed their offences. We will continue to pursue all available avenues with international partners in seeking justice and accountability for those who have fought alongside Daesh.

**Lord Dubs (Lab):** My Lords, does the Minister not agree that we are talking about British people who were born, brought up and educated here, and who now find themselves in Kurdish custody—possibly not even certain custody as they might again come under ISIS's control? Surely we have a responsibility to people educated in this country to bring them back, expose them to the full force of the law and have them prosecuted here, rather than leaving them to fester in the dangerous situation in the region.

**Baroness Williams of Trafford:** My Lords, we have no intention of letting people fester, but the noble Lord will appreciate the fact that we obviously have no consular access so it is difficult to bring people to justice at the moment. We are in discussion with our international partners about what a suitable solution would look like, with agreement from those partners, in bringing people to justice.

**Viscount Hailsham (Con):** My Lords, what steps are the Government taking to ensure that, when a passport is revoked, a person is not left stateless? Does she accept that having a possible claim in another country, based on parental birth or residence, is not necessarily the same as being a citizen of that other country? On a personal note, my mother was born in Dublin so I have a possible claim to Irish citizenship. However, I am not an Irish citizen so if my UK passport was revoked, I would be stateless—which I, at least, would regard as unfortunate.

**Baroness Williams of Trafford:** Well, other people may not.

**Noble Lords:** Oh!

**Baroness Williams of Trafford:** Sorry, that was a bit of a Brexit dig. When the Home Secretary makes the decision to revoke someone's citizenship, they may not render that person stateless. They must, therefore, take

legal advice at the time, which they are doing. I know the exact point that my noble friend makes but the Home Secretary cannot render someone stateless.

**Lord Hannay of Chiswick (CB):** My Lords, will the Minister address the issue of the British orphans in the part of Syria that is now under attack? What are the Government doing? Does she recognise that there is real urgency here because if the truce is being extended for a bit, as was reported today, that could provide an opportunity to get some of these children at least as far as Iraq on their way back here, where they ought to be?

**Baroness Williams of Trafford:** I not only recognise but acknowledge and agree with the noble Lord's point. I appreciate the time that we had to talk about some of these difficult issues. Where a child is a British citizen, we will work with partners to try to find a safe route to return them to this country, as he says.

**Lord Paddick (LD):** My Lords, is it not a principle of British justice that an accused person is innocent until proven guilty in a legitimate court of law? On the basis of what evidence are these British nationals denied entry to the UK or even denied British citizenship? Should the UK not do what almost every other country is doing and repatriate its nationals, albeit to face trial if necessary?

**Baroness Williams of Trafford:** My Lords, different countries have different approaches. I am aware of what they are doing. Where the noble Lord talks about being innocent until proven guilty, I assume that he means people who have gone to Syria to fight. He is right to say that these people should be brought to justice, and that is why we are having conversations with our international partners to look at the best method to work this out in an internationally agreed way.

**Lord Soley (Lab):** My Lords, is there not a real danger both of orphaned children and of adults, if we allow them, being recruited again and retrained either by ISIL or other groups; being given false papers, as they would be; and being able to travel to other countries in the world, including the United Kingdom, to carry out terrorist acts? This is not just a humanitarian issue; it is also one of the security of this and every other country. We need to do something fast.

**Baroness Williams of Trafford:** I agree about the dangers of the recruitment of children and the dangers of them being left. I hope that I made clear in my response to the noble Lord, Lord Hannay, some of the things we are trying to do to ensure that children who are British citizens are returned home safely. We absolutely recognise the real danger and that is why urgent conversations are going on, some of which I simply cannot discuss at the Dispatch Box.

**Baroness Sheehan (LD):** My Lords, if the Government propose to take only British children and not their British mothers, what assessment have they made of the probable fate of those mothers?

**Baroness Williams of Trafford:** The noble Baroness would have to describe in what context we would not take their mothers, but I think that I have been quite clear in explaining about children who are orphaned or have been left in the region without anyone.

## Organ Tourism and Cadavers on Display Bill [HL]

*First Reading*

*3.37 pm*

*A Bill to amend the Human Tissue Act 2004 concerning consent to activities done for the purpose of transplantation outside the United Kingdom and consent for imported cadavers on display.*

*The Bill was introduced by Lord Hunt of Kings Heath, read a first time and ordered to be printed.*

## School Admissions for Children Adopted from Overseas Bill [HL]

*First Reading*

*3.37 pm*

*A Bill to make provision for children adopted from overseas to receive the same priority for admission to maintained schools as children looked after or previously looked after by a local authority in England.*

*The Bill was introduced by Baroness Whitaker (on behalf of Lord Triesman), read a first time and ordered to be printed.*

## Armed Forces (Posthumous Pardons) Bill [HL]

*First Reading*

*3.38 pm*

*A Bill to make provision to provide posthumous pardons to armed forces personnel convicted of, or cautioned for, certain abolished offences.*

*The Bill was introduced by Lord Cashman, read a first time and ordered to be printed.*

## Department of Health (Northern Ireland) Bill [HL]

*First Reading*

*3.38 pm*

*A Bill to provide for the functions exercised by the Northern Ireland Department of Health to be exercised by the Secretary of State until the formation of a Northern Ireland Executive.*

*The Bill was introduced by Lord Empey, read a first time and ordered to be printed.*

## Age of Criminal Responsibility Bill [HL]

*First Reading*

*3.39 pm*

*A Bill to raise the age of criminal responsibility.*

*The Bill was introduced by Lord Dholakia, read a first time and ordered to be printed.*

## Common Organisation of the Markets in Agricultural Products and Common Agricultural Policy (Miscellaneous Amendments etc.) (EU Exit) (No. 2) Regulations 2019

## Common Organisation of the Markets in Agricultural Products (Transitional Arrangements etc.) (Amendment) (EU Exit) Regulations 2019

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

## Agriculture (Miscellaneous Amendments) (EU Exit) Regulations 2019

## Import and Export Licences (Amendments etc.) (EU Exit) Regulations 2019

*Motions to Approve*

*3.39 pm*

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

That the draft Regulations laid before the House on 23, 24 and 25 July be approved. Considered in Grand Committee on 16 October.

*Motions agreed.*

## Environment and Wildlife (Legislative Functions) (EU Exit) (Amendment) Regulations 2019

## Pesticides (Amendment) (EU Exit) Regulations 2019

*Motions to Approve*

*3.40 pm*

*Moved by* ***Baroness Chisholm of Owlpen***

That the draft Regulations laid before the House on 17 and 24 July be approved. Considered in Grand Committee on 16 October.

*Relevant document: 59th Report, Session 2017–19, from the Secondary Legislation Scrutiny Committee.*

*Motions agreed.*

## Birmingham Commonwealth Games Bill [HL]

*Third Reading*

*3.40 pm*

*A privilege amendment was made.*

*Motion*

*Moved by* ***Baroness Barran***

That the Bill do now pass.

**The Parliamentary Under-Secretary of State, Department for Digital, Culture, Media and Sport (Baroness Barran) (Con):** My Lords, in begging to move that this Bill do now pass, I note my gratitude that this House has recognised the importance of this Bill by supporting the carryover Motion that brought us to Third Reading. Taking up the Bill at this stage also offers me the opportunity to recognise and thank my noble friend Lord Ashton of Hyde for the excellent job he did in taking the Bill through its previous stages, ably supported by my noble friend Lord Younger of Leckie.

As my noble friend Lord Coe reflected at Second Reading, legislation such as the Commonwealth Games Bill provides,

"the crucial framework, foundations, provisions and protections",—[*Official Report*, 25/6/19; col. 1019.]

on which the successful and seamless delivery of an event of the scale of the Commonwealth Games relies. I echo that sentiment and am glad that this House has gone about its scrutiny with that in mind.

I also reflect—as I know my noble friend Lord Ashton would have—on the informed and constructive engagement undertaken by this House on the Bill, particularly from the noble Lords, Lord Griffiths and Lord Addington, on the Front Benches opposite. I also thank the Delegated Powers and Regulatory Reform Committee for its detailed and helpful consideration of the Bill. Finally, my thanks go to the Bill team led by the Bill manager Jo Trapp and deputy Bill manager Tim Dwyer.

I am pleased that, for the first time in my role as a Minister at the Department for Digital, Culture, Media and Sport, I can touch—albeit briefly—on the truly exciting opportunities created by the Birmingham 2022 Commonwealth Games. It has been a strong feature of the debates on this Bill that the Games are about far more than just two weeks of sport and will unlock opportunities for people across the region and the UK, delivering significant benefits after the 11 days of sport in 2022 are over.

I welcome this House's great enthusiasm for and interest in the Games, and I fully appreciate the desire of noble Lords to be kept updated as plans progress. Indeed, since we last met, the organising committee has published its annual accounts and its chief executive has written to noble Lords who have spoken on the Bill to update them on the delivery of the Games. I beg to move.

*3.45 pm*

**Lord Griffiths of Burry Port (Lab):** My Lords, I echo what has been said and warmly second the list of thanks that was offered so well—especially as I was included in it. In addition to those listed, I thank my

noble friends Lord Rooker and Lord Hunt. We heard wonderful disquisitions from the noble Lord, Lord Moynihan, and I know there will be many more in the future. I have already welcomed the noble Baroness to her post and I very much look forward to working with her, but: she must be very careful in that job because, if she looks to her right, she will see what just might happen to her.

**Lord Addington (LD):** My Lords, I welcome the noble Baroness to her role. This is a very happy and really unusual moment in this House, in that we have something that we all agree on. I encourage everybody to, first, apply for tickets, and, secondly, to look to sponsor another big sporting event soon.

**Lord Campbell of Pittenweem (LD):** My Lords, briefly, I associate myself with the expressions of support we have already heard. There is no question but that Birmingham has done both the Commonwealth and sport a great advantage through its willingness to take on the production of these Games at short notice after a previous candidate had to withdraw. So far as we can see, the arrangements are proceeding at pace and are well judged. On this occasion, we can comprehensively wish Birmingham a good strong following wind.

**Lord Hunt of Kings Heath (Lab):** My Lords, this is too good an opportunity to miss. In thanking the noble Baroness and her colleague for steering the Bill through, I want to put a question to her, as suggested by my noble friend Lord Faulkner. Can she assure me that Kings Heath station will be reopened in time for the Commonwealth Games?

**Baroness Barran:** I may have to write to the noble Lord on that.

*Bill passed and sent to the Commons.*

## North-east Syria
*Statement*

*3.47 pm*

**The Minister of State, Foreign and Commonwealth Office (Lord Ahmad of Wimbledon) (Con):** My Lords, with the leave of the House, I shall now repeat in the form of a Statement the Answer to an Urgent Question asked in another place on British children in north-east Syria. The Statement is as follows:

"This is, of course, a dreadful situation. Innocent minors trapped in north-east Syria are, without doubt, vulnerable. All these cases must be approached with care and compassion. We are aware that British nationals, including children, are living in displaced persons camps in Syria but, owing to the circumstances on the ground, we are not in a position to make an accurate estimate of the number.

The safety and security of British nationals abroad is a priority for the Foreign Office, although UK travel advice has consistently advised against all travel to Syria since 2011. Although the United Kingdom has no consular presence in Syria from which to provide assistance, we will do all we can for unaccompanied minors and orphans.

The Foreign Secretary made it clear to the House last week that the Government will try to help any British unaccompanied minors and orphans in Syria, subject to national security concerns. We work with all concerned in Syria and at home to facilitate the return of unaccompanied or orphan children where feasible. Each case is considered on an individual basis.

The situation in north-east Syria is fragile, but we will continue to work with international partners to secure stability in the region, to ensure that the considerable gains made against Daesh are not undermined, and to bring humanity and compassion to a deeply troubled and traumatised region".

*3.50 pm*

**Lord Collins of Highbury (Lab):** I thank the Minister for repeating that Statement. I am sure many noble Lords will have been disappointed by Dr Morrison's response yesterday—particularly over the numbers—especially as NGOs on the ground are clear about the numbers. Yesterday, former Foreign Office Minister Alistair Burt complained that sometimes practical difficulties were used to mask a failure in government to make the decisions it needs to make. As we heard during the earlier Question from my noble friend Lord Dubs, ultimately Ministers will have to decide how to deal with the children's parents. Does the Minister agree with Alistair Burt that we have to recognise an international responsibility to take them back—even those who have been indoctrinated and radicalised—to protect British children?

**Lord Ahmad of Wimbledon:** My Lords, first, I put on record that I know the right honourable gentleman Alistair Burt very well. I worked with him as a Minister in the Foreign and Commonwealth Office and I pay tribute to his work across both that department and DfID. The Government have listened carefully and I have read through his exchange with my right honourable friend. As I have stated, it is clear that we have moved forward constructively. I am sure the noble Lord will acknowledge that the situation on the ground is difficult, but we have already committed that we will work with all agencies on the ground to ensure that we can bring minors and unaccompanied children back to the United Kingdom at the earliest opportunity. As to other British citizens, we are, as my right honourable friend said, looking at this on a case-by-case basis. I hear what the noble Lord says about numbers. I do not want to get specifically into the numbers but I can assure him that we are working with agencies on the ground to ensure that we can identify British citizens at the earliest opportunity and act accordingly in their best interests.

**Baroness Northover (LD):** My Lords, I share the concern of the noble Lord, Lord Collins, and that expressed in the earlier Question. The Minister in the other place yesterday addressed the position of orphans, but Save the Children says that there are probably only three orphans out of 50 to 60 children. That may be why the Minister does not want to talk about numbers. All the children, most of whom are aged under 12, are

[Baroness Northover]
in this position through no fault of their own. Does he agree that their rights must be protected and that when they are back, they must be fully supported? Does he further agree—we have to press him on this—that their parents, often in this case their mothers, must also come back and, if appropriate, be held to account? Leaving them and their children there is not only an abuse of the rights described earlier but may also foster further radicalisation. It is very short-sighted.

**Lord Ahmad of Wimbledon:** I reiterate, I can go no further on the issue of numbers. The noble Baroness referred to orphans but, as the Statement made clear and my right honourable friend the Foreign Secretary has said, this is not only about orphans but also about unaccompanied minors. The right approach is to prioritise the most vulnerable, which Her Majesty's Government are doing. On the issue of mothers, I listened to the point the noble Baroness raised, and which her colleague, the noble Baroness, Lady Sheehan, raised in an earlier Question, and we will look carefully at each individual case. On the issue of mothers, children and separation, I share the noble Baroness's view that we should be mindful not to separate children from their mothers. That is being looked at carefully. However, the situation on the ground is very challenging. We do not have a consular presence on the ground, but we are working with agencies to identify specific cases involving British citizens and to act accordingly.

**Lord Alton of Liverpool (CB):** My Lords, although the Minister has rightly said that he cannot give exact numbers, does he recognise the figure of 60—double the number mentioned previously—produced by Save the Children, a reputable charity in this country? Can he also say why we said that it was too dangerous to take children out of the situation they are in, while the United States, France, Austria and Belgium were able to use the ceasefire to take children out of those same dangerous conditions? On consular access, does he also recognise that, as we do not have an embassy, consulate or any diplomatic presence in Syria, it is impossible for women—the mothers of these children—to get access to anyone? How are we going to provide that consular access?

**Lord Ahmad of Wimbledon:** On the noble Lord's final point, I have said that we are working with all partners and agencies on the ground to identify those individuals, including the mothers of children, to whom the noble Lord alluded. On his point about numbers, he said that the number has doubled. That demonstrates why I do not want to get into speaking about numbers specifically. I accept that there are vulnerable children, orphans, unaccompanied minors and British citizens currently in that region. We will work with all agencies on the ground. On our international partners' ability to access and withdraw their citizens, particularly children, the Government have said that we are looking at this carefully and seek to do exactly that: to withdraw unaccompanied minors and orphans at the earliest opportunity and in the safest possible way.

**Lord Robathan (Con):** My noble friend mentioned the need for stability in the region. Is he able to throw any light on what discussions have taken place at the top of NATO, in the NATO Council and elsewhere, with Turkey, given that there is now an appallingly difficult situation where children are in danger with Turkey facing Russia in some strange sort of ceasefire?

**Lord Ahmad of Wimbledon:** My noble friend is right to raise the issue of Turkey. As noble Lords know, Turkey is a key NATO ally. For that reason, we have been prioritising direct discussions with Turkey. My right honourable friend the Foreign Secretary has spoken to Foreign Secretary Çavuşoğlu. On 12 October, my right honourable friend the Prime Minister spoke to President Erdoğan, and he spoke to him again on 20 October. Points included ensuring humanitarian access in any incursion and that any returns to the buffer zone must be done on a voluntary basis in a secure and safe manner. There are other matters directly related to NATO which we are discussing extensively. The fact that my right honourable friend the Prime Minister prioritised those calls demonstrates the priority Her Majesty's Government attach to this issue.

**Baroness Lister of Burtersett (Lab):** My Lords, Save the Children and members of the Minister's party yesterday argued very strongly that all British children should be repatriated. The response was that the Government look at children on a case-by-case basis. Will the Minister explain what criteria will be used to decide which children are worthy of being brought back to Britain and which are not?

**Lord Ahmad of Wimbledon:** I referred to all British citizens in the announcement we made; I am sure the noble Baroness recognises that. I work very closely with Save the Children and have great regard for its incredible work on the ground. I shall not name specific agencies, but we are working with every NGO and partner on the ground to identify such people at the earliest opportunity. The noble Baroness does sterling work in this area, and I am sure she recognises that unaccompanied minors and orphans, whom we have specified, are the most vulnerable and we should prioritise them.

**Lord McConnell of Glenscorrodale (Lab):** My Lords, it is right that Members of your Lordships' House scrutinise the Government in detail on this issue, but I detect a slight difference of tone in the response on this issue from that which we previously received on similar issues under the previous Prime Minister. That is welcome if it is indeed the case. However, I want to highlight the circumstances in relation to children in this situation. There are people who were children when they were groomed to go to Syria or Iraq to be part of the Islamic State wider family, or perhaps to marry into it, and who have remained there even though they have now moved out of the age of childhood. Would it not be appropriate in those circumstances for the Government to rethink the very hard-line approach taken by the previous Home Secretary to these young women, who were children when they were groomed to go to marry ISIS fighters?

**Lord Ahmad of Wimbledon:** I am sure the noble Lord understands that it would be inappropriate for me to comment on specific cases. On the broader issue

of radicalisation, we definitely need to look at it as a whole. On this occasion it has happened with Syria, but the tragic nature of grooming and radicalisation has to do with how it occurs, when it occurs and where it occurs. The fact that many young people and others left the United Kingdom after being influenced by Daesh's narrative is something we need to look at as a priority. We also need to look at what steps can be taken domestically to prevent it happening again. I reiterate that we will look at specific cases that come to our attention on a case-by-case basis.

## Freedom of Establishment and Free Movement of Services (EU Exit) Regulations 2019

*Motion to Approve*

*3.59 pm*

*Moved by* ***Lord Duncan of Springbank***

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

*Relevant document: 58th Report, Session 2017–19, from the Secondary Legislation Scrutiny Committee*

**The Parliamentary Under-Secretary of State, Department for Business, Energy and Industrial Strategy and Northern Ireland Office (Lord Duncan of Springbank) (Con):** My Lords, I stress at the outset that a deal with the EU would render the provisions of this instrument unnecessary until the end of any agreed implementation period. The regulations are required only in the event of the UK leaving the EU without a deal, a reality which the UK cannot guarantee unilaterally but for which it must necessarily prepare.

A number of noble Lords have raised concerns with me over whether these regulations will remove the rights of EU nationals to establish a business or provide services in the UK. I am grateful to the noble Lord, Lord Stevenson, for meeting me earlier today to discuss this issue and those that he will raise in moving his amendment. I take this opportunity to put on the record that these regulations do not impose any new restrictions on EU nationals or EU-based businesses, or the nationals or businesses of countries with associated agreements, at the point at which we exit the EU. This is because the UK's underlying legislative framework is compliant with these rights and, importantly, because EU retained law under the withdrawal Act will also apply.

The regulations do not impact on the immigration regime applying to the EEA or to Turkish and Swiss nationals in the UK. Indeed, they explicitly carve out any potential impact on the immigration rights of Swiss nationals and Turkish nationals to ensure that any changes come into force separately via primary legislation, which will be scrutinised in the normal way.

The regulations do not impact on the rights of EU citizens resident in the UK at the point of exit; those are protected separately. All EU citizens resident in the UK by exit day will still be able to work, study and access benefits and services, whichever scenario plays out.

The instrument addresses the reality, once we leave the EU, of reciprocity and necessary legal certainty affecting EU states and those states with which the EU has association arrangements. It covers the definition of "services", rights of establishment and the provision of services, free movement of services, and the prohibition of non-discrimination, as set out in the relevant articles of the Treaty on the Functioning of the European Union and similar provisions contained in EU association agreements.

The Treaty on the Functioning of the European Union provides rights for nationals of member states and is founded on the principle of reciprocal rights, including in the areas of services and establishment. If the rights were not disapplied, this would create certain legal issues for the UK. Going forward, the UK could be in breach of the WTO's General Agreement on the Trade in Services—the most favoured nation principle.

Unilateral provision of the measures could be interpreted as granting EU nationals additional rights to challenge the UK's laws and decisions in the future, and could restrict the Government's ability to regulate in the future. It would also create an uneven playing field in which EU nationals benefited and UK nationals in the EU did not.

The Government have sought the widest scrutiny of this instrument. The necessary consent of the devolved Administrations in Scotland and Wales was sought and secured, and the Northern Ireland Civil Service has been notified.

The Joint Committee on Statutory Instruments considered these regulations but chose not to report them to either House. The Secondary Legislation Scrutiny Committee chose to draw the instrument to the attention of the House, noting, in particular, compliance with WTO law and matters relating to satellite decoder cards.

To reiterate, the regulations impose no additional restrictions on EU nationals or EU-based businesses, or the nationals and businesses of countries with associated agreements, when we exit the EU, as the UK's existing legislation is compliant with these rights. All relevant Whitehall departments have examined UK legislation to identify where direct impacts might arise from the regulations and underlying UK legislation is not already in line with the treaty rights. I am satisfied that UK legislation is compliant with the rights.

The regulations will impact on the use in the UK of satellite decoder devices intended for EU audiences—that is, dishonestly receiving programmes without payment. In essence, it brings the law into alignment with the rules for non-EU satellite decoder devices.

All EU citizens resident in the UK by exit day will still be able to work, study and access benefits and services, whatever the scenario. Further, the regulations will have no impact on the immigration regime applied to EEA, Turkish and Swiss nationals in the UK, save to ensure that changes to the immigration regime applied to Swiss nationals and Turkish nationals will come into force separately via primary legislation.

These regulations are necessary. They ensure the UK's compliance with international law and protect the UK's right to regulate in the future. On that basis, I commend them to the House.

*Amendment to the Motion*

*Moved by* ***Lord Stevenson of Balmacara***

At end insert "but that this House regrets that the draft Regulations will remove certain rights for European Union, European Economic Area, Swiss and Turkish nationals, namely to be self-employed, own and manage a company and provide services in the United Kingdom without facing additional restrictions; further regrets the impact this may have for many long-residing individuals and families, as well as the wider consequences for the United Kingdom economy and employment; expresses concern that this change may result in the loss of rights for United Kingdom citizens resident elsewhere in the European Union, European Economic Area, Switzerland or Turkey; and calls on Her Majesty's Government to immediately and unilaterally guarantee the continuation of the relevant rights of European Union, European Economic Area, Swiss and Turkish nationals in the United Kingdom beyond exit day."

**Lord Stevenson of Balmacara (Lab):** My Lords, I am grateful to the Minister both for our meeting earlier today and for his introduction to the regulations. I belatedly welcome him to the Front Bench; although we have crossed swords at Questions, this, I think, is the first time that he has dealt with me on a substantive issue. I look forward to more of those.

These regulations will come into force only in the event of a no-deal Brexit, which now seems extremely unlikely to happen, but they are also contingent on the becalmed immigration Bill; that separation is continuing, is causing concern and is troublesome. However, were they to come into force, they would significantly impact on the rights of EU, EEA, Swiss and Turkish nationals. Specifically, they disapply the basis under which these nationals enjoy their rights to be self-employed, own or manage companies, or provide services to the UK on the same basis as UK nationals, and their right to bring nationality discrimination claims in relation to these rights.

As the Minister said, these regulations were drawn to the special attention of your Lordships' House by the Secondary Legislation Scrutiny Committee because they remove EU treaty rights and make significant policy changes. As he said, they were debated in the Third Delegated Legislation Committee of the House of Commons on Monday and have just been subject to a vote in the Commons, so they are drawing quite a lot of attention.

It surely makes no sense to decide immigration rights for those who are self-employed or are running businesses, separately from determining the immigration rights of other people, but that is what these regulations do. As recent correspondence has amply demonstrated, thousands of self-employed, business-owning or business-managing providers of services—including many who are contributing to our social and cultural life, the health service and our prosperity as a nation—need assurances that they will not be disadvantaged and that their right to stay will not be questioned or removed as we move forward. Does the Minister agree that the department could do more to explain what is happening to those affected by this measure, perhaps by writing to them once we know which way we are going?

In essence, I have three main concerns. First, the draft regulations are being made under Section 8 of the withdrawal Act, which gives the Government power to amend retained EU law in order to correct or mitigate "deficiencies" or,

"a failure of retained EU law",

to operate effectively after Brexit. But are these really deficiencies? In what sense has there been a "failure" of retained EU Law? Is it appropriate for the Government to use Henry VIII powers in Section 8 as a vehicle for policy changes? That Act was never intended to address how, whether or how quickly we could meet our obligations under the WTO.

Secondly, the regulations disapply the rights of EU, EEA, Swiss and Turkish nationals who are presently self-employed, owning and managing companies or providing services in the UK, and precludes them from bringing nationality discrimination claims in respect of those rights. In drawing the regulations to the special attention of the House on public policy grounds, the SLSC has described them as appearing,

"to be a significant reduction of rights".

The Minister said that the SI has had a wide review but, because there is no impact assessment, we do not know how many people will be affected; nor have they —or anyone—been consulted. In a previous debate, on a no-deal Brexit SI on metrology on 7 October, the Minister said on the question of stakeholder involvement in that SI:

"We did this the wrong way round—there should have been greater engagement in advance of such a complex and dense series of materials, to ensure that we had captured all the elements the first time. We did not do that, and … I acknowledge that this is the wrong way round, and I have said that on the record".—[*Official Report*, 7/10/19; col. 1913.]

It is a pity that, in his short time in the department, he has not been able to change its view on how it deals with SIs such as this one.

Thirdly, if the House accepts that a change of policy of such profound character should not be made by way of secondary legislation, the question then becomes: why is this issue not included in primary legislation such as the immigration Bill, which, as I said, is becalmed but is still around? In particular, how does this square with the fact that, on 5 September 2019, the Home Secretary released a policy paper in which she stated that free movement would be ended after exit day by way of primary legislation—a commitment from a Cabinet member?

In his opening remarks, the Minister said that, as well as protecting our WTO most favoured nation status, the Government were progressing on the basis that there was no guarantee that the EU would offer reciprocity on this matter. However, it is not so long ago that the Government chose to allow EU and EEA firms the right to continue to have full access after Brexit to electronic data held in the UK, with absolutely no guarantee that our firms would be offered those rights in return. Reciprocity was not a barrier for BEIS on that occasion, but it seems to be here—really?

Despite the Minister's assurances, which I accept, we have before us an SI which many of those affected think removes the rights to be self-employed, to own and manage companies or to provide services in the UK on the same basis as UK nationals. That, in turn, at face value, may affect the underlying basis of their lawful residence in the UK, because it is dependent on the immigration Bill, which we do not yet know the timetable for. The very strong impression given by the proposed SI is that it is a continuation of the Government's "hostile" immigration policy.

Given where we are, and where we are likely to be in the not-too-distant future, I believe the regulations should be withdrawn and that, as my amendment says, Her Majesty's Government should immediately and unilaterally guarantee the continuation of the relevant rights of EU, EEA, Swiss and Turkish nationals in the UK beyond exit day using primary legislation, if that is required. I beg to move.

**Lord Oates (LD):** My Lords, I support the amendment in the name of the noble Lord, Lord Stevenson. During the referendum campaign, a number of categorical commitments were made to EU citizens resident in the UK by the current Prime Minister and Home Secretary, among others. In June 2016, they said that,

"there will be no change for EU citizens already lawfully resident in the UK. These … citizens will automatically be granted indefinite leave to remain in the UK and will be treated no less favourably than they are at present".

I have often repeated that statement to the House, and I make no apology for doing so again; first, because to the shame of the Government that undertaking remains unhonoured to this day; secondly, because it bears significantly on the level of trust that it is prudent to place in any assertions from this Administration; and, thirdly and most importantly, because it bears significantly on the regulations we are discussing today.

As we have heard, these regulations remove certain rights of EU, EEA, Swiss and Turkish citizens in the event of a no-deal Brexit, in relation to self-employment, the establishment and management of businesses, and the provision of services in the UK. They do so despite the fact that, during the passage of the European Union (Withdrawal) Act 2018, the Government pledged that no policy changes would be made via delegated legislation. The then Secretary of State, David Davis, told the House of Commons on 30 March 2017 that this went "without saying". Nevertheless, MPs were sensible enough to insist that he actually said it, which he subsequently did. He told the House that,

"no change should be made to rights through delegated legislation",

and added:

"Let me reiterate that the use of delegated legislation will be for technical changes".—[*Official Report*, Commons, 30/3/17; col. 431.]

However, the Explanatory Memorandum that accompanies these regulations states that,

"the removal of these rights is not expected to prevent those EU, EEA EFTA, Swiss or Turkish nationals who are operating businesses or providing services immediately before exit day from continuing to be able to do so immediately after exit day (where they retain residence rights)".

So the Government's Explanatory Memorandum concedes that rights will be removed, in breach of Mr Davis's undertaking. Having dispensed with the removal of rights, notwithstanding this undertaking, the best that the Government can tell us about the impact of the removal of these rights is that they do not expect that this will prevent EU-plus nationals from continuing to run their businesses or provide services.

It is deeply troubling that the Government can offer no more assurance than an expectation, because these regulations are causing great anxiety among EU-plus nationals resident in the UK about the impact they will have on their status and their ability to continue with their business or in self-employment. I hope that the Minister will be able to give them some considerably greater reassurance in his reply than that which has been given to date. I would be grateful in particular for the Minister's response on the following points.

*4.15 pm*

First, during consideration of these regulations by the Third Delegated Legislation Committee on Monday, the Parliamentary Under-Secretary for BEIS, Mr Nadhim Zahawi, said:

"The regulations do not impose any new restrictions on",

EU-plus nationals,

"or on EU, EEA, EFTA, Swiss or Turkish-based businesses at the point at which we exit the EU".—[*Official Report*, Commons, Third Delegated Legislation Committee, 21/10/19; col. 15.]

Can the Minister tell us how he reconciles that statement with the assertion in the Explanatory Memorandum that the disapplication of rights will have a "limited" impact? There is a difference between no impact and a limited impact. I hope the Minister will provide some examples of where the potential limited impacts might be. It would, of course, help if we had an impact assessment by which to judge such a serious issue affecting people's rights, but the Government have declined to provide us with one. In his opening remarks, the Minister stated that EU nationals would still be able to work, study and access benefits. I do not think he said that they will still be able to be self-employed, own and manage businesses or provide services. Can he give that explicit assurance?

Secondly, can the Minister tell us whether these regulations will apply to EU nationals who have settled status, pre-settled status or have been resident in the UK for the qualifying period but have yet to apply for such status? Will they also lose their rights?

Thirdly, how does the Minister reconcile the assertion that these regulations will not affect the underlying immigration rights of self-employed EU nationals in circumstances where these underlying rights arise specifically from Article 49 of the TFEU with the fact that Article 49 is expressly disapplied by these regulations?

Fourthly, can he tell us whether the disapplication of the right to bring nationality discrimination claims in respect of the rights to be self-employed will apply to EU nationals who have settled status, pre-settled status or have been resident in the UK for the qualifying period but have yet to apply?

Finally, can the Minister explain why regulations are being brought before us that explicitly remove people's existing rights when the Government gave a clear undertaking that this would not happen? Why are they not doing this openly and transparently via the immigration Bill, where we could have proper discussion and scrutiny?

[LORD OATES]

It is very clear that the Government have been extremely careless of the very real impacts of the action they take on people's lives. They talk of Brexit in the abstract, but they refuse to engage in the reality of the effects it would have on so many people. They use delegated legislation to casually remove rights, failing to give proper consideration or allow proper debate about the implications this will have not only on EU-plus nationals here but potentially on millions of British citizens living in EU 27 states, whom the Government seem to have abandoned without even a cursory consideration of what this might mean for them.

These regulations are a clear breach of the undertakings given to Parliament. They should be withdrawn, a full legal and impact analysis should published and, if the Government want to bring them back, they should do so in the proper way via primary legislation.

**Lord Pannick (CB):** My Lords, I share the concerns expressed by the noble Lords, Lord Stevenson and Lord Oates. In his opening remarks, the Minister emphasised that these regulations impose no new obligations, but that is not the concern; the concern is whether they remove existing rights. He was anxious to downplay their impact, yet at the same time he told the House that they are necessary because, unless they are implemented, this country might face problems at WTO level. I am puzzled as to how those two matters can be reconciled. I would be grateful for his elaboration on that point.

In any event, it seems to me, as it does to the noble Lords, Lord Stevenson and Lord Oates, that these are very complex matters, and in my view they are highly inappropriate for a statutory instrument. They surely cry out for detailed assessment as to their purpose and effect as a matter of policy by primary legislation. The method being used by the Government is delegated legislation under Section 8 of the European Union (Withdrawal) Act 2018. Noble Lords will recall the sensitivity of that issue, the care and attention which this House in particular gave to the powers being conferred on the Government and its anxiety to constrain the use of such powers so that they did not relate to matters of policy. As the noble Lord, Lord Oates, indicated by reference to the speech of David Davis, the then Secretary of State, that was the view of the Government themselves.

I remind the House that the Government have made it clear from the outset that these delegated powers would be used only in the most circumscribed way. The White Paper that preceded the publication of the Bill *Legislating for the United Kingdom's Withdrawal from the European Union* said at paragraph 3.17:

"Crucially, we will ensure that the power"—

that is, the power to make delegated legislation—

"will not be available where Government wishes to make a policy change which is not designed to deal with deficiencies in preserved EU-derived law arising out of our exit from the EU".

The Explanatory Notes that accompanied the EU withdrawal Bill 2018 said at paragraph 14:

"The Bill does not aim to make major changes to policy or establish new legal frameworks in the UK beyond those which are appropriate to ensure the law continues to function properly from day one. The Government will introduce separate primary legislation to make such policy changes which will establish new legal frameworks".

It seems to me, as it does to the noble Lords, Lord Stevenson and Lord Oates, that these regulations are in breach of those statements. I share the regret which the amendment proposed by the noble Lord expresses.

**Baroness McIntosh of Pickering (Con):** My Lords, since the noble Lord, Lord Oates, and I entered the House together on the same day, I always follow closely what he says. He said that the position of UK nationals could be placed in jeopardy in the member states and other countries mentioned in the statutory instrument.

Paragraph 2.4 of the Explanatory Memorandum states:

"Directly effective rights derived from TFEU Articles are based on reciprocal relationships between EU Member State territories. Directly effective rights derived from EU bilateral and multilateral agreements are based on reciprocal relationships between EU Member State territories and certain non-EU territories".

The Parliamentary Under-Secretary of State for the department who introduced the statutory instrument in Committee in the other place said that a reason for it was sovereignty. He stated:

"Given that the rights will no longer be reciprocated, failing to disapply the rights in UK law would leave a lack of clarity as to whether EU nationals and nationals of countries with associated agreements had additional rights, compared with nationals of other countries, to challenge the laws and decisions of UK authorities after Brexit".—[*Official Report*, Commons, Third Delegated Legislation Committee, 21/10/19; col. 4.]

The SI and this debate so far seem to be silent on what the position will be of British nationals working, either having established their service or with free movement to provide services, in another EU country.

I would be grateful if my noble friend the Minister could put my mind at rest by saying that those people will not be disadvantaged. Are we moving away from reciprocity? Will he confirm that we are seeking to negotiate their future rights? What is the position of lawyers? I remind my noble friend that I am a non-practising Scottish advocate who practised EU law in Brussels. I would be very pleased to know that these rights will remain reciprocated after 31 October.

**The Lord Bishop of Salisbury:** My Lords, I support the regret amendment tabled by the noble Lord, Lord Stevenson, and echo the sorts of points that have been made already. One strength of the Church of England is that there is the Diocese in Europe and a Church of England presence in Europe that will continue beyond our membership of the European Union. The Bishop in Europe, in response to this SI, said that: "From a Brussels perspective, we are aghast that EU and EAA citizens' rights in the UK could be restricted in this way. It surely invites reprisals on UK citizens running businesses in the EU".

This is not just a technical issue. This is an issue about the way in which we see people who live in this community and the way in which UK citizens will be seen within the EU. If this is preparation for the theoretical possibility of a no-deal Brexit, it is profoundly unhelpful to the people directly named within it and

affected by it and the way that they are viewed within their own community here in the UK. It arises, as the Minister said, because of a conflict with WTO terms for most favoured nation principles, but it also raises questions about the reliability of government in relation to the continuing status of EU/EAA citizens within the UK and, by implication, of UK citizens within the EU.

This seems to me to be a very good example of why the withdrawal Bill will need careful scrutiny regarding what might or might not be involved in our taking back control. What do the Government see as the implications of this matter and proceeding in this way on UK citizens in the EU?

**Lord Campbell-Savours (Lab):** My Lords, as I was about to retire to go to bed last night, I received a rather distressed message from a family in Maidenhead, the former Prime Minister's constituency. So, late last night, I read up on the background to this debate. Most of what I was going to say has been said and I have never been into tedious repetition, so I will simply place on record the email that I received, which said that:

"This very important matter has only very recently come to our attention and could have great impact on members of my immediate family. Hence our writing to you with so little time to spare".

As I say, it was received late last night. I would like the Minister to follow this, because perhaps, in this case, we will be able to establish the real position. The email continues:

"Our son-in-law is a Swiss national who has lived in the UK for 24 years and been married to our daughter for 10 years. They have 2 children. Apart from an initial period as a student our son-in-law has supported himself and his family through self-employed work and, for the last 8 years, has run his own business … You can see why we are very worried by the laying of these Regulations which appear to be intended to affect the underlying basis for our son-in-law's lawful residence in the UK as an economically active person. This would result in an extremely significant change and loss of rights which would make pursuing his trades very difficult and could undermine his status for staying in the UK. He is a photographer and an athletic coach to disabled British athletes. One of his athletes, a severely injured ex-serviceman, won an Olympic medal for Britain in 2016 … We are concerned that these changes, which could adversely affect many hundreds of thousands of people, are being introduced by secondary legislation, seemingly in contradiction of government assurances"—

previous government assurances, that is, which were alluded to by colleagues. The email asks that,

"as a matter of urgency, you would look into this issue, which is causing us much unexpected concern for the stability of our daughter's and grandchildren's family life in their home country".

I read that out in light of very good advice I was given many years ago, 40 years ago almost, by Tam Dalyell. Tam's theory was always that whenever there is a real problem and no one really knows where they stand, one should always bring in some personal testimony, because it always adds to the debate and concentrates the minds of Ministers when having to reply from the Dispatch Box.

*4.30 pm*

**Lord Anderson of Ipswich (CB):** My Lords, the main issue from a legal perspective is how the use of delegated legislation can be justified, contrary to past undertakings, for a significant policy change that reduces, or appears to reduce, acquired rights. I agree with everything that the noble Lord, Lord Stevenson of Balmacara, and my noble friend Lord Pannick have said about that, and I need not weary your Lordships with any more, but I shall address two other points. The first relates to the practical effect of what the Minister in the Commons accepted on Monday is the potential disapplication of rights. The Government must accept that those rights have some value, as my noble friend Lord Pannick said, because of the position that to maintain these rights in favour of EU-plus nationals might violate the most favoured nation principle of the WTO. Indeed, the Secondary Legislation Scrutiny Committee records BEIS as saying that those rights afford a guarantee against,

"additional restrictions or barriers that may apply to nationals and businesses from other countries".

I am puzzled by the suggestion that the removal of these directly effective rights, in particular the right not to be discriminated against in the delivery of services or in owning or managing businesses, will have limited or no practical impact.

The Minister has said, no doubt rightly, that our law will be in accordance with EU law on exit day, but because the rights have direct effect they afford protection, by definition, over and above that contained in domestic law. Without these rights, where are the equivalent entitlements and remedies not to be discriminated against to be found in our law? Nor am I entirely clear whether the right of all EU nationals to apply for settled or pre-settled status, even if that right is successfully exercised by the end of 2020, is a full substitute for the right of residence derived from the directly effective right of establishment under the Immigration (European Economic Area) Regulations 2016. Will he explain further whether it is the case—and if so, why—that the removal of these important rights, leaving aside the special issue of satellite decoders, will have only de minimis impact in the respect I have identified?

My last point relates to the specific power under which these regulations are made, Section 8 of the European Union (Withdrawal) Act 2018, which is available only where there is a failure of retained law to operate effectively, or some other deficiency in retained EU law, as was said by the noble Lord, Lord Stevenson. I make another point in relation to that: deficiencies in retained EU law are exhaustively defined in Section 8(2) and (3) of the Act, but I cannot find any definition there that fits the present case. There is some suggestion in the Explanatory Memorandum that the deficiency consists of lack of reciprocity, but it is not clear, certainly to me, how a deficiency could arise from the possibility that others might choose to withhold equivalent rights in their own law. If that were the case, then the scope of Section 8 would be very broad indeed. Can the Minister say any more about which provision of Section 8 is relied upon as a sufficient basis for these regulations and, if so, how?

**Lord Greaves (LD):** My Lords, I have been listening with great admiration to the knowledge and expert understanding of all this of noble Lords who have spoken. I thank the noble Lord, Lord Stevenson, for tabling his amendment and my noble friend Lord Oates for explaining it all, so that I understand it a bit more.

[Lord Greaves]

The right reverend Prelate and other noble Lords referred to UK citizens living in other EU countries and the effect that the whole Brexit thing is having on them. We have friends who live in the south of France and operate a small business there, and they have just held up their hands and applied for and obtained French citizenship as the only way they thought they could secure their position and their business there. There is a clear understanding among a lot of British citizens in other EU countries that in the negotiations so far, the Government have not taken their interests fully into account.

On this regulation, when we were discussing settled status during Question Time this afternoon, the noble Lord on the Opposition Front Bench declared a personal interest, so I suppose I ought to declare a personal interest in that my daughter's husband is a European Union citizen and they live in this country. They work from home; I must confess that I do not know whether they are technically self-employed, have a zero-hours contract or both, but they certainly have a highly technical, successful operation, which is inherently insecure as it depends on the organisation that provides them with work. Sometimes there is none and at other times there is a lot. They are very concerned, not only about these regulations but about their position, so they asked me to take a look at this.

I looked at it and read the Explanatory Memorandum, knowing that this is where I would find the truth, the whole truth and nothing but the truth from the Government. It asks:

"Why is it being changed?"

As noble Lords have said, it says that Section 4 of the European Union (Withdrawal) Act provides the rights in domestic law, and so on. It then says in paragraph 2.11:

"To address any inoperability and to ensure UK law continues to function effectively, with legal clarity, and that the UK is compliant with its World Trade Organization … obligations, including the General Agreement on Trade in Services, these rights need to be disapplied".

I have read it again and again and I do not understand why, and I have heard noble Lords speak today and I still do not understand why. However, what concerns me is not that I do not understand this—what inoperability there may be or what conflicts there may be with the rules of the WTO—but that the Government do not seem to know either. The Explanatory Memorandum talks about "any inoperability"; is there any or is there not? I presume that the Government have taken legal advice on this and have a belief as to whether there is or is not. Because they think this legislation is necessary, I assume that they think there is, but they do not want to tell us exactly what it is.

Later, paragraph 2.12 says:

"These directly effective rights of establishment and free movement of services would appear to have limited practical effect, post-exit in a no deal scenario",

but the Minister is telling us that the Government do not think that it will have any effect in practice. Will it have a limited effect or not really any effect? If it will have a limited effect, can the Minister tell us exactly what that limited effect is, in words that I, as a non-lawyer and a non-expert in these WTO matters, might understand? The Minister himself used the word "could" about three times—"It could have an effect". But will it or will it not? What is the legal advice, or is it all very vague and nobody knows?

However, the Explanatory Memorandum reassures the individuals and businesses concerned:

"Individuals and businesses will be able to check published no deal planning guidance on gov.uk".

If I were to look at GOV.UK this afternoon, would I find advice on whether there is inoperability and limited practical effect, or would it tell me not to bother because there is not? If it tells me not to bother because there is not, why is this all coming here anyway?

**The Earl of Clancarty (CB):** My Lords, at the beginning of this debate, the noble Lord, Lord Stevenson, said that parliamentarians are talking about this issue. The noble Lord, Lord Oates, and others, said that EU citizens are talking about this issue, and indeed, the British living and working in Europe are doing so too. They are all very worried. There is something about this issue to which the noble Lord, Lord Greaves, referred. It is a confidence issue, a trust issue and a perception issue. That is very important. There is a sense that a safety net is being removed in preparation for worse to come, despite the Minister's assurances.

I would be appalled by any legislation that attempted to reduce the rights of EU citizens to run businesses or be self-employed in this country under a no-deal scenario. Such legislation should surely be in an immigration Bill, not presented to the House in this form as a fait accompli. As the noble Lord, Lord Stevenson, noted, we are talking about a wide variety of industries being affected. The so-called gig economy, the NHS, IT and the creative industries would be hit hard if EU citizens felt forced out, and we would be culturally impoverished as a result. However, as the noble Lord pointed out, it is not only the livelihoods of EU citizens that will be at risk, but the livelihoods of British citizens living in Europe.

It is a widely held view, but a misconception, that most British abroad are retirees. Of the 1.24 million UK citizens in Europe, Britain in Europe estimates that only 20% do not work. Many of those in work are self-employed, in as wide a variety of service industries as in the UK. It feels, however, as though the Government do not care enough about the British living in Europe, or about their livelihoods, which will without a doubt be threatened through any reciprocal effect. A number of us in this House have repeatedly asked the Government to protect the rights of the British working in Europe. This is not the right way to go about it, and that is apart from the message being sent through this legislation to EU citizens who run businesses or are self-employed in this country.

**Lord Purvis of Tweed (LD):** In the absence of an impact assessment, I have four questions for the Minister. In many respects, they support the points raised by my noble friend Lord Oates.

The first is linked to the questions asked by the noble Lords, Lord Anderson and Lord Pannick. Can the Minister be clear with the House about what the Government consider the current preferential trading

environment to be? If we offer a preferential trading environment to those providing services to a national of a country with which we do not have a trade agreement, we fall foul of the WTO. The Minister said that there would be no difference to those providing business services in the UK if they were EU, Swiss or EEA nationals. If that is the case, there should be no difficulty with the WTO, because we would not be offering any preferential arrangement. At the same time, if the WTO considered it a preferential trading agreement, and therefore discriminating against third countries other than EU countries, what would that preferential trading environment be for those that the WTO considered the UK to be falling foul of?

Given our consideration of the Trade Bill, we also looked at the draft services schedule presented by the UK to the WTO. There was no reference to that in the Minister's remarks. Given that the services schedule has been lodged at the WTO for nearly a year now, what is the interaction with that services schedule? The Minister will know that there is a specific reference in it to those providing financial services, yet there was no reference to that in his remarks today. Will there be a difference for those EU nationals currently providing financial services products to UK citizens? I see the Minister nodding his head from his sedentary position, but that is contrary to the understanding of others. If the operation of the European financial single market ended on a no-deal Brexit, such people would not have the same level of protections. I would be most grateful if the Minister could clarify that.

My second point is linked to that. We also considered a continuity treaty with the Swiss Confederation. That treaty has specific clauses providing for elements of those who would be offering services. There was no mention of that in the Minister's remarks so I am interested to know whether he can clarify something on the interaction with the treaty that Parliament has agreed, which offers, on a no-deal basis, a preferential level of support for those Swiss nationals. With this instrument, it seems as though things would contradict that because mentions of Swiss nationals run throughout it. If the Minister can clarify the point on how this will interact with the treaty that we agreed with the Swiss Confederation, I would be grateful.

*4.45 pm*

My third question regards the impact. There are 2.37 million EU nationals working in the UK at the moment, according to the latest government figures. Are the Government unwilling to share any information with us about how many of those people are sole traders, self-employed or providing services? The Government's Explanatory Memorandum says that there will be no impact on the business community. Despite how integrated British business is and how many employees working in supply chains will also be EU nationals who are sole traders and self-employed—and not necessarily resident, as my noble friend Lord Oates indicated—no information has been provided. On the one hand, that is of concern for those individuals—we are of course concerned for them—but the secondary concern is for our economy and the people providing services, either through supply chains or to our consumers. The Government must have information on how many people this would apply to. Given the points made by the noble Lord, Lord Anderson, and others, those people would be affected by any changes in UK law made after exit day.

That leads me to my final point regarding how information about those who provide services should be provided to our consumers. We all know that there are many requirements for those who provide not just financial services but services to consumers in the UK. There are many legal requirements, and as many for indemnity insurance. There are requirements for sole traders providing services to the public sector, not least those who provide services to individual consumers. It is surely right that a customer should know now, when embarking on business with an EU national providing services, that the situation could well change after exit day because the current permanent EU legal protections will no longer be permanent. Surely the public sector must ask these questions of those providing services, whether for a school, a hospital or across the board. It would be a dereliction of duty if it did not do so when it started to negotiate with that provider what legal basis it has as an operator in this country.

I would be most grateful if the Minister could clarify those points. I suspect that he cannot, which will bring us back full circle to my reason for strongly supporting the amendment moved by the noble Lord, Lord Stevenson: to get the Government to withdraw the regulations and think again.

**Lord Brown of Eaton-under-Heywood (CB):** My Lords, I am another lawyer, but I must not be mistaken for one who has worked on this particular problem. Indeed, I was not alive to it until I came into the Chamber this afternoon, so I am not another Lord Pannick or Lord Anderson of Ipswich—I am genuinely seeking a little clarification.

Perhaps I may focus the Minister's attention on paragraph 7.8 of the Explanatory Memorandum. As I understand it, the whole question arises only if we leave with no deal, but the instrument is not required on leaving with no deal as matters currently stand, and there is nothing inconsistent with the directly effective rights currently enjoyed. The whole object, as I understand it from paragraph 7.8, is to prepare the ground so as to allow the Government, at some future date,

"to make policies and legislative changes which depart from the directly effective rights".

Paragraph 4 of the report of the Secondary Legislation Scrutiny Committee states that it would,

"enable the Department to introduce new policies and regulations that depart from this approach, for example by introducing new restrictions on EEA, Swiss and Turkish nationals or businesses".

My question is this. If there comes, post leaving with no deal, a future point at which the Government do want to make policy and legislative changes to restrict rights, can they not at the same time as they would need the legislation to introduce those policies and legislative changes also do what is necessary to disapply what otherwise, absent this instrument, would be the continuing directly effective rights? In other words, why can we not wait until we see what future restrictive policies or legislation the Government would like to introduce post leaving with no deal? Can we not leave it until then to make any change that is then required and which is intended, by this instrument, to anticipate those future possibilities?

**Lord Hope of Craighead (CB):** My Lords, I should like to return very briefly to the points made by the noble Lords, Lord Anderson of Ipswich and Lord Purvis of Tweed. They relate to the extent to which the Government have informed themselves about the impact of the instrument we are discussing. Like the noble Lord, Lord Greaves, I tend to look at the Explanatory Memorandum for guidance, and what I looked at first was paragraph 10, dealing with consultation. It is a most surprising paragraph, against the background of what we have heard in the Chamber this afternoon, because all it tells us is that the only area in which the directly effective rights of establishment or the free movement of services have been identified to have a direct impact on UK business is that of satellite decoders. That suggests that those who have been considering this instrument have a very narrow vision of the extent to which they are disrupting the system that has existed during our time in the EU. I am concerned about the extent of the consultation and therefore the about lack of information that has been gathered by the Government about the effect of the instrument. If it is to be taken away, I hope that a further and more wide-ranging consultation will be undertaken so that there will be a better awareness of the effect of this instrument.

**The Earl of Clancarty:** My Lords, does the noble and learned Lord agree that there is one impact that we do know about, which is the impact of a climate of concern?

**Baroness Bull (CB):** My Lords, the House has heard from many noble and noble and learned Lords. I rise briefly to add my support to this amendment and to put on record that the concerns set out by the noble Lord, Lord Stevenson, and which have been elucidated by so many distinguished and legal brains, are shared more broadly across the House. Those of us without legal backgrounds rely on the expertise of the House's Secondary Legislation Scrutiny Committee, which has highlighted that removing treaty rights means that EU-plus citizens will no longer be able to use these rights to challenge new restrictions. It describes this as a, "significant reduction of rights"—yet, as we have heard, there has been no impact assessment, so we really do not know the scope and the extent of the impact of this reduction in rights.

I have two very simple questions, and they echo questions which have already been asked. First, what will be the impact of this on reciprocity and on the livelihoods of UK citizens who have established businesses in or provide services across other EU countries? Secondly, can the Minister clarify whether this does in effect apply retrospectively? As the noble Lords, Lord Oates and Lord Greaves, pointed out, paragraph 2.12 of the Explanatory Memorandum uses phrases such as, "It is anticipated" and "it is not expected". To this non-legal brain, that does not seem very decisive.

Similarly, in paragraph 2.17 we read:

"This Instrument ensures that Swiss nationals operating a business or providing services in the UK immediately before exit day will not lose residence rights by virtue of the disapplication of the directly effective rights".

That clarifies residence rights, but I would be grateful if the Minister could confirm that this extends to the right to carry on owning or managing businesses or providing services, because it is not clear.

Like the noble Lord, Lord Oates, I heard the Minister twice repeat that these groups would be able to live, work, study and access services and benefits, but he specifically did not say that they would be able to continue to be self-employed, own and manage companies or provide services. Can he clarify whether this will be the case?

None of this is particularly clear, and it is not surprising that I, like other noble Lords around the House, have been written to by members of the public asking, for example, whether this means that Turkish nationals will no longer be able to own and run a Turkish restaurant.

If there really is no problem here, perhaps the Minister might agree that the Government could be a little clearer about this and clarify the intention behind the SI and its impact on EU nationals who have made their home here. The memorandum says:

"Individuals and businesses will be able to check published no deal planning guidance on gov.uk"—

which is not particularly reassuring to the people around the UK who are concerned.

The Prime Minster has made much in recent speeches and statements about the contribution of EU nationals to the UK and its prosperity, success, culture and economy. This SI seems rather at odds with this newly warm and welcoming tone.

**Lord Duncan of Springbank:** My Lords, this has been a complicated debate, but I am drawn to the remarks by the noble Lord, Lord Campbell-Savours, as a way of helping us step into the debate. Tam Dalyell was absolutely right: it is the person who will help us understand the reality who we need to hear today. The individual spoken of by the noble Lord, Lord Campbell-Savours, has lived in the UK for 24 years, has two children and is a photographer and athletics coach. He is an important citizen in this country. There will be no diminution of his rights—not just to study or live, but to be self-employed, to offer services or, indeed, to operate as he currently operates—as a consequence of this statutory instrument. The noble Baroness, Lady Bull, at the end mentioned Turkish people who may feel that they will have their rights to operate a Turkish restaurant in some way curtailed; that is also not true.

The noble Lord, Lord Purvis of Tweed, spoke of 2.3 million EU citizens in this country. A number of noble Lords have asked why, when so many people seem to be affected by this, the impact assessment has not been provided and has therefore not given due consideration to something that will impact 2.3 million people. The important thing to remember here is that the 2.3 million people derive their rights from that element of retained EU law that we have brought across in the previous withdrawal agreement. Each of the elements that enshrine their right to the employment they enjoy is contained not just in our domestic law but in our retained EU law.

The important thing to stress here is that there will be no impact on individuals such as the gentleman raised by the noble Lord, Lord Campbell-Savours. I am fully aware that my department has not been successful in making this clear. It is perfectly obvious that a number of noble Lords have received a number

of letters stating these concerns. The very fact that my department has allowed that state to exist is a failing of my department. We need to be better at making sure that not just the legislation but the Explanatory Memorandum is adequate to ensure that people reading it—not just eminent lawyers but others—are able to understand. This is too important a moment to get this wrong.

It is a difficult piece of legislation in one respect only. There are a number of conditional elements contained within it, but they refer to future situations in which something might happen. I was going to say, "If we leave the EU", but let me put that the other way around and get my tenses right. When we leave the EU, if there is no deal the reciprocity we enjoy today would simply fall away and not be there. Our courts would still be able to draw on the body of law that exists inside the EU, but the actual reciprocity element would not be there. Going forward, because we have retained the EU law into our own corpus of law, the reality would be that certain EU nationals might be able to invoke their existing—previous—rights as a means of confronting the Government as they sought to move future policy forward. Future policy, however, would not be determined on a whim, nor would it use a Henry VIII power. It would be determined by this House and the other place in the traditional way. That is how future policy in this area will happen.

This is the important thing to stress in talking about the impact this will have on WTO rules or the question of reciprocity. As regards WTO rules, the suggestion is that individuals in that situation, without this disapplication within this body of retained EU law, would still be able to draw on those rights in the retained EU law to challenge the UK Government. Some noble Lords may think that that is not a bad thing, but that alone is the reason for the disapplication.

*5 pm*

The reason we are conscious of the notion of most favoured nation status in WTO rules—we say that it could be an issue, not that it certainly will be—is simple. It is a right which they will be able to draw upon which is available to no one else: only to those who have been—within the constraints in which we now operate—members of the EU. It is a right that will not be available for other third countries to draw upon. That might—I say might, not will—be an element in a future case. That is why we are seeking to be as clear as we possibly can.

Going forward, what we really want is reciprocity between the UK and the EU, but that is not something you can create unilaterally. We cannot do that, which is why, even though I wish things to go forward as smoothly as possible, there are certain elements—they are modest, which is why there is no impact assessment—in this which we are looking at now to try to move this forward. I can see out of the corner of my eye that the noble Lord, Lord Pannick, is very keen to stand.

**Lord Pannick:** I am very grateful to the Minister. I ask him a question out of genuine puzzlement, in the sense of my noble and learned friend Lord Brown of Eaton-under-Heywood. His argument to the House, as I understand it, is that there is no need to worry because the individuals concerned will continue to enjoy the directly effective rights which are being brought across into our domestic law by the 2018 Act. My puzzlement is because Regulations 2(1) and 3(1) both say that any,

"rights, powers, liabilities, obligations, restrictions, remedies and procedures",

which continue by virtue of Section 4(1) of the 2018 Act,

"cease to be recognised and available in domestic law".

I am puzzled because I am concerned that the read-across is being disapplied by this very regulation.

**Lord Duncan of Springbank:** It is quite clear that we have not succeeded in convincing the noble Lord that the reality is that the retained EU law, which this House fought so carefully over and which was enshrined in the withdrawal agreement, sets out the rights of individual EU nationals in this country with regard to their ability to be employed or self-employed, to offer services and so on. That is contained in retained EU law and will become operational and functional at that point in the future.

Here we are talking about making adjustments to that retained EU law for certain rights to invoke the previous entity of the EU as a means of engaging directly with the Government as a challenge. It is that part we are talking about today.

**Lord Greaves:** My Lords—

**Lord Purvis of Tweed:** Would the Minister give way?

**Lord Duncan of Springbank:** No, I will make some progress if I may. This is complicated enough, and I fear I have to answer noble Lords' questions before they ask new ones.

The noble Lord, Lord Oates, was very clear in some of the points he raised. That is why I am trying to be as unambiguous as I possibly can. He sought explicitness, and I am trying to give that. The self-employed will be unaffected if they are EU nationals. Those providing services will be unaffected, and their continued ability to provide those services will go undiminished. Those operating businesses will be able to do so going forward undiminished. The laws that underpin them remain as they are, both in our domestic law and in the retained EU law. There are no new restrictions whatever placed upon these individuals in this. That is why I am trying to point out that the limited impact is just that—a limited impact.

This will have no impact on the settled status of anybody coming in; for those noble Lords who are concerned about migration, this suite of statutory instruments explicitly carves out any issues of migration to ensure that they are considered carefully during the passage of the immigration Bill, which is primary legislation and will afford this House and the other place the full rights and abilities to inquire into that. So again, there is no attempt to pull the wool over anyone's eyes—quite the reverse. In seeking to move this into primary legislation where it touches upon immigration, we are ensuring that this House has the full panoply of opportunity to explore this, as it will need to do going forward. That is why I refute the point of the noble Lord, Lord Oates, that this is a clear breach. I do not believe that it is.

[Lord Duncan of Springbank]

The noble Lord, Lord Pannick, is quite right when he says that this places upon us no new obligations. There are no new obligations which rest upon EU citizens; they can enjoy the rights that they have been able to do so to date. The question is whether the disapplication materially impacts on, for example, the ability of the gentleman mentioned by the noble Lord, Lord Campbell-Savours, to do his business. It does not. The noble Baroness, Lady Bull, raised the question of the restaurateur who operates a Turkish restaurant and whether it places material changes upon them. No, it does not. It is important to stress that we are not seeking in any way to erode the rights currently enjoyed by these EU citizens. However, I should say that this would be far better addressed through an implementation agreement, and ultimately by that future relationship, whereby we can put to rest any suggestion that this Government are seeking to undermine the rights of EU individuals to undertake their legitimate exercises.

The question of what happens for UK citizens who work abroad is more challenging. Again, we cannot insist upon such reciprocity, since it rests with each individual member state, and we cannot offer guarantees on their behalf.

**Baroness McIntosh of Pickering:** I did ask my noble friend to put our minds at rest and specify what talks are happening at this time with other member states.

**Lord Duncan of Springbank:** I wish I could give my noble friend the reassurance she seeks, but these elements remain part of the future relationship negotiations and there has been unwillingness on the part of individual member states to discuss these matters. Much as I would like to be able to give her confidence on that matter, I cannot. That will be part of the future relationship negotiations, and I hope we can move on to that as swiftly as we can.

**Lord Bassam of Brighton (Lab):** I have listened very carefully to everything the Minister has said. He seems to be saying that nothing changes. That being the case, why are these regulations required or necessary at all, if they change nothing?

**Lord Duncan of Springbank:** I did not say that. What I said was that these regulations have no impact upon the ability of EU nationals resident in the UK to operate, full stop. Going forward, they seek to disapply—bugger!

**Noble Lords:** Oh!

**Lord Duncan of Springbank:** Sorry about that; that was a big fly—bigger than normal.

**Lord Stevenson of Balmacara:** It was a big fly, not a big lie.

**Lord Duncan of Springbank:** Goodness me, such words. I like a pun at this time.

We seem to be caught in a situation in which a number of noble Lords believe that this is of significance to the extent that it impacts upon 2.3 million people. It does not. However, if individuals affected by future changes in policy wish to confront the Government, they may be able to use elements of the existing corpus to do so, unless we disapply them. It may seem modest—I am sure the courts will be able to address this and many lawyers will make a great deal of money—but the point I am trying to make is that the change should, in the future, not happen. But it might happen. It is a relatively small adjustment we are talking about here, and it has had no impact assessment because the impact is de minimis.

**The Earl of Clancarty:** I understand that some countries are drawing up legislation to protect the rights of British citizens in those countries. That includes employment rights. Will the Minister comment on that?

**Lord Duncan of Springbank:** Those countries are, at present, unwilling to open discussions with this country and will not do so until the withdrawal agreement has been accepted and we move on to the future relationship negotiations. I hope that not just individual countries will seek to do this but the EU itself, collectively, to protect the rights of British citizens resident abroad—just as we will do exactly the same. I hope we would do so in the spirit of our withdrawal agreement's evolution into that future relationship that delivers the very thing that each individual here would wish. However, at present, I cannot offer any guarantees in that regard.

**Baroness Bull:** To follow up the question of the noble Baroness, Lady McIntosh, we are looking today not at the scenario of a future agreement but at no-deal legislation. Surely reciprocity cannot be dependent, in this legislation, on the future relationship documentation because this is no-deal legislation. I echo the question: where is the conversation about reciprocity, should the unfortunate thing happen and we leave with no deal?

**Lord Duncan of Springbank:** The noble Baroness will be aware that the Government's policy is to secure that deal. That is why we are here. The reason this has had to come forward in the manner in which it has is that, although this House and the other place have been clear that they do not wish the UK to leave with no deal—which I wholeheartedly share and endorse—that is not in our gift alone to ensure. The unintended consequences of actions that may unfold over the next few weeks could lead us into a scenario in which a no deal does emerge, and that scenario is the one we are touching on here. If it does not emerge, we will not have any of the risks we are touching on here because we will continue, I hope, to move into an implementation period during which we negotiate that future relationship. That is the point. This instrument is here because, in a scenario in which we end up outside the EU, these elements will be deemed necessary. As I said, the purpose is to ensure that in those small areas this aspect of the law is addressed.

I think I need to write—and am willing to do so—to every noble Lord who has received letters raising these concerns to set out the situation, in language clearer than my department has thus far achieved, to ensure that those individuals have confidence that they will not find themselves in any of the darker scenarios of which they may be fearful. That is critical

and I give that commitment here at the Dispatch Box. If noble Lords will contact my office, I will write to every individual to ensure that they fully appreciate exactly what this suite of statutory instruments means and, in particular, what it does not mean. It is critical that that is done.

**Lord Pannick:** Perhaps I may suggest to the noble Lord that a more sensible approach would be to withdraw these regulations and redraft them so that they say precisely what they are intended to achieve and what rights are preserved.

**Lord Duncan of Springbank:** I disagree with the noble Lord for one simple reason. This is the moment when we face the question of whether we shall exit the EU with or without a deal. The purpose behind my offer is to reassure those individuals who fear that they will be in some way undermined in their rights in this country. They need to be reassured and I would much rather do that today. I am not sure I can sign all the letters in one go but, over the next few days, I will be keen to write to all those individuals affected. In so doing so, I hope to reassure them that this instrument does not do what they are fearful of. That is the most important aspect: this does not do what they fear it does. It is critical that it is taken from this debate, however it resolves itself, that there will be no impact on the 2.3 million EU citizens residing here; they will be in no way affected. They will be able to do their business, be it in self-employment, the operation and delivery of services or any other aspect. That must be taken from the debate today, irrespective of how we get to that conclusion.

I hope that in so doing I can not only give confidence to the noble Lord, Lord Stevenson of Balmacara, but, more importantly, give the individuals who have approached him and a number of other noble Lords the confidence that they need right now. On that basis, I beg to move.

**Lord Anderson of Ipswich:** The Minister has addressed a good number of questions but I raised one relating to the legal basis for these regulations, which is said to be a power to prevent, remedy or mitigate deficiencies in retained EU law. Deficiencies are precisely defined in the 2018 Act, but I have not heard from the Minister what provision of Section 8(2) or 8(3) these regulations purport to be made under, and I do not understand at the moment what the deficiency is said to be. There is some reference in the Explanatory Memorandum to the WTO but, as I understood what the Minister said earlier, the Government take no position on whether there is an incompatibility with the WTO.

**Lord Duncan of Springbank:** I am very grateful to the noble Lord, who has given me the opportunity to find the other pieces of paper that I did not get to in answering his question.

With regard to which provision, it is a deficiency specifically envisaged by Section 8(1)(e) of the European Union (Withdrawal) Act 2018, which covers the reciprocal arrangements that no longer exist on EU exit. That is the specific element that I think the noble Lord is looking for. In extension to that, on why this has a limited impact—on which a number of noble Lords have taken the view that I am wrong and that it has a much bigger impact—I hope we can correct that today, irrespective of how we do it. The important thing is that the practical impact of these regulations is limited because UK legislation is currently compliant. That is the important part. However, should a future Government wish to amend the ability of EU nationals to provide services, that would be debated in this House and in the other place in the normal manner. This suite of statutory instruments is designed to address future Governments making future legislation by the established mechanisms in this place and the other place—not, as I hope we can take from this, the impact on the 3.2 million EU nationals who reside in the UK.

*5.15 pm*

**Lord Greaves:** At a less erudite level, what advice is currently given to these people on GOV.UK?

**Lord Duncan of Springbank:** GOV.UK is a resource which I hope helps people address their questions. Part of the difficulty with GOV.UK is that it is very hard to anticipate questions that have not been set out in government legislation. We did not anticipate that individuals who have written would be fearful of what had been done. That is why I say again that we must be better at how we explain this in all our communications, whether online or on paper, and in the Explanatory Memorandum. The important thing for individuals to take from this debate is that the impact on them is not what has been explored or explained by others but rather a restricted aspect of future issues that concern future government policy or the ability of the WTO and the UK going forward to agree on most favoured nations.

**Lord Stevenson of Balmacara:** My Lords, as I have been sitting and enjoying this debate, I have been reflecting on why the other 582—is it?—SIs on a no-deal Brexit did not attract audiences of this size and did not give rise to a debate of such excitement. I have reached no firm conclusions, but it is possibly because we as a House are reaching the end of our patience with the Government in how they use these regulations at a time when it is patently clear that we are moving on to different ground.

Having said that, this has been an extremely good debate, and I thank all noble Lords who have contributed. The right reverend Prelate the Bishop of Salisbury got it right in his contribution: while we are talking about important and possibly quite narrow legislation, this is really about trust—whether we feel we can place our trust in the Government to get this right in the wider context that we have been discussing. Although the Minister made a valiant attempt to persuade us of the correctness of his position, in his arguments, explanations, apologies for not making it more easily available to people outside and apologies for the drafting, he covered all the possible grounds for attack, but did not really answer the two or three main questions.

As the noble Lord, Lord Pannick, said, we are disapplying one set of regulations and relying on what has already been brought in under a different piece of legislation. You cannot have it both ways. Either you are losing the rights that applied under the original position, in which case there is a deficit, or different sets of relationships are being brought in by the new

[Lord Stevenson of Balmacara]

corpus of law, which has drawn on EU and UK national law. There might be no threat in that, but we simply have not had the opportunity to discuss it. At the end of the day, the lasting feeling, I fear, is of people's frustration. The points that have been raised around the House from reading these documents at very short notice—in some cases, the shortest possible notice—have been significant and substantial, and they deserved a better and wider hearing in front of a greater and more expert group, such as would have been provided by primary legislation.

Therefore, my three main points are as follows. First, were the Government right to use the EU withdrawal Bill? I do not think that we have been persuaded on that: there would have been a better way of doing it through primary legislation. Secondly, will there be a diminution in the rights currently enjoyed by people affected by this SI? The Minister is probably right that there are no direct changes, but it is the fear of those changes and the fear of the possible consequences once the law has changed that is not being addressed properly. As I said, I do not see how we can balance the two things. Thirdly, in our earlier meeting, the Minister's officials were keen to make it very clear that these regulations deal only with movement under the EU legislative framework; they do not deal with immigration rights that will be coming forward. At the end of the day, this is about the gap between what it is being said will change and what might change under the immigration Bill, of which we have no knowledge because it is not in front of us.

The Government have not been successful in the court of public opinion, and we owe it to that public opinion to test the opinion of the House.

*5.20 pm*

*Division on Lord Stevenson of Balmacara's amendment to the Motion*

*Contents 204; Not-Contents 132.*

*Amendment to the Motion agreed.*

**Division No. 1**

**CONTENTS**

Aberdare, L.
Addington, L.
Adonis, L.
Anderson of Ipswich, L.
Anderson of Swansea, L.
Andrews, B.
Armstrong of Hill Top, B.
Bakewell of Hardington Mandeville, B.
Barker, B.
Bassam of Brighton, L.
Beecham, L.
Beith, L.
Benjamin, B.
Bennett of Manor Castle, B.
Berkeley, L.
Bhatia, L.
Bilimoria, L.
Blackstone, B.
Blunkett, L.
Boateng, L.
Bonham-Carter of Yarnbury, B.
Bradley, L.
Brinton, B.
Bristol, Bp.
Brooke of Alverthorpe, L.
Brown of Eaton-under-Heywood, L.
Browne of Ladyton, L.
Bruce of Bennachie, L.
Bryan of Partick, B.
Bull, B.
Burnett, L.
Campbell of Pittenweem, L.
Campbell of Surbiton, B.
Campbell-Savours, L.
Cashman, L.
Chandos, V.
Chidgey, L.
Clancarty, E.
Clark of Windermere, L.
Clement-Jones, L.
Collins of Highbury, L.
Cotter, L.
Crawley, B.
Davies of Oldham, L.
Desai, L.
Dholakia, L.
Donaghy, B.
Doocey, B.
Drake, B.
Dubs, L.
Falkland, V.
Faulkner of Worcester, L.
Featherstone, B.
Foster of Bath, L.
Foulkes of Cumnock, L.
Fox, L.
German, L.
Glasgow, E.
Goddard of Stockport, L.
Golding, B.
Goudie, B.
Grantchester, L.
Greaves, L.
Griffiths of Burry Port, L.
Grocott, L.
Hain, L.
Hannay of Chiswick, L.
Hanworth, V.
Harris of Haringey, L.
Harris of Richmond, B.
Haskel, L.
Haworth, L.
Hayter of Kentish Town, B.
Healy of Primrose Hill, B.
Hollick, L.
Hope of Craighead, L.
Howarth of Newport, L.
Howe of Idlicote, B.
Hoyle, L.
Hughes of Woodside, L.
Humphreys, B.
Hunt of Kings Heath, L.
Hussain, L.
Hussein-Ece, B.
Hylton, L.
Janke, B.
Jolly, B.
Jones of Cheltenham, L.
Jones of Whitchurch, B.
Jones, L.
Judd, L.
Judge, L.
Kakkar, L.
Kennedy of Cradley, B.
Kennedy of Southwark, L.
Kerslake, L.
Kingsmill, B.
Kramer, B.
Laming, L.
Lawrence of Clarendon, B.
Lea of Crondall, L.
Lee of Trafford, L.
Lennie, L.
Liddle, L.
Lipsey, L.
Lister of Burtersett, B.
Listowel, E.
Livermore, L.
Low of Dalston, L.
MacKenzie of Culkein, L.
Macpherson of Earl's Court, L.
Maddock, B.
Mair, L.
Marks of Henley-on-Thames, L.
Massey of Darwen, B.
Maxton, L.
McAvoy, L. [Teller]
McDonagh, B.
McIntosh of Hudnall, B.
McKenzie of Luton, L.
McNicol of West Kilbride, L.
Monks, L.
Morgan, L.
Morris of Aberavon, L.
Morris of Handsworth, L.
Morris of Yardley, B.
Murphy of Torfaen, L.
Newby, L.
Northover, B.
Oates, L.
O'Loan, B.
O'Neill of Bengarve, B.
Osamor, B.
Paddick, L.
Palmer of Childs Hill, L.
Pannick, L.
Parminter, B.
Patel, L.
Pendry, L.
Pinnock, B.
Pitkeathley, B.
Ponsonby of Shulbrede, L.
Prashar, B.
Prosser, B.
Purvis of Tweed, L.
Puttnam, L.
Quin, B.
Randerson, B.
Rebuck, B.
Redesdale, L.
Reid of Cardowan, L.
Rennard, L.
Robertson of Port Ellen, L.
Rodgers of Quarry Bank, L.
Rooker, L.
Salisbury, Bp.
Sandwich, E.
Sawyer, L.
Scott of Needham Market, B.
Sharkey, L.
Sheehan, B.
Sherlock, B.
Shipley, L.
Shutt of Greetland, L.
Smith of Basildon, B.
Smith of Gilmorehill, B.
Soley, L.
Somerset, D.
Stern, B.
Stevens of Kirkwhelpington, L.
Stevenson of Balmacara, L.
Stoneham of Droxford, L.
Storey, L.
Strasburger, L.
Stunell, L.
Suttie, B.
Taverne, L.
Taylor of Bolton, B.
Taylor of Goss Moor, L.
Teverson, L.
Thomas of Winchester, B.
Thornhill, B.
Tomlinson, L.
Tope, L.
Touhig, L.
Truscott, L.
Tunnicliffe, L. [Teller]
Turnberg, L.
Tyler of Enfield, B.
Tyler, L.
Walker of Gestingthorpe, L.
Wallace of Saltaire, L.
Walmsley, B.
Warwick of Undercliffe, B.
Watson of Invergowrie, L.
Watson of Richmond, L.
Waverley, V.
Wheatcroft, B.

Wheeler, B.
Whitaker, B.
Whitty, L.
Wigley, L.
Willis of Knaresborough, L.
Wrigglesworth, L.

**NOT CONTENTS**

Agnew of Oulton, L.
Ahmad of Wimbledon, L.
Anelay of St Johns, B.
Ashton of Hyde, L. [Teller]
Astor of Hever, L.
Astor, V.
Attlee, E.
Balfe, L.
Barran, B.
Berridge, B.
Bethell, L.
Blackwood of North Oxford, B.
Blencathra, L.
Bloomfield of Hinton Waldrist, B.
Borwick, L.
Brabazon of Tara, L.
Bridges of Headley, L.
Brougham and Vaux, L.
Browne of Belmont, L.
Browning, B.
Brownlow of Shurlock Row, L.
Byford, B.
Caithness, E.
Cathcart, E.
Chalker of Wallasey, B.
Chisholm of Owlpen, B.
Colgrain, L.
Colwyn, L.
Cope of Berkeley, L.
Cork and Orrery, E.
Courtown, E. [Teller]
Craig of Radley, L.
Craigavon, V.
Crathorne, L.
Davies of Gower, L.
De Mauley, L.
Deben, L.
Deech, B.
Dixon-Smith, L.
Dobbs, L.
Duncan of Springbank, L.
Dundee, E.
Eaton, B.
Elton, L.
Empey, L.
Evans of Bowes Park, B.
Fairhead, B.
Finkelstein, L.
Finn, B.
Framlingham, L.
Gardiner of Kimble, L.
Garel-Jones, L.
Geddes, L.
Gilbert of Panteg, L.
Glenarthur, L.
Goldie, B.
Goodlad, L.
Grade of Yarmouth, L.
Greenway, L.
Hailsham, V.
Haselhurst, L.
Hayward, L.
Henley, L.
Holmes of Richmond, L.
Hooper, B.
Houghton of Richmond, L.
Howe, E.
Hunt of Wirral, L.
James of Blackheath, L.
Jopling, L.
Keen of Elie, L.
Lamont of Lerwick, L.
Lansley, L.
Lindsay, E.
Lingfield, L.
Loomba, L.
Lothian, M.
Lytton, E.
Mancroft, L.
Marlesford, L.
McCrea of Magherafelt and Cookstown, L.
McInnes of Kilwinning, L.
Meyer, B.
Montrose, D.
Morris of Bolton, B.
Morrow, L.
Moynihan, L.
Neville-Jones, B.
Neville-Rolfe, B.
Newlove, B.
Nicholson of Winterbourne, B.
Norton of Louth, L.
O'Shaughnessy, L.
Parkinson of Whitley Bay , L.
Penn, B.
Pickles, L.
Popat, L.
Porter of Spalding, L.
Prior of Brampton, L.
Randall of Uxbridge, L.
Redfern, B.
Ridley, V.
Risby, L.
Robathan, L.
Rogan, L.
Sanderson of Welton, B.
Scott of Bybrook, B.
Seccombe, B.
Selborne, E.
Selkirk of Douglas, L.
Shephard of Northwold, B.
Sherbourne of Didsbury, L.
Shinkwin, L.
Smith of Hindhead, L.
St John of Bletso, L.
Stedman-Scott, B.
Strathclyde, L.
Sugg, B.
Taylor of Holbeach, L.
Taylor of Warwick, L.
Tebbit, L.
Thurlow, L.
Trefgarne, L.
Tugendhat, L.
Verma, B.
Wakeham, L.
Waldegrave of North Hill, L.
Wei, L.
Wilcox, B.
Williams of Trafford, B.
Woolf, L.
Young of Cookham, L.

*Motion, as amended, agreed.*

# Electricity Supplier Obligations (Excluded Electricity) (Amendment) Regulations 2019

*Motion to Approve*

*5.33 pm*

*Moved by* ***Lord Duncan of Springbank***

That the draft Regulations laid before the House on 9 September be approved.

**The Parliamentary Under-Secretary of State, Department for Business, Energy and Industrial Strategy and Northern Ireland Office (Lord Duncan of Springbank) (Con):** My Lords, it is like I have never been away. This statutory instrument amends the Electricity Supplier Obligations (Amendment & Excluded Electricity) Regulations 2015. The existing legislation supports the competitiveness of energy-intensive industries by exempting eligible businesses from a proportion of the costs of funding renewable electricity. This instrument amends the existing legislation to: include the manufacture of grain mill products; clarify the application of state aid requirements which exclude firms in difficulty from the scheme; and improve the scheme's overall operation.

The sectors eligible for the existing exemption scheme employ over 300,000 workers and account for more than a quarter of total UK exports. Many are located in areas of economic disadvantage and provide good, well-paid jobs. While our industrial gas price is internationally competitive, our electricity prices for medium and large industrial users are the highest in western Europe and have been for some time. Clearly, electricity costs have a significant impact on the competitiveness of such enterprises. The industries affected operate in international markets, so higher electricity costs place them at a competitive disadvantage, resulting in the risk of carbon leakage, which is when companies choose to move their production to countries with less ambitious climate policies.

Existing legislation covering energy-intensive industries allows eligible businesses to receive an indirect exemption of up to 85% of the costs of funding renewable electricity schemes. When an eligible business applies successfully for the exemption, its electricity supplier receives a reduction in the costs which it passes on to the eligible business. This approach mitigates the cost of the renewable electricity schemes, supports industrial competitiveness and provides certainty for businesses. The costs of the exemption are distributed to other electricity users.

As I said, the regulations add the grain mill products sector, as it now meets the criteria for inclusion in the scheme. The regulations clarify the information that applicants must give to enable the department to assess their eligibility. They also improve the scheme by ensuring that a business that uses a new meter will have to accrue only three months of data before applying; and that, when electricity meters are shared by more than one business, the proportion of electricity which is exempted will be updated more rapidly. Certificates will now expire at the end of June rather than March, thereby reducing the risk of businesses facing a gap in receiving the exemption. Businesses

[Lord Duncan of Springbank]
are also now able to submit their quarterly reports on any day of the quarter, resulting in increased flexibility for them.

In conclusion, these regulations will extend and improve the existing legislation and support the competitiveness of energy-intensive manufacturing industries in the UK. I beg to move.

**Lord Teverson (LD):** My Lords, I am interested that the Minister did not mention carbon leakage, because that is absolutely the core of what this is about. It is about reducing our own carbon footprint. If industry migrates to China or to south-east Asia, that has no effect in any way on global emissions even though it reduces our carbon footprint. At that point we lose employment and all the advantages of business that he outlined.

There is a completely different and topical approach to this issue. Professor Dieter Helm, in his report earlier this year or at the end of last year to the department, said that one of the things that needs to happen if we are serious about electricity prices, energy prices and a carbon-neutral economy is that we should have external carbon tariffs. On our European position, whether we are inside or outside, it is interesting that the President-elect of the Commission, Ursula von der Leyen, said that external carbon tariffs were a way forward as a core part of her Green Deal package for Europe. Whether we have equivalence when we are outside is another question.

Has the Minister's department looked at all strategically at this question, rather than fiddling around with which industry, sector, business, conglomerate or corporate should be in this definition? I have no idea why flour milling should be, but it is great that it needs to be. I have no argument with that. I have not come across that industry in this context before. Would moving forward in this external way not solve all these problems at a stroke? I suspect that a lot more might be produced internationally, but it seems the direction of travel.

I am not sure that the Minister mentioned businesses in distress, which are now excluded from this for state aid reasons. I do not necessarily disagree with it, but I want to understand it more. Has that exemption been used in the past? Perhaps we can understand some examples and what effect it had.

**Lord Lennie (Lab):** The contracts for difference scheme demands that certain high-energy industries pay what is in effect a tax to fund a levy to help subsidise and encourage the generation and production of renewable electricity. Within the scheme, energy-intensive industries, or EIIs, can apply for an exemption from having to pay. This SI adds flour milling to the list of those industries eligible to apply for an exemption, to help the milling industry remain internationally competitive—what you might call flour power.

The SI also seeks to hasten the responsiveness to applicants seeking such exemptions. Where a meter is used for shared purposes either within or between companies, it allows speedier and more accurate removal from the scheme of those activities which do not qualify for such a reduction. It extends EII certificates from the end of March to the end of June each year, giving business more time to report and lessening the chance of a gap between reporting and granting of exemptions

I have some questions. Does the scheme apply to all flour millers and all flour milled, or is it restricted to flour milled for the human food chain only? Graded grains make finer flour, as the phrase goes. Is the scheme just for human-chain flour, or is it for other flour used for animal feed purposes? Is the Minister satisfied that the changes proposed in the scheme will ensure the long-term future of the flour milling industry internationally as well as helping to stabilise food security post Brexit?

The next review of the EII scheme is not due until 2023. Given the Government's welcome shortening of their climate change targets, should not this review also be brought forward to determine any revisions that may be necessary to the scheme to help meet these obligations?

I understand that the feed-in tariffs scheme closed in April 2018, so why does paragraph 2.3 of the Explanatory Memorandum state that eligible EIIs,

"are also eligible for reductions in the costs of funding two other policies that support renewable electricity generation, namely the Renewables Obligation (RO) (in England and Wales and in Scotland) and the small-scale Feed-In Tariff (FIT) schemes"?

If that scheme has closed, why does the Explanatory Memorandum use an active word, or has the scheme been replaced and renewed in ways that we have not yet heard?

The Government announced a control mechanism for low carbon levies in 2017: in effect, that they would have to prove that they were value for money. Can the Minister provide any up-to-date assessment of that decision?

**Lord Duncan of Springbank:** It has been a remarkably short and sweet debate. Long may such debates continue. I say to the noble Lord, Lord Teverson, that I did mention carbon leakage, as it happens.

**Lord Teverson:** I apologise.

**Lord Duncan of Springbank:** Not at all. The noble Lord is quite right in one respect: the notion of carbon leakage is potentially worse for global emissions, because moving from an area where there are high standards to one where they are lower runs the risk of one's emissions being increased.

The issue of carbon border tariffs is fascinating. I spent a great deal of time as a Member of the European Parliament and a rapporteur looking at carbon border tariffs around the emissions trading scheme. The challenge with that was that, even at an EU level, it was hard to get a consensus to support it. I do not want to set any hares running, but I want to consider it carefully because we cannot rule anything out in the future.

However, the present scheme is designed as best we can to ensure a level of competitiveness, which I think we can appreciate. We need to recognise where the energy-intensive industries can become more efficient and thereby reduce their emissions, and where there are certain process emissions which are simply the output of an equation in chemistry and will always produce a certain number of carbon dioxide molecules. There are important things that we need to explore.

On businesses in distress, an example that might fit here is the steel industry but, in truth, it would have qualified even had it not been in distress, because it was already within the carbon intensives. We are looking at the supply chain, as we drop down from the larger sector to the smaller parts of the supply chain which may be in distress as a consequence of a bigger impact somewhere higher up. Rather than me simply saying this, I will write to the noble Lord to set this out in some detail and I will happily place a copy of that in the Library so that he can see exactly where that rests.

The question raised by the noble Lord, Lord Lennie, relating to the flour mills themselves is an interesting one, because it is a question that I also asked myself. Do all flour mills automatically qualify? The answer is, no, they do not; they still have to meet the obligations set inside. A flour mill would be eligible to take part because it is now within an industry that is recognised as qualifying, but the individual mill itself would still have to meet the criteria to qualify for inclusion in order to secure the benefits. That would apply to all sectors, so it is not an automatic inclusion, although some industries or sectors are pretty much in their entirety all within that.

As to the longer-term question, I would hope that this will help flour milling to be competitive at the European and global levels. Food security remains one of the prime considerations across the EU and here at home. On the issue of whether we will review this, I think we should in fact be constantly reviewing these issues. I appreciate that my making that statement and a review actually occurring might not be hand in glove, but I recognise that, on the glide path to COP 26 next year in Glasgow, we should look at all our obligations in this regard to make sure that they are all being delivered as expected. If we are not careful, we could become complacent and simply rely upon that which worked in the past. We want to make sure that it works going forward.

When the noble Lord raised the question of feed-in tariffs, I also had a little twinkle in the back of my mind that they were closed. They are in fact closed to new entrants but there are existing recipients who benefit from the payments, and that is why they are cited in the body of the Explanatory Memorandum. They are few in number and, if the noble Lord would like, I will happily set out how many still qualify under the feed-in tariff scheme within this wider obligation.

On that basis, I think I am content to move these regulations forward.

*Motion agreed.*

## Waste and Environmental Protection (Amendment) (Northern Ireland) (EU Exit) Regulations 2019

*Motion to Approve*

*5.46 pm*

*Moved by* ***Baroness Chisholm of Owlpen***

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

*Relevant document: 58th Report, Session 2017–19, from the Secondary Legislation Scrutiny Committee.*

**Baroness Chisholm of Owlpen (Con):** My Lords, the regulations make corrections to three other Northern Ireland EU exit instruments and amend one piece of Northern Ireland primary legislation to address failures of retained EU law to operate effectively with regard to Northern Ireland waste legislation, arising from the withdrawal of the United Kingdom from the European Union. Part 2 of the instrument amends the Waste and Contaminated Land (Northern Ireland) Order 1997. Part 3 amends three Northern Ireland EU exit SIs to correct some earlier operability changes made to primary and secondary waste legislation in Northern Ireland. This is considered necessary to ensure that a consistent approach is taken to address operability issues identified across the relevant Northern Ireland waste legislation.

All the amendments are to provisions which relate to the interpretation and application of article 16 of the waste framework directive, once the UK exits the European Union. The amendments ensure that the requirement on the United Kingdom to move towards the aim of becoming self-sufficient in waste disposal and in the recovery of waste is adequately and accurately reflected in domestic legislation. The amendments also ensure that the relevant legislation in Northern Ireland is updated to ensure there are no inoperable references to "best available techniques". The amendments are therefore primarily corrections which are technical in nature. Importantly, there are no policy changes and there is no reduction in the environmental standards or obligations to which Northern Ireland is currently subject.

The regulations are made under Section 8 of, and paragraph 21 of Schedule 7 to, the European Union (Withdrawal) Act 2018. The Act retains EU-derived legislation in UK law. Section 8 of the Act enables regulations, such as those we are considering, to be made to address deficiencies in EU-derived legislation that arise from the UK leaving the European Union.

The regulations extend and apply solely to Northern Ireland. They concern matters which would normally be dealt with by the Northern Ireland devolved Administration. The Government's preference is that these Northern Ireland regulations be made and scrutinised by the devolved institutions in Belfast. However, there is no sitting Assembly in Northern Ireland and it would not be possible to make the regulations. The Government are committed to the restoration of devolved government in Northern Ireland but, given existing circumstances, we have decided to process these and other Northern Ireland regulations made under the withdrawal Act through Parliament in order to maintain the integrity of the Northern Ireland statute book. In pursuing this course, we have worked closely with the Northern Ireland Department of Agriculture, Environment and Rural Affairs.

As with other regulations made under the withdrawal Act, these regulations have been drafted on the basis of leaving the EU without an agreement. It is, of course, the Government's preference that there will be an agreed basis for leaving the EU. The Secondary Legislation Scrutiny Committee highlighted this SI as an instrument of interest. The committee published comments by Green Alliance which highlight the group's concerns about the removal of references to "best

[Baroness Chisholm of Owlpen]
available techniques" in Northern Ireland legislation. They fear that this could lower environmental standards. I categorically reassure noble Lords that there is absolutely no risk of any lowering of standards. Notwithstanding the Government's repeated commitments to protect environmental standards, the Government are already bound by other legislation to take best available techniques into account. This SI does not change that. The Waste Management Licensing Regulations (Northern Ireland) 2003 set out these requirements in the context of establishing an adequate network of installations for waste disposal and for the recovery of mixed municipal waste from households in Northern Ireland.

The corrections and amendments in this instrument remove the requirement to take best available techniques into account in the context of article 16.1 of the waste framework directive. We are doing so to ensure that the United Kingdom can set its own best available technique requirements and emission limits going forward, rather than having to comply with those which may be produced by the European Commission after the UK exits the European Union. In respect of the amendment to the Waste and Contaminated Land (Northern Ireland) Order 1997, the reference to best available techniques in Schedule 3, which was directly copied from article 16 of the waste framework directive, has been omitted because the term is not defined or used elsewhere in the order. This would render the term inoperable.

The Government have committed to putting a process in place for determining future UK best available technique conclusions for industrial emissions post the UK's exit from the European Union. This is being developed with the devolved Administrations and competent authorities across the UK. Legislative changes may be required to reflect the agreed process in due course. If so, your Lordships and, where appropriate, the devolved Parliaments and Assemblies, will be able to scrutinise these at the appropriate time. No comments were raised by the JCSI in respect of the regulations. As the purpose of the regulations is to make corrections and minor technical amendments, no consultation was undertaken in respect of the provisions. The regulations will not have any significant impact on business, charities, voluntary bodies or the public sector, but will help ensure legal certainty for regulators, stakeholders and the Government and prevent any ambiguity around environmental obligations.

Similar legislative updates to those contained in this instrument have already been extended to England and Wales through the Environment and Rural Affairs (Amendment) (EU Exit) Regulations 2019, which amended the Waste (Miscellaneous Amendments) (EU Exit) Regulations 2019 and the Waste (Miscellaneous Amendments) (EU Exit) (No. 2) Regulations 2019. These regulations maintain the integrity of the Northern Ireland statute book, ensure legal certainty as we approach our exit from the EU and ensure that we maintain environmental standards and protections across the UK. I beg to move.

**Baroness Bakewell of Hardington Mandeville (LD):** My Lords, I thank the Minister for her extensive introduction. I am grateful to her and her officials for their time in providing a briefing.

I am reassured that this SI makes no changes to the regulations covering waste and ensures that the law around waste disposal, installations and the recovery of mixed municipal waste collected from private households after Brexit will now be exactly the same over the whole of the UK. More importantly, perhaps, for Northern Ireland, it will be the same across the whole island of Ireland, as the UK and the EU statutes will be identical, so there will be no issues should a border ever be reintroduced.

This SI covers contaminated land and the supply and storage of prescribed substances and potentially hazardous substances. This could include asbestos. Can the Minister say whether this might also include, as a hazardous substance, nuclear waste, and, if so, whether that might now or in the future be nuclear waste created in England, Wales or Scotland and shipped to Northern Ireland for safe disposal?

As this SI transfers current EU law directly into UK and Northern Ireland law, I am confident that there will be no additional costs on local authorities as they already carry out duties under waste disposal, noise and environmental liabilities.

In the Explanatory Memorandum, paragraph 2.6 refers to the Environment (Miscellaneous Amendments) (Northern Ireland) (EU Exit) Regulations 2019, which have already been debated. Since SIs which have been debated are then allocated an official number, it would be helpful for this number to be used. For those of us grappling with numerous SIs, many with what appear to be the same long titles with only one word different, if where they have a number it is quoted each time they are referred to, this would make life far less confusing. That is a very minor point, but it would certainly assist the process if it were to happen. Apart from that, I am happy to support this SI.

**Lord Grantchester (Lab):** I too thank the Minister for her introduction to the order this afternoon. It is unfortunate that the Assembly in Northern Ireland is still not up and running. I declare my interest as having a farm in Cheshire in receipt of EU funds. I also thank the Minister for being available to discuss the order.

As the Minister says, these are mostly technical in their detail, in that they remove the references to Northern Ireland to follow the best available techniques in waste management and emissions targets as defined at an EU level. I am sure that she will confirm that improvements in developing techniques will still take place, scrutinised by experts in the relevant competent authorities.

While I understand that in the long term the UK will not be bound into the EU system, nevertheless, can the Minister confirm that, under the current withdrawal Bill, Northern Ireland will stay compliant with the EU's regulatory regime? Is there then a risk that standards in techniques may diverge from those in other parts of the UK, and is it expected that any divergence will be material?

Generally speaking, the EU has been in the forefront of environmental improvements and has been instrumental in driving change. Following the UK's proposed exit from the EU, there are severe misgivings that, in the

impact of removal to EU standards, environmental improvements will not be maintained. While I acknowledge that the Minister has indeed stated that the UK will adhere to high standards, I would be grateful if she could outline the measures that the UK will commit to in order to ensure that environmental improvements will be adhered to throughout the UK.

These regulations also correct errors in earlier EU exit regulations. While I can understand the urgency with which it was necessary to introduce these regulations, can the Minister let the House know about the overall progress of revision of the department's regulations and when the process might be complete?

**Lord Bew (CB):** My Lords, I thank the Minister for introducing this instrument, and I am very grateful to her for confirming that there will be no diminution of environmental standards, and that this really is about protecting environmental standards in the right way. I express the obvious regret that this is not being dealt with in the Northern Ireland Assembly. It is now over 1,000 days. This is not the first time that the Government have had to come to this House with an issue of environmental protection which would have been better dealt with in the Northern Ireland Assembly. However, I would say to the Government that for a long time there was a certain chariness in doing things which had a hint of direct rule. I understand that, but in these areas where the two communities agree—there will be other issues coming before the House soon, I hope—I do not think that they need concern themselves overmuch with ideology. There is a genuine reason to be concerned, but there are areas where the two communities agree, and others are in the pipeline. Since the Irish Government understand the difficulty that the United Kingdom Government are in, there is no serious problem here. It is a matter of regret that for 1,000 days we have had no Northern Ireland Assembly, but none the less, the Government have no choice but to act as they are doing today.

*6 pm*

**Baroness Chisholm of Owlpen:** I thank noble Lords for taking part and for their various questions. As I said, this is a simple SI, taking forward important things into Northern Ireland's statute book.

The noble Baroness, Lady Bakewell, mentioned numbers. I agree with her. When we had a meeting, the officials took note of this and said that it would make sense. The numbers are complicated enough without us not being able to identify which is which. I am sure that they have taken note of that again, but I know that they agreed with the noble Baroness on that.

As far as nuclear waste from England, Scotland and Wales coming to Northern Ireland for disposal is concerned, this SI will have no impact. As highlighted earlier, the purpose of some of the amendments is to adequately reflect the requirement placed on the United Kingdom by EU legislation to move towards becoming self-sufficient in the disposal of waste from the recovery of household waste. Northern Ireland does not have any high-activity radioactive waste, and there are no plans to site a geological disposal facility in Northern Ireland. Any future policy decision on geological disposal in Northern Ireland would be a matter for the Executive, and subject to community agreement and planning in environmental consents. Any action by the Department of Agriculture, Environment and Rural Affairs in Northern Ireland, or by its previous Ministers, on GDF, has been in support of proposals for safeguards to ensure that communities have given a voice to any decisions around the siting of a geological disposal facility. An updated policy framework for higher radioactive waste was published by BEIS in December 2018, and a process to identify a location to develop a GDF has commenced, but this applies only to England and Wales.

The noble Lord, Lord Grantchester, asked whether this SI would lead to any lowering of standards. The regulations do not water down or lower current environmental standards, in line with government commitments. The removal of,

"best available techniques do not weaken current standards",

is because the current available techniques are still present in legislation. The UK has also committed to putting in place a process for determining future UK best available technique conclusions for industrial emissions post our exit from the European Union. However, the changes do not impact on current requirements, which will remain the same around meeting best available techniques when operating waste installations. We wanted to ensure that there will be no operability issues with the current legislation once the UK exits the European Union.

The noble Lord, Lord Grantchester, also asked what the UK process for developing best available techniques might involve. The devolved authorities and the relevant departments and authorities in England are developing this process. It is likely to include the establishment of new structures, including a new integrated pollution control standards council formed of representatives from the appropriate authorities—Defra, the Scottish Government, the Welsh Government and Department of Agriculture, Environment and Rural Affairs in Northern Ireland—a new regulators' group formed of representatives from the UK regulators and technical working groups led by the sector leads from the UK regulators. They will invite participation from UK experts—industry, environmental and NGOs. These structures will work through a process that will involve technical issues and relevant evidence from stakeholders being considered before recommendations are made, so it is very much hoped that everybody will be involved in the process. Ultimately, this may lead to UK best available techniques being approved by the Secretary of State and relevant Ministers, and then reflected in legislation.

Like the noble Lord, Lord Bew, we regret that Northern Ireland is not making this legislation, but we feel that the most important thing is to make sure that the Northern Ireland statute book is up to date. That is why we were so determined to carry this through ourselves.

I think that I have answered all the questions. I thank noble Lords for their points. The regulations make corrections to current EU exit instruments and are minor technical amendments, as I said. It is important that we continue to safeguard, maintain and enhance our environmental protections in all parts of the kingdom, and the regulations help to ensure this for Northern Ireland.

*Motion agreed.*

# Plant Health (Amendment etc.) (EU Exit) Regulations 2019

*Motion to Approve*

*6.06 pm*

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

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

**The Parliamentary Under-Secretary of State, Department for Environment, Food and Rural Affairs (Lord Gardiner of Kimble) (Con):** My Lords, the regulations amend earlier EU exit regulations relating to plant health, to update the Plant Health (EU Exit) Regulations 2019 and ensure that recent EU-derived protective measures against the introduction and spread of harmful plant pests continue to remain effective and operable on leaving the EU. The Plant Health (EU Exit) Regulations 2019, which were debated in this House on 25 March, are an important element of the EU exit legislation that we have put in place for maintaining plant biosecurity. They set out the list of harmful pests and plant material that will continue to be regulated.

It is our responsibility—particularly mine, in my role as Minister for Biosecurity—to protect biosecurity across plant and animal health and the wider ecosystem. It is also important that we have a robust process of ongoing review to strengthen biosecurity protections, where this is possible and necessary after we leave. The regulations are specifically about protecting plant biosecurity. The amendments address technical deficiencies and inoperability issues relating to retained EU law on plant health that could arise when we leave.

I should make it clear that all the amendments introduced by the instrument are simply technical operability amendments and do not introduce any policy changes. They ensure that existing measures set out in EU legislation and national measures introduced under the EU's plant health directive will continue to apply to the UK after we leave. The majority of the changes update the list of regulated plant pests and plant material and associated import and movement requirements relating to host material in the Plant Health (EU Exit) Regulations. They reflect recent amendments to the plant health directive made by Commission implementing directive 2019/523, as a result of technical changes in the assessment of risks presented by particular pests and diseases.

I would like to explain what all that means by way of a number of examples. The lemon tree borer is native to New Zealand. Despite its name, the larvae are generalist feeders, boring into the wood of a wide variety of trees. When Captain Cook first arrived in New Zealand, his naturalists collected a lemon tree borer in their first collection made between 1769 and 1771. This oldest collected specimen can be found in the British Museum and our aim is to ensure that it remains the only specimen in the United Kingdom. Adding the lemon tree borer to the list of regulated pests will mean that countries where it is present must ensure that consignments of plants for export are free of it and officially certify that that is the case. The UK pressed for this change to be made to EU legislation following occasional interceptions of the pest on imported plants, and this instrument will ensure that the new requirements will remain operable after exit.

The tobacco whitefly is one of the most economically important agricultural and horticultural pests in the world, due in part to its adaptability, wide host plant range and capacity to vector more than 110 plant pathogenic viruses. Despite its establishment in the EU, the UK remains free of the pest and has protected zone status. The changes included will further strengthen our protections against this damaging pest. In particular, they broaden the list of plant species that are subject to official control as well as the scope of those controls, requiring greater official oversight and pre-export inspections of those pathways which have most frequently been the cause of interceptions in the UK. I should add that this is a glasshouse pest and not a threat to the UK's wider environment. As such, interceptions can be dealt with effectively, without the likelihood of longer term establishment of the pest. Nevertheless, we will continue to ensure that our import requirements are as robust as needed to mitigate the threat of infested plants being imported, which is why we will continue to review the effectiveness of these strengthened measures to check that they are achieving the desired outcome. If not, we will not hesitate to take further action.

The pine processionary moth is another pest for which the UK currently has protected zone status due to its establishment elsewhere in the EU. Its caterpillars are a threat to the health of pine and some other conifer tree species as well as a hazard to human and animal health. The caterpillars feed on the needles of pine trees and some other conifer tree species, and in large numbers they can severely defoliate trees. Like the oak processionary moth, pine processionary caterpillars have thousands of tiny hairs containing an irritating protein, which, if they come into contact with people and animals, can cause painful skin, eye and throat irritations and rashes and, in rare cases, allergic reactions. That is why it is so important that we continue to exclude this pest and keep our protections up to date. There is new information to confirm that cedar is a host of the pine processionary moth, so we have taken early action to ensure that this host is added to the scope of EU legislation on this pest, maintaining the robustness of our import protections. There have been no findings of pine processionary moth since the UK was designated a protected zone and we aim to keep it that way. These are some examples from directive 2019/523 which we intend to and must keep operable after exit.

The instrument also covers other recent EU decisions, most importantly from the UK perspective, to better protect against the emerald ash borer. Decision 2018/1959 suspends an option for the import of ash wood originating in Canada and the United States, which has been assessed as not being complied with reliably. In addition to these changes in EU legislation, the list is being updated to incorporate specific national measures that have been introduced under EU provisions to protect against the rose rosette virus and the oak processionary moth. These national measures reflect our proactive approach to plant health. We are taking timely, robust and technically proportionate actions in response to new risks.

Rose rosette virus is an extremely damaging disease of roses, widespread in the United States and part of Canada—where it has caused devastating impacts—and was found for the first time in India in 2017. The virus affects all roses, and it and its mite vector may be present in both plants and plant parts. Current EU regulations restrict the import of plants for planting from non-European countries to plants that are dormant and free from leaves, flowers and fruit, but this is not sufficient to prevent the entry of this virus.

*6.15 pm*

When this was picked up in our horizon scanning, we worked in partnership with others to develop a Europe-wide risk assessment through the European and Mediterranean Plant Protection Organization. This risk assessment has provided the technical basis to introduce national protections that must continue to be retained in future. It is worth noting that the EU has reviewed the UK national measures and decided to introduce EU-wide protections, which have just been published this month through decision 2019/1739.

Oak processionary moth, native to southern Europe, causes human and animal—as well as plant health—impacts, and the majority of the United Kingdom is designated as a protected zone against this damaging pest. The pest is established in many parts of Europe, and there has been an expansion of its distribution. Following a number of interceptions in the UK this year, we quickly identified that the current import requirements were deficient and took rapid action to strengthen them. In particular by taking national measures, we have removed altogether the option that allows larger oak trees to be imported from open nurseries in areas where OPM is present. This has essentially closed off all imports of such trees from countries such as the Netherlands, where the pest is established. At the same time as strengthening the legislation, the Forestry Commission and the APHA took swift action to eradicate findings in the protected zone, including surveillance, tracing work and the destruction of caterpillars and infested and related trees.

The instrument also amends primary legislation to remove references to EU obligations. These changes have no operational impact but simply remove redundant and inoperable references to EU obligations.

As is customary, we have worked closely and extensively with our devolved counterparts, with Regulation 2 of this instrument applying to Great Britain, Regulation 3 to Northern Ireland and Regulations 4 and 5 to England, Wales and Northern Ireland. The Scottish Government are replicating the changes in Regulations 4 and 5 to provide a UK-wide approach. In this area, the way in which we work with the devolved Administrations is not only common sense but absolutely the right way forward. I am pleased that we have that very collaborative approach and will continue to do so.

For the reasons I have outlined and because of some of the examples of the pests we are contending with, I beg to move.

**The Duke of Montrose (Con):** My Lords, I welcome this measure by the Government, because we all find plant health extremely important in this country. As somebody with some small woodlands and gardens, I am conscious of diseases and things that have affected the country.

Presumably the plant health regulation was initially to do with diseases that were not in the EU. I was glad to hear my noble friend the Minister outlining that his department has picked up on diseases already in the EU. We need our own protection to prevent them being brought into this country.

I have just had a quick glance through the paper. The range of plants included is amazing: prunus, apples, roses and oak trees. I see, from the list of diseases the Minister is on the lookout for, that we need very good protection, and I am glad to think that the department is putting in place all this detail.

Most of these are things which we wish to keep out of this country. I just noticed in tidying up the legislation the restated phytophthora ramorum, which we already have in this country and which is causing a bit of damage, although not as much as some of the other diseases going about. We have had a lot of trouble with the other one—phytophthora lateralis—which is attacking ash trees across Scotland. I gather that the Government's approach is to leave it to work and see whether we have any ash trees that will resist it, which is a fairly low-key, not very active approach. Let us hope that it has some success.

**Baroness Bakewell of Hardington Mandeville (LD):** My Lords, I thank the Minister for his comprehensive introduction to this very important matter for the UK. I am grateful to him and his officials for their time in providing a very helpful briefing.

Some of the language in this extensive SI is unfathomable to anyone not steeped in the science. As just one example, Regulation 4(6)(b)(ii) in Part 3 refers to,

"an official statement that it has been squared to entirely remove the natural rounded surface".

This seemed an absurd statement to me and I am extremely grateful for the explanation that squaring a tree trunk removes the bark, which harbours many pests and diseases. This bark is then chipped or made into sawdust. The SI sets out regulations for how that by-product is to be treated, dependent on the country of origin, before importation, thus avoiding the transfer of disease.

The biosecurity of our native trees, shrubs and plants against pests and diseases is one of the most important aspects of ensuring that our countryside and way of life are preserved into the future. When and if we leave the EU, being confident that imported pot-grown oak trees are free from oak tree moth is vital. The oak tree is such a national icon that it would be devastating if it were to suffer the fate brought by Dutch elm disease and ash dieback. There appear to be a number of processionary moths attacking our trees, as the Minister has said, from oaks through to pines. It will be important to try to ensure that imports come only from areas and countries which are declared protected zones and to import at the time of year when the pests are known to have died off due to temperature or are dormant.

I turn now to cut flowers and pot-grown plants, some of which are seasonal. We are currently approaching the season when hundreds of thousands of poinsettias

[Baroness Bakewell of Hardington Mandeville] will appear in nurseries, florists and supermarkets. Some of us may even be given them as gifts. Poinsettias are grown under glass in cold climates, but in the open in warmer areas such as the southern states of the USA. Plants grown under glass are susceptible, as the Minister has said, to tobacco whitefly, which is undetectable to the naked eye. This pest spreads a virus which, if imported, could get into our salad crops, which are also grown in glass-houses. In an age where climate change is high on everyone's agenda and in which we should be moving towards more self-sufficient, homegrown food production, the protection of salad crops is extremely important.

Another flower import is the cut rose. Most of these come from EU countries or east African countries such as Kenya. All come from protected zones, free from the rose rosette virus, which causes leaf curl and flowers to drop. India and the Americas are not protected zones and have the virus. It is obvious that importing cut flowers from across the world by air is not sustainable and doing little to help with climate change, but buying flowers only in season is a difficult message to get across to the public.

On 14 February and Mother's Day, vast quantities of roses will be imported, especially long-stemmed red roses. Those coming from protected zones will be flown to airports close to our flower markets, such as the one in Bristol, in my own area. Can the Minister say how many flower markets there are in the UK and whether they receive roses and flowers imported from rose rosette-free zones? I regret that I can envisage a scenario where unscrupulous flower sellers and importers looking to make a quick buck will see the opportunity, especially around 14 February, to buy and import roses from unprotected zones such as Canada, America or India. This could be devastating for one of our country's national treasures: the English rose. Will the Minister give assurances that there will be measures in place to prevent this happening? Will licences for importation be scrupulously checked around these sensitive dates in our calendar?

While it is very touching to receive a bouquet of red roses on Valentine's Day, personally I would much rather have a bunch of UK-grown daffodils and tulips. These flowers bring such colour and hope to us all when they start to emerge in the spring, heralding the passing of winter.

Lastly, I understand that in the UK we have 24 protected zones. Will the Minister say where the protected zones are around the country?

This is an extremely important SI which will help protect our trees and plants. I fully support the measures we are debating this afternoon.

**Lord Grantchester (Lab):** My Lords, I thank the Minister for his excellent introduction to the regulations before your Lordships' House this afternoon. I am very grateful to him and his officials at the department for the detailed briefing they organised yesterday. I declare my interest as a farmer in receipt of EU funds.

As the Minister said, these regulations include the latest updates agreed at EU level. I commend his department for taking the lead in EU discussions on protection against the rose rosette virus and extra protection measures against the oak processionary moth. But that begs the question: what mechanisms do the Government envisage are necessary to continue the UK's influence and the exchange of information should the UK leave the EU? What are the sharing arrangements around biosecurity post EU exit date? Under the withdrawal Bill, will the UK still have access to the surveillance notification systems of the EU? What contingency arrangements are in place in the event of there being no access, which would occur if the UK was so careless as to let a no-deal scenario come to pass? Will the Minister at least assure me that all future updates that the EU may undertake are being carefully monitored?

As the Minister explained, these new regulations follow the latest risk assessments to protect biosecurity while facilitating the exchange, trade and movement of plants and plant material. There are many reasons for such movement, from access to genetic material, research and development and commercial trade to the movement of plants and food for retail to the consumer. The overriding and most important factor is to reduce all risk to biosecurity. I approve these technical amendments as being necessary to ensure that all EU protective measures against the introduction and spread of harmful organisms are in place and effective on any EU exit date.

Controls must take precedence over and above commercial pressures. Nevertheless, the Government must ensure that trade is facilitated within these parameters. For example, one of the measures taken is against tobacco whitefly, which pose risk to greenhouse produce through the supply of poinsettias, which are much in demand at Christmas. The pest is endemic in regions that produce poinsettias. Is the Minister satisfied that the APHA will have the necessary resources available to cope with supply chains sensitive to such dates, whether it be poinsettias for Christmas, roses for Valentine's Day or flowers generally for Mother's Day? What contingency arrangements are in place to deal with seasonal spikes in demand?

One of the points of discussion yesterday involved protected zones whereby the UK recognises zones as free of certain risks to enhance exchange with biosecurity. Interestingly, many of these areas are in Ireland. Can the Minister say whether these zones will continue to be recognised and even increased to include areas outside of the EU? Will other defensive measures be taken to restrict areas and entry points? In the canopy of agencies and inspectorates, is the department developing strategies around controlling access to specific entry points, ports or airports, or even restricting trade to disease-dormant limited periods in the calendar, in order to spread not only the load of biosecurity but also the risks of any breaches? Are there any such restrictions in place at the moment and is the noble Lord confident that such controls are working and sufficient?

*6.30 pm*

The oak processionary moth is a case in point. First found in 2006, it has gained a foothold in Greater London, where further imports could lead to an expansion of its range. OPM caterpillars have been recently identified on trees from the Netherlands.

At present, the EU plant health directives require checks on material imported from third countries at the point of entry into the EU. However, following EU exit, is it correct that such material from other third countries would be allowed to enter and pass through the EU on their way to the UK without any checks at any EU border, which could then lead to some oversight risks and confusion? Does the Minister share the concern that such material will no longer be checked and inspected until it has arrived within the UK?

Among the discussions yesterday was the issue of harmful organisms through wood originating in Canada and the US. The regulations make specific references to necessary paring down of the timber to exclude bark and therefore dust and offcuts. Can the Minister confirm that APHA's responsibilities cross over to include monitoring the sustainability of woodchip imported as part of the supply chain for biomass plants? Is he confident that measures are in place through export certificates and APHA registration to ensure frictionless trade, not only into the UK but exports, following future growth and prosperity in the sector concerned? Is he confident that future tariff arrangements will not jeopardise trade?

Turning to the devolved Administrations, as mentioned by the Minister, given the sensitivities around the union at the moment, are there any measures the Government could undertake to minimise any possible risk of divergence in the future? It is recognised that, to date, the communication between the devolved Administrations has been excellent and has produced consistency between them.

On the issue of any future policy proposals for a different plant health regime once the UK leaves the EU, can the Minister give the House any indication of whether and how this may differ from that of the EU and when any proposals may come forward?

Your Lordships' EU Committee's report *Brexit: Plant and Animal Biosecurity* advised that the best way to maintain the free flow of goods is for the UK to remain aligned with the EU's biosecurity policy and regulation, even if the UK's influence were to diminish. Any deviation in standards or practice would result in the EU insisting on additional checks for conformity for UK products to maintain the integrity of its market. In addition, any more stringent measures the UK might determine would, by their very nature, restrict the movement of goods across UK/EU borders. Has the Minister any initial proposals on how to balance any conflicts this may bring between international trade and strong biosecurity arrangements?

I thank the noble Lord for taking us through so many of the examples in the regulations today and, with appropriate assurances and explanations, I am happy to approve them.

**Lord Gardiner of Kimble:** My Lords, it may answer some of the general points that the noble Lord, Lord Grantchester, raised if I start by saying that protecting biosecurity is of supreme importance, not only to the Government but to the arrangements in this country. We are still free of very damaging pests, and we wish to remain so. We are undertaking research, which is the perhaps for another time, but some of the research on tree health and so forth will be tremendously important to us.

The noble Lord, Lord Grantchester, spoke about trade. Clearly it is important to facilitate the importation and movement of plant material, but it must be done in a biosecure way. The noble Baroness, Lady Bakewell, referred to material that is homegrown, and to seasonality. These are areas which we should think of more as consumers. I think that growing trees, shrubs, plants or flowers in Britain for environmental reasons, and for seasonality in the case of cut flowers, is the best and I actively encourage it.

My noble friend the Duke of Montrose referred to UK measures and the protections we have. We have had very good relationships with our European friends and partners. The Chief Plant Health Officer often gives a lead on these matters. On the real worry of Xylella fastidiosa, which has decimated the olive groves in southern Italy and is in other places, this country has been instrumental in driving stronger legislation which now applies across the EU for certain high-risk hosts. We are working very closely with the Horticultural Trades Association and the National Farmers' Union to ensure there is guidance on Xylella to encourage good practice when sourcing plants. Work is going on in the Horticultural Trades Association on assurance schemes and on ensuring that when people buy British plants and trees they come with a high provenance. These are areas which we should work on.

Like the noble Baroness, Lady Bakewell, I read the SI and came across squarings and roundings. Many of the pests that we have reflected on in this debate, and others, are in the bark. That is why we need to have wood square for inspection so that there is no bark, which is one of the major sources and pathways for disease. Like her, I sometimes find statutory instruments impenetrable, so I always go to the Explanatory Memorandum first. I assure her that the regulations may be convoluted to us but they are very well understood by those who need to ensure that they are compliant.

The noble Baroness also mentioned oak. We have set up Action Oak and are doing research work with great institutions and universities to see what we can do to counter the travails of our wonderful, iconic national tree. If we are to import, we clearly must ensure that imports are pest-free.

The noble Baroness, Lady Bakewell, referred to cut flowers. I spent a day working with the inspectors at Heathrow, because a lot of our cut flowers come through it. If I have any further detail about other sources—I am mindful of her reference to Bristol—I will let her know. There is strong inspection of flowers coming in from non-EU sources, and there is the facility at Heathrow which I visited. However, she is right about cut flowers. We are taking these measures because of the rose rosette virus, of which we need to be very mindful. We have a specific risk and horizon-scanning team in Defra that monitors evidence and information, which, along with intelligence from the APHA inspectors on the ground, is fed through monthly in an attempt to identify and respond to new threats. She is also right about vertical salad food production

[Lord Gardiner of Kimble]
and that whole area of innovation. Clearly, we need to be extremely vigorous in stopping the arrival of the tobacco whitefly.

On the regulation of pests and diseases and their impact on food production, we already have measures in place to protect important food crops such as potatoes and cereals. This instrument includes provisions that strengthen protection against certain pests that affect important food crops. As we have mentioned, the tobacco whitefly can spread viruses to salad crops, and the potato psyllid can spread a bacterium that causes zebra chip disease in potatoes. That, again, is an area where we have been instrumental in pressing for strengthened measures to protect our food crops.

The noble Baroness is absolutely right about peak dates such as Christmas, Valentine's Day, Easter and Mother's Day. The Netherlands is a prime source of flowers from the EU. East Africa is another source, and that is where most of the non-EU flowers and plants that are inspected as they are flown in come from. I have seen the inspections and can report that they are very effective. Timber inspection is carried out at many arrival points, and Heathrow, London Gateway, Felixstowe, Dover, Southampton, Liverpool, Humber and Teesport are all areas where we receive goods of which we need to be watchful.

The protected zone is an EU concept, and the UK is the most prolific user of the protected zone scheme. When we leave, these designations will no longer apply but we will maintain the same protections through our list of regulated pests and import and movement requirements. We will redesignate protected zones that apply only to certain parts of the UK as pest-free areas, in line with international standards. This applies mainly to protected zones currently in force in Northern Ireland. We will of course keep under review the need to introduce new pest-free areas in the future. I have a list of them and it might facilitate better understanding if I circulate a map and a list—that might help to bring the picture alive.

We obviously hope that we will be able to negotiate successfully with the EU on third-country access to the EU notification system, not only because that would be in our interests but because, candidly, as I hope I have outlined, this is an area where the UK has made a major contribution in seeking to enhance biosecurity both here and within the EU. I very much hope that this will be an area where mutual working can continue, as pests and diseases do not respect borders or even the 22 miles of the channel. All EU systems have publicly available elements that we will be able to access, although we have of course developed fallback positions should we lose access. As I said, this is an area where it is common sense for us to collaborate.

The noble Lord, Lord Grantchester, referred to the importance of recruiting inspectors. At the end of October, APHA will have recruited a further 107 full-time equivalents as PHSI inspectors and administrative staff. APHA is reviewing operational procedures to mitigate any resourcing and ensure that all services are delivered as and when required, as I said.

The noble Lord, Lord Grantchester, asked about our overall protection from plant pest threats. One of the great things that I have discovered as Biosecurity Minister is that we have a monthly biosecurity meeting with all the top officials, experts and scientists. One of the key features of that is horizon scanning all around the world. I have a list of every conceivable animal and plant disease along with their profiles and information on whether they are increasing, holding their own or reducing. This is an important element of our ensuring that the threats are kept at bay.

The noble Lord, Lord Grantchester, referred, for example, to woodchip particles. The regulations apply whether the material is intended for manufacturing, amenity use or industrial power. That is why it is important to regulate all possible pathways by which a pest can be introduced, whether via plants, timber, woodchips or bark.

Another issue mentioned by the noble Lord brings me to my final point. I have outlined, adequately I hope, that the Government are absolutely staunch on the issues of plant and tree health, investment and research, at both commercial and public level. Our policies on plant health EU exit instruments are risk-based and proportionate; that is clearly how we want to do things from day one but we will be considering anything that comes forward from the EU. It is important, since we have often been a leader, that we continue this collaboration. If, indeed, there were any new decisions from the EU on things that we had not already done and need to do—although I hope that we would already have done them—I can assure your Lordships that this is an area where, through Defra, the Food Standards Agency, APHA, and all the agencies, we have a prime responsibility to keep our country safe.

I will look at *Hansard* because there may be other distinctions, but I hope that I have explained why this instrument is important for us as part of our biosecurity regime.

*Motion agreed.*

## European Parliamentary Elections Etc. (Repeal, Revocation, Amendment and Saving Provisions) (United Kingdom and Gibraltar) (EU Exit) (Amendment) Regulations 2019

*Motion to Approve*

*6.47 pm*

*Moved by* ***Earl Howe***

That the draft Regulations laid before the House on 23 July be approved.

*Relevant document: 69th Report, Session 2017-19, from the Joint Committee on Statutory Instruments (special attention drawn to the instrument)*

**Earl Howe (Con):** My Lords, the instrument that we are now considering is designed to make sensible provision to ensure that, in consequence of our participation in the European parliamentary elections earlier this year, the necessary administrative processes that are required following the poll are able to be carried out and completed. I shall go into more detail

on the actions and processes that are required in a moment, but one example is the requirement for relevant electoral officers to store ballot papers and other election-related documents for 12 months after the poll.

The proposed changes will provide for legislation governing European parliamentary elections to remain in place until 31 December 2020. We consider that this will provide sufficient time for post-poll processes to be completed. The Government are acting responsibly in bringing forward the instrument, which is essential to maintain the integrity of our electoral process. The instrument brought before the House today applies to the United Kingdom and Gibraltar.

I turn to the detail of the proposed changes. The intention had previously been that the UK would leave the European Union before the European parliamentary elections in May 2019. As a result, the European Parliamentary Elections Etc. (Repeal, Revocation, Amendment and Saving Provisions) (United Kingdom and Gibraltar) (EU Exit) Regulations 2018—which I will call the 2018 regulations—were made to come into force on exit day. Those regulations repeal, revoke or amend legislation relating to European parliamentary elections which would no longer be required. Therefore, as things stand, under the 2018 regulations the legislation will be repealed when we leave the EU.

However, as a result of not having left the European Union before the European parliamentary electoral period, the UK took part in the European parliamentary elections on 23 May 2019. As I have indicated, as a consequence of holding the poll, there are a number of post-poll actions and processes set out in legislation which need to be completed. It is therefore necessary for European parliamentary elections legislation to stay in place after exit day—whenever that is—in order to ensure that the electoral process runs smoothly.

I now turn to the detail of the proposed changes. The instrument is being made under powers in the European Union (Withdrawal) Act 2018. It amends the 2018 regulations concerning European parliamentary elections that I referred to earlier, in order to delay the repeal of the European parliamentary elections legislation until 31 December 2020. We consider that this will provide sufficient time for the post-poll processes that I referred to to be completed. The instrument does not make any substantive changes to any of the provisions in the 2018 regulations but changes the date that the regulations come into force from exit day to 31 December 2020.

That means that necessary functions and processes that are required following the European Parliament poll on 23 May of this year can be carried out and completed. I will give some examples. The SI will allow for the relevant electoral officers to store ballot papers and other election documents for 12 months from the date of the poll, or longer in certain circumstances. Without the law remaining in force, electoral officers will have no legal authority to keep the ballot papers or other documents. The police may need to refer to the documents in the event of an investigation and would not be able to do so if the documents were no longer stored. Political parties will be able to inspect and obtain the marked register throughout this 12-month period. There are also provisions concerning payments to returning officers for the costs of running the poll. If these provisions were not in force, the Government would no longer have legal authority to reimburse returning officers for costs incurred in running the poll.

The European Union (Withdrawal) Act 2018 repeals the two main pieces of legislation governing European parliamentary elections: the European Parliamentary Elections Act 2002 and the European Parliament (Representation) Act 2003. The repeal of these two Acts in the European Union (Withdrawal) Act 2018 will come into effect on a day set out in commencement regulations. In line with the approach we are taking today in relation to this instrument, we similarly intend not to commence the repeal of the European Parliamentary Elections Act 2002 and the European Parliament (Representation) Act 2003 until after exit day.

I should also highlight that the 2018 regulations include provisions that are not linked solely to the holding of European parliamentary elections. The approach that we have taken in the instrument before us is to leave these provisions on the statute book for a limited period. The Joint Committee on Statutory Instruments drew this instrument to the attention of both Houses on the basis that it required elucidation. The Cabinet Office provided details to the committee to explain further why we have taken this approach. It was explained that we carefully considered a number of options and concluded that this approach was the most appropriate because it has the benefit of being clear and simple for electoral administrators to understand and implement. It also ensures that all necessary legislation stays in force, minimising the risk of any adverse unintended consequences.

The committee accepted that these reasons were a reasonable justification for taking the approach in the SI, specifically keeping in force the provisions that are not to do with the European parliamentary elections. I reassure noble Lords that, if it emerges that there are provisions left on the statute book that will cause practical difficulty, we will of course take steps to commence repeal of those provisions.

Once we have left the EU, the UK will no longer have any MEPs or take part in European parliamentary elections—either scheduled elections or by-elections—since the EU law obligation to do so will have fallen away. I can give reassurance that the instrument does not change that position.

Finally, on the wider engagement we have undertaken, the Cabinet Office has engaged on the proposed change with the Electoral Commission, representatives of the Association of Electoral Administrators, the Electoral Management Board for Scotland, the Society of Local Authority Chief Executives, the Wales Electoral Coordination Board, the devolved Administrations in Scotland, Wales and Northern Ireland, and the Government of Gibraltar. The Electoral Commission and other bodies agree with the Government's approach in the instrument and consider that the proposed approach is sensible, given that the UK took part in the European parliamentary elections in May of this year. We have also kept the Parliamentary Parties Panel informed of the position with the instrument. I commend the instrument to the House.

**Lord Tyler (LD):** My Lords, I am particularly delighted that it is the noble Earl who has brought this measure to the House for a reason that I will come to in a moment. However, I am not sure whether he is adding to his already substantial portfolio of responsibilities, because I do not know whether he is now permanently accountable to the House for the Cabinet Office. If so, he is of course warmly welcome, but he already carries a great many responsibilities. It might be that he is only temporary.

I and, I think, many other Members of the House feel that the noble Lord, Lord Young of Cookham, is truly irreplaceable. Nobody could compete with his command of the issues that the Cabinet Office deals with. He was in the House only a few minutes ago, but perhaps he will read *Hansard* in due course.

We are in urgent need of a Minister with particular responsibility for these issues. The Cabinet Office has some important jobs to do at the moment. I am not clear whether the noble Earl is now permanently taking up residence there, or whether some other Member will be given full-time responsibility. Maybe, since the noble Earl is Deputy Leader of the House, he will be able to tell us when there might be a Cabinet Office Minister responsible to your Lordships for the exercise of the many important duties that department has.

We think that this SI is very necessary and very appropriate. In its relative clarity, it is perhaps rather easier to understand than some of the SIs that the House looked at earlier. I pay tribute to the noble Earl's clear exposition and to the excellent Explanatory Memorandum. Like many other Members of your Lordships' House, I always go there first rather than to the SI.

I want in particular to draw attention to paragraph 9.1 of the Explanatory Memorandum on consolidation, because it goes beyond the SI's particular area of responsibility and has incredibly important significance for the work being done by the Cabinet Office and the Law Commission. It says:

"The Law Commissions have conducted a review into the desirability and feasibility of reforming and consolidating electoral law. The Government is continuing to work with the Law Commissions, as well as other stakeholders such as the Electoral Commission, to consider ways to streamline and clarify our electoral system in order to make elections easier to administer and therefore more resilient to errors or fraud. We will consider their proposals in full once we receive the Law Commissions' final report".

That paragraph has much wider significance because it relates not just to recent elections, but to any future—perhaps near future—elections. As I keep reminding Ministers, there is an urgent need to make our electoral law fit for purpose. It would surely be irresponsible to trigger an early general election before many of the defects identified have been attended to. For example, it would leave candidates and their agents at the mercy of a legal minefield if the Electoral Commission's new codes of practice had not been considered and approved by Parliament. The same is obviously true for the lack of effective transparency for online political campaigning, its origin and funding, particularly over whether some of that is from foreign shores.

*7 pm*

I know that the Cabinet Office must be well aware of the authoritative warnings—there were more this very morning—of the threat to the integrity of our elections in this respect. In the run-up to the poll in May this was an issue, too. I welcome the point made in the Explanatory Memorandum that reviewing what took place in May is a critical aspect of the opportunities given to the Electoral Commission under this SI. Paragraph 7.3 states that it will be,

"able to investigate any potential offences in relation to breaches of the rules in electoral legislation".

It will not be just breaches; it will be whether the integrity of the election in May was at risk and whether it has important lessons for any future poll, be it a general election or indeed a referendum.

The SI very properly reminds us that the process and outcome of those parliamentary elections on 23 May require appropriate examination, analysis and follow-up. As the Minister said, that will take a bit of time, and I welcome the fact that the SI sets a reasonable period for that to take place.

It is rather nice to have an opportunity quickly to look back at the events of May 2019. I am reminded that the Conservative Party came fifth in Great Britain, with just a 9.1% share of the poll; the Labour Party had 14.1% and the Liberal Democrats 20.3%. Some of the Minister's colleagues have spent some time in recent months—the noble Earl certainly would not have been guilty of it—teasing us on these Benches that we were perhaps not terribly representative of our support in the country. I gently remind them that the boot may now be on the other foot. They were temporarily converted to the issue of proportional representation. Not only does a procession of new Conservative Peers rip up the No. 10 agreement to the Burns scheme for reducing the size of the House but, on the basis of the most recent national poll, they must surely recognise that they are totally disproportionate.

The extensive references in the Explanatory Memorandum —I emphasise, in the memorandum rather than in the SI—to "exit day" as taking place on 31 October 2019 are now likely to be totally irrelevant. That is good news, but I would like assurance from the Minister that the fact that the date appears in the Explanatory Memorandum does not mean that the SI could be in any way defective. I am sure he will place on record unambiguously that the current "pause" in the progress of the Brexit Bill does not invalidate the terms of this statutory instrument.

Of course, we recognise that the effect of the European Union (Withdrawal) Act 2018 makes it necessary to preserve and implement various ongoing responsibilities. These are helpfully spelt out in paragraph 7.3 of the memorandum. This may also provide an opportunity for co-operation with both the Electoral Commission and the Information Commissioner's Office on the transparency of online campaigning, which undoubtedly became an issue in the run-up to the 23 May poll. I know that important advice on this has been given to the Government and Parliament. I hope that the Cabinet Office, which has consulted widely on this matter, will now take action to ensure that the lessons are learned.

Paragraph 7.6 of Explanatory Memorandum is a statement of the obvious:

"Once the UK leaves the EU, there will be no obligation for the UK to hold European Parliamentary elections and we will no longer have MEPs".

It was interesting in the previous debate to learn of the extent to which MEPs and Ministers from this country—I see one before me—made a major, positive contribution to important developments in the EU on plant health and other issues where we were looking for protection, which could have been achieved only on an international basis.

It is a sad day where we have to record that, in future, that contribution will not be made. However, just as a reminder that it is impossible to completely future-proof legislation, we should perhaps note that it is still just possible that Parliament could decide to support a confirmatory referendum on Brexit and that the current opinion polls—from today—show that the remain cause has a 10% lead over leave. For those who say that this SI is a realistic, completely up-to-date, factual presentation to your Lordships, I simply note that it relies in detail on very substantial and significant personal assurances from the right honourable David Lidington CBE MP, Minister for the Cabinet Office. Whatever happened to him?

**Lord Deben (Con):** My Lords, this is of course a necessary SI. I say to my noble friend that I am not going to object to the nature of the SI, which is necessary, but I would like to make two principled points.

The first, in which I am to some extent following the noble Lord, Lord Tyler, is that it is remarkable, is it not, how we find time to bring forward necessary bits of legislation like this, which tidy things up—we have all sorts of discussions with all kinds of people about how it should be tidied up and then we make sure that those who are looking into statutory instruments are happy on the various elements—but we still have not found time, not for tidying up, but actually putting right our electoral system and the threats to it. It seems that, once again, we are spending time that we should never have to spend on tidying up, which we should not have had to do, but we cannot find time—nor the energy or enthusiasm—to make the changes necessary for the protection of our electoral system. Earlier this month, I suggested that now there is no question that we can possibly claim to be an exemplar of governance to the rest of the world, we might as well at least try to get an electoral system that is an exemplar for the rest of the world but, at the snail's pace with which we are moving at the moment, it seems, sadly, that we are just not going to do that. Yet we do find time to tidy things up. In that sense, I am very happy that we should do the tidying but not that we should miss the fact that we do not have the energy to make the changes that are manifestly necessary, which all parties agree on, which the Cabinet Office has pointed to in what it says, but which we cannot manage to do.

My second point of principle is that I do not want this SI to go through without reminding the House of the serious damage that we have done to this nation by removing ourselves not just from the European Union but from the European Parliament. We have just had a debate, which I know my noble friend Lord Howe was sitting through, when my noble friend Lord Gardiner explained that the only way that we could handle the biosecurity of this nation is to do all the things that we have always done along the same lines as the rest of the European Union. That is what he told us: there is no way whatever that we are going to move aside from the European Union—and why? Because it is 22 miles away, and because we have to do that because there is no way whatever, except jointly, that we can protect ourselves. The only difference is that we will not be able to discuss it in the European Parliament. These decisions will be made by the European Union and the European Parliament and Britain will just take them. Oh, yes, we will take back control. We will take back control in order to say yes to everything that the European Union does. We have just had precisely that discussion. So when we pass this SI, what we are saying to the world is that we have been stupid enough to shoot ourselves in the foot by saying that we will now accept that we will have to do all those things that we are doing together now, only we are going to pass control to other people.

Members know that I do not normally allow these SIs to go through without reminding the House of the seriousness and the stupidity of what we have done. I hope that everyone here will go home and try to explain to their grandchildren what this ridiculous series of Bills and SIs do. What we have done is to give our grandchildren less control over the future, less opportunity to change things for good, less chance to be a real power in the world, and we have done it for the least satisfactory of reasons. We have lied to people—I do not talk about this House, of course—by saying that we are taking back control. No, we are giving up control, and this SI reminds us of the seriousness, the degree and the extent of giving that control to other people.

**Baroness Hooper (Con):** My Lords, I recognise that these regulations are a necessary formality, as so clearly explained by my noble friend, but I am someone who campaigned long and hard for the right of the people of Gibraltar to have the vote. It may be remembered that, when we had our first direct elections to the European Parliament in 1979, the people of Gibraltar were actually disfranchised until the single-member constituency system was changed to a regional list system, which enabled them to vote in the south-west region of England. As a result, the people of Gibraltar exercised their right very adequately—in fact, rather better than the people of this country.

I simply wish, at this stage, to express my deep regret and sadness—I fully support everything my noble friend Lord Deben just said—that, as a result, we have lost our right, and not just the right of the people of this country but the right of the people of Gibraltar, to have a democratic voice in the European Union after Brexit, or after 31 December 2020, as has been stated. I deeply regret the necessity for these regulations.

**Lord Kennedy of Southwark (Lab Co-op):** My Lords, I welcome the noble Earl to his Cabinet Office brief and look forward to our exchanges in the future. I join the noble Lord, Lord Tyler, in paying tribute to the

[Lord Kennedy of Southwark]
noble Lord, Lord Young of Cookham. He certainly had an encyclopaedic knowledge of these matters and was always very courteous in all our dealings. He will be missed from the Government Front Bench.

I thank the noble Earl for going through the regulations. He explained them very carefully and I read them and the report of the JCSI carefully. He elucidated them well for the House and I thank him for that: it was very helpful. I agree with everything said by all noble Lords who have spoken. A number of points were raised, and I know that the noble Earl will come back to us on those points. It is very regrettable that we find ourselves in this situation. The noble Lord, Lord Tyler, made reference to the work of the Law Commission in respect of electoral law. This is slightly different from the main body of the regulations, but he said that it is looking at our electoral legislation.

I have raised these matters many times standing here. Usually the noble Lord, Lord Young of Cookham, would answer them. I would say that our law is not fit for purpose, and he would say, "I agree entirely with the noble Lord that it is not fit for purpose". The noble Lord, Lord Young of Cookham, has been great; we have had meetings with the noble Lords, Lord Tyler, Lord Rennard, Lord Hayward and Lord Gilbert, from the Conservative Benches, and my noble friend Lady Kennedy of Cradley. We have sat there in meetings, including with Chloe Smith, and everybody agreed that our laws are not fit for purpose and we have to do something about it. However, as the noble Lord, Lord Deben, says, we do nothing about it.

*7.15 pm*

In the Queen's Speech we have one tiny Bill about needing identification to come along and vote. We have a massive problem here, including what is going on with online campaigning. Who is behind these adverts, who is funding them and who is paying for them? What is going on? Is it foreign Governments? We do not know. We have the Prime Minister saying, "I want a general election", but he is not prepared to do anything about this. Some time in the next few months or whenever it will be, we will have a general election, and there is no attempt from the Government to do anything about the state of electoral law.

We have an analogue electoral law system in a digital world, and that cannot be right. The Government really should talk to the other parties, then we could agree a Bill in both Houses that could go through very quickly to start to put some of this stuff right. That is the important thing. If we are to elect Governments, they have to be elected properly and fairly and everybody has to know that they have been elected properly and fairly. That is the tragedy of all this. That needs to be done but so far—I hope I am wrong—there seems to be no evidence that the Prime Minister wants to do that.

I will leave that there, but I hope that the noble Earl can take it back to his colleagues in government. On all sides of the House, we have to deal with the whole question of ensuring that our elections are free and fair and properly run so that we know that when we elect people, they will have been elected properly and fairly, and they can get the respect they deserve.

**Earl Howe:** My Lords, I am grateful to all noble Lords who have commented on these regulations and I thank them for accepting that we need them, regardless of whether we should be in this position in the first place—I note in particular the comments of my noble friends.

Completely understandably, the noble Lords, Lord Tyler and Lord Kennedy, asked me about the Law Commission's recommendations on electoral law. As they both will be aware, the final report has not been published yet; it is due to be published early next year. The Government will consider it as expeditiously as possible, and any actions that they need to take. It is therefore not fair to say that we are doing nothing about the reform of electoral law. No responsible Government would wish to proceed with reform in an area such as this without having the benefit of the Law Commission's final report. I appreciate that a lot of discussion has happened, and I am grateful to noble Lords opposite and around the House for participating in that. We would like to proceed as quickly as we may, but it has to be done on a properly informed basis.

I noted the comments of my noble friend Lord Deben in particular. He and the noble Lord, Lord Tyler, asked me about the lessons that we have learned collectively from past elections, but the noble Lord asked me in particular whether the May election was open to any kind of abuse, what we know that arises from that, whether lessons were learned, and so on. That is the subject of the report from the Electoral Commission, and the report by the Association of Electoral Administrators called *The Electoral Landscape in 2019*. We will obviously wish to give careful consideration to both those reports on the matters raised. As we have done previously, we will look to consider the Electoral Commission's report in conjunction with the AEA report, and we will respond formally as appropriate.

**Lord Tyler:** There is a specific issue about transparency of online campaign messaging, which was a major issue in May and was a big issue in the referendum and the subsequent general election. The Cabinet Office consulted about it many months ago. Evidence was taken from the Information Commissioner's Office; the Electoral Commission also looked into it. I would be grateful if the Minister could take back to the Cabinet Office the concern from all over your Lordships' House that there seems to be very little action taking place on this. It remains a very sensitive issue, not least because of the important report from the DCMS Select Committee.

**Lord Kennedy of Southwark:** I take the point that the Minister made about the work of the Law Commission. It is doing its work and will come back with some comprehensive reports. However, when I have sat in a room with Chloe Smith and the noble Lord, Lord Young, we have all agreed that there are things we can do now. They have never said, "We can't do anything because we need this Bill going forward". There are things that can be done. I would ask the Minister to talk to his officials. He would certainly be encouraged by all of us around this House to sort this out quickly, notwithstanding the much more detailed work of the Law Commission; that cannot be used as

an excuse for saying, "We do not know enough about that, so we have to leave the electoral system as inadequate as it is now".

**Earl Howe:** I take the points made by both noble Lords. There are some tremendously important areas that we need to address. The online issue is one of them. All I can say at the moment is that the strength of feeling that has been articulated this evening will not be lost on my officials: I shall make sure of that. We are committed to implementing an imprints regime for digital election material. This will ensure greater transparency. It will make it clearer to the electorate who has produced and who has promoted online political materials. I assure the noble Lord, Lord Tyler, that we will be bringing forward proposals in this area in the coming months.

The noble Lord asked me whether the progress of the withdrawal Bill might invalidate this statutory instrument. I can reassure him that it will have no effect at all. We simply need to ensure that the European parliamentary elections legislation is not repealed on exit day, in all circumstances—or in any circumstances—so we still require this statutory instrument to be agreed. If it is, the correct result will be achieved, namely that the repeal of the European parliamentary elections legislation will happen not on exit day but rather, as I said either, on 31 December 2020. The SI is needed simply to provide certainty to electoral administrators and to maintain the integrity of our domestic electoral processes.

The noble Lord, Lord Tyler, asked whether I was a permanent or temporary spokesman for the Cabinet Office. I wish I could quantify the length of the piece of string that we are dealing with here. I am but a pale imitation of my noble friend Lord Young, whose presence on the Front Benches is sorely missed. Currently, I respond for the Cabinet Office. It is my privilege to do so and I will continue to do so until requested not to.

*Motion agreed.*

*House adjourned at 7.23 pm.*