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PARLIAMENTARY DEBATES
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HOUSE OF LORDS
OFFICIAL REPORT

ORDER OF BUSINESS

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The following abbreviations are used to show a Member's 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

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

House of Lords

Friday 27 November 2020

The House met in a hybrid proceeding.

11 am

Prayers—read by the Lord Bishop of St Albans.

Arrangement of Business

Announcement

11.06 am

The Deputy Speaker (Lord Brougham and Vaux) (Con): My Lords, the Hybrid Sitting of the House will now begin. Some Members are here in the Chamber, respecting social distancing, others are participating remotely, but all Members will be treated equally. If the capacity of the Chamber is exceeded, I will immediately adjourn the House.

Communications Act (e-Commerce) (EU Exit) Regulations 2020

Electronic Communications and Wireless Telegraphy (Amendment) (European Electronic Communications Code and EU Exit) Regulations 2020

Data Protection, Privacy and Electronic Communications (Amendments etc) (EU Exit) Regulations 2020

Motions to Approve

11.06 am

Moved by ***Baroness Barran***

That the draft Regulations laid before the House on 24 September, 12 and 14 October be approved.

Relevant document: 32nd Report from the Secondary Legislation Scrutiny Committee. Considered in Grand Committee on 10 November. Considered in Grand Committee on 10 and 16 November.

Motions agreed.

Audiovisual Media Services (Amendment) (EU Exit) Regulations 2020

Motion to Approve

11.07 am

Moved by ***Baroness Barran***

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

Relevant document: 32nd Report from the Secondary Legislation Scrutiny Committee

The Parliamentary Under-Secretary of State, Department for Digital, Culture, Media and Sport (Baroness Barran) (Con): My Lords, I am pleased to introduce this instrument, laid in both Houses on 15 October, which is being made under the European Union (Withdrawal) Act 2018. These regulations remedy certain failures of retained EU law arising from the withdrawal of the United Kingdom from the EU. This instrument seeks to maintain, but not expand, Ofcom's remit to regulate video-sharing platform services. This intervention is necessary to ensure the law remains operable beyond the end of the transition period.

The EU's audiovisual media services directive, known as the AVMS directive, governs the co-ordination of national legislation on audio-visual media services. The AVMS directive was initially implemented into UK law in 2010, primarily by way of amendments to UK broadcasting legislation. The directive was subsequently revised in 2018. The UK Audiovisual Media Services Regulations 2020, which transposed the revised AVMS directive, were made and laid in Parliament on 30 September. Those regulations came into force on 1 November and introduced, for the first time, rules for video-sharing platform services. The Government have appointed Ofcom as the regulator for these services. The new rules ensure that platforms falling within UK jurisdiction have appropriate systems and processes to protect the public, including minors, from illegal and harmful material.

There were three key requirements placed on video-sharing platforms under the regulations. These were: to take appropriate measures to protect minors under 18 from harmful content, to take appropriate measures to protect the general public from harmful and certain illegal content, and to introduce standards around advertising. I also draw the attention of the House to the report from the Secondary Legislation Scrutiny Committee considering this instrument, and I thank its members for their work.

I will now address the committee's concerns regarding jurisdiction. The AVMS directive sets out technical rules governing when a platform falls within a country's jurisdiction. First, there must be a physical presence, or a group undertaking, of the platform in the country. Where there is a physical presence in more than one country, jurisdiction is decided on the basis of factors such as whether the platform is established in that country, whether the platform's main economic activity is centred in that country, and the hierarchy of group undertakings as set out by the directive.

Under the revised AVMS directive, each EU member state and the UK is responsible for regulating only the video-sharing platforms that fall within its jurisdiction. There will be only one country that has jurisdiction for each platform at any one time. However, if a platform has no physical presence in any country covered by the AVMS directive, then no country will have jurisdiction over it, even if the platform provides services in those countries.

Through this instrument, we are seeking to maintain the same position for Ofcom's remit beyond the end of the transition period. This position allows Ofcom to regulate video-sharing platforms established in the UK and additionally regulate platforms that have a

[Baroness Barran]
physical presence in the UK but not in any other country covered by the AVMS directive. Although Ofcom's remit will not be extended to include platforms established elsewhere in the EU, we believe UK users will indirectly benefit from the EU's regulation of platforms under the AVMS directive. The regulation under this regime is systems regulation, not content regulation. We therefore expect that as platforms based outside of the UK will set up and invest in systems to comply with the AVMS regulations, it is probable that these same systems will also be introduced for their UK subsidiaries.

In the absence of this instrument, Ofcom would no longer be able to regulate any video-sharing platforms. This would result in an unacceptable regulatory gap and a lack of protection for UK users using these services. Our approach also mitigates the small risk that a video-sharing platform offering services to countries covered by the AVMS directive, but not the UK, would establish itself in the UK in order to circumvent EU law.

While we recognise that most children have a positive experience online, the reality is that the impact of harmful content and activity online can be particularly damaging for children. Over three-quarters of UK adults also express a deep concern about the internet. The UK is one of only three countries to have transposed the revised directive thus far, evidencing our commitment to protecting users online.

These regulations also pave the way for the upcoming online harms regulatory regime. Given that the online harms regulatory framework shares broadly the same objectives as the video-sharing platform regime, it is the Government's intention that the regulation of video-sharing platforms in the UK will be superseded by the online harms legislation, once the latter comes into force. Further details on the plans for online harms regulation will be set out in the full government response to the consultation on the *Online Harms White Paper*, which is due to be published later this year, with draft legislation ready in early 2021. With that, I beg to move.

11.14 am

Lord Blunkett (Lab): My Lords, it is hard to do justice in an hour, with a three-minute time limit, to something that, on the face of it, looks like a technical adjustment to take account of our departure from the European Union at the beginning of this year and the end of the transition period. I congratulate the Minister on making it sound as though it is just a very boring technical change—but it is not. This is far more fundamental than it appears at face value. While the Minister rightly says that we are seeking to maintain some authority for Ofcom, that authority was integral to the authority that other member states of the European Union had as the key regulators for those platforms with a prime base in those countries. The Minister has admirably spelled this out in a way that made it sound totally benign.

In this instrument we have a recognition that, without the online harms legislation promised by the former Prime Minister Theresa May, we have a major gap not just in maintaining what Ofcom may or may not have been able to do to date but in terms of any control over these video-sharing platforms.

We are talking about Netflix, Facebook and TikTok—and it is indeed "tick-tock", because time is passing but the fingers have fallen off the face of the clock. Between now and when, at some point, the online harms legislation comes in, we are at the mercy of these big international tech companies in avoiding child abuse and the dangers that go with it, and we are at their behest regarding their co-operation in ensuring that these platforms are not used for counterterrorism purposes and whether they agree to continue complying with regulation.

Given the time available to me, I simply ask the Minister to spell out to the House when she replies just which of these platforms have a prime base in the United Kingdom. Which of their group systems is at such a level that it is counted as having a prime base here? If it is not here, we are entirely reliant on those areas where that prime base is located, and which therefore have the regulatory power to intervene and take action. This is of course one consequence of coming out of a group of 28 countries that can act decisively and with authority in dealing with large, multinational tech giants based elsewhere, primarily in the United States and, for TikTok, in China.

To pretend that this is a technical way of ensuring continuity is, I believe, to mislead the British public. That is alongside the panel that has been set up by DCMS on the future of public service broadcasting, which is packed with people who are not in favour of retaining the security and safeguards of the public service broadcasting regulation that we have at the moment.

We are in a dire position in how we deal with these platforms as opposed to how we deal with normal, traditional broadcasters. While we will not be voting against this particular order, it does flag the dangers of a future without the forthcoming legislation—at some unspecified date—that will provide us with at least some power to deal with the potential harms.

11.19 am

Lord Moynihan (Con): My Lords, I declare my interests as set out in the register, particularly as an adviser to Station12, with its interests in content production.

These debates on EU exit regulations are important in their own right, but this one is all the more important because of the wide statutory and regulatory work that is under consideration in this fast-moving technology space, as noted by the noble Lord, Lord Blunkett. I welcome the regulations for what they are—confirmation that the European standard of regulation continues to apply after the end of the transition period—but what I am hoping for today is government recognition that, with technological advancement, with some countries banning some of the platforms, with online harm already a major and growing issue, and with serious crimes occurring, it is really important that the Minister and the Government provide us with absolute confirmation that the new legislation will not be sometime early in 2021 but as early as possible, for all the reasons given by the noble Lord, Lord Blunkett. I hope that consultation will take place with consumer and business groups, that it will be extensive and that,

in the words of the Minister in another place, the Government intend to bring forward "a pioneering UK regime", which will be necessary.

I fully appreciate that these new rules ensure that platforms falling within UK jurisdiction have appropriate systems and processes in place to protect the public, but what will be the consequences of Ofcom licences no longer being recognised to regulate video-sharing platform services in non-ECTT member states when licences issued by non-ECTT member states will no longer be recognised in the UK? In practice, the largest VSPs work outside the UK's regulatory scope and it is critical, in the context of sexual online threats, that the National Crime Agency will continue to co-ordinate activities closely with colleagues abroad to help the regulators with misinformation warnings and action against criminals. This is an international problem and one that, like Covid-19, pays scant regard to national boundaries. International co-operation, as well as effective domestic law, are essential components of success.

EU broadcast law has recently undergone a sea change, as the Minister said, principally as a result of the revised AVMSD, which has been transposed into UK law by the Audiovisual Media Services Regulations, including the brand-new regime for VSP services. Am I correct in my understanding that, in terms of the end of the transition period, this instrument, at Regulation 4(2), together with recent Ofcom guidance, clarifies that a VSPS will fall under UK jurisdiction where

"it has the required connection with the United Kingdom"—

a somewhat imprecise phrase which could benefit from clarification by the Minister today? In the meantime, I very much welcome these regulations.

11.22 am

Lord Clement-Jones (LD) [V]: My Lords, today's SI is a bit of a sideshow compared to the important revised AVMS regulations which came into effect on the first of this month, but it is an opportunity to raise a number of issues. I welcome the transposition of these duties on internet platforms into UK law; the noble Lord, Lord Blunkett, spelled out clearly why they are needed. I found the impact assessment for the main regulations refreshingly clear—indeed, it was refreshing to have an impact assessment. My noble friend Lord Foster is in the driving seat for our Benches on these regulations today, so I will confine myself to just a few questions to the Minister.

As the Secondary Legislation Scrutiny Committee asked, who, after the transition period, will regulate to our satisfaction services available in the UK but based elsewhere? Ofcom's interim plans for regulation of VSPs are limited by country of origin. There are crucial issues about services regulated outside the UK, such as ODPs such as Netflix, regulated in the Netherlands, and VSPs such as YouTube, regulated in Ireland. What happens, in particular, in the event of a no-deal Brexit? That leads to the question of the nature of our future relationship with the ERGA, the European Regulators Group for Audiovisual Media Services, which now has increased importance. The committee rightly says it is vital that these regulations are superseded by new online harms legislation, which we on these Benches have been calling for ever since the publication of the White Paper. Can we expect the overdue response any day?

Do the Government intend their online harms legislation to bring all VSPs that impact on UK consumers under the scope of UK regulation? If not, then the vaunted taking back of control will be a sham. We have seen Ofcom's interim guidance of 21 October on regulating video-sharing platforms, but what is the point of Ofcom

"developing and publicly consulting on more detailed regulatory guidance for VSPs"

when online harms legislation will supersede the AVMS provisions?

The Government, shamefully, have not implemented Part 3 of the Digital Economy Act. Will we not need age verification in order to comply with the directive? Or do the Government think age assurance is different in kind, as I asked in a Written Question earlier this month? How will we prevent access to restricted material? Moreover, will age verification not be needed to comply with the new age appropriate design code?

With or without a deal, should we not be helping to develop the role of the European Convention on Transfrontier Television? What are the Government's plans?

Finally, what will be the mechanism for dealing with individual complaints about VSPs? I look forward to the Minister's reply.

The Deputy Speaker (Lord Brougham and Vaux) (Con): The noble Lord, Lord Singh of Wimbledon, has withdrawn, so I call the noble Baroness, Lady Ritchie of Downpatrick.

11.25 am

Baroness Ritchie of Downpatrick (Non-Afl) [V]: My Lords, I thank the Minister for her explanation of these regulations, which address how on-demand programming and video sharing platforms will be regulated after the Brexit transition period. Like the noble Lords, Lord Clement-Jones and Lord Blunkett, I have certain issues regarding the gap during which there does not seem to be any form of control. When dealing with digital platforms and the potential for child abuse, full regulatory and legislative control is vital, so I have some questions for the Minister.

The House of Lords Secondary Legislation Scrutiny Committee raised some issues, the main one being the lack of an online harms Bill. According to the White Paper published some years ago, it should cover child sexual exploitation, hate speech, terrorist offences, online crime and online bullying and harassment. What is the expected date of this Bill? In her introduction, the Minister said it would be early in 2021. Because of the gravity of the situation, and because of the gap between the end of the transition period on 31 December and whenever this comes into operation, could she specify a date today? During this regulatory gap between the end of the transition period and the implementation of this Act, Ofcom will simply be unable to operate its regulatory function. Are there any plans to provide a temporary power to Ofcom to deal with this regulatory gap until the full legislation is ready for publication, debate, implementation and Royal Assent?

[Baroness Ritchie of Downpatrick]

Another area of concern is that both Google and Facebook have their European headquarters in Dublin, where EU regulations will apply, and the new arrangements will apparently not allow Ofcom to intervene where these companies may have UK subsidiaries. Is it not possible, as part of the UK-EU negotiations, to discuss some resolutions in this area, when the issue of the protection of children from sexual exploitation is vital? There are also issues around scamming and people who extort money using these digital platforms. Will Ofcom and the online harms Bill be able to deal with those issues?

The Deputy Speaker (Lord Brougham and Vaux) (Con): The noble Lord, Lord Liddle, has withdrawn, so I call the noble Earl, Lord Erroll.

11.28 am

The Earl of Erroll (CB): My Lords, this is only part of a patchwork of regulation and legislation around online harms—very sadly, we do not have the online harms Bill yet. This regulation highlights the whole problem of the UK having jurisdiction over foreign-domiciled—housed or homed overseas—companies. Companies outside the EU can completely dodge it: it does not cover them at all. The noble Lord, Lord Clement-Jones, mentioned the Digital Economy Act. We put a lot of thought, in Part 3 of that Act, into how we could still exert some degree of serious influence over such foreign companies. There was some stuff in there to allow us to ask payment providers, who all rely on getting money, to refuse payments on behalf of things that have breached UK law. I think that is quite a good mechanism, because we have to hit people in the pocket, otherwise they will just get around it.

A lot of this will come down to age-checking; we need a robust, Government-approved age-checking methodology. It is essential to doing anything and moving forwards. That became apparent after the BBFC failed to do anything effectively, although there was British Standard guidance in place to do it. International regulators will need it too; I know the EU and others are very interested in what we are doing in this space. We also need it for other online harms such as purchasing knives, alcohol, corrosive substances and many other things.

It would cost the BSI about £90,000 to take PAS 1296 to a proper, full specification. That could then be used by certification bodies to certify companies' websites and age-verification providers against a standard. It would also be written in such a way as to be a seed document for an ISO standard, and can then go straight on to becoming—without further cost—an international standard to be used by EU and international regulators in the same way. They could therefore co-operate more easily, particularly if they decided to act against organisations delivering online material to the UK and their own jurisdictions, because they would all have the same concerns about the young.

Four government bodies should take a serious interest in this. Though DCMS is responsible at the moment, and has offered a small amount towards this, the Home Office, the ICO and Ofcom should all contribute a reasonable amount as well, not just pittances. They should put some money into it and probably also have representation on the BSI steering group, so that they back it properly and state so publicly for a change. The Age Verification Providers Association has already promised money, and we can draw in more industry people if the Government support it.

11.32 am

Lord Naseby (Con): My Lords, by way of background, I was a director of one of the major advertising and marketing agencies in the UK. There has been an explosion of VSPs, which need control.

I notice in paragraph 2.10 of the draft Explanatory Memorandum that a second statutory instrument is due to be laid; can the Minister indicate when that may be? Paragraph 6.2 says that there will be another instrument to deal with "deficiencies"; is the Minister in a position to tell us what the deficiencies are?

Paragraph 7.2 says that Ofcom may or may not have power in the future. It is not much of an incentive to Ofcom to invest properly with senior people if it does not know whether it will carry on with this in future. I suggest to Her Majesty's Government that there should be a clear statement that Ofcom will be the body dealing with this.

There are also the points on protection, rightly raised by my noble friend. Terrorist content is a real problem in this country from a security point of view, as we know—quite often from what appear to be genuine, sympathetic human rights bodies, some of them operating legally, some not quite so legally and some illegally. We really need to focus on that because, as the document says,

"VSP providers are merely responsible for the organisation of content".

If that is the situation, who on earth will control it, particularly for VSPs that are produced outside either the European Union or here in the UK? In relation to this Bill, certain countries are well known for producing highly controversial and illegal VSPs. There is a big problem there.

I also have some questions about paragraph 7.13, which says that, where Ofcom

"become aware of serious instances of … harm",

et cetera, it should take strong "enforcement action"; it has never taken much strong enforcement action in the past, so there is a problem there. It also says that Ofcom will give guidance. Where is the guidance? Is it coming soon or not? People are now planning for the spring, and have probably decided what will happen, so we need clarification on that.

In paragraph 14.1, under "Monitoring & review", the Government should clarify what they really mean. It says that

"legislation relating to VSPs will be repealed and encompassed within the Online Harms regulatory framework."

When is that likely to happen?

11.35 am

Lord Bhatia (Non-Afl) [V]: My Lords, this SI is essential for Ofcom to be able to determine and justify which providers of video-sharing platform services it will regulate. Ofcom will have robust enforcement powers against any serious instances of egregious or illegal harm caused by inadequate regulatory systems

of VSPs within UK jurisdiction, when it considers it appropriate to use them. This SI is made under the power in Section 8 of the EUWA to address failures of retained EU law to operate effectively or other deficiencies arising from the withdrawal of the United Kingdom from the EU.

Ofcom will publish guidance in accordance with the Audiovisual Media Services Regulations 2020 and engage with VSPs to help them understand any new obligations. It will also have a duty in legislation to produce guidance on the application of the appropriate measures which VSPs can take to protect users. Ofcom's guidance will make it clear that VSPs must take into account freedom of expression when designing and implementing their systems to protect users from the required areas of harm.

I have only one worry about this legislation. Increasingly, there are reports of children having their own computers, laptops and iPhones and spending many hours in their bedrooms looking at videos and games. Often, they fall into contact with predators who lead them into victimhood and self-harm. Can the Minister confirm whether Ofcom will have powers to introduce new rules to take legal action against providers, with heavy fines and/or imprisonment?

11.37 am

Lord Loomba (CB) [V]: My Lords, these regulations do not cover audio-visual media providers in certain circumstances and raise issues of jurisdiction, including a lack of jurisdiction for infringement resolution. One area of grave concern is that the regulations should protect minors from harm, such as child sexual exploitation, but until the online harms Bill is published there will be a regulatory gap.

Another key point is the problems surrounding case law, precedent and appeal cases, as discussed this week during the passage of the retained EU case law Regulations. As the noble and learned Lord, Lord Mackay of Clashfern, pointed out during that debate, there is a deficiency in the withdrawal Act with regard to methods

"in place for reaching from, for example, the magistrates' court in England to the Court of Appeal."—[*Official Report*, 25/11/20; col. GC 28.]

Can the Minister say how the courts will reconcile issues of jurisdiction if matters are to be determined by a regulator in another EU country, or if there is no regulatory jurisdiction due to an audio-visual media provider being without a base in an EU country or the UK but the harm is occurring in the UK and being dealt with by the criminal courts in this country? Can she also tell us how our courts will deal with case law if they are not expected to follow EU case law but the regulator covering the harm involved is based in an EU country and bound by EU law, particularly EU case law?

11.40 am

Lord Mann (Non-Afl): My Lords, what sanctions will be applied, and by whom, on those platforms that host audio-visual materials that glorify terrorism or violence against others?

11.40 am

Lord Foster of Bath (LD): My Lords, earlier versions of the AVMS directive regulated linear and, subsequently, online demand TV. This new version effectively replicates all of that but adds to the existing measures, adding video-sharing platforms and bringing them into scope for regulation. As we have heard, the SI, which came into force on 1 November, appears to be a faithful transposition of it into UK law. I therefore welcome and support it—but, rather like the noble Lord, Lord Moynihan, for what it is. Picking up the point made by the noble Lord, Lord Naseby, I also note that, despite the start date of 1 November, the regulatory regime will not be fully operational until late summer next year. Perhaps the Minister can confirm that I am correct and explain why we have not got on with it sooner.

For far too long, video-sharing platform owners have denied any responsibility for material posted on their sites. They have hidden behind the various safe harbour provisions, such as those contained in the US Digital Millennium Copyright Act. For example, when Paramount Pictures sued YouTube for $1 billion for allowing users to upload Paramount material more than 150,000 times, YouTube got away without paying any damages. Fortunately, that is now changing, and VSPs are beginning to recognise that they have some responsibility—hence, for example, the action taken against the postings of Donald Trump.

Of course, the majority of VSPs serving the UK are headquartered outside the EU—not least in the United States—so it might appear that they are exempt from regulation. However, as the Government and the Minister have pointed out,

"most, if not all, US based prominent VSPs will have some form of physical presence in Europe."

So, UK users of most VSPs will have the protection ushered in by the SI, though often by other EU regulators rather than by Ofcom. However, future trade deals could undermine this if, for example, American-style safe harbour provisions are insisted upon, as they were by the United States in their recent deal with Canada and Mexico. Can the Minister provide an assurance that in discussions with the US over any trade deal there will be no agreement to dilute these provisions?

The noble Lord, Lord Blunkett, picked up on a point referred to by many other noble Lords, including the noble Baroness, Lady Ritchie, my noble friend Lord Clement-Jones, and the noble Earl, Lord Erroll—that we need a tougher regulation than this will herald in. It is a much lighter regime than could be brought in and, we hope, will be brought in with the online harms legislation. We have had months, in fact years, of delay with getting this legislation, so can the Minister give a categorical assurance that the response to the consultation on online harms will be published before the end of the year and that draft legislation will follow shortly afterwards?

As the Explanatory Memorandum makes clear, online harms legislation will enable us to also deal with the obvious problem of the UK's inability, post 31 December, to have some say in the regulation of the numerous VSPs, such as YouTube and Facebook,

[Lord Foster of Bath]
which are heavily used in the UK but regulated in one of the other remaining 27 EU countries. Can the Minister confirm that the forthcoming online harms legislation will include measures that will enable Ofcom to regulate, in respect of online harms, all VSPs that serve UK audiences, regardless of the location of their primary establishment? Given that the Government plan to regulate the commercial behaviour of tech platforms, can she explain what she sees as the relationship, in relation to VSPs, between the role of Ofcom and the new Digital Markets Unit within the CMA?

On another point made by the noble Lord, Lord Moynihan, and my noble friend Lord Clement-Jones, does the Minister acknowledge that, even with such legislation in place, it will clearly be beneficial for the UK to continue to have some means of influencing discussions within the EU about future changes to the AVMSD? At the end of the year we will lose our membership of the EU bodies that bring regulators together, but we could become observers. Can the Minister update us on plans to do that? Can she also tell us whether she thinks it will be sensible for us to have more involvement in developing the work of the ECTT—the European Convention on Transfrontier Television?

Finally, I turn to a point raised by the noble Earl, Lord Erroll. Ofcom, in its regulatory proposals, says that there will be a requirement for what it calls "strict access control measures"—age verification measures—to protect children from restricted material that has the most potential to cause harm. Given the numerous areas in which robust age verification is needed, surely it is important that the Government do not leave this decision to Ofcom alone, as the noble Earl rightly pointed out. For example, it makes sense that measures required by Ofcom are aligned with those that the ICO will use for age appropriate design codes. What steps are the Government taking? Does the Minister believe that access control measures should conform to BSI 1296, and be subject to external audit, assurance and certification? Does she believe that VSPs can be trusted to carry out their own age assurances for high-risk content? I look forward to the Minister's response, but I welcome and support this limited SI.

11.47 am

Lord Bassam of Brighton (Lab) [V]: My Lords, colleagues across the House have posed a number of very awkward questions for the Minister to answer, and I am going to add one or two more of my own. It is worth making a few observations that perhaps take us to the point where we can see an improvement in the patchwork of regulation that we are left with.

As we have seen with a number of recent DCMS instruments, our ability to effectively regulate digital activity will be restricted without broader reciprocal arrangements with the EU and others, as my noble friend Lord Blunkett admirably explained and set out in his comments, which were echoed by the noble Lord, Lord Moynihan, and others across the House.

This SI provides some certainty on matters of jurisdiction after the transition period, which empowers Ofcom to regulate video-sharing platforms where their primary establishment is in the UK—but it does rather leave it at that. It is important today to remind ourselves that the Secondary Legislation Scrutiny Committee said that:

> "It is important that the Government will adhere to the legislative timetable provided by the Department, so that the current regulatory gap, which leaves UK users potentially exposed to online harm, can be closed."

That is a pretty damning observation, and we should be worried by that. We need greater certainty for the sector, and greater certainty as legislators and regulators. Can we be assured that this regulatory gap will be closed pronto? We need the online harms legislation to provide the certainty that we all crave.

VSPs that operate in the UK but are established in other countries may fall under Ofcom's jurisdiction, but not, as others have observed, if that firm has a presence in the EEA. In that case, power will reside with the European regulator and we will, after the end of this year, be shut out from that—and we need influence.

Paragraph 2.18 of the Explanatory Memorandum notes the particular challenges around TikTok, which is based in China and has no physical presence in either the UK or EEA, and which is therefore currently in a regulatory void. This concern, as others have observed, is covered by the 32nd report of the SLSC. Paragraph 2.19 of the memorandum acknowledges that

> "there will only be a small number of VSPs in Ofcom's jurisdiction."

Can the Minister estimate how many? Is she confident that Ofcom has the regulatory tools needed?

We find ourselves in a bizarre holding pattern where we will have to make do with these arrangements between the end of the transition period and the emergence of the long-awaited online harms Bill. Can the Minister provide any new information on when that legislation is expected? Will it be subject to pre-legislative scrutiny, as has been suggested in some quarters, and if so can she confirm what that will look like? It would be very helpful to this House and to the other place if we had that opportunity.

We hope we will finally have some news on a deal with the EU in coming days, if one ever gets over the line. However, if ever an area of law needed to be put in place quickly to cover the gaps that exist, this is it, and we need strong arrangements on digital regulation if we are not to be at the mercy of the market. That said, of course we support this instrument, which is making a contribution to providing an urgently needed regulatory regime.

11.51 am

Baroness Barran (Con): I thank all noble Lords for their contributions and probing questions about these regulations. I will endeavour to answer as many as possible in the coming minutes, but if I cannot answer any at the Dispatch Box I will write to all noble Lords and place a copy of the letter in the House Library. I will start by addressing some of the concerns about the scope and working of these regulations before moving on to the questions about the timing of the online harms Bill.

The noble Lord, Lord Blunkett, my noble friend Lord Moynihan and other noble Lords asked how many video-sharing platforms would be regulated by Ofcom. My understanding is that Ofcom currently

anticipates that only a small number of services will fall within the UK's jurisdiction. We expect this to include platforms such as Vimeo and Twitch. However, it is Ofcom's role to determine which platforms are in scope, and it will be able to do this once it has engaged fully with platforms and concluded its consultations on guidance and scope. Platforms providing services which fall within UK jurisdictions will be required to notify Ofcom of provision of those services from April 2021.

The noble Lords, Lord Clement-Jones and Lord Foster, asked about our relationship with existing EU and EEA regulators and our reliance on them in this interim period. VSPs established in the EEA will be regulated not by Ofcom but by the EEA state that they are established in. Without that, it would put a duty on Ofcom to regulate large social media platforms such as Facebook, for example, which are established in Ireland but which have a subsidiary here in the UK, and would involve a lot of duplication of effort and perhaps not the best use of resource. Therefore Ofcom will rely on informal co-operation with the relevant EU regulatory authorities for information regarding determination of jurisdiction and discussions on co-operation and consistency of approaches towards video-sharing platform regulations. Most of the major US video-sharing platforms have some form of physical presence in the EU, so we would expect them to be regulated under the AVMS directive by a regulator either in the UK or an EU member state.

The noble Lord, Lord Blunkett, asked specifically about TikTok and VSPs based outside the EEA. Again, enforcement will depend on whether it is carried out by a UK regulator on UK jurisdiction. However, if, for example, a VSP was based in China, had no establishment in the UK or parent subsidiary or group undertaking in either the EEA or the UK, it would not fall under UK jurisdiction; indeed, that is just a reflection of the status quo today. If TikTok meets the criteria of being established in the UK, it would in all likelihood be regulated by Ofcom, but we cannot currently confirm whether it would fall under UK regulation. The noble Lord, Lord Bassam, also raised the same points on TikTok.

The noble Lord, Lord Clement-Jones, asked about the appropriate measures that video-sharing platforms will be required to comply with. They are to take appropriate measures to protect minors under 18 from harmful content, to protect the general public from incitement to hatred and violence and certain illegal content, and to introduce standards around advertising. As I am sure that he is aware, the revised AVMS directive sets out a list of 10 appropriate measures that video-sharing platforms may implement to achieve these protection purposes, which includes setting terms and conditions for their users.

My noble friend Lord Naseby asked about the timing of the second statutory instrument that is required to deal with remaining technical deficiencies in UK law relating to the AVMS directive. We intend to lay that instrument later this year using the negative procedure.

The noble Lords, Lord Bhatia and Lord Mann, asked about enforcement. Ofcom has a range of formal enforcement powers, including issuing enforcement notices requiring action if a platform is in breach of its obligations in not taking appropriate measures to protect users or indeed failing to implement those measures adequately. It can impose financial penalties of up to 5% of a service's qualifying revenue or £250,000, whichever is greater, and in the most serious instances can issue a direction to suspend or restrict a platform provider from providing a service. Specifically on harmful content, this regulatory regime looks at regulation of systems and, with regard to the terrorist content to which the noble Lord, Lord Mann, referred, the responsibility there lies with the Home Office.

The noble Lord, Lord Foster, asked about the relationships of the new digital arm—if that is the right word—of the Competition and Markets Authority. Obviously that was announced very recently, but my understanding is that it will liaise with all the relevant regulators, including of course Ofcom.

I turn to the heart of many of your Lordships' questions about the timing and approach in the forthcoming online harms Bill. The Government remain firmly committed to making the UK the safest place to be online, and the DCMS and Home Office are working at pace to introduce this legislation. We will publish a full government response to the online harms White Paper consultation later this year, which will include more detailed proposals on online harms regulation and will be published alongside interim voluntary codes on tackling online terrorist and child sexual exploitation and abuse content and activity. We will follow the full government response with legislation which will be ready early next year. I look forward to working with many of your Lordships on that as those plans develop.

The noble Earl, Lord Erroll, and the noble Lord, Lord Foster, asked specifically about age verification and age assurance. Those sit within the crucial wider approach of this Government to addressing online harms, which includes placing a duty of care on companies that host this content. Clearly, age assurance and age verification play an important part, but it is critical that our approach should be future-proofed for any particular technology. We expect Ofcom to decide how this will work through codes of practice, which will be regularly updated.

Both noble Lords referred to PAS 1296; we absolutely recognise that technical standards have an important role to play. That was why we committed funding to support the update of the standard and will promote its use, in line with our support of a standards approach which preserves the voluntary nature of technical standards, while providing a future-proof, clear and innovation-friendly approach for the industry. Companies can take alternative action to achieve those outcomes, as long as the outcome achieved is as good as, or better than, that set out in the code of practice.

I hope that I have addressed most of your Lordships' questions and, with that, I commend these regulations to the House.

Motion agreed.

Arrangement of Business

Announcement

12.02 pm

The Deputy Speaker (Baroness Watkins of Tavistock) (CB): The time limit for the Motion to approve the next order is one hour.

Legislative Reform (Renewal of Radio Licences) Order 2020

Motion to Approve

12.02 pm

Moved by ***Baroness Barran***

That the draft Order laid before the House on 2 July be approved.

Relevant document: 20th Report from the Regulatory Reform Committee

The Parliamentary Under-Secretary of State, Department for Digital, Culture, Media and Sport (Baroness Barran) (Con): My Lords, I am pleased to introduce this statutory instrument. It is a short but important order that will bring clarity and certainty to the UK's commercial radio sector. In particular, it will allow the holders of commercial analogue—that is, AM and FM—radio licences to renew those licences for a further 10 years. Additionally, it will give smaller stations the ability to renew their licences if they commit to carriage on small-scale DAB multiplexes, where these are available. This provision will have the most immediate effect for the three national licences—Classic FM and the AM licensees, Absolute Radio and talkSPORT—as well as around 100 local licences which are due to expire over the next decade.

The measure meets the tests set out in the Legislative and Regulatory Reform Act 2006. It has been approved by the Delegated Powers and Regulatory Reform Committee, and the Regulatory Reform Committee in another place, as being appropriate for a legislative reform order with the affirmative procedure. Since the launch of the *Digital Radio Action Plan* in 2010, the Government have supported the listener-led transition of radio from analogue to digital, through measures including the expansion of the digital transmission network to substantially match FM coverage. Digital now accounts for around 60% of listening, having been closer to the 20% mark only 10 years ago.

There is now a need for a new plan to co-ordinate the next phase. In February 2020, we announced a joint government-industry review of the future of digital radio and audio in the UK, which is due to report in March 2021. However, analogue broadcasting —particularly FM—remains an essential part of UK radio, and we expect this to be the case well into the 2020s. Analogue services are valued by listeners and, in some parts of the country, analogue provides the only means of accessing broadcast radio. During Covid, radio has played an essential role in providing reliable and trustworthy communications to the public. With existing licences due to reach their final expiry dates from the end of 2021, and with Ofcom having no authority under existing legislation to extend them further, it was therefore important to clarify the position for analogue licence holders.

In December 2019, we issued a consultation to explore the options for reform: a "do nothing" option, which would involve allowing the licences to be re-advertised; or to legislate to allow the further renewal of licences for either five or eight years. Having carefully considered the responses, our conclusion was to retain the long-standing arrangements for analogue licence renewals that previous Governments have used to support the development of digital radio.

While there are some arguments in favour of opening analogue licences to competition, a full-scale re-advertisement process would, in our view, be disruptive and expensive, and the impacts would outweigh any potential benefits—particularly at a time when commercial radio faces severe disruption from Covid-19 and increased competition from online audio and smart speakers. We reflected carefully on the impacts of Covid-19 on stations' advertising revenues, which have seen significant year-on-year reductions. In the light of this, we took further views on a longer, 10-year renewal and the responses to this—in particular from Radiocentre, the industry body for commercial radio—were positive. In addition, the extension is likely to take matters towards a natural endpoint for analogue broadcasting by the end of the decade.

I should make it clear, however, that the Government, while supporting the transition, have made no commitments about a future radio switchover. We will of course take account of the findings of the digital radio and audio review that I mentioned earlier, when it is due to report in the spring of 2021. However, I confirm to noble Lords that any switchover decision remains some way off. It would require a clear understanding by broadcasters and others, including groups representing listeners, as to whether it would be an appropriate course of action for radio's future.

I want to touch quickly on the second provision within the order relating to small stations. The change will allow stations to satisfy the digital carriage condition by broadcasting on an appropriate small-scale multiplex. Following the passage of the Small-scale Radio Multiplex and Community Digital Radio Order 2019 and Ofcom's recent commencement of the licensing process for small-scale DAB, it will soon be possible for smaller stations to broadcast over digital without needing to do so via local multiplexes, which cover larger, county-sized areas and come with the costs that such coverage implies. The current legislation refers only to local and national multiplexes. The provisions in this order will update the legislation to refer to small-scale multiplexes too. This is a change widely supported by smaller stations and the wider radio industry.

In summary, the order will continue the long-standing arrangement of allowing licence renewal for a commitment from commercial radio stations to DAB. In effect, it is the no-change option. It will provide stability and certainty to the industry during this tough time while continuing the progress of UK radio and audio towards a digital future. I beg to move.

12.10 pm

Baroness Altmann (Con): My Lords, I congratulate my noble friend the Minister on her presentation of the order. I also congratulate the Government on their wise decision to extend these licences. The future scenario for radio services is clearly moving towards digital, but 40% of users still listen on FM or AM. I welcome the order because it ensures that, for those loyal listeners, there will be no interruption to their favourite FM or AM radio stations. I declare an interest as a loyal listener of Classic FM.

I believe that the Government's decision is commendable, having gone through the exercise that my noble friend explained and taken into account the disruption caused by Covid both to the country at large and to the advertising revenues for these stations. Extending rather than requiring reauthorisation will save these radio stations the cost and hassle of submitting a new application while giving them at least some certainty in the current uncertain environment.

Some 55 local radio multiplex services provide DAB radio stations. I support the extension to small-scale multiplexes; they can be so important for selective audiences with particular interests. I understand that these analogue services are being required to commit to a digital future by being on a national, local or small-scale DAB multiplex, but can my noble friend confirm the investigations being made by Ofcom and the progress reports that may be required over the next few years in terms of that changeover to digital?

I have one further question, which relates to Ofcom's verification of the technical information in each local radio multiplex licence to make sure that it has the required and expected coverage and that there are no cutbacks in services to certain areas around the country. As my noble friend rightly said, so many people—particularly elderly citizens—are relying on radio during the pandemic. Some cannot see; they can only hear. For them, radio is a real lifeline. I therefore welcome the current measures and I congratulate the Government on their decision to extend these licences.

12.13 pm

Lord Berkeley of Knighton (CB) [V]: My Lords, I declare my interests as listed in the register. It is a pleasure to agree with both the previous speakers: the noble Baroness, Lady Altmann, and the Minister. I do not think that I could take issue with anything they said.

To me, this affirmative approval Motion seems an eminently sensible move by the DCMS. We know that there is a considerable audience for commercial radio: as many as 36 million listeners per week. Of course, the Covid-19 pandemic has meant that communication and home entertainment have acquired even more significance.

As a BBC broadcaster for many years, I welcome the scope of the market—and, indeed, making it even larger—and the offering of alternatives, which helps keep the BBC on its toes. Local and national choice can only be good for competition, and therefore enriching for the audience, but, as we have heard, there is another pressing issue that we must consider carefully: largely for topographical reasons, many areas simply do not enjoy digital coverage at all, and sometimes only variable analogue coverage as well. I ask to the Minister to confirm that we will not move to a digital spectrum until we have sorted this out.

I speak from an area here in mid-Wales, in the beautiful Welsh Marches, as a case in point. In order to speak to your Lordships today and to broadcast from here, I have had to invest in a series of booster amplifiers and advanced technology—and it is still variable. I hope that I will not offer an example of that in the next couple of minutes.

I know that the Government want to extend digital and internet coverage to everyone—I applaud that ambition—but until it is realised, we simply must retain the broader spectrum of analogue and AM signals to allow listeners access to information, which is often vital to our general well-being currently, as we have heard. To that end, we need to continue to underpin the strong growth in DAB until everyone has the same access across the country. This is not unlike the need for petrol stations until electric charging points are so plentiful that we are not disenfranchising those people in rural and remote communities, particularly, where transport and digital access are thin both on the ground and in the air.

The other important point, which was made to me by industry representatives and which the Minister also mentioned, is that, should this legislative reform order not be enacted, scores of stations currently living on a financial tightrope might fall owing to the cost of having their licences readvertised. These include prominent stations such as Classic FM—a healthy and complementary alternative to BBC Radio 3, where I hope the noble Baroness, Lady Altmann, might visit us occasionally—but also stations such as Kiss, Heart, LBC and Jazz FM, as well as many much smaller independent stations. The sector contributes to the UK economy £638 million in gross value added and more than 12,000 jobs. In addition, it offers alternative support at the local and national level to broadcasters that the BBC may not be able to retain.

I support this Motion absolutely.

12.17 pm

Lord Kirkhope of Harrogate (Con) [V]: My Lords, let me say at the outset that I of course support the proposals before us, which have come about following much consultation and discussion. I do not intend to comment on the special procedure demanding a legislative reform order in this case; I assume that all the criteria in the 2006 Act, to which my noble friend the Minister referred, have been met.

The proposals throw up a number of issues that, in my view, also require attention if we are to ensure the balanced and fair future development of radio broadcasting in this country. We can all be nostalgic—especially on a Friday morning—but I speak as one who campaigned in the 1960s for the freeing up of the provision of radio services. Radio Caroline, Radio London, Radio 270 and others operated on the edge of law but they were exciting at the time to young people like me. Luckily, I was able to get more involved by advising the Government on the preparation of the White Paper ahead of the legalisation of commercial radio in the Sound Broadcasting Act 1972. In 1973, I was then part of one of the first consortia to apply for a radio licence. I remain part of the community radio movement today.

I say all this because, to this day, I have retained a list of the then Independent Broadcasting Authority's requirements, which formed the basis of the grant of a licence for what were essentially regional and local services in 1973. The strict hands-on approach of the then IBA chair, the late Lord Aylestone, included rules

[Lord Kirkhope of Harrogate]
about the type of advertising, the level of local content, technical requirements and the mix of directors and shareholders. He also ruled:

"The pursuit of commercial objectives must not become the company's dominant activity to the detriment of programme standards."

To some extent this mirrored a similar requirement for ITV, where companies had to reflect the regions where they were based and often where their shareholders were based too.

I say all this in the full realisation that the measure before us is technical and administrative in nature and is of the 21st, not the 20th century, and of course things move on. But that is the problem. The emergence first of FM and then DAB and DAB+ frequencies has changed the quality and nature of the transmission of programmes. Advertising revenue and placement has also changed, and some national stations have been authorised and licensed.

The appetite of the public for radio as opposed to TV is still strong, even though social changes are also changing the way we listen to it. Technical changes have provided massive opportunities for new ideas, but they could and should still concern local and regional communities and provide an even greater diversity of programmes. During the Covid crisis, it is the BBC local radio stations that for many people have been the mainstay for receiving local news and guidance, and in my opinion, no BBC director-general should dare to damage or denude those stations.

Ofcom, the present regulatory body for commercial radio, should also be concerned to continue to protect the mix of news, current affairs and community guidance from commercial stations which are being lost in many parts of the country. The consolidation of programmes and networking of production goes on apace. Well-loved, established local stations that obtain licences after having to demonstrate their community connections are, one by one, being absorbed into the mega-conglomerates that now seem to control the sector. In the region where I live in Yorkshire, a large number of local stations have lost their special identity as their out-of-town owners dispose of local staff and content, and simply hijack the licensed frequency to pump out centrally edited music that is obtainable in various other ways, either from national broadcasters or through web streaming services. That simply should not have been allowed.

I understand the pragmatism of these proposals and the new conditions requiring digital radio multiplexes to be made available, but how are the Government and Ofcom going to make sure that if such conditions are met, this will then allow others, apart from those getting extensions to their licences, to really enter this field and restore some of the services to the communities which Ofcom has allowed to be curtailed by the present licensees? Can my noble friend elaborate on this? In hoping for entrants to such broadcasting, can she say how they will be controlled? Even though I want to see this element of the proposals work out, we must not allow or encourage new community radio operators to work to lower standards, but aspiring broadcasters must also not be deterred by excessive and inappropriate fees and charges imposed by Ofcom.

Ofcom claims that it still demands compliance with such things as character of service, but since 2008, it has allowed more flexibility in the format of licensed stations. What used to be strict requirements are too often now fudged or ignored. Surely the process of networking, which I mentioned earlier, is a fundamental breach of the basic principles to follow an agreed format.

I accept what is proposed in the order. It sounds reasonably sensible, but please will my noble friend give me the reassurance that in the now ongoing major review into digital radio and audio, the consultation will be wide enough to cover all interests, especially those who want to retain truly local services that inform and assist? I understand that the report of the review is due in March. I hope that my noble friend is satisfied that it will be ready by then, but in this case, might it not be better to have a little more time so that we can ensure that the future of radio in the UK is properly and fairly constituted?

12.23 pm

Baroness Gardner of Parkes (Con) [V]: My Lords, I support the introduction of this instrument, but in particular, I want to talk about the changes to the radio licences renewal order, which seeks to recognise small, local radio stations. We cannot underestimate the importance of the provision of radio services during the coronavirus pandemic both in sharing information locally and in helping those who would otherwise feel isolated to be connected to the outside world. The instrument helps to recognise the essential importance of small, local radio service providers, and I have no doubt that they will play a key role in the future.

12.25 pm

Lord Foster of Bath (LD): My Lords, I welcome the order and in doing so I particularly welcome, as others have said, the addition to it of small-scale multiplexes and the potential benefit that that could bring. Before I say anything further, however, I want to give huge praise to the Government for achieving something that I have never seen before. I have spoken in a number of debates recently and have had to look through explanatory memorandums that, frankly, I have not begun to understand. The explanatory document, as it is called, that we have been provided with for this debate is exemplary. I praise it and ask the Minister to pass on my thanks to all those in her department who were responsible for its production.

I have only two things to say about the order. The first is that the Minister referred to the announcement made back in February that there will be a review of digital radio. I believe that this is long overdue. The Government promised that when certain criteria of radio listenership were met, there would be a review. Those criteria were met in May 2018. In May 2019, the Government announced that they intended to have a review, but it took them until February 2020 to announce that review. We will not get the results until March 2021, and no doubt several months after that before we get a response from the Government on what they intend to do.

This will not be a pleasure for the noble Baroness, Lady Altmann, to hear, but I have long argued that we should be more urgently looking to have the same sort of radio switchover as we have had so successfully in relation to television. I am firmly convinced that were the Government to invest money in improving the digital infrastructure, there would be huge benefits not just in terms of radio listening, but so much more; that funds would be saved for the operators in that they would not have to have dual transmission; and that there would be an enormous benefit to the Treasury through the auction that could then take place of the analogue spectrum that had become available. I am disappointed that the Government have adopted what they call the "listener-led" approach, and I note that the Minister has said that she "reasonably thinks" it is likely that analogue will come to an end by the end of the current decade—another 10 years—which I personally believe is a wasted opportunity.

The other thing I want to remark on is the comments made by the noble Lord, Lord Kirkhope, and the noble Baroness, Lady Gardner of Parkes. Both referred to the vital importance of local radio. In my view, local radio has been diminished by the reduction of the requirements being placed on it. Now, far too often, as the noble Lord, Lord Kirkhope, pointed out, they are putting out the same music that you can hear on any other station. We need to look at ways of regaining genuine local radio that covers local news issues, holds local politicians to account and tells the stories that involve local people. That, sadly, is being diminished in this country. The addition of the small-scale multiplex and the possibility that that brings for new entrants is of course very welcome. It is one of the reasons I support this order, but of course there are other huge benefits in the order in that it will save the readvertising costs that would be incurred.

12.29 pm

Lord Stevenson of Balmacara (Lab) [V]: My Lords, I thank the Minister for a very clear introduction to this order and echo the comments made by the noble Lord, Lord Foster, on the very good explanatory document, as he rightly called it, which accompanied it. It was easy to read and gave us a lot of information that we would otherwise have had to root around for.

Like some other noble Lords who spoke in this debate, I recall the 2015 statutory instrument, which gave existing licence holders a five-year renewal of their licences. A key point that emerges from today's debate is how the arguments have changed over those five years. The key debate then, as the noble Lord, Lord Foster, has said, was whether and when digital switchover would take place.

The case was made pretty convincingly—I am sorry that the noble Lord, Lord Vaizey, is not speaking today, because he would recall saying this—for a two-tier test: the Government wanted to make sure that audiences would lead the way, with more than 50% of listening being digital, and that, perhaps ironically given later policy changes, new cars would be sold with digital radios. I have never managed to buy a new car, but I gather from friends who have that that has now happened, and all new cars have digital radios. We know that audience figures have moved ahead, so there should be no question, as the noble Lord, Lord Foster, has said, that we should be discussing when, and in what way, the Government are going to announce a digital switchover. But as he said, we now have fudge. There is a natural end-point to analogue at the end of the decade, but no commitment—I repeat, no commitment—being made here today by the Minister that that will happen or how.

The problems raised by other speakers, including the noble Baroness, Lady Altmann, and the noble Lord, Lord Berkeley, about reach, and the need to ensure that the quality that comes with digital is available to all who wish to use it, are being solved by the small-scale digital multiplexes. I very much welcome that section of the statutory instrument. It is the answer to a lot of the problems we have.

Seen in this light, it is probably inevitable that existing licences need to be extended, but it is a bit ironic that the consultation was on a five-to-eight-year period and we are getting 10. Whatever happened to competition in the radio world? I appreciate the severe difficulties that companies are going through at the moment, but I thought that this Government believe that competition is the way to raise standards and make sure that public services are properly organised. When she comes to respond, perhaps the Minister could talk more about the role of Ofcom in promoting competition among existing services.

Inevitably, we want to support this. Radio provides a source of comfort and companionship through difficult times. It plays a valuable role in supporting mental well-being, which is often underplayed, enabling listeners to feel connected during a period of enforced isolation, particularly in this pandemic. It is also one of the most trusted sources of news and information, which is again important during the pandemic. It is not surprising to discover that listening numbers have been raised and now nearly 40% of people are listening to more radio than before the lockdown.

So this is a good story, but unfortunately there are sustainability consequences, because the difficulty facing companies is that the advertising that supports many radio services is collapsing. There needs to be thought about that. When she responds, could the Minister talk about other ways in which radio might be supported? Are there any other plans that might be brought forward to support the arts more generally? Radio is, in some senses, part of that community and needs support. Would she comment on the ongoing consideration of an advertising tax credit for UK media, which might stimulate demand and boost economic recovery?

The key question is whether the companies that currently hold licences will continue to do as they have in the past, which is to invest in DAB and make sure that we are ready for the switchover, as and when it naturally occurs. Saving costs by reducing the need to apply for new licences is a sensible way forward, but we need to think harder about competition and how services can be improved, if there is not going to be a change of licence and churn in that way. That will be the way that listeners stick with the radio that they love and know, carrying forward the need for investment in it.

12.34 pm

Baroness Barran (Con): My Lords, it has been a pleasure to debate this order with your Lordships, and I thank all noble Lords for the warm welcome they gave it. I will bask for a short moment in the huge praise from the noble Lord, Lord Foster of Bath, for the Explanatory Notes, which was echoed by the noble Lord, Lord Stevenson of Balmacara. I absolutely support that and thank all those involved in preparing the notes for their clarity and ease of use.

A number of your Lordships, including my noble friend Lady Gardner and the noble Lord, Lord Berkeley, emphasised the importance of local radio during the recent difficult months of the pandemic and the critical role that those stations have played in communicating messages, particularly on public health and Covid, in many parts of the country and in many community languages, which is of such critical importance.

My noble friend Lady Altmann and the noble Lord, Lord Stevenson, highlighted the significant impact that the radio sector has suffered as a result of the pandemic, with falls of 40% to 50% in advertising revenue. The noble Lord, Lord Stevenson, asked what else the department has done to support the sector. We have had the wider economic support packages, but DCMS has also negotiated a significant package of support for commercial radio stations, ensuring that smaller stations benefited from a six-month waiver of transmission charges, and we repurposed the Community Radio Fund to provide small grants to community stations that are facing financial challenges as a result of the pandemic. The fund has made a total of 112 grants, worth a little over £400,000, in two rounds. Finally, Ofcom has relaxed some regulatory requirements on the production of content to support radio stations to develop ways of working to cope with the lockdown and movement restrictions.

In response to my noble friend Lady Altmann's question on how we are working with Ofcom on small-scale DAB rollout, we are working very closely with the regulator. The closing date for the first round of applications was this week. Ofcom has been carefully testing small-scale stations, with trials running since 2015.

I also thank the noble Lord, Lord Berkeley, for his generous words. The Government, the BBC and commercial radio have all invested in the expansion of the DAB network. We recognise that more investment is needed in Wales, which is one of the issues that the digital radio and audio review will look at.

Concerns were raised by my noble friends Lord Kirkhope and Lady Gardner, and the noble Lord, Lord Foster, about the risk of the reduced availability of local radio and loss of local content. As I have already said, the Government recognise the important role that radio plays in the provision of local news and information. However, the context in which it operates is clearly changing dramatically, as a result of structural and technological factors. We all know that there is a proliferation of ways to consume audio content, a shift from local to national listening, and greatly increased competition for advertising spend from the expansion of digital media and the rapid growth in online advertising.

However, Ofcom, which issues guidance on localness, has made no changes to the local news or information requirements for local stations, and those requirements will not be affected by this order. Indeed, following the consultation on future commercial radio regulation in 2017, we committed to strengthening local news and information requirements, which are the key public service aspects of local commercial radio, and to extending them to digital radio stations. We hope to bring forward legislation on commercial radio reform when parliamentary time allows.

The noble Lord, Lord Stevenson, referred to a "fudge" regarding the digital switchover dates. The specific issue of whether a formal managed switchover should take place, and if so when, will be considered as part of the review, as I mentioned, and we will get that report by the end of March 2021. Again, and to reassure the noble Lord, Lord Berkeley, no decision has been made to date as to whether or when a switchover should take place.

To return to the provisions of the order, we believe that it will allow commercial radio stations to focus their efforts at this difficult time on continuing to deliver the vital news and entertainment that listeners value most, while supporting the ongoing transition to a digital future for the radio sector. I commend it to the House.

Motion agreed.

12.41 pm

Sitting suspended.

Covid-19: Devolved Administrations

Private Notice Question

1 pm

Asked by ***Lord Morris of Aberavon***

To ask Her Majesty's Government what further steps they are taking to ensure a common approach between the UK Government and devolved administrations for COVID-19 related matters.

Lord Morris of Aberavon (Lab) [V]: My Lords, I wish to ask a Question of which I have given private notice, on what steps, further to the joint Statement on UK-wide Christmas arrangements by the UK Government and devolved Administrations on Tuesday 24 November, Her Majesty's Government will take to ensure a common approach to other Covid-19-related matters.

The Minister of State, Cabinet Office (Lord True) (Con): My Lords, the UK Government are committed to working with the devolved Administrations to protect the health of our citizens, communities and economies. We published a Statement on 25 September setting out this shared commitment, and our UK-wide approach to arrangements at Christmas is an example of it working in action. We will continue our substantive ministerial, official and scientific engagement to protect the lives and livelihoods of citizens across Scotland, Wales, Northern Ireland and England.

Lord Morris of Aberavon (Lab) [V]: My Lords, I am pleased at what, at last, has been achieved by the four Governments. As drafter of the first Welsh devolution Bills, I would always fight for the right of devolved Governments to take their own decisions on devolved matters, but I never contemplated that there would be so many differences on decisions around infections which know no boundaries. Has the apparent stubbornness been in Whitehall, Cardiff, Edinburgh or Belfast?

Lord True (Con): My Lords, I cast stones at nobody. I agree with the noble and learned Lord that co-operation is always the best route forward and posturing is never helpful. The Christmas alignment arose from a joint meeting at very high level on 2 September, which was followed up by four further high-level conversations. It is an example of co-operation in action.

Baroness Barker (LD): My Lords, speaking as a Scot, Christmas is a secondary festival to new year for many of us. What steps have been taken to address issues of cross-border policing for the whole of the festive period?

Lord True (Con): My Lords, as the noble Baroness knows, I am not a line Minister on this specific question, but I will ensure that she is advised on the matter.

The Deputy Speaker (Lord Brougham and Vaux) (Con): The next speaker is the noble and learned Lord, Lord Mackay of Clashfern. He is not answering, so I call the noble and gallant Lord, Lord Craig of Radley. There is a problem with the sound, so we will come back to the noble Lord. I call the noble Lord, Lord Reid of Cardowan.

Lord Reid of Cardowan (Lab): My Lords, like many in this Chamber, I very much welcome the UK-wide discussions to help us combat Covid. It is always better when we are helping each other. In that context, how much, as a total, have the UK Government distributed in consequentials and Covid-related expenditure to Scotland, Wales and Northern Ireland?

Lord True (Con): My Lords, the noble Lord asks a very important question. I fear I cannot answer with a specific figure, but I will write to the noble Lord and advise others on that matter. As he says, the UK Government have procured vaccines for the whole of the United Kingdom. The Joint Biosecurity Centre, part of NHS Test and Trace, is UK-wide, and the UK Government provide testing capacity to all the devolved Administrations, including operating testing sites across the United Kingdom. Mutual aid and co-operation across and between all four nations has, in our judgment, been a key part in ensuring that PPE gets to where it is needed. I will write on the figures.

The Deputy Speaker (Lord Brougham and Vaux) (Con): I call the noble and gallant Lord, Lord Craig of Radley. There are still problems. I call the noble Lord, Lord McNally.

Lord McNally (LD) [V]: My Lords, I am sure the Minister would agree that optics are important in fighting a campaign. One problem that we face in fighting the Covid epidemic is that quite often the Prime Minister has seemed to be uttering appeals from the imperial Parliament. Should not he take advice from, or the example of, his hero Churchill, who in 1940 who brought in the Opposition and presented a national front? Should not a special COBRA meeting be set up and meet regularly, involving opposition leaders and the leaders of the four nations? That would send a message of national unity that is missing at the moment.

Lord True (Con): My Lords, again, I do not agree with taking this to my right honourable friend the Prime Minister who leads in taking decisions and is involved in conversations. I think it is more important to stress the point made by the noble Lord, Lord Reid, that there is active, high-level engagement across the Governments and that is securing progress. We believe in devolution, and the devolved Administrations have public health responsibilities. I repeat that co-operation exists and should continue to exist.

The Deputy Speaker (Lord Brougham and Vaux) (Con): I call the noble and gallant Lord, Lord Craig of Radley. The problems continue. I call the noble Lord, Lord Jopling.

Lord Jopling (Con) [V]: My Lords, I want to add to the contribution of the noble Baroness, Lady Barker, about the position of Scotland and the jubilation which surrounds the new year. In the north of England we have over the years been accustomed to a massive migration of Scots going back to Scotland for new year and then coming back to England or elsewhere afterwards. It is essential that the rules that apply to Christmas also apply to the new year so that the Scots can fully enjoy their traditional holiday. Therefore, it is crucial that there is the utmost co-operation between the devolved Administrations, particularly with Scotland, so that jubilation does not increase the level of Covid outbreaks.

Lord True (Con): My Lords, I said to the noble Baroness, Lady Barker, and I say to my noble friend that, of course, I appreciate the importance of new year, particularly in Scotland, but to many others. I cannot advise the House specifically on this position, as I explained in answer to the earlier question, but I will take away the questions raised and seek further advice for your Lordships.

Baroness Meacher (CB) [V]: My Lords, the Government and the DAs are right to prioritise children's schooling. However, this is endangering the lives of those parents who are at exceptional risk from Covid. They are told by the Government to self-isolate, yet have children coming home from school every day, often having been exposed to Covid. I declare my personal interest. Can the Minister work with the DAs to ensure that these parents are at the front of the queue with front-line health workers for the first MHRA-approved vaccine? If not, we can expect excess deaths among these relatively young parents.

Lord True (Con): My Lords, the noble Baroness makes a very important point. It is obviously within the wider construct, which is that it is vital that young children secure education at the most formative stage of their lives—I think that there is broad agreement on that. Regarding the very important specific issue that she raised, as she knows, there is constant discussion between the chief medical officers of the four devolved Administrations, and I will ensure that her question is brought to the attention of all those involved.

Baroness Wilcox of Newport (Lab) [V]: My Lords, I am grateful to my noble and learned friend Lord Morris of Aberavon for securing this important Private Notice Question. In recent months, we have seen increasing divergence in the approaches taken across the four nations of the UK. We welcome the recent agreement regarding restrictions over the Christmas period and hope that it represents the beginning of a shift in the Government's relationships with the devolved Administrations in relation to the pandemic and, indeed, other issues. Can the Minister confirm what, if any, new structures will be put in place to formalise dialogue and data exchange across the four nations as we move into the new year and the next—and, I hope, final—phase in the fight against this awful disease?

Lord True (Con): My Lords, I repeat what I said before. There is a public health responsibility, which is devolved, and obviously decisions are taken by the devolved Administrations on how they wish to apply and use those powers. As I indicated, a network of co-operation exists: I gave the example of over 20 calls involving my right honourable friend the Chancellor of the Duchy of Lancaster and the senior Ministers involved in the devolved Administrations, and the CMOs meet regularly. Christmas has been a good example, but we must work within the devolved structure and in line with how all those involved choose to operate it.

Lord Wigley (PC) [V]: My Lords, I very much agree that there should be close co-operation between the four Governments on arrangements to facilitate travel across the UK over the Christmas break, but does the Minister accept that the devolved regimes would find this very much easier if the Westminster Government gave them adequate notice of their intentions, to enable timely discussion to take place before final decisions were made? Co-operation is a two-way street. For it to blossom, it must be on the basis of mutual respect, but that has not always been evident from the Prime Minister over the past eight months.

Lord True (Con): My Lords, I have an arm's-length brief on meetings, discussions and calls that have taken place at various levels, in addition to the continual engagement at official level. I am glad that noble Lords are pleased with the example of Christmas co-operation, but I think that the best way forward is to throw not stones but co-operation at each other. We have sought a co-ordinated approach wherever possible and where the evidence shows that this will make the response more effective. This co-ordination has taken place in many aspects of the response, including travel corridors, higher education and the work of the Joint Biosecurity Centre.

Lord Haselhurst (Con) [V]: My Lords, should we not all recognise that, unlike in a real war, the present Government are fighting an invisible and still not fully understood enemy, while being offered an array of conflicting expert opinions in the full glare of publicity? Therefore, great restraint really has to be exercised if we are to help bolster public resolve, which, in the end, is what we all depend on if this virus is to be defeated.

Lord True (Con): My noble friend makes an extraordinarily important point, and indeed it is something that is always emphasised by the Prime Minister and all the others who speak to the nation. A lot rests on us—the way that we behave, our sense of responsibility and our common resolve. We should not let those things flag. I frequently note now as I walk down the road that people make no effort to social distance at all. That is in sharp contrast to the observance of space, which was in practice in the original lockdown. Washing your hands, giving space and observing the rules are very important.

Baroness Finlay of Llandaff (CB) [V]: How often are the four leaders scheduled to meet? Does the Minister recognise that in Wales the distance-aware message means that people still consistently create distance in the street? Also, can he tell us what agreed UK-wide permissions are in place to allow very close relatives of people who are dying, whether they are at home or in a hospice, to visit, even across long distances? For these people, the memories of the last days and weeks will live on for the rest of their lives.

Lord True (Con): My Lords, I cannot comment on the timing of specific or planned meetings. I have assured the House that a very long and continuing process of engagement takes place. I understand the very sensitive point that the noble Baroness makes and I have sympathy for it. I do not know the specific position that may or may not have been agreed between the parties involved, but I will get advice and let her know.

Baroness Quin (Lab) [V]: My Lords, speaking as someone who lives in Northumberland not far from the Anglo-Scottish border and where people on both sides often identify as "Borderers", I am in favour of maximum co-ordination between the devolved authorities. Has the Minister seen the report of the Institute for Government outlining some of the problems that have been experienced and suggesting ways forward for working better together in future?

Lord True (Con): I have not seen the specific report, but I can only repeat that there has been extensive engagement with the DAs throughout the crisis, with regular ministerial engagement, including the calls that I have referred to, and devolved Administration attendance at COBRA meetings. As an example, I refer back to the question from the noble Baroness, Lady Finlay. Through discussions between the four nations' chief medical officers, we have also aligned advice and guidance to the clinically extremely vulnerable throughout the pandemic, dependent on restrictions in each nation at the time, and for the Christmas period. I assure the noble Baroness and the House that

the reality is a common desire to defeat a common enemy. I wish that we could accentuate that resolve and not pick at the occasional differences that arise. There is a lot of work to be done.

The Deputy Speaker (Lord Brougham and Vaux) (Con): My Lords, the time allowed for this Private Notice Question has elapsed. I am sorry about the lack of communication with the noble and gallant Lord, Lord Craig.

Supplementary Protection Certificates (Amendment) (EU Exit) Regulations 2020

Motion to Approve

1.19 pm

Moved by ***Lord Callanan***

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

The Parliamentary Under-Secretary of State, Department for Business, Energy and Industrial Strategy (Lord Callanan) (Con): My Lords, this instrument was laid before the House on 14 October. It seeks to ensure that the UK's supplementary protection certificate system takes account of regulatory changes arising from the Northern Ireland protocol.

Intellectual property plays a vital role in the UK economy; it supports creativity, ingenuity and innovation, and provides incentives for research and development. The life sciences sector is one of the UK's most valuable industries and is crucial to our success as a science superpower. It has consistently been the largest investor in research and development in the UK, investing over £4.5 billion in 2018.

Supplementary protection certificates, or SPCs, are a particularly valuable IP right for this sector. They provide a way for the industry to recoup the costs of developing a new drug, which the Association of the British Pharmaceutical Industry has estimated may exceed £1 billion. The SPC system is designed to operate as a balance between supporting the development of new drugs and ensuring that those drugs become available more cheaply, through competition from generics, in good time. This enables the NHS to benefit both from innovative new medicines and the wide availability of existing treatments. It is important that the system is as clear and comprehensible as possible, so that rights holders and third parties have certainty about what they can and cannot do in relation to such a valuable right.

It may be beneficial if I explain briefly how the SPC system currently works, to set the context for the changes in this instrument. Before medicines and agrochemicals can be placed on the market, they must be approved for use by a regulatory body. Extensive testing of the product is required to demonstrate its safety, efficacy and quality, which of course takes time. If the product is patented, there can be a significant delay before the rights holder can benefit from the exclusive rights provided by their patent. SPCs are intended to limit the effect of that delay. In order to qualify for the additional protection of an SPC, the product must be protected by a patent and must have a valid authorisation that allows it to be sold on the market in the UK. The SPC system derives from EU law, which will be retained as domestic law at the end of the transition period. The Government have previously taken legislative steps to ensure that the system will function in the same way before and after that point. Noble Lords may recall that they approved the most recent of these after a good debate in early September.

However, the Northern Ireland protocol will result in changes to how medicines and agrochemicals are approved in the United Kingdom. This will have an indirect effect on the SPC system. The protocol means that products placed on the market in Northern Ireland must be approved in line with EU regulatory requirements. This ensures that they can move freely between Northern Ireland and the EU, avoiding a hard border. Approval to place a product on the market across the UK may therefore be provided by more than one authorisation, with different territorial and legal scopes. As I mentioned, one of the conditions to get an SPC in the UK is to have a marketing authorisation for the product which allows it to be placed on the market in the UK. The current SPC system assumes, however, that there will be a single authorisation across the whole of the UK; it is not designed to accommodate the arrangements that arise from the protocol.

This instrument therefore amends the two retained EU regulations on SPCs to fit the new regulatory arrangements into the SPC system. Let me be clear: an SPC will remain a UK-wide right. There will not be separate SPCs for Great Britain and Northern Ireland. If a patented product has been authorised for sale somewhere within the United Kingdom—whether in Great Britain, Northern Ireland or the UK as a whole—an SPC may be granted. However, the protection provided by the SPC will extend only to the territory in which the product has been authorised. This preserves the link between the SPC and the approval for the product. Up until the point the patent expires and the granted SPC takes effect, the protection can be extended further if another authorisation is granted for the product, covering additional territory. But, once the SPC is in force, no further changes will be permitted.

Taking this approach provides certainty for all parties. It would not be fair for a third party to find that a legitimate action they had taken, in a territory where the SPC did not provide protection, suddenly became an infringement at a later date. This is why the scope of protection is fixed in place when the SPC comes into force. Similar limitations will apply to the award of an additional six months of SPC protection, which is available for products that have been tested for paediatric use.

In terms of engagement with business on these changes, IPO officials contacted representative bodies and individual businesses in the pharmaceutical and pesticides industries as well as the IP legal profession, of course, following the publication of the Command Paper on the protocol. They set out the potential effect on SPCs and invited comments. Officials met with those who responded to discuss the proposed changes in more detail and get views on whether any additional issues needed consideration. At a later stage, these

[Lord Callanan]
stakeholders were also invited to comment on a working draft of the legislation, providing valuable feedback to help finalise the wording.

Looking forward, the IPO is preparing business guidance to explain what the changes will mean in practical terms; this will be published shortly. Alongside the guidance, informal consolidations of the legislation will be provided, similar to the Keeling schedules, which were placed in the House Library. These were intended to allow noble Lords to see the amendments in context; I hope they were useful in that regard and that they will have the same benefit for businesses.

In conclusion, these regulations will ensure that the effect of the Northern Ireland protocol on the approval of medicines and agrochemicals is properly taken into account, while preserving the balance inherent in the current SPC system. I commend these regulations to the House.

1.25 pm

Lord Lansley (Con) [V]: My Lords, supplementary protection certificates have been a feature of EU patent protection for medicines and plant products for some 30 years. I am very grateful to my noble friend Lord Callanan for setting out the structure of these regulations and their purposes very clearly. Of course, as we exit the transition period, in the absence of a mutual recognition of marketing authorisations between the United Kingdom and the EU regulatory authorities, it is necessary to provide for the SPC systems to work both in Great Britain and Northern Ireland. These regulations deliver such a system.

The timing of our scrutiny of these regulations is interesting. On Wednesday this week, just two days ago, the European Commission published its pharmaceutical strategy for Europe alongside its intellectual property action plan and its evaluation document on the system of supplementary protection certificates. That evaluation offered some interesting observations on the impact of SPCs in meeting their objectives. Of course, the principal purpose was to promote the quantum of innovation in Europe. The level of global R&D in new medicines remains high. The US is the largest component of that, and the proportion of new chemical entities originating in the United States has grown, with Europe in second place but China catching up fast.

The evaluation found that SPCs are valued by stakeholders, and it further suggested that they have contributed significantly to the return on pharmaceutical R&D in Europe. It calculated—I do not vouch for this—that 13% additional turnover has resulted from access to SPCs where they apply. Of course, this is only for new active pharmaceutical ingredients—APIs—and not for patents for such things as new formulations. None the less, this was able to support higher levels of R&D: an estimated €37 billion in total, which is sufficient for the development of between 39 and 62 new treatments.

The regulations for the European Union also have the objectives of supporting the location of pharmaceutical research within it and securing a harmonised framework for SPCs in Europe. The evaluation did not offer definitive evidence on the former—the location of R&D investment in Europe—and it reported little progress on the latter. As one might expect, the European Commission strategies published the day before yesterday now focus on what they describe as the "fragmentation" of the SPC system. With the establishment of the Unified Patent Court—alongside the European Medicines Agency, of course—according to my interpretation of the documents, the European Commission is now looking for the SPC to be a European, rather than a nationally determined, right.

So does any of that make any difference to us? Yes, in that the incentive to seek a marketing authorisation and an SPC in the European Union will be further strengthened and the regulatory costs in the EU will be less if one system is created. We are not in the Unified Patent Court. I recall the views of the noble Earl, Lord Devon, on that subject recently so I will not repeat those.

The United Kingdom is 3% of the global pharmaceutical market but we are 10% of global pharmaceutical research and development and of new innovations. There are many reasons why that is the case, and I believe that we can sustain that; indeed, it is one of the principal subjects for debate as we are considering the Medicines and Medical Devices Bill. SPCs themselves are a modest contributing factor but we should make the protection for new APIs in the UK at least comparable to that in the European Union. The simplest way to do that would be through the mutual recognition of marketing authorisations and, even better, shared work on the scientific evaluations leading to that. However, if we cannot achieve that, we could pursue an aligned structure for SPCs.

I offer a few questions to the Minister, partly because of my own lack of understanding, and I would be grateful for his response. First, I understand that a Swiss SPC is recognised within the European Economic Area by virtue of the fact that it is applicable in Liechtenstein. Logically, would a UK SPC be similarly recognised within the EU single market by virtue of its direct applicability in Northern Ireland?

Secondly, if an SPC is granted by the European Medicines Agency that applies in Northern Ireland but no marketing authorisation is given to that product in Great Britain then, at the point when the SPC takes effect, the opportunity to extend the territorial application of that SPC will end. That should be a rare event as there may well be a period of some years between the SPC being granted and it coming into effect. However, is it necessary for that option to be removed? The principle of one SPC per product applies, but can the Intellectual Property Office in this country enable a European supplementary protection certificate to be recognised, applying for the same period as it would have remaining effect elsewhere in the European Union?

Thirdly, the so-called Bolar exemption is important for generic biosimilar producers so that they can meet the trial data requirements to offer competing products at the end of exclusivity. The Commission's IP action plan talks of further clarifying the provisions relating to this, so we may see legislation in the EU. Will the United Kingdom seek to do the same and keep our law in this respect in line?

Lastly, could my noble friend explain further the legal provisions on the granting of the six-month paediatric extension to which he referred? Is this achieved

in the human medicines regulations amendments that we are to consider next Wednesday, which were also laid in mid-October? Why was Article 36 of the EU human medicines regulation excluded from applying in Northern Ireland by the protocol? Does that not create a potential discontinuity between the SPC for a product and its paediatric extension? I would be grateful to understand this better, not least before next Wednesday. I am grateful for the opportunity to ask a few questions on this.

1.34 pm

Baroness Wheatcroft (Non-Afl) [V]: My Lords, I thank the Minister for introducing this SI. I am pleased to follow the noble Lord, Lord Lansley, with his endorsement of the great achievements of our pharmaceutical industry.

In one way this legislation is very straightforward but it is also a reflection of the drastic change now under way in what is still, for the time being, our United Kingdom. It encapsulates the fact that, once the transition period ends, Northern Ireland's relationship with Great Britain will be dramatically changed. As someone who believes in the union and is clear that it has strengthened its component parts, it grieves me to see this rupture.

Supplementary protection certificates are not common. Apparently only about 70 are issued in a year. They are important; the need to get medicines to market can be huge, and the time taken can span many years. However, as we have seen with the development of Covid vaccines, it can be done remarkably quickly in some cases, which we should all be very grateful for. Nevertheless, given the usual investment, in money and in the time that it takes to develop drugs and some agrochemicals, it makes sense to provide a mechanism that allows the usual patent lengths to be extended. That is what the SPCs do. However, the SPC relates to the marketing authority that approves the product for market, and once the transition period has ended, no matter how often we say that there will be no hard border between the UK and Northern Ireland, products authorised in Northern Ireland will not be able to apply for an SPC that would be recognised on the mainland. Equally, a product approved by the relevant regulator will only be eligible for an SPC that protects it in Britain.

Therefore, to be covered in both territories, companies will need two marketing approvals. This is not a mere technicality. When this SI was debated, or waved through, in the other place—to call it a debate is something of an exaggeration, since there were only two speakers, one of whom was the Minister—the potential risks came to light. The Minister accepted that if a product from Northern Ireland secured an SPC on the basis of an EU marketing authority, it would be vulnerable to having the intellectual property unprotected in Great Britain. There would thus be the risk of the market being flooded with generic copies of something that it had invested huge amounts in developing.

The Minister assures us that the SPC remains a UK-wide intellectual property right, but the protection that it provides extends only to the territory in which the product has been authorised. This sounds like Alice in Wonderland reasoning. What use is a property right if it does not confer protection? Can the Minister tell the House how he would define an intellectual property right? No impact assessment has been conducted on this SI, so can he put a cost on the extra bureaucratic procedures that drug manufacturers will have to go through to get wide authorisation? Also, as the noble Lord, Lord Lansley, pointed out, it is possible to extend an SPC by six months in the case of paediatric medicines. Can the Minister explain why this exception, and say whether it would be sensible for us to have it secured for any drug in this category?

1.39 pm

Baroness Bowles of Berkhamsted (LD) [V]: My Lords, it is not that long ago that, in the context of the internal market Bill, we discussed the unitary nature of patent protection in the United Kingdom. Now we find that it is not quite so for the time extensions gained through supplementary protection certificates that can be given to effectively extend patent terms when initial market approvals have eaten up the time available under the original patent term. I want to continue probing in the areas that have been opened up by the noble Lord, Lord Lansley, and the noble Baroness, Lady Wheatcroft.

For some time before us there may still be UK-wide authorisations, but as a kind of legacy, which will in future be split into Northern Ireland and Great Britain authorisations. If they started together and protection certificates exist, then they will continue. But at some point we will get to the position where authorisations come separately for Great Britain and Northern Ireland, depending on whether they are from the EU side or the Great Britain side. Applications for supplementary protection certificates will be made based on the first one that is achieved. If the other part of the jurisdiction also has a marketing authorisation before the end of the patent term, then that can be added in and it all proceeds.

In practical terms, I guess that pharmaceutical companies will try to ensure that they have both sets of marketing authorisations in place by the end of the patent term. However, it is possible that that will not happen. This can come about without the supplementary protection certificate if you have marketing authorisations in one part of the UK and not in the other. That raises the question of what happens to the goods: will they actually flow freely from one part of the United Kingdom to the other under the non-discrimination principle for goods in the internal market Bill, or will there be some kind of restriction? I understand fully that there are restrictions on what you can do between a place that is patented and a place that is not, but I am interested in how this interacts with the internal market Bill.

If we have that position, whether it comes about during the extended term or not, what happens to the licensing of drugs for use by the NHS under NICE? They will have different prices in different places, at least in theory. How will that operate, and how will it come about that you can get even treatment across the United Kingdom under the NHS?

[Baroness Bowles of Berkhamsted]

This will not be the only instance when we will have such situations; they will happen in REACH. Can the Minister advise whether it is necessary, for example, always to have authorisations in both parts of the United Kingdom in this instance to enable marketing throughout the United Kingdom? I do not see how this is clear at all, unless you are going to say that there is no possibility of that trade between Northern Ireland and Great Britain.

I confess to also being confused about why the paediatric extension was not in the Northern Ireland protocol. As far as it appears from the explanations, that is at risk of being lost if the original market authorisation is not obtained in time to come under the supplementary protection certificate. That seems to potentially remove it. It is for only six months, but it has a valuable use.

That is all I need to say on the matter, as most of the other questions have been asked. I know that this debate is primarily about the supplementary protection certificates, which are probably the simple part of this—it is just a recording of where you got the authorisations and therefore where the extension can apply. The complexity comes with what is happening to the United Kingdom internal market. If the Minister does not feel he can give an answer to that right now, could he please write to lay out clearly the interaction between marketing authorisations, the internal market Bill and, taking into account costs, what may or may not be licensed by NICE?

1.45 pm

Lord Stevenson of Balmacara (Lab) [V]: My Lords, I am grateful to the Minister for his clear introduction of what is turning out to be a rather complicated issue. I certainly felt that his remarks were a lot clearer than the Explanatory Memorandum, which I have been struggling through and which brought me to a stop around paragraph 7.7 or 7.8; I will ask a couple of questions about that, so the Minister has advance notice. Most of the points that I was going to make were made in the expertise displayed by earlier speakers —particularly the noble Lord, Lord Lansley, and the noble Baroness, Lady Wheatcroft—and in the supplementary questions asked by the noble Baroness, Lady Bowles.

The Explanatory Memorandum struggles to answer questions because it is trying to do the impossible: to make a rationale behind what is obviously a bit of a fudge in relation to requirements that could have been dealt with better in the Northern Ireland protocol—but that is easy to say with the benefit of hindsight. The issue that I get stuck on occurs when I get to paragraphs 7.7 and 7.8 of the Explanatory Memorandum. It concerns the same question that the noble Baroness, Lady Bowles, asked about. What do companies have to do to be sure that they do not run the risk of losing control of their intellectual property in relation to the need to have a set of regulatory approvals that faces the UK market but does not put them outside the ability to market the same product through Northern Ireland into the EU?

Paragraph 7.8 suggests:

"Products which are subject to regulatory approval before they can be placed on the market in Northern Ireland must … be assessed in accordance with EU law",

but it is not at all clear to me what that actually means in practice. It goes on to say:

"Approval may be given by the UK regulator acting on behalf of Northern Ireland".

What does that mean? It also says that such approval may instead be given

"by the European Medicines Agency."

Obviously, we all understand and know about that process.

Paragraph 7.9 helpfully states:

"This means that products … may have a marketing authorisation granted under EU law."

However, paragraph 7.10, which I was hoping would explain that, simply repeats this fact:

"A specific product may have two authorisations … in most cases, a GB authorisation and an NI authorisation."

Is that the same as an EU authorisation? Are we hearing that this is a mutual recognition issue, as suggested by the noble Lord, Lord Lansley? I look forward to the Minister's response on that.

My only other point relates to later on in the Explanatory Memorandum, under paragraph 9. I was grateful to see that the IPO will prepare some Keeling schedules, of which I am a great fan. Although the timing of this is complicated because the date of publication is a lot earlier than today, paragraph 9.2 states:

"The IPO has prepared, and will be making publicly available, informal consolidated texts of Regulations … which take into account all legislative changes for the end of the transition period."

That is obviously very imminent. It goes on:

"A draft of this material has been laid in the Libraries of both Houses".

In fact, when I checked in the Library, I could not find it. Can the Minister confirm whether we have gone past the draft stages and now have a final version? If so, would it be possible to circulate that to noble Lords who participated in this debate, as I would like to have confirmation that this has all been done properly?

1.49 pm

Lord Callanan (Con): My Lords, first, I thank all noble Lords for their valuable contributions to this short and simple—actually, not simple but complicated debate.

This instrument is vital to ensure that the SPC system is effective and operable from 1 January next year. The amendments take a pragmatic approach in providing protection which reflects the regulatory approval of a particular medicine or agrochemical. Failing to address these issues would put valuable rights at risk and force businesses to go to the expense of litigation to clarify what can and cannot be done.

As noble Lords will be aware from our debate just a few weeks ago, the World Intellectual Property Organization recently listed the UK as the fourth most innovative country in the world. Our ambition, of course, is to be the first most innovative country in the

world. With that goal in mind, this Government have pledged to increase UK investment in research and development, with the goal being to reach 2.4% of GDP by 2027, and our R&D road map puts science and technology at the forefront of our economic and social recovery. As my noble friend Lord Lansley observed, intellectual property is a crucial part of that effort, so that great research and ideas can be turned into great businesses.

Innovation and creativity have never been more important or more valuable, especially in the life sciences sector. UK R&D in this sector is at the forefront of the efforts to combat coronavirus, with the Oxford Vaccine Group and AstraZeneca in particular leading efforts to develop a vaccine, with promising results emerging from clinical trials in recent days.

Of course, global access to a vaccine is critical to an effective response to the pandemic, ensuring that no-one is left behind, particularly the poorest and most vulnerable. We believe that the best way to provide equitable access to vaccines, treatments and tests is by fully funding the ACT accelerator. The UK is proud to have put in $1 billion of the global total of $5 billion raised so far.

Of course, I am also aware of the calls for greater flexibility on IP rights to create and enable equitable access. The Government's view is that meeting the objectives of prevention, containment and treatment of Covid-19 is best achieved through the existing flexibilities within the Agreement on Trade-Related Aspects of Intellectual Property Rights.

Looking more broadly, I know that concerns have been raised about whether businesses adapting to the new regime may have to cope with further changes to regulation in the future. Of course, it is impossible to rule out that changes might be needed to regulations which affect the medicines or agrochemical sectors, but I hope the House will be reassured that any proposals for changes, and any effect they might have on the SPC system, would be subject to consultation with stakeholders and interested parties. I am also conscious of the concerns about whether drugs being available under different rules in Great Britain and Northern Ireland will cause any issues for trade within the UK, and whether the analysis of the impact of this SI took account of this.

In response to the point made by the noble Baroness, Lady Bowles, we believe that most SPCs will take effect UK-wide in the future, as the majority of SPC applicants will want regulatory approval for the whole of the United Kingdom. Although small numbers of SPCs may provide protection in only part of the UK, the right itself will not introduce a barrier to movement of goods. Marketing authorisations will be needed to put medicines or agrochemicals on either the Great Britain or Northern Ireland market.

In response to the point made by the noble Baroness, Lady Wheatcroft, about the costs and impacts—also raised by the noble Baroness, Lady Bowles—the purpose of the instrument is to incorporate the changes to the regulatory system into the existing SPC framework so that businesses will not have to do anything significantly different. They will file the same forms, pay the same fees and engage with the same authorities as at present. The only significant new element of the process would be the need to inform the IPO about any additional authorisations. The administrative and information requirements will be similar to existing processes and the numbers small, so the need for familiarisation will be limited.

Although the SPC system is linked to the regulatory regime, the direct effect of this SI does not cover any impacts or changes to the regulatory system itself. The changes to the SPC system are required to take account of all marketing authorisations that will be valid in the UK when the protocol takes effect.

The noble Lord, Lord Stevenson, raised what I think is a very valid point—this is a particularly complicated SI, and I confess that he is not alone in finding the drafting quite tricky to follow at times. But this is a complex area of IP law, and all the provisions are indeed necessary. This complexity was part of the reason behind the material placed in the House Library. The IPO will ensure that an informal consolidation of the legislation is available so that businesses can see, in one place, the legislation as it will operate, and I would be happy to place a copy of that in the House Library as well.

My noble friend Lord Lansley asked about the importance of SPCs in helping to keep the UK competitive—I completely agree with him on that. There are a number of factors which business should consider when deciding when to launch medicines in particular territories. R&D pharmaceutical companies are very clear that a strong intellectual property regime is vital to their business models, as this helps recoup their large up-front investment costs. The SPC regime is an important part of the UK IPO regime for these companies.

My noble friend also asked about our participation in the Unified Patent Court. In view of its withdrawal from the European Union, the UK no longer wishes to be a party to the Unified Patent Court system. Participating in a court that applies EU law and is bound by the CJEU would be inconsistent with the Government's aim of becoming an independent, self-governing nation.

My noble friend also referred to the recently completed EU legal and economic analysis of the SPC system. These reports were comprehensive and looked at many different aspects of the existing SPC regulations. The implications of their conclusions are still being considered. It is important to consider the SPC regulations and other forms of IP protection holistically, so that amendments in one area do not have unforeseen consequences in another. Any future changes to the system would be carefully considered in light of evidence as to their potential impacts on the UK market.

My noble friend also asked about the recognition of UK SPCs in the EU. As he will be aware, SPCs are currently a national right and are granted separately in each member state. He also asked about the Bolar exemption; this was added, as I am sure he is aware, to the Patents Act in 2005. In 2014 we introduced a new exemption by way of a legislative reform order. The two exceptions are of similar scope but have different purposes. The Bolar exemption specifically relates to abridged authorisation processes, while the LRO exception

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ensures that clinical trial work is fully protected by the exception on experimental use of a patented product. It is therefore possible that some activities may fall within one exception but not the other, so it is important that both continue to function effectively.

My noble friend Lord Lansley and the noble Baronesses, Lady Wheatcroft and Lady Bowles, raised the paediatric extension. This is a six-month extension of SPC protection for a medicine which has been tested for use in children. The protocol does not require EU law covering this to apply in Northern Ireland. The paediatric extension will instead be provided in UK law with conditions set by the Human Medicines Regulations. These will apply whether the medicine has been approved under EU or UK law. The paediatric extension will provide protection only in the territory in which the SPC does. Equally, if the conditions are met in only part of the territory protected by the SPC, it will provide protection in that territory.

The noble Baroness, Lady Wheatcroft, raised her favourite subject: the end of the transition period. The Government continue to deliver the necessary primary and secondary legislation required to ensure a functioning statute book at the end of the transition period so that we can seize the opportunities as an independent sovereign nation, something I know she passionately believes in. She also asked about the erosion of SPC rights, giving them shorter protections. The Government still consider their approach entirely reasonable, as it keeps the current way of calculating term in place and delivers a level of protection which is seen as one of the most generous in the world. In addition, under the protocol, authorisations granted under EU law continue to have effect in part of the UK. It therefore makes sense for the term calculation to take that into account.

The noble Baroness, Lady Bowles, and the noble Lord, Lord Stevenson, asked what would happen if UK SPC law diverges in future from EU law. UK SPCs will continue to be granted according to UK domestic law. The protocol does not require EU SPC law to be followed in Northern Ireland. The SPC will remain a single IP right which may provide protection in Great Britain, Northern Ireland or across the UK. Any divergence would not lead to different outcomes in different parts of the United Kingdom.

The noble Baroness, Lady Bowles, took us back to our discussion earlier this week on the internal market Bill, asking whether this would have any implications for IP. This is a reserved area of policy that applies UK-wide, so the internal market Bill is not expected to have a significant effect where the market access principles set out in the Bill apply to goods and services.

The noble Baroness, Lady Bowles, asked whether SPCs will restrict the trade of medicines and agrochemicals within Northern Ireland and Great Britain. We expect that the majority of SPC applicants will want marketing authorisation across the UK for their innovative goods, so most SPCs in the future will take effect across the whole of the UK, as they do now. Although small numbers of SPCs may provide protection in only part of the UK, the right itself will not introduce a barrier to the movement of goods. Marketing authorisations will be needed to put medicines or agrochemicals on the Great Britain and Northern Ireland markets. The SPC changes simply reflect the marketing authorisations which exist for Great Britain and Northern Ireland.

The noble Baronesses, Lady Wheatcroft and Lady Bowles, asked why the SPC is not enforceable in the whole of the UK. It is because it is not right to give an enforceable right if the medicine has not been authorised; that is how the bargain of the SPC system currently works.

Finally, the noble Lord, Lord Stevenson, asked about the regulatory system and the effect of the Northern Ireland protocol. The very final version will be available in the Library, as I said earlier, and we shall make sure that he receives a copy for his bedtime reading. I hope that he will enjoy benefiting from discussing that in the future.

To remain world leading on IP we must be at the forefront of understanding how advances in technology affect the IP framework—whether that is personalised medicines, artificial intelligence, efforts to achieve net zero or something as yet unknown and still over the horizon. We must continue to lead on international discussions on these issues and more, so that the global IP system works effectively for British businesses.

With that, I think I have answered all the queries that were put to me, so I commend these regulations to the House.

Motion agreed.

Product Safety and Metrology etc. (Amendment etc.) (UK (NI) Indication) (EU Exit) Regulations 2020

Motion to Approve

2.03 pm

Moved by ***Lord Callanan***

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

Relevant document: 32nd Report from the Secondary Legislation Scrutiny Committee (special attention drawn to the instrument)

The Parliamentary Under-Secretary of State, Department for Business, Energy and Industrial Strategy (Lord Callanan) (Con): My Lords, this SI is one of a series of SIs that amend the previously laid 2019 regulations. Those original regulations, the Product Safety and Metrology etc. (Amendment etc.) (EU Exit) Regulations 2019, were drafted in the event that a deal was not agreed and will need to be amended before coming into force at the end of the transition period.

The SI we are debating today is needed to take account of the withdrawal agreement, in particular the requirements of the Northern Ireland protocol. This amending instrument—the sixth in the series—will do a number of things to complete the picture on how goods from the EU and from Northern Ireland will be treated on the market in Great Britain and provide businesses with certainty about these arrangements.

The aim of the original product safety and metrology EU exit regulations 2019 was to bring the existing EU system of essential requirements, standards and conformity assessment into our domestic law. It made some changes that are needed by virtue of the UK leaving the EU—regardless of any deal—while retaining the fundamental elements of the product safety and metrology regulatory regime.

As I am sure noble Lords will recognise, the UK product safety and legal metrology system is among the strongest in the world. Alongside the original EU exit regulation, which left that framework largely unchanged, this amending SI will ensure that we continue to have a robust product safety framework in place to prevent unsafe and non-compliant products, whether that is toys, cosmetics, lifts or machinery, entering the UK market. Specifically, this SI will allow for continued acceptance of CE-marked goods into the market of Great Britain for 12 months, before making the new UKCA mark mandatory from January 2022. It will introduce a number of transitional arrangements to help minimise costs to economic operators and give them time to prepare. It will provide for unfettered access for Northern Ireland to the rest of the United Kingdom, and introduce and implement the UKNI marking for certain goods on the Northern Ireland market.

By making these amendments, this SI will ensure that the UK is able to provide continued robust protection to UK consumers, giving confidence that only safe and compliant products can be placed on the market, maintaining a robust product safety and legal metrology framework from the end of the transition period. There will, of course, be interest in what the new UK regulatory regime will look like going forward. This SI does not set out what that future regime will look like; it sets out the building blocks that will be a matter for future consultation and future legislation. On this matter, I will simply say that the Government are committed to ensuring that consumers are protected from unsafe products and we will look to deliver a future product safety regime that is simple, flexible and fit for the opportunities ahead of us.

What does this SI do? It does a number of things to complete the picture of how goods from the EU and from Northern Ireland will be treated on the market in Great Britain, as follows. It provides greater legal certainty about the date by which companies need to comply with new regulatory requirements for the market in Great Britain, specifying that the new UKCA marking will become mandatory from the start of 2022. It amends domestic legislation to take account of the withdrawal agreement, implementing the Northern Ireland protocol with respect to product safety and legal metrology. On the protocol, this SI provides for unfettered access to the rest of the United Kingdom market for qualifying Northern Ireland goods, subject to product safety and metrology legislation.

This SI will introduce and implement the UKNI marking, which will accompany the CE marking for certain goods when placed on the market in Northern Ireland. This includes the introduction of an appropriate set of sanctions should the UKNI marking be missing or misused, in line with the penalties that apply when other product safety rules are broken. I shall address each of these areas in more detail, starting with the GB regulatory arrangements.

In respect of amending domestic legislation, this SI will ensure that provisions in previous EU exit legislation are updated to reflect the Government's approach to phasing in new GB regulatory requirements. The previous product safety EU exit SI introduced a domestic regulatory regime, with the UKCA marking replacing EU conformity markings, including the CE marking, alongside a system of UK approved bodies to replace EU notified bodies. That system will come into force at the end of the transition period. This original SI also set out that goods meeting the EU's requirements, including the CE marking, could still be accepted in Great Britain, in order to give businesses time to prepare. However, the original SI did not put a specific end date on how long the CE and other conformity markings could continue to be accepted. Now that we have greater certainty, due to the withdrawal agreement and the end date for the transition period, this amending SI now introduces a 12-month end point for goods in scope of this instrument.

We now have a clear date for independently approving goods for sale in our market, rather than relying on the EU. We believe that this will give businesses clarity on when they should be ready for the new regime. However, we do appreciate that business will still need time to prepare, so we have also gone further than the original SI by increasing the number of easements for businesses. This includes offering the option to affix the UKCA marking on to products using labels, or on accompanying documentation, rather than on to each individual product. This will be allowed from the end of the transition period for 24 months and will help to reduce costs to businesses for retrospectively changing their marking and labelling mid-production. It will also allow new UK importers of products into Great Britain—those from the EEA and Switzerland—to place their contact details on accompanying documents, again for a period of 24 months from the end of the transition period—which is an increase on the 18 months' timeframe established in the original SI. This measure will give businesses more time to implement the labelling requirements for the GB regime, again saving them time and money.

This SI will also ensure that all GB authorised representatives must be based in the United Kingdom from the end of the transition period, helping to ensure that any legal entity that has been authorised to act on behalf of the manufacturer can be held accountable here in the UK.

Turning to the issue of unfettered access, the Government committed to legislating by 1 January 2021 to guarantee unfettered access for qualifying Northern Ireland goods to the rest of the United Kingdom market. That commitment is intended to be delivered through both primary and secondary legislation, with the Government having already laid a draft affirmative SI to define qualifying Northern Ireland goods. This SI references that definition in order to implement unfettered access provisions with respect to product safety and legal metrology. The changes made by this SI will be interdependent with other required

[Lord Callanan]
protocol work—for example, to establish a Northern Ireland-facing product safety and legal metrology system. This SI must be in place to ensure all aspects work coherently from day one.

Finally, I turn to the UKNI marking, which noble Lords will find as an illustration in Schedule 1 to the instrument. This SI makes provisions in respect of two aspects of the UKNI marking: its introduction and the implementation of the product marking requirements in respect of the Northern Ireland protocol. It sets out the design of the marking and implements the approach to sanctions should the marking be missing or misused.

The UKNI marking will be used alongside the CE marking to indicate that a UK-based conformity assessment body has undertaken third-party testing against EU requirements and approved it for placing on the Northern Ireland market. This will also mean that such products cannot be put on the market in the EU. This is a vital part of the operation of the protocol. Not proceeding with this legislation would mean not fully implementing the protocol, causing businesses uncertainty about the UKNI marking and what exactly they must do to comply after the end of the transition period.

In conclusion, this SI will retain a regulatory framework that business is familiar with, alongside delivering important updated elements of the product safety and legal metrology regime in both Great Britain and Northern Ireland to implement the requirements in the withdrawal agreement of the Northern Ireland protocol. I can reassure noble Lords that we have engaged with Northern Ireland colleagues on the changes this SI makes and ensured that they have been kept fully informed of its progress. It ensures that provisions in previous EU exit legislation are updated to reflect this Government's approach to allowing goods in the scope of this SI to continue to be accepted on to the Great Britain market, having followed EU rules for 12 months after the end of the transition period, and it forms part of the legislation to deliver unfettered access for qualifying Northern Ireland goods to the rest of the UK market.

The safety of individuals, families and communities is a top priority for the Government. As I am sure noble Lords will recognise, it is essential that the UK continue to have a robust product safety framework in place to protect consumers and prevent unsafe and non-compliant products entering the UK market. I therefore commend these regulations to the House.

2.13 pm

Lord Foulkes of Cumnock (Lab Co-op) [V]: My Lords, I thank the Minister for his introduction and the very helpful letter and factsheet he sent us yesterday. However, I must say I found the Explanatory Memorandum to this SI even more interesting—and much more revealing. The obtuse title of the SI hides a lot of important issues, but in the limited time available I will confine myself to a few questions to the Minister.

As he said, we have already agreed four Sis, in 2018 and 2019, on this subject in preparation for a no-deal exit from the EU, which could now come into force on 31 December. As I understand it, we have six SIs to amend those because of the withdrawal agreement: four already laid and two more still to come. We do not know yet if there will be a deal or no deal, so can the Minister explain how we will deal with these SIs if there is a deal, and if there is no deal?

This instrument deals with a wide variety of important matters, as the Minister said, including noise emissions by outdoor equipment, aerosol dispensers, toy safety, lifts, recreational craft—including motorboats—gas appliances, and PPE, yet there was no formal consultation on this. Why not? This instrument also covers the important issue of firework safety and the designation of an approved body for pyrotechnics. Interestingly, maybe astonishingly, it allows for it to be based in any country—the UK, in the EU or in the rest of the world, presumably including China. Can the Minister explain why the present arrangement is not acceptable?

The regulations also provide for unlimited fines for the misuse of what are complicated product safety rules, but the Government say they will be used rarely. How can they make such a prediction?

This is just one of hundreds of such SIs from this and other departments taking up the valuable time of capable officials, which could be better spent elsewhere. And it is all because of the chaos and confusion arising from a bungled and unnecessary exit from the European Union market—a market that was working well.

2.16 pm

Lord Dodds of Duncairn (DUP) [V]: My Lords, these measures are, like others we have dealt with in recent weeks, designed to implement the Northern Ireland protocol as well as the other objectives that the Minister set out this afternoon.

Noble Lords will know how many in Northern Ireland feel about the protocol, which was implemented and imposed on the people, businesses and communities here without any consent being forthcoming from Northern Ireland and without even the need for it to be voted on in the Assembly by our elected representatives. In the limited time that I have, I will not go into all the major issues, big and small, that that creates. I seek assurance from the Minister this afternoon that qualifying Northern Ireland goods can be sold in the rest of the United Kingdom without the need for checks and controls, in line with the commitment to unfettered access, that there will be no regulatory discrimination, and that it will be on the basis of the mutual recognition of regulatory standards. Can the Minister assure the House that that will continue to apply in the future, whatever the EU requirements or the requirements set by Her Majesty's Government for the rest of the UK may be?

I also seek reassurance on the matter highlighted in the Secondary Legislation Scrutiny Committee's report about conformity assessments carried out in Great Britain. Can we be assured that assessments, registrations, certificates and approvals issued or carried out by the competent authority of the United Kingdom will be valid in Northern Ireland? It would be unacceptable for that not to be the case. It is clearly in line with the provisions of the protocol.

On costs, we are told that over 100,000 businesses need to familiarise themselves with these new requirements. Tens of thousands of retailers, wholesalers and manufacturers are affected. What is the impact of the measures being taken to implement the protocol, and what is the financial impact on businesses and manufacturers in Northern Ireland? Who will bear these costs going forward? Surely the Government must ensure that both the starting and ongoing costs are met by government. There cannot be an extra cost on business.

With time running out before the end of the transition period, Northern Ireland businesses need certainty and confidence. How confident is the Minister that all necessary systems and arrangements will be in place and ready to operate smoothly for Northern Ireland businesses come 1 January 2021?

2.19 pm

Lord Moylan (Con): My Lords, good design and branding have been at the heart of commercial success at least since the Great Exhibition. For example, in 1913, Frank Pick, the legendary managing director of what became the London Underground, commissioned Edward Johnston to produce a typeface for that railway. That typeface is still in use to this day. It is a London icon—clean, simple, modern—and was the exclusive property of TfL until the copyright expired in 2015. It is used on signs, letterheads, the Tube map and everywhere you look.

If noble Lords turn to the sample of the form of the UKNI logo to be imposed on Northern Ireland businesses from the end of this year, they will find that it fails to meet that standard by a long way. To my mind, it is ugly, blockish and typographically illiterate, with its mixture of serif and san-serif letters, designed almost to hamper, rather than promote, the export of Northern Ireland goods and products. My question to my noble friend the Minister is who designed it. Did he have a hand in it himself, or was it produced by a committee? Was public money paid for it and, if so, can we get our money back? Is there anything that can be done, even at this late stage, to improve it?

My second question is more constitutional. Who is making this law? I understand, at a simple level, that this Parliament is clearly making this regulation, because it is in front of us for that purpose. But let us say that, a few months or some time down the road, the democratic leaders in Northern Ireland join together—as I am predicting they might—to say that this logo is not doing the job of marketing and branding, and they would like it changed. To whom would they write? Would it be to the UK Government, so that we could make that decision unfettered? Would they have to write to this strange and unaccountable joint committee that now appears to set many of the rules for the Northern Ireland protocol? Would they be reduced, as leaders in Northern Ireland—the DUP and Sinn Féin—were only a couple of weeks ago, to writing a begging letter to Brussels, in that case to ask if their supermarkets could still be supplied on the customary basis?

Given that Northern Ireland is the only part of Europe that I can think of that is, at the moment, being actively de-democratised, noble Lords would like to know the answers to those questions and have some assurance from my noble friend.

2.22 pm

Lord Empey (UUP) [V]: The noble Lord, Lord Moylan, made some interesting points at the end of his contribution. The Minister, during his introduction, referred to the UK being a sovereign independent nation once again. However, how can someone from Northern Ireland feel part of that sovereign independent nation when, for several weeks and months in this House, we have been passing secondary legislation that distinguishes us from the rest of the United Kingdom? We are talking today about marks, and the noble Lord, Lord Moylan, makes valid points, but the fact that they are there illustrates the differences that have been created between different parts of the United Kingdom.

As is common to a number of these SIs, the impact assessment refers to how

"relevant EU legislation will continue to apply to Northern Ireland by virtue of the Protocol."

It is as if the protocol is some kind of wonderful achievement. As far as I am concerned, it is a dagger pointed at the heart of the union, and the fact that we are having these discussions and making these differences illustrates that.

We are now going to have to pile more work and burdens on to our businesses and manufacturers. We are creating a situation where you can run the CE label with the other label for a year. What happens if, over time, differences in standards emerge? Whose standards will prevail? Will it be the Brussels or the UK standard? What will happen if a product made in Northern Ireland falls foul of the regulations that apply in Great Britain? There are no answers to these questions.

The Government have consistently refused to accept the fact that what they have done with the protocol is to turn Northern Ireland into virtually an overseas territory of the European Union with its own set of discrete pieces of legislation. The regulatory regime is to be left in the hands of Brussels. We are still subject to state aid rules where Great Britain will not be, and we have a huge pile of problems that will arise in the next few weeks whereby every tin of baked beans that comes into Northern Ireland will have to be notified to the authorities in advance and be subject to inspection. How under these circumstances, can the Minister maintain that we are in any sense on an equal footing with our colleagues in the rest of the United Kingdom?

2.26 pm

Lord Lilley (Con): It is a great privilege to follow the noble Lord, Lord Empey, and I follow him in the spirit of the issues he has raised. Can the Minister explain how certification and labelling will affect trade between Great Britain and Northern Ireland? Let us suppose that a supermarket sources foods within Great Britain for distribution throughout the United Kingdom, including to its stores in Northern Ireland. Surely it would be onerous, if not impossible, for the supermarket and its suppliers to have two varieties of goods, one labelled "UK CA" and the other "CE". Who will enforce the labelling requirement on goods from Great Britain going to Northern Ireland and where will that be enforced? If it is not going to be enforced at the ports of Great Britain and Northern Ireland—and we

[Lord Lilley]
have had assurances that it will not be—it must be enforced within Northern Ireland, presumably by trading officers, in practice, when goods are brought to their attention either by a retailer or a customer. If that is possible, why cannot Northern Ireland have the same labelling requirements as us and any enforcement on goods that filter over the border to Ireland be enforced within Ireland by its trading officers, having had the goods brought to their attention by their customers and retailers without any border controls? I simply do not understand why we have got ourselves into this invidious position.

Finally, since my time is running out, I ask my noble friend to imagine what would be the situation in the United States if Alaska had to adopt Canadian rules because tribes crossing the border insisted on that, so that any goods moving from the 48 states to Alaska would have to go through a different regulatory process. Likewise, what would happen in France if goods coming from the Hexagon had to have different rules and regulations on labelling from those in Corsica, or in Italy, if goods sold legally on the mainland could not be sold in Sicily? None of them would accept that. Are British Ministers making these points in the Joint Committee and elsewhere to our partners in Europe, and in Congress to Speaker Pelosi?

2.28 pm

Baroness Ritchie of Downpatrick (Non-Afl) [V]: My Lords, I thank the Minister for his explanation of these complex regulations and for the factsheet that we received yesterday. However, I still have certain questions for him. Like the noble Lord, Lord Foulkes, I agree that all of this would not be happening if we did not have to leave the European Union. But, sadly, that is taking place and, although I always will be a remainer, I will have to accept that.

Notwithstanding that, I have certain questions for the Minister. Where does the conformity marking take place for goods manufactured in Britain to be sold in Northern Ireland and vice versa? What compensation arrangements are in place to facilitate the delays that could take place in supplying goods because of the specialised marking indicators required, notwithstanding that there is a year's grace period?

The Lords Secondary Legislation Scrutiny Committee, as the noble Lord, Lord Dodds of Duncairn, referred to, has pointed out the disagreements between the EU and the UK on whether accredited bodies in the rest of the UK will be able to provide conformity assessments for goods sold in Northern Ireland. The EU says that the UK will not be able to do that, but the UK asserts article 7.3 of the protocol, which indicates that it is allowed to. Will the Minister provide the House with an update on the discussions and negotiations on that matter? Can the Minister further provide an update on the sanctions regime for the misuse of the UK/Northern Ireland conformity marks?

This is going to place a considerable financial burden on Northern Ireland businesses, which are already impacted on by the costs not only of Brexit but of Covid. Will the UK Government provide the Northern Ireland Executive with the funding to deal with the costs of implementing the regulations? It has been suggested that between 10,000 and 17,000 UK manufacturers and up to 135,000 UK wholesalers and retailers will be impacted. That is a massive cost to businesses.

Lastly, has there been any update from the negotiations on the food supplier issues around prohibited and allowed goods? The noble Lord, Lord Moylan, referred to the letter from the First and Deputy First Ministers relating to the issue of goods coming into Northern Ireland. I would appreciate updates from the Minister on these issues.

2.32 pm

Baroness McIntosh of Pickering (Con) [V]: I am delighted to follow the noble Baroness, and I would like to build on her arguments. I thank my noble friend for introducing the instrument today and for the fact sheet sent with his letter. He has argued that this instrument is necessary for greater clarity, but I regret that the main thrust of this debate is that that is certainly not the case.

The noble Baroness, Lady Ritchie of Downpatrick, and the noble Lord, Lord Dodds, have highlighted the disagreement that exists between the UK Government and the EU. What is the legal position on this? How will that disagreement be resolved? Does it have to be resolved by 1 January?

The noble Lord, Lord Foulkes, referred to the fact that there has been no formal consultation. Why has a decision been taken on principle not to have one? I am grateful, as I am sure are others, for the note from the Library and for the 32nd report from the Secondary Legislation Scrutiny Committee, which looked at these issues and highlighted them in their report.

The noble Baroness, Lady Ritchie of Downpatrick, noted the numbers of those affected, which are staggering. The estimated cost to businesses over a 10-year period is in the region of £25.7 million for conformity marking, £3.7 million for conformity assessment and £6.6 million for familiarisation, leading to a total over the period of £36 million—a not inconsiderable sum. Can my noble friend explain why the impact assessment was not made available at the time of the scrutiny by the Secondary Legislation Scrutiny Committee? Is it available for us to look at now? I am sure it would be of great interest to the businesses affected.

I further reinforce the point made by the noble Baroness, Lady Ritchie of Downpatrick, about what the impact will be on agrifoods as of 1 January, both under this particular instrument and more broadly. What discussion has there been between the Minister's department not just with the agrifood industry but with the road haulage owners and operators, who I know are deeply concerned? I understand that my noble friend Lord Agnew has met the English equivalents, but has anyone actually had the courtesy to meet the Northern Ireland road hauliers?

2.35 pm

Baroness Bennett of Manor Castle (GP) [V]: My Lords, I am delighted to follow the informative and detailed speeches of the noble Baronesses, Lady McIntosh and Lady Ritchie. I spent some time today seeking to understand the way businesses have to take a step up

in the supply chain due to Brexit product safety rules and how the complications for businesses based in Northern Ireland and exporting to Northern Ireland and Ireland play out. I think I have a handle on it now, although it is very hard to be sure. As the noble Baroness, Lady Ritchie of Downpatrick, pointed out, there are hundreds and thousands of businesses around the United Kingdom now seeking to make the same leap and to achieve the same understanding. As the noble Lord, Lord Foulkes, pointed out, they still cannot know, with 34 days still to go, what rules will apply.

To be specific, I was looking at cosmetics and thinking about some small specialist businesses I know that make high-value organic cosmetic products, often sold online and at a small scale—a popular and fast-growing market. The difficulties that these businesses and many others face were acknowledged by the Minister, who noted that the time for compliance in the UK has been extended from earlier plans, but I will ask him about the challenges they will face from 31 January. If they are exporting to the EU—and I assume to Northern Ireland; perhaps the Minister can confirm this—as well as having a registered responsible person in the UK, which is a legal entity that must hold the product information file and whose name and address must be listed on the product packaging, they have to locate an appropriate registered person in the EU and ensure that labels have been updated for products placed on the market in the EU from 1 January. For the cosmetic product notification portal, products will have to be registered in the UK and in the EU—a transfer that has been made by 31 December or started again from scratch.

This stepping up procedure legally means that businesses are more susceptible to investigation by enforcement bodies, and criminal prosecution and liability, in relation to these goods. A risk of civil liability can be passed on through contracts, but criminal liability cannot. From reading up on this, I discovered that enforcement action can lead to customs delays, product seizure, stop notices and enforced product recalls. I think of the lorry queues we recently saw at Dover when the French enforcement procedures were being tested, and I worry.

Mostly in this context I am worried about small businesses. Is the Minister confident that they are ready? Have they received sufficient support? Will they get help with the surely inevitable tangles from 1 January? This applies across the UK, but it is particularly acute in Northern Ireland and for those seeking to sell to Northern Ireland. Looking to the future, as the noble Lord, Lord Moylan, pointed out, regulations will likely diverge further. Will there be support for small businesses, particularly those in and exporting to Northern Ireland, to assist them in navigating through the maze?

2.38 pm

Lord Chidgey (LD) [V]: My Lords, I am sorry for this confusion; it is not my doing. I will give my contribution now.

I thank the Minister for his explanatory remarks and his letter concerning product safety when the UK leaves the EU. I note that the statutory instrument before Parliament makes amendments to the product safety regulations 2019, but they have yet to come into force. They will implement the Northern Ireland protocol and the withdrawal agreement, and correct deficiencies caused by the UK's withdrawal from the EU. All this is in the interests of ensuring that an effective product safety regime continues in the UK, in that it removes unsafe or non-compliant products from the market. This is of course very laudable, providing protection to the public from the unscrupulous and giving certainty to consumers.

To illustrate the point, will the Minister offer some examples of products that are currently deemed safe under the EU CE mark but could be deemed unsafe in future without the corresponding UKCA or UK(NI) mark? In a similar vein, could he provide examples of deficiencies that might need to be corrected in goods and products that might be traded between the UK and the EU, between Northern Ireland and other parts of the UK, or between Northern Ireland and the Republic of Ireland?

The factsheet that accompanied the Minister's letter makes it clear that the department has not undertaken a public consultation on this instrument for the reasons given. Unfortunately, errors or omissions in the same paragraph obscure its sense. On the subject of insensitivities, the instrument regularly refers to the United Kingdom and Northern Ireland while reducing the description of the Republic of Ireland to the diminutive "Ireland". The factsheet estimates that more than 100,000 businesses may need to familiarise themselves with these changes; around 85,000 are UK retailers/wholesalers, notified bodies and local authorities. Will the Minister say how those figures were arrived at and what are the estimated costs of their introduction and subsequent policing?

2.40 pm

Baroness Bakewell of Hardington Mandeville (LD) [V]: My Lords, I am grateful to the Minister for his helpful letter and factsheet and for his introduction to this SI. It is extremely important that Great Britain and Northern Ireland should be able to operate effectively and safely after 31 December on a wide range of important aspects of life which residents take for granted.

During my time on Somerset County Council, I often went up to the scientific services laboratory on the third floor to look at some of the work being done there. It was very wide-ranging, from seizing unsafe toys to ensuring that weights and measures were accurate. If a consumer is buying 1 kilogram of potatoes they need to be sure that the instrument weighing the kilogram is accurate and is not weighing out 900 grams and calling it 1 kilogram. There are much more serious breaches of this legislation that can have disastrous consequences. I note that the UK does not currently have an approved body for pyrotechnic articles, so approval will be done in other countries. In the past, substandard fireworks have been imported and have had to be withdrawn at short notice due to safety issues. Can the Minister say whether there are plans to have an approved body for pyrotechnics based in this country in future?

[Baroness Bakewell of Hardington Mandeville]

The list of bodies in paragraph 2.14 of the Explanatory Memorandum is extensive and extremely varied. At this time of year, our thoughts not unnaturally turn to the safety of the toys and gadgets which appear on the lists of hopeful children. With the lockdown and the closure of the stores where parents and grandparents might normally inspect and buy their children's presents, many of them are relying on buying online and by mail order. It is essential that the Government ensure that the law protects them through this SI. A package arriving via a van or the mail can often be very disappointing once it is unwrapped and not exactly what was viewed online.

The Government have estimated that more than 100,000 businesses will need to familiarise themselves with the changeover and recognise and use the new marking systems. At paragraph 12.1 the Explanatory Memorandum states:

"The analysis developed to inform this instrument demonstrated that there are limited/negligible additional costs to business associated with the specific provisions made in this instrument."

Unfortunately, this is inaccurate. The Secondary Legislation Scrutiny Committee investigated this issue and obtained a copy of the assessment from the Government. As the noble Baroness, Lady McIntosh of Pickering, has already said, it found that between 10,000 and 17,000 UK manufacturers and up to 135,000 UK wholesalers and retailers will be impacted, with an estimated cost to business over a 10-year period of £25.7 million for conformity marking, £3.7 million for conformity assessment and £6.6 million for familiarisation—a total of around £36 million. This is a significant amount for a number of businesses. Can the Minister confirm that these costs are accurate?

I turn to the Northern Ireland protocol, which the noble Lords, Lord Empey and Lord Lilley, and the noble Baroness, Lady Ritchie, have spoken about eloquently. It requires that, if a product is for sale in Northern Ireland, it will need to be tested in a UK conformity centre. New regulations introduced new UKNI conformity marking, which allows products to be sold in Northern Ireland when they have been tested by an accredited body in Great Britain.

A product may bear both the UKNI and CE marks if it has been tested in both Great Britain and the EU, allowing the product to be sold in Northern Ireland and the rest of the EU. The Secondary Legislation Scrutiny Committee noted that this could give rise to a disagreement between the UK Government and the EU on whether accredited bodies in the rest of the UK will be able to provide conformity assessment for goods sold in Northern Ireland. The EU stated that they will not; the Government disagree with the EU view—the noble Lord, Lord Empey, referred to this. Can the Minister please provide clarification on this complex issue?

Paragraph 7.19 of the Explanatory Memorandum states:

"In some situations, regulators need to know about the composition of products before they are placed on the market. Businesses placing qualifying NI cosmetic products on the GB market will need to notify regulators about the contents of those products, in the same way that they inform EU regulators."

Can the Minister say whether the regulators will be checking for plastic microbeads in wash-off cosmetic products?

I note that there was no formal consultation, as the noble Lord, Lord Foulkes of Cumnock, and others have indicated. However, there was a series of informal engagements, with discussion around lead-in times given to allow businesses to adapt to the new regulations. It is extremely important to allow business to adapt. The Minister's helpful factsheet states that the transitional arrangements allow for the UKCA marking to be used until 31 December 2022 and also allow new importers to set out their details until 2022. I fully support this SI and all its provisions and welcome the extension of the transition period to allow for full compliance by GB and Northern Ireland companies.

2.47 pm

Lord Bassam of Brighton (Lab) [V]: My Lords, I join others in thanking the Minister for his explanatory notes, memoranda and letter, trying to bring some clarity to a very complicated situation. I am also grateful to all my colleagues in the House who have spoken because they have all drawn out important issues: my noble friend Lord Foulkes was particularly forceful on consultation. I also understand the feelings of our colleagues in Northern Ireland. I am grateful to the noble Lord, Lord Empey, and the noble Baroness, Lady Ritchie of Downpatrick, for the force of their argument, and to the noble Baronesses, Lady McIntosh and Lady Bennett, for their points, which looked at some of the complexities that small businesses will face. We all found the intervention of the noble Lord, Lord Moylan, extremely entertaining, with his digression on fonts and typefaces.

The Government have said that this instrument has two main purposes: first, to amend earlier product safety and metrology instruments to ensure that the Northern Ireland protocol is implemented; and, secondly, to correct

"deficiencies arising out of the United Kingdom's withdrawal from the European Union."

We all remember the related instrument from last year, which was described at the time as a "beast of an SI" in the press. It was 636 pages long and weighed in at 2.5 kilograms. We are grateful that this SI is not as long, though it provides businesses with more of an understanding of what will happen after the transition period ends in just over a month's time. That the "oven-ready" deal is not yet to be seen makes things more difficult.

In the UK, we need a meaningful regulatory framework for product safety and legal metrology, including the ability to amend our own regulations in the future in the interests of UK businesses and consumers. Therefore, these changes provide some clarity, which is welcome, but it is important to ensure that unsafe and non-compliant products can continue to be removed from the market. That will provide businesses and consumers with reassurance about the safety and accuracy of products.

Following our departure from the EU, the UK will no longer be able to use the CE mark to identify safe products. As has been explained, that has been replaced in the UK by the new conformity assessed marking,

the UKCA. These regulations will end the automatic acceptance of products that comply with the EU product safety and metrology legislation at the end of 2021, except in Northern Ireland. How was the period of 12 months decided on, and how will this be communicated effectively to businesses?

In terms of Northern Ireland, the regulations introduce a new UK(NI) indication. The Government have explained that, under the new arrangements, if a business wants to place a product on the NI market it will need to manufacture that product to EU requirements and apply a CE or other relevant conformity marking. If that product requires a third-party conformity assessment under the relevant EU legislation, and if a UK notified body is used to do that, both the UK(NI) indication and the CE marking, or any other relevant conformity marking, will need to be applied. That does not sound simpler to me. How many products does the Minister expect will need a UK(NI) indication and a CE marking? Does he think that this will cause more additional costs for Northern Ireland businesses in comparison to Great Britain businesses?

The Secondary Legislation Scrutiny Committee has been very concerned about the Government's transparency on the cost to businesses. It said:

"Given the significant number of businesses that will be affected by the changes … We are disappointed that the"

impact

"Assessment was not ready when the instrument was laid before Parliament."

That has to be of concern. The Government now estimate that between 10,000 and 17,000 UK manufacturers, and up to 135,000 UK wholesalers and retailers, will be impacted by the instrument's implementation. The noble Baroness, Lady Bakewell, gave some useful figures about the costs of conformity. Without wishing to repeat them, they underline how businesses will be impacted, not least by the familiarisation process. The assessment warns that those costs will be passed on to UK consumers and businesses through increased prices or reduced product availability, and I wonder what specific impact that will have on Northern Ireland businesses.

The big question is: how will the Government support business with these costs? This has been a terrible year for businesses with Covid-19, and we need to make sure that they have all the necessary support to power the recovery next year. Surprise product marking costs will add only extra pressure and burdens. We support these regulations but questions of cost and the way in which the conformity regime will work out need to be answered.

2.53 pm

Lord Callanan (Con): My Lords, I thank all noble Lords for their valuable contributions to this debate on what is a complicated issue, as a number of noble Lords have accepted. I have set out today the importance of this SI for completing the picture on how goods from the EU and from Northern Ireland will be treated on the market in Great Britain. This will provide businesses with certainty about the arrangements in place at the end of the transition period, and easements to give them some more time to prepare. It will do so in the following ways.

It will allow for the continued acceptance of CE marked goods in the scope of this SI on the market of Great Britain for 12 months after the transition period, before making the new UKCA mark mandatory from January 2022. It will introduce transitional arrangements to help minimise costs to economic operators arising from any uncertainty and give them time to prepare by clarifying the obligations they are required to comply with at the end of the transition period. It will provide unfettered access for Northern Ireland to the rest of the UK, which means no new regulatory checks or additional approvals for Northern Ireland businesses to place qualifying Northern Ireland goods on the Great Britain market. It will also, by setting out the rules in relation to the UK(NI) marking, provide clarity for businesses wishing to supply products to the Northern Ireland market that use UK-based conformity assessment bodies.

Along with the business easements that this SI introduces, a number of other steps have been taken to help businesses get ready for the end of the transition period. These include the rollout of an ambitious series of events, including sector-specific webinars and business adviser training sessions, giving the most up-to-date information on general readiness actions to be taken. The Office for Product Safety & Standards has also published a suite of sector guides, explaining product by product the changes made and how businesses need to comply.

In supporting this SI, we will ensure that the UK is able to continue to provide robust protection to consumers, ensuring that only safe and compliant products can be placed on the market. Without it, we risk disruption and confusion for businesses and enforcement authorities.

Turning to some of the specific questions that were raised, I can reassure my noble friend Lord Moylan that I was not involved in the design of the UKNI logo—which is probably to everybody's benefit. However, it is intended to be easy to print and to read, and I can assure my noble friend that we discussed the design extensively with a range of manufacturers to ensure that they can apply it if they need to. It was delivered in close consultation with businesses, which rejected a number of alternative options that were put to them.

I can assure my noble friend Lady McIntosh, the noble Baroness, Lady Bakewell, and the noble Lord, Lord Foulkes, that we have engaged extensively with businesses on these regulations. We held informal discussions with over 4,000 businesses, including manufacturers, trade associations and industry representatives, by means of a series of structured interviews.

A number of noble Lords, including the noble Lords, Lord Dodds and Lord Empey, raised the issue of the Northern Ireland protocol and unfettered access. This instrument deals with unfettered access arrangements for certain manufactured goods such as toys and gas appliances. Together with other statutory instruments, as well as the UK Internal Market Bill, this instrument will guarantee unfettered access for qualifying Northern Ireland goods to the rest of the UK market. Highly regulated goods, including cosmetics, which can pose a more serious risk to consumers and the environment, will be subject to some minor transparency requirements

[Lord Callanan]
that ensure that the GB regulator has the necessary information to protect UK consumers and the environment.

The noble Baroness, Lady Ritchie, and the noble Lord, Lord Dodds, also raised the issue of whether products tested in Great Britain can be sold in Northern Ireland. The UK Government are clear that, as set out in the text of the protocol, Article 7 allows for assessments, registrations, certificates, approvals and authorisations issued or carried out by the competent authorities in the United Kingdom or by bodies established in the United Kingdom to be valid in Northern Ireland. The EU's technical notice on industrial goods states that only bodies in Northern Ireland carry out this activity. Let us be clear that we do not agree with this interpretation.

My noble friends Lord Lilley and Lady McIntosh, and the noble Baroness, Lady Bakewell, raised the issue of recognition. Obviously, the final free trade agreement is not yet agreed, but we have proposed a comprehensive mutual recognition agreement with the EU to recognise each other's conformity assessment test results, which would mean that UK testing houses could test against EU rules and affix the relevant CE mark, although this is still a matter for negotiation. However, as I said, the UK Government are clear that, as set out in the text of the protocol, Article 7 allows for assessments, registrations, certificates, approvals and authorisations issued or carried out by the competent authorities of the UK or by bodies established in the UK to be valid in Northern Ireland.

The noble Lord, Lord Foulkes, showed a worrying interest in the subject of pyrotechnics, which should be extremely alarming for those of us on the Government Front Bench. I can tell him that we have allowed approved bodies on pyrotechnics to be based outside the UK from 1 January 2021 because, as the noble Baroness, Lady Bakewell, pointed out, currently there is no UK-approved body in the UK. It should be noted that any approved body requirements need to be approved by the Secretary of State.

My noble friend Lady McIntosh addressed the impact assessment. I can tell her that the withdrawal agreement Act sets out an impact assessment on the provisions governing the UK's exit from the EU, including the terms of the Northern Ireland protocol. This SI is the detailed implementation of that policy, which has already been assessed by that impact assessment, so no new burdens need to be assessed.

In response to the question from the noble Baroness, Lady Ritchie, about UKNI indication and misuse penalties, the UK has high levels of product safety to protect the public from potentially dangerous products. When our market surveillance authorities find that a business has misused a product conformity marking, such as the UKNI, our starting position will be to help businesses to understand and comply with the rules, unless it is a particularly serious breach of product safety. There will usually be a period of time for the business to correct the non-compliance before we take any action.

The noble Baronesses, Lady Bennett and Lady McIntosh, raised the subject of business readiness. Further guidance has since been published and more than 3,000 people have attended government webinars to help them to get ready for the end of the transition period, with 86% of those polled saying that they would take action to prepare their business as a direct result of these sessions. A second phase of webinars is running throughout November and December, covering key issues that could affect businesses in multiple sectors, including personal data and regulations on manufactured goods.

Coming back to the impact assessment, we have assessed the changes related to setting out the time limits to end recognition of the CE mark as below the de minimis threshold of £5 million per annum; an impact assessment is therefore not required, according to the Government's better regulation framework. I say that to the noble Baroness, Lady McIntosh, and the noble Lord, Lord Bassam.

The noble Lord, Lord Empey, raised the subject of unfettered access if standards diverge between Great Britain and Northern Ireland. Under unfettered access qualifying, Northern Ireland goods can be placed on the Great Britain market without the need for further approvals. This means that goods that are valid on the Northern Ireland market will be valid on the market in the rest of the UK. We have been clear that unfettered access will not cover goods travelling directly from Ireland or the rest of the EU being imported into Great Britain. Northern Ireland businesses will need to label goods that are placed on the market in the rest of the UK with their own contact details, in common with UK businesses placing goods from outside the UK on the GB market.

I am running out of time. I have a number of other queries to respond to so I will be happy to write to noble Lords, with my apologies. With those comments, I commend these regulations to the House.

Motion agreed.

House adjourned at 3.02 pm.