Vol. 808
No. 155

Wednesday
2 December 2020

PARLIAMENTARY DEBATES
(HANSARD)

HOUSE OF LORDS
OFFICIAL REPORT

ORDER OF BUSINESS

Lords wishing to be supplied with these Daily Reports should give notice to this effect to the Printed Paper Office.

No proofs of Daily Reports are provided. Corrections for the bound volume which Lords wish to suggest to the report of their speeches should be clearly indicated in a copy of the Daily Report, which, with the column numbers concerned shown on the front cover, should be sent to the Editor of Debates, House of Lords, within 14 days of the date of the Daily Report.

This issue of the Official Report is also available on the Internet at
https://hansard.parliament.uk/lords/2020-12-02

In Hybrid sittings, [V] after a Member's name indicates that they contributed by video call.

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

Wednesday 2 December 2020

The House met in a hybrid proceeding.

Noon

Prayers—read by the Lord Bishop of Carlisle.

Arrangement of Business

Announcement

12.08 pm

The Lord Speaker (Lord Fowler): My Lords, the Hybrid Sitting of the House will now begin. Some Members are here in the Chamber, and others are participating remotely, but all Members will be treated equally.

Death of a Member: Lord Kerr of Tonaghmore

Announcement

12.08 pm

The Lord Speaker (Lord Fowler): My Lords, I regret to inform the House of the death of the noble and learned Lord, Lord Kerr of Tonaghmore, on Tuesday 1 December. On behalf of the House, I extend our very sincere condolences to the noble and learned Lord's family and friends.

Arrangement of Business

Announcement

12.09 pm

The Lord Speaker (Lord Fowler): Oral Questions will now commence. Please can those asking supplementary questions keep them sensibly short and confined to just two points. I ask that Ministers' answers are also brief.

Belfast International Airport

Question

12.09 pm

Asked by ***Baroness Hoey***

To ask Her Majesty's Government what steps they are taking to support the operation of Belfast International Airport.

The Parliamentary Under-Secretary of State, Department for Transport (Baroness Vere of Norbiton) (Con): My Lords, the measures taken in response to Covid-19 have been unprecedented, enabling airlines, airports and ground handlers to benefit from a very significant amount of taxpayer support. This includes, but is not limited to, the Coronavirus Job Retention Scheme and financing facilities. In Northern Ireland, airports have also benefited from business rates relief.

Baroness Hoey (Non-Afl): My Lords, Belfast International Airport is the largest airport in Northern Ireland, with 70% of all Northern Ireland travellers passing through it. It is an easyJet hub for the whole of Europe, and it is open throughout the night, with extensive essential flights for Royal Mail, the air ambulance, the military, security and freight. Yet, despite opening throughout the pandemic, it has not received any Department for Transport money or Northern Ireland finance support, even though a tiny Londonderry airport was allocated £1.2 million last week, and Aer Lingus at Belfast City Airport was supported for three months through the public service obligation. Can the Minister look into this and see what more the Department for Transport can do to ensure equal treatment for Aldergrove?

Can she also tell Northern Ireland passengers why, as it stands at the moment with the protocol, from 1 January, duty-free and tax-free goods will be available on all flights from GB airports to the EU, except from Belfast—and yet when flying from Dublin to London, you will be able to purchase duty-free? Will the Minister take this up as a matter of urgency with the Chancellor of the Duchy of Lancaster, who sits on the joint committee, as this is just not fair?

Baroness Vere of Norbiton (Con): My Lords, a number of issues were brought up there, and perhaps I will take away the last issue and write to the noble Baroness. Financial support for airports is of course a devolved matter for the Northern Ireland Executive, but it is the case that all of the airports—Belfast International Airport, Belfast City Airport and the City of Derry Airport—have benefited from the business rates relief. It was also the case that, for a very short period, there was an additional PSO in place, which operated from Belfast City Airport. This was put in place because that was the last remaining flight and therefore it needed to be protected, but that support was needed only for a very short period.

Baroness Pidding (Con): My Lords, our regional airports, such as those in Tees Valley, Newquay and Exeter, play an essential role in aiding regional connectivity. They are vital for both business and leisure and contribute to local economies. Would my noble friend the Minister agree with me that the business rates relief announced by the Government would help to ensure that, with this support, our aviation industry has a fighting chance of survival in these turbulent times?

Baroness Vere of Norbiton (Con): My noble friend is quite right, and my department was delighted to be able to support the announcement of the business rates relief, which will be open for applications shortly. It is the case that up to a maximum of £8 million will be available per eligible site, and this will help support our commercial airports and ground handlers.

Lord Kilclooney (CB): My Lords, the connectivity of travel between the four nations within the United Kingdom is essential. The people in Great Britain have the option of rail and road connections, as well as air travel; in Northern Ireland, we have no such options. Will the Minister please pass on to the department

[Lord Kilclooney]
responsible the request that air passenger duty is removed from domestic flights from the three Northern Ireland airports—not from the international flights from Northern Ireland but from the domestic flights from Northern Ireland to Great Britain?

Baroness Vere of Norbiton (Con): My Lords, the Government have committed to consult on the future of APD. This consultation has been slightly delayed by the Covid pandemic, but we expect it to be issued soon.

Lord Foulkes of Cumnock (Lab Co-op): My Lords, I back the noble Lord, Lord Kilclooney. Those of us who live in Great Britain can get around by train and by car, but people in Northern Ireland can get over here only by air—at least until the Prime Minister builds his bridge, which may take some time. So will the UK Government now treat this as a special case and put some UK Government money into helping Belfast airport?

Baroness Vere of Norbiton (Con): I have already addressed this point. It should be pointed out that Belfast International Airport is owned and operated by VINCI Airports, which owns and operates 45 airports worldwide and is a very large company. There are various interventions that Belfast International Airport is able to avail itself of at the moment.

Baroness Randerson (LD) [V]: My Lords, there has been a lot of focus on potential disruption at ports after 1 January but very little on the impact on airports and, in particular, Belfast airport. Can the Minister explain what the Government expect the situation to be, both with and without a deal with the EU?

Baroness Vere of Norbiton (Con): My Lords, conversations around a deal or otherwise are ongoing, but trade with Northern Ireland will of course continue according to the "unfettered access" under the Northern Ireland protocol. It is worth noting that Belfast International Airport is a significant freight airport, and while it suffered a 79% reduction in passengers in October, it has seen an 8% increase in freight, so that is good news.

Lord Rosser (Lab) [V]: During the pandemic, smaller airports such as Belfast International Airport have suffered most, as airlines have consolidated their operations to the larger hubs. Am I to take it from the Government's responses to this Question so far that they actually think they have done enough to ensure that no further smaller airports in the United Kingdom will face the financial pressures that Belfast International Airport has?

Baroness Vere of Norbiton (Con): I apologise if I have given the noble Lord that impression; that was not my intention at all. The Government are well aware that both large and small airports are experiencing significant difficulties at the moment, which is why the expert steering group has been established. It is working on a strategic framework for the medium and long-term recovery of the aviation sector in the form of a recovery plan. This group does engage with the DAs.

Baroness Ritchie of Downpatrick (Non-Afl) [V]: My Lords, could the Minister look again at air passenger duty and provide us with a specific timetable for when that consultation will begin? Aviation is central not only to our transportation strategy but to our economic strategy through jobs in aircraft building and associated businesses.

Baroness Vere of Norbiton (Con): My Lords, I am not able to provide any further details of the timing of the APD consultation. However, I recognise the noble Baroness's point that aviation connectivity is important. That is why it will be an important part of the union connectivity review, which was announced on 30 June and will be led by Sir Peter Hendy. This will look at connectivity across all modes, including aviation, across the four parts of the United Kingdom.

Baroness Altmann (Con) [V]: My Lords, I congratulate the Government on the measures they have introduced, such as business rates relief and the other facilities that my noble friend mentioned, of which small airports can avail themselves. Will my noble friend tell the House what impact the Government expect on Belfast International Airport if we were to leave the EU without a deal at the end of December?

Baroness Vere of Norbiton (Con): I am not aware that the Government have done any specific assessment of Belfast International Airport. It may be the case that the Northern Ireland Executive have, and perhaps I will ask them to be in touch if they have any further details.

Lord McCrea of Magherafelt and Cookstown (DUP): [*Inaudible*]—Belfast International Airport to Dublin, because of the abolition of air passenger duty in the Republic. Therefore, Belfast International Airport was facing an uphill battle competing with Dublin Airport. The airport is the hub for international travel in Northern Ireland. In March, the Government announced a recovery plan for aviation. What specific financial assistance has been forthcoming to ensure the survival of Belfast International Airport?

Baroness Vere of Norbiton (Con): My Lords, I have outlined the support that Belfast International Airport and various airports in Northern Ireland have already had, but I can give a little more detail. For example, the business rates relief which was offered by the Northern Ireland Executive totalled £2.2 million, of which Belfast International Airport received the lion's share, at £1.7 million. The City of Derry Airport received £1.23 million from the NIE, but the reason behind that is that it is owned by the council, and local authority airports cannot access the same support as private airports, such as CBILS, the CJRS and so on.

The Lord Speaker (Lord Fowler): My Lords, the time allowed for this Question has elapsed. We now come to the second Oral Question.

Children: Online Grooming

Question

12.20 pm

Asked by ***Baroness Benjamin***

To ask Her Majesty's Government what action they are taking to protect children online who have been groomed into filming their own abuse.

Baroness Benjamin (LD): My Lords, I beg leave to ask the Question standing in my name on the Order Paper and declare an interest as a champion of the Internet Watch Foundation and a vice-president of Barnardo's.

The Minister of State, Home Office (Baroness Williams of Trafford) (Con): My Lords, the rise in self-generated indecent images of children is extremely concerning. These images can have devastating impacts on young people, putting them at risk of blackmail, coercion and, of course, further abuse. Through the online harms Bill we intend to publish a new duty of care for online companies towards their users, overseen by an independent regulator. Our response during the pandemic includes amplifying messages to stakeholders to help children to stay safe online.

Baroness Benjamin (LD): My Lords, professionals working in child protection, such as those at Barnardo's and the NSPCC, have been raising concerns about the impact of the lockdown on children, which has created a perfect storm that has led to an increase in online child abuse. The Internet Watch Foundation has warned of a rise in self-generated illegal images of young children which it has had to take down, up almost 50% on last year. What steps are the Government taking to ensure that there is a renewed focus on prevention and the protection of children, who are spending more time online, to guarantee that they are properly supported with high-quality online safety advice, funding and resources?

Baroness Williams of Trafford (Con): I agree wholeheartedly with the noble Baroness: she is absolutely right that the figures she quotes are staggering and worrying. I commend the Internet Watch Foundation for the work it is doing. I know that officials are engaging very closely with the IWF to explore what more we can do to tackle this sort of online grooming. I also know that RSE in schools is another area through which we can engage with children to prevent this sort of thing happening in the first place.

Lord Harris of Haringey (Lab): My Lords, the UK Safer Internet Centre recently reported that in one week alone earlier this year 700 young girls, most of them between 11 and 13 years old, were coerced into filming their own abuse and posting it online, where it is easily shared, repeating the trauma and victimisation time and again. What progress have the Government made in getting social media companies to take down all such images, including those that have been shared, as they are reported? Which companies are not complying with this process? Can the Minister also confirm that funding for the UK Safer Internet Centre has been secured as a result of the Chancellor's Statement last week?

Baroness Williams of Trafford (Con): I cannot confirm the answer to the noble Lord's question about the funding for the UK Safer Internet Centre, but I will confirm it to him in writing. The figure that he quoted of 700 girls in one week is just staggering in its magnitude. Of course, this is a problem of this generation: my children were certainly not subjected to this type of coercion, either by their peers or by groomers online. This is the double concern. I know that Five Eyes are working together with some of the internet providers and social media sites and that the Home Secretary has been engaged in this work, specifically with Facebook.

Baroness Kennedy of Cradley (Non-Afl): My Lords, in April 2017, three and a half years ago, the Digital Economy Act included measures to protect children online. In 2019, the Government decided not to commence these measures, wanting instead to wait for the online harms Bill. A year on, we are still waiting for that Bill. When will it be published, and can the Minister explain to the House how this three and a half year-delay is the Government seeking to protect children online?

Baroness Williams of Trafford (Con): I cannot disagree with the noble Baroness that the sooner the online harms Bill comes our way, the better. I certainly know that the response to the consultation will be published very shortly. The sooner we can get on with this, the absolute better for our children.

Lord Mackay of Clashfern (Con) [V]: My Lords, is there any way for the authorities to monitor communications with children who are in local authority care and particularly vulnerable to the offer of a relationship, and in this way prevent the grooming altogether?

Baroness Williams of Trafford (Con): I have to say to my noble and learned friend that in local authorities, particularly when local authority systems are being used, there are firewalls to prevent some types of abuse, but if a child has a smart phone with such things as Messenger or Snapchat on it, it is incredibly difficult for local authorities to keep tabs on children who are at the end of such coercive behaviour. The noble Baroness, Lady Kennedy of Cradley, talked about the online harms Bill next year: that is going to be crucial, because it will place a duty of care on service providers and social media platforms to actually protect vulnerable people from this sort of thing.

Baroness Walmsley (LD) [V]: My Lords, following up on the Minister's reply to the noble Lord, Lord Harris of Haringey, she may be aware that industry compliance in taking down child abuse images fell by 89% in the first month of lockdown. What tools are the Government using, or threatening to use, to ensure that social

[Baroness Walmsley]
media companies such as Facebook design and deliver platforms and services that put child protection front and centre?

Baroness Williams of Trafford (Con): I can guess at several of the factors, but one might be the ever-increasing use of encryption, so that not only can parents not see what their children are doing, but nor can the local authority or, actually, the internet providers themselves. This is at the heart of what the Home Secretary and Five Eyes partners are trying to discourage going forward.

Baroness Warsi (Con) [V]: My Lords, following up on the question from the noble Baroness, Lady Walmsley, my noble friend may be aware that Facebook and Facebook-owned apps such as Instagram and WhatsApp account for more than 50% of online abuse. What conversations are specifically taking place with Facebook in relation to its platforms being the preferred method and platform for this kind of abuse?

Baroness Williams of Trafford (Con): Well, Messenger, which is a Facebook app, had not to date been encrypted, but Facebook has announced its intention to encrypt Messenger from, I think, next year. This is precisely the type of discussion that the Home Secretary and Five Eyes partners are having with Facebook, because not only will law enforcement bodies and the National Center for Missing and Exploited Children in the US not be able to look at what is going on there, but nor will Facebook itself, and that is the crucial thing here.

Lord Kennedy of Southwark (Lab Co-op): My Lords, these are horrific crimes. Frankly, is it not time to give the directors of the companies that are hosting these images legal civil and criminal responsibility for the content they host? I suspect we would see much swifter action if this were the case, and nothing short of this will do to deal with this abuse.

Baroness Williams of Trafford (Con): My Lords, although I cannot give the actual details of the online harms Bill, that duty of care will push that responsibility on to those internet service providers and platforms to do just that, to protect our children.

Lord Mann (Non-Afl): The question we really want answered is whether the Home Office is pressing for, and the Government are going to provide parliamentarians with, the opportunity to vote in Parliament to create criminal sanctions against the internet companies that are failing to deal with this depravity.

Baroness Williams of Trafford (Con): I certainly look forward to having those discussions with parliamentarians in your Lordships' House, many of whom have such expertise in this area.

The Lord Speaker (Lord Fowler): My Lords, the time allowed for this Question has elapsed. We now come to the third Oral Question.

Security Co-operation
Question

12.30 pm

Asked by ***Lord Dubs***

To ask Her Majesty's Government what assessment they have made of the future of security cooperation across Europe from January 2021.

The Minister of State, Home Office (Baroness Williams of Trafford) (Con): My Lords, we will continue to work closely with our European partners to tackle shared security threats, promoting the safety and security of all our citizens. We also continue to work closely with operational partners to ensure that we are ready for a range of possible outcomes at the end of the year. The UK will continue to be a global leader on security and one of the safest countries in the world.

Lord Dubs (Lab) [V]: My Lords, does the Minister agree that we are threatened by cybercrime, other forms of serious crime, violent extremism and terrorism and that, if we leave the EU without a sensible deal on security co-operation, we will lose access to data, the European arrest warrant and Europol? On access to data, will she confirm that we use the Schengen Information System 600 million times a year? Surely our membership of the European Court of Justice, which is a government red line, is trivial compared to the need to keep our people safe and save lives in this country.

Baroness Williams of Trafford (Con): We have always said that there would be a mutual loss of capability in the event that the UK no longer had access to SIS II. That is why we have offered to reach an agreement with the EU that delivers a similar capability. The Commission has stated its view that it is not legally possible for a non-Schengen third country to co-operate through SIS II and that a future agreement between the UK and the EU need not provide similar capabilities. We regret this and have maintained our offer to the EU.

Lord Mackenzie of Framwellgate (Non-Afl) [V]: My Lords, the sharing of intelligence and the importance of close co-operation between the UK and our friends throughout Europe is well proven. I could cite several examples clearly showing that it keeps us all safe and has prevented terrorist attacks throughout the continent. What assurance can the Minister give your Lordships' House that there will be no lessening of this close partnership after the end of the implementation period on 1 January 2021?

Baroness Williams of Trafford (Con): I assure the noble Lord that the UK will continue to work with our European partners to counter, as he said, the terrorist threats we face in Europe and beyond. We have world-leading expertise on counterterrorism and countering violent extremism, which we will continue to share with EU member states as appropriate.

Viscount Trenchard (Con): My Lords, how much of our data exchange with EU member states now takes place through Europol? Does my noble friend agree that, having left the EU, we should rebuild our security and intelligence exchange arrangements on a bilateral basis with member states rather than exchanging sensitive intelligence through Europol, and that our security will be enhanced rather than diminished as a result?

Baroness Williams of Trafford (Con): My Lords, the UK is not seeking membership of Europol or Eurojust. That is not how third-country arrangements with these agencies work. We have not sought membership of either agency, but we are negotiating at what is clearly a very sensitive and late stage. In general, there is a good degree of convergence between what the UK and the EU have been seeking to negotiate.

Baroness Coussins (CB) [V]: My Lords, can the Minister give a clear assurance that, from 1 January, the police will continue to have unfettered access to the various EU databases which help them track and prevent transnational crime such as the trafficking of drugs, arms and people? Over 50 million requests are made of these databases every year from UK police forces. National security would clearly be at risk without access to them.

Baroness Williams of Trafford (Con): I agree with the noble Baroness about our capabilities. We are in the very late stages of negotiating an agreement on law enforcement, criminal justice and, as she says, those data exchanges that are so important. I cannot say more than that, but we have had some very useful discussions in this area and I am hopeful of a good deal.

Baroness Quin (Lab) [V]: My Lords, can the Minister assure us that, once we are no longer part of the EU's common security and defence policy, UK defence companies will not be disadvantaged in participating in and supplying to European defence projects?

Baroness Williams of Trafford (Con): The noble Baroness strays slightly into the area of defence, but I can say that the foundation of European security since 1949 has been the NATO alliance. Our intelligence services already have highly effective co-operation to build on outside those EU structures. We also have the Five Eyes group and the Counter-Terrorism Group. We are well placed going forward.

Lord Campbell of Pittenweem (LD): My Lords, is it not the case that, without access to EU databases and the European arrest warrant, in terms of security we are leaving the European Union on a wing and a prayer?

Baroness Williams of Trafford (Con): The European arrest warrant is used exclusively by EU members, obviously. We have proposed that an agreement with the EU should provide for fast-track extradition arrangements, based on the EU's arrangements with Norway and Iceland but with appropriate further safeguards for individuals.

Lord Polak (Con): My noble friend has rightly stated that the safety and security of our citizens is the top priority and that the UK will continue to be a global leader in security. One therefore hopes that our European friends will continue to work closely with us to ensure the safety of all our citizens. In the unlikely event that we leave without a deal, can my noble friend confirm that there are well-developed and well-rehearsed plans in place to ensure the safety and security of the British people?

Baroness Williams of Trafford (Con): I can confirm that for my noble friend. I also reiterate his point that the safety and security of our citizens is the Government's top priority. We are negotiating an agreement on law enforcement and criminal justice with the EU to equip our operational partners on both sides with the capabilities to protect citizens and bring criminals to justice.

Lord Rosser (Lab) [V]: The National Police Chiefs' Council has warned that, post Brexit, with the loss of access to EU databases,

"even with contingencies in place, the fallback systems will be slower, provide less visibility of information/intelligence and make joined up working with European partners more cumbersome."

The National Crime Agency has said that, in both a negotiated outcome and a non-negotiated scenario,

"the alternative measures are less automated and more unwieldy to use."

Do the Government agree with the National Police Chiefs' Council and the National Crime Agency? If so, what do they intend to do about it?

Baroness Williams of Trafford (Con): I reiterate that there will be a mutual loss of capabilities for the UK and the EU in a non-negotiated outcome. I do not think I have made any secret of that in this House. We are therefore working very hard—I know it is late in the day—to secure a negotiated outcome.

Lord Bilimoria (CB) [V]: My Lords, the Minister has confirmed that the security of their citizens is the number one priority of the Government. If that is the case, are we going to have access to the European Criminal Records Information System, which we make almost 200,000 requests to in a year? Are we going to have access to the Schengen Information System II, which, as noble Lords have said, has required access of up to 500 million times a year? What about Europol, which was mentioned? What about the European arrest warrant? Does the Minister agree that, deal or no deal, if we do not have these things, they represent a risk to public safety and security?

Baroness Williams of Trafford (Con): I can only admire the noble Lord's ability to get about seven questions in his one question. Going back to SIS II, which we spoke about earlier, the Commission has stated its view that it is not legally possible for us, as a non-Schengen country, to co-operate through SIS II.

[Baroness Williams of Trafford]
As set out in the UK's published approach to negotiations, we believe an agreement should provide for the fast and effective exchange of criminal records data between the UK and EU individual member states.

The Lord Speaker (Lord Fowler): My Lords, I do not admire the noble Lord's ability to get more than two questions in, because that is meant to be the requirement of Question Time. We now come to the fourth Oral Question.

Ethiopia: Northern Tigray Region
Question

12.41 pm

Asked by ***Lord Alton of Liverpool***

To ask Her Majesty's Government, further to the announcement by the government of Ethiopia on 30 November that military operations in the northern Tigray region are complete, what assessment they have made of the situation in that region; and what access they have (1) requested, and (2) been granted, to the region to establish (a) humanitarian needs, and (b) any evidence of war crimes.

Lord Alton of Liverpool (CB): My Lords, I beg leave to ask the Question standing in my name on the Order Paper. In doing so, I declare my interest as the vice-chairman of the All-Party Parliamentary Group on Eritrea.

The Minister of State, Foreign, Commonwealth and Development Office (Lord Ahmad of Wimbledon) (Con): My Lords, an initial Tigray humanitarian preparedness plan has been prepared by the United Nations. A comprehensive assessment of the humanitarian needs across Tigray has not yet been possible. We are encouraged that an assessment mission co-ordinated by the UN is scheduled to commence later this week, and this follows efforts by the UK and others to press for implementation of the assessment. We have also contributed to the UN guiding principles presented to the Government of Ethiopia on humanitarian access, with a view to the delivery of assistance for civilians.

Lord Alton of Liverpool (CB): My Lords, I thank the Minister for that reply. Can I press him further on the issue of the humanitarian corridor? Will this conform to United Nations principles of neutrality, and will access be granted to our diplomats to visit Tigray? Secondly, how do we intend to hold to account those who have been responsible for the torture of refugees, the forced reform of refugees and some pretty barbaric acts which have been carried out against some of those who have escaped from Tigray?

Lord Ahmad of Wimbledon (Con): My Lords, on the noble Lord's second point, of course the situation at the moment does not allow for a full assessment. But let me assure him of this: we will certainly continue to press that any perpetrators of such acts are brought to justice. On his point about humanitarian corridors, we are liaising closely with the UN humanitarian organisations to establish what, if any, additional support is needed to press for diplomatic channels in particular—which we have been doing—to allow for the principles that he has articulated. It is integral to the principles laid down by OCHA, which the UK supported the development of.

Lord Hain (Lab) [V]: My Lords, does the Minister agree that there is a real prospect of the Ethiopian conflict getting right out of control, especially given the Horn of Africa's strategic importance, with Gulf countries, China, the US and others jockeying for influence, or even becoming a Libyan nightmare of war crimes, war lords and ethnic cleansing? Can the Government redouble efforts to broker negotiations through the United Nations, the African Union and the EU?

Lord Ahmad of Wimbledon (Con): My Lords, first let me assure the noble Lord that I share his concern, when we see the challenges faced in neighbouring countries, about the importance of containing this and seeking a peaceful settlement. On the channels he has mentioned, my right honourable friend the Foreign Secretary discussed co-ordination with our EU partners on 23 November, and we are in discussions with key African partners, including Uganda, Somalia, Kenya and, importantly, South Africa. At the UN, we also participated in the Security Council debate on 24 November.

Baroness Northover (LD): My Lords, given the risk to stability in the region, does the Minister agree with former US ambassador Carson when he said yesterday that the battle cannot be won militarily, and that it is vital that neighbours do not become embroiled through the use of their bases or airspace? Could he spell out which EU countries the United Kingdom is working with to secure these aims via the UN?

Lord Ahmad of Wimbledon (Con): On the noble Baroness's two questions, I can say yes and yes. We are working specifically with the likes of Germany and France in this respect, which also have important equities in that area.

Lord Lancaster of Kimbolton (Con): My Lords, all too often, women and children are the greatest victims of conflict. The UK is leading the way in the implementation of UN Resolution 1325, which recognises the importance of women's involvement in peacekeeping. I visited and saw first-hand the UK contribution to the Peace Support Training Centre in Addis but, in light of recent events, is now the time to increase our commitment to that centre?

Lord Ahmad of Wimbledon (Con): My noble friend speaks with some insight and, of course, great expertise. I share his view that one of the real successes has been the women, peace and security programme run by the Ministry of Defence and the FCDO. On his specific question on whether we increase capacity, obviously the situation at the moment is very fluid on the ground, but he makes a very important suggestion, which I will certainly take back and update him on accordingly.

Baroness Cox (CB) [V]: My Lords, what assessment have Her Majesty's Government made of the Ethiopian premier's assertion in Parliament on 30 November that his forces "have not killed a single civilian" during the conflict in the Tigray region? That followed a statement by the International Committee of the Red Cross on 29 November that Ayder Referral Hospital in the Tigrayan capital was "running dangerously low" on stocks and body bags due to an influx of wounded people, and that 80% of them had suffered unspecified trauma injuries. What can be done to help the supply of medical equipment much needed for that hospital?

Lord Ahmad of Wimbledon (Con): My Lords, I assure the noble Baroness that I have been speaking directly to UN agencies, as have other colleagues within the FCDO. I share the important point she raised right at the end of her question, and we are pressing for unfettered humanitarian access. The number of fatalities is unclear, but there is clearly also a high level of internally displaced people. I assure her that we are using all good offices and lobbying directly with the country, as my right honourable friend the Foreign Secretary has done, to ensure unfettered humanitarian access to the region.

Lord Collins of Highbury (Lab): Picking up the last point the Minister mentioned, on the number of internally displaced people, has there been an assessment of how many there are? Have conversations taken place with the Governments of Sudan and Eritrea over the support that could be given to refugees at the border as well?

Lord Ahmad of Wimbledon (Con): My Lords, on the noble Lord's second point, the short answer is yes. We have raised it on a bilateral basis, as have international agencies. One figure I can share with him is that we now estimate that more than 45,449 people have fled Ethiopia for neighbouring Sudan—that is the latest figure I have. That is an example of the figures we have been able to make an assessment on.

Baroness Barker (LD): My Lords, given that this is, in essence, a political and economic conflict, and given also that the Chinese Government are the biggest economic investor in Ethiopia, are Her Majesty's Government working with the Chinese Government to see what influence they can bring to bear to calm matters and to bring about a potential negotiation between Ethiopia and Eritrea?

Lord Ahmad of Wimbledon (Con): The noble Baroness makes an important point. We too are one of the leading international donors to the country, and I assure her that we are using, in particular, our discussions at the UN in pursuit of that aim.

The Lord Bishop of St Albans [V]: Prior to the conflict, Tigray was a safe haven for Eritrean refugees afraid to return home because of fear of persecution. With Eritrea's rumoured involvement in the conflict against the TPLF, what assessment have Her Majesty's Government made of the validity of claims that the Eritrean military are forcing refugees into trucks and abducting them back to Eritrea?

Lord Ahmad of Wimbledon (Con): The right reverend Prelate is right to raise those concerns. This too is part of the conversations that my right honourable friend the Foreign Secretary has had with the Eritrean Government. They, of course, refute any such programmes or policy, but we continue to raise our concerns directly with them.

Lord Robathan (Con): My Lords, I first visited Ethiopia with the Commons International Development Committee. We had a long meeting with Meles Zenawi, who was very impressive, and was often described as Tony Blair's favourite African dictator. He, of course, has been gone for many years. However, when I visited last year, although there was greater prosperity there was still grinding poverty. Can my noble friend assure me that henceforth, when we pour in billions and billions of pounds in aid, as we have done in Ethiopia, for humanitarian reasons and for education and health, we will also look at what is happening to the defence budgets of such countries? I am afraid that what has been happening is fungibility. We have been giving aid for education and health—they have been spending money on arms.

Lord Ahmad of Wimbledon (Con): My noble friend raises an important point about transparency in development spending. That is why the new structure at the FCDO will pursue that very point, ensuring that development support is intended for those who are suffering, and gets directly to them.

Lord Harries of Pentregarth (CB) [V]: In answer to the question asked by the noble Baroness, Lady Northover, the Minister said that the Government were in touch with France and Germany. Are the Government in touch with any power in the region itself that might be an influence for good, and what response have they had from the African Union about the role that it might play?

Lord Ahmad of Wimbledon (Con): Let me assure the noble and right reverend Lord that yes, we are in touch with some of the countries I have already listed, such as Kenya, Uganda, Somalia and South Africa. We are dealing with those countries in the region at the most senior levels of government.

Baroness Goudie (Lab) [V]: My Lords, may I ask the Minister about local women being asked to be at the peace table, on both sides, from now on? It is only with local women at the peace table that we will get real peace.

Lord Ahmad of Wimbledon (Con): I totally agree with the noble Baroness. The United Kingdom has been at the forefront of involving women peace mediators. Indeed, we have launched several initiatives, and I agree that when women are involved in bringing about peace and sustaining it, peace agreements last much longer. The evidence is there for all to see.

The Lord Speaker (Lord Fowler): My Lords, all supplementary questions have been asked, and that brings Question Time to an end.

12.52 pm

Sitting suspended.

Arrangement of Business

Announcement

1.02 pm

The Deputy Speaker (Lord Lexden) (Con): My Lords, the Hybrid Sitting of the House will now resume. I ask Members to respect social distancing.

Conduct Committee Report

Motion to Agree

1.02 pm

Moved by ***Lord Brown of Eaton-under-Heywood***

That the Report from the Select Committee *Registration of members' foreign interests* (7th Report, HL Paper 182) be agreed to.

Baroness Scott of Bybrook (Con): My Lords, we are ready to start if the noble and learned Lord could unmute. I do not think that he can hear.

Lord Brown of Eaton-under-Heywood (CB) [V]: I have not been linked up. Can anybody hear?

Noble Lords: Yes!

Baroness Scott of Bybrook (Con): We can hear you. You can start now.

Lord Brown of Eaton-under-Heywood (CB) [V]: My Lords, I should start by explaining that I am moving this Motion as a member of the Conduct Committee on behalf of my noble and learned friend Lord Mance, because this particular report raises matters in which he personally has interests and has therefore recused himself from deliberations upon it.

This report builds upon an earlier report that the House approved in July about Members' dealings with foreign Governments. It is, indeed, the latest in a series of changes that we are proposing to the House in order to increase transparency around Members' overseas interests, reflecting increasing levels of concern about foreign state influence on our politics. Not least, your Lordships will recall, such concerns were raised by the long-awaited ISC report in July. After a good deal of deliberation, the committee is now proposing that Members should be required on an annual basis to disclose their earnings—I quote paragraph 9 of the report—from

"governments of foreign states (including departments and agencies), organisations which may be thought by a reasonable member of the public to be foreign state-owned or controlled, and individuals with official status (whether executive, legislative or judicial) in foreign states when acting in that capacity".

One of our key challenges was to find such a definition that properly caught all that we wanted and thought we needed to capture.

Although the registrar may be consulted, Members will be responsible for judging whether an organisation or individual in fact meets that definition. In case of doubt, they should err on the side of registration. Members will be able to disclose the exact amount that they have been paid or simply indicate into which of the several bands set out in paragraph 12 of the report their earnings fall.

The committee is aware that in some professions there is a clear duty of confidentiality that would prevent some Members from disclosing all the information required. Obviously, they may include doctors, arbitrators or perhaps other lawyers. Rather than try now to come up with a definitive list of such professions in the code, we propose that Members should apply for an exemption as far as necessary. To do that, they will be asked to consult the registrar, who will provide advice on the basis of detailed guidance, which we, the Conduct Committee, shall give him. The committee is currently drawing up such guidance, with a view to publishing it early next year.

If the House agrees this report, the registrar will email Members to explain these changes, which will then take effect from 1 January 2021. Registerable earnings between then and the end of the financial year, 5 April 2021, would need to be disclosed no later than 31 January 2022. Registerable earnings in the next financial year would then need to be disclosed by 31 January 2023, and so on. All that is set out in paragraphs 10 and 11 of the report.

Finally, we propose also to add to the guide some cautionary wording for Members with regard to their dealings with foreign Governments and entities. Paragraph 17 deals with that. I beg to move.

The Deputy Speaker (Lord Lexden) (Con): I will call the following to speak: the noble Lord, Lord Balfe, and the noble Baroness, Lady Smith of Basildon.

Lord Balfe (Con): My view is that all money received by Members of the House of Lords should be declared. This report tries to do what is virtually impossible, which is to lay down a code of conduct that, by its own nature, is vague. I have a number of questions.

As regards the guidance on dealing with lobbyists, the report states:

"Members should be especially cautious when coming into contact with representatives of corrupt or repressive regimes".

The noble and learned Lord who introduced the report is a lawyer. He will know that the word "representatives" is certainly capable of challenge. What is a representative? What is a corrupt regime? What is a repressive regime? Is Hungary a repressive regime? If someone is in contact with a representative of the Hungarian Government, at what level does the rule apply? Is the ambassador of Hungary a representative of a repressive regime? This report is shot through with problems.

The next page covers the level of remuneration in respect of the interests falling within this category that need to be disclosed only where they are received from the Governments of foreign states. What do we mean by "foreign states" or "controlled by"? Is Huawei controlled by the Chinese Government, as is alleged by some, or is it not controlled by them, as is said by the Chinese Government? What about what I would call "parastatal" regimes—in other words, bodies that are set up at arm's length by Governments such as the British Government to provide services? Is Serco a parastatal regime and company, or is it not? This is just not good enough.

On applying for exemptions, how will we explain to the British public that Members of the House of Lords can take earnings from organisations and not declare them? That is what this says: earnings do not have to be declared because of confidentiality. We can have confidential agreements made by legislators who can subsequently intervene on legislation, but there is no public record of that. It is not good enough.

My final point is about

"disposing once in respect of each financial year."

If I visit Turkey, which I did not so long ago, I have to declare that within two months. Why, if we have this system, could someone earn money in May 2021 and not have to declare it until January 2023? Why the sudden difference? I do not think that this is acceptable.

I will not vote against the report because that is not the done thing, but I do not think that it answers the question that was put before it, which is to make the proceedings of this House and the activities of its Members more transparent. I am sorry to rock the boat again, but these things need to be said.

Baroness Smith of Basildon (Lab): My Lords, I am grateful to the noble and learned Lord, Lord Brown of Eaton-under-Heywood. I have two points: both have been touched on by the noble Lord, Lord Balfe, but in a slightly different way. I have a query about paragraph 16 of the report which states:

"Members should be especially cautious when coming into contact with representatives of corrupt or repressive regimes, ensuring that they uphold the integrity of the parliamentary process and the reputation of the House of Lords at all times."

That is a bit unclear—I am not sure what it means or who would make that decision.

My other point is on the paragraph about confidentiality, which might more appropriately be called exemptions. The noble and learned Lord might be able to help me to understand this. The report states:

"We are aware that in a small number of professions there is a duty of confidentiality"—

I can think of only one, which is the medical profession, and I am not sure whether the others might possibly be to do with the legal profession. The report goes on

"which would make it difficult for members to disclose the identity of the government"

but then proposes that

"members … would be able to apply for an exemption from the registration requirement."

Does that mean that they would not have to register anything at all, not even having received any money if that was the case? I can understand that there might be an element of confidentiality, although I struggle to understand whether that is essential, but I do not see why that should completely exempt Members from the registration requirement.

I also have concerns about the personal services company element because I am not clear about how it will work. The report states that Members

"need to register the type of client involved but without naming the particular client in question."

I am not convinced that that is 100% helpful to the House or to those looking at this, but my main question is who makes the decision. In paragraph 9 under definitions, it states:

"Although the Registrar may be consulted, members will be responsible for judging whether an organisation or individual meets this definition, and in case of doubt they should err on the side of registration."

The noble and learned Lord, Lord Brown, helpfully said that the Conduct Committee will issue guidance for the registrar, but I am not clear who will make the decision that an exemption is appropriate. Given that exemption brings with it the opportunity not to make any form of registration at all or to provide any information, I would like some clarity on who will make the decision. If it is the same as in paragraph 9, which states that the individual Member can make that decision, that seems somewhat unhelpful to this House and to the issue of transparency.

I will not seek to divide the House or to vote against the Motion because it is an important step forward and there are a lot of areas in which the report is helpful, but I would like clarity on those points if the noble and learned Lord is able to give them to me.

1.15 pm

Lord Brown of Eaton-under-Heywood (CB) [V]: My Lords, I am most grateful to the noble Lord, Lord Balfe, and the noble Baroness Lady Smith, not least because, if I may say so, they have effectively confirmed that there are real difficulties in reaching the necessary degree of definition in this highly complex area of our code—[*Inaudible.*]

Baroness Scott of Bybrook (Con): My Lord, I am sorry, but we cannot hear you again. Could you try and press your unmute button? They are working on trying to get the audio back so we can hear you.

Lord Brown of Eaton-under-Heywood (CB) [V]: Am I audible again?

Baroness Scott of Bybrook (Con): Yes, my Lord, we can hear you.

Lord Brown of Eaton-under-Heywood (CB) [V]: I apologise, although I do not believe it to have been my fault. As I was saying, the noble Lord, Lord Balfe, and the noble Baroness, Lady Smith, have established what we have long felt—that this is an extremely problematic area of our code on which we have deliberated long and hard to try to achieve these definitions.

On the main question raised by both speakers, of course there are difficulties in deciding whether a particular organisation is controlled by the Government. These matters are dealt with in Paragraph 9 of the report. But as the report is at pains to show, there are two guiding principles. The first is that what reasonable members of the public might suppose to be the position here, along the lines of Huawei and so forth. If it may be thought by the public that an organisation is foreign state-owned or state-controlled, there is a clear and categoric obligation to disclose that fact. However, there is always the power of consulting the registrar, so there is help from that quarter. There is also the enduring obligation that in case of doubt, a Member should err on the side of registration.

We have not felt able to be more specific than that. If anyone feels that they have a clear solution to this riddle, we would be delighted to hear it. In the meantime, we feel that this is the best that we can offer.

[Lord Brown of Eaton-under-Heywood]

With regard to corrupt and repressive regimes, your Lordships will see that this was dealt with in an earlier report. Paragraph 1 of the report points that out. We are trying to help further, in paragraph 17. Of course, these are highly difficult concepts, but this is open to Members—and one hopes that they will avail themselves of this—to consult the registrar and, if in doubt, an obvious course would be to effect the registration. As to the date of earnings, we have tried to be helpful and to minimise the administrative burden on Members by taking the same date and concept for declaration of earnings as one uses for one's tax returns annually, to 31 January—to do one's earnings in relation to the tax year. That is why the first proposed registration is for 1 January to 5 April 2021.

I hope that deals with most points. Your Lordships will have seen that we continue to consult on this and deliberate in this field. On the question of guidance for the registrar, it is the registrar whose decision ultimately rules on the question of exemptions. Again, it is difficult to see how one could improve on that. To address a point made by the noble Lord, Lord Balfe, I hope this is not an absurd, fanciful and unhelpful suggestion, but if we assume that one of our enormously distinguished doctors in the House, who contributes greatly to the proceedings of the House, has as a patient some foreign head of state, Prime Minister or whatever, and is consulted by him professionally—that must surely be confidential. He cannot possibly say: "I've been treating that king for piles" or whatever it is. It would be a gross abuse of professional privilege and confidentiality. That is the sort of situation one could get into. Therefore, if you had this report without the possibility of exemption, you would require somebody such as that doctor to take leave of absence and cease to participate in the House. I am not sure that I can do any better than that. I fear that nothing I can say will entirely satisfy all the questions that such a report inevitably raises.

Baroness Smith of Basildon (Lab): My Lords, I have listened carefully to the noble and learned Lord, Lord Brown. He has tried to answer, and he has hit the nail on the head when saying that it explains the difficulties. However, the committee must look again at two things that he referred to as a matter of urgency. This report takes us some way forward, but not far enough. The point he made about a medical person who contributes to the work of this House but who is treating somebody in confidence does not explain why there cannot be any registration at all. Surely the registration could be declared. The confidentiality of who is being treated might be an issue, but who makes that decision? That is the central point. At present, the person who makes that decision is the Peer. When we talk about exemptions, that is not acceptable. I do not intend to divide the House against the report, which takes us a step further forward, but there are inadequacies in it which I hope the noble Lord will take back to the committee and address as a matter of urgency.

Lord Brown of Eaton-under-Heywood (CB) [V]: We will certainly take back and consider all the points that have been made. On the substantive question that the noble Baroness raises, I have no doubt whatever that the Member would say that he practices as a doctor in a given field for clients internationally as well as at home. I do not know whether that would be regarded by her as satisfying that aspect of the register of interests. Subject to that, of course, we will look afresh in the light of all the helpful comments made by Members.

Motion agreed.

Animal Welfare and Invasive Non-native Species (Amendment etc.) (EU Exit) Regulations 2020

Food (Amendment) (EU Exit) Regulations 2020

Agricultural Products, Food and Drink (Amendment etc.) (EU Exit) Regulations 2020

Motions to Approve

1.25 pm

Moved by ***Baroness Bloomfield of Hinton Waldrist***

That the draft Regulations laid before the House on 8, 21 and 22 October be approved.

Relevant document: 33rd Report from the Secondary Legislation Scrutiny Committee. Considered in Grand Committee on 30 November.

Motions agreed.

Definition of Qualifying Northern Ireland Goods (EU Exit) Regulations 2020

European Union Withdrawal (Consequential Modifications) (EU Exit) Regulations 2020

Motions to Approve

1.26 pm

Moved by ***Baroness Scott of Bybrook***

That the draft Regulations laid before the House on 7 and 21 October be approved.

Relevant document: 31st Report from the Secondary Legislation Scrutiny Committee (special attention drawn to the first instrument). Considered in Grand Committee on 30 November.

Motions agreed.

Official Development Assistance

Statement

The following Statement was made in the House of Commons on Thursday 26 November.

"Madam Deputy Speaker, I will make a Statement to the House on official development assistance. The House will know that my right honourable friend the Chancellor updated the House yesterday on the economic challenges posed by Covid-19. It is a truly sobering

assessment. The UK is facing the worst economic contraction in almost 300 years and a budget deficit of close to £400 billion—double what we faced in the last financial crisis. Britain is responding to a health emergency, but also an economic emergency, and every penny of public spending will rightly come under intense scrutiny by our constituents.

Given the impact of the global pandemic on the economy and, as a result, the public finances, we have concluded after extensive consideration—and, I have to say, with regret—that we cannot for the moment meet our target of spending 0.7% of gross national income on ODA, and we will move to a target of 0.5% next year. Let me reassure the House that this is a temporary measure. It is a measure we have taken as a matter of necessity, and we will return to 0.7% when the fiscal situation permits.

The relevant legislation, the International Development (Official Development Assistance Target) Act 2015, envisages circumstances in which the 0.7% target may not be met, particularly in the context of economic pressures. The Act provides for accountability to Parliament in that event, and I will of course report to the House in the proper way. Equally, given the requirements of the Act, the fact that we cannot at this moment predict with certainty when the current fiscal circumstances will have sufficiently improved and our need to plan accordingly, we will need to bring forward legislation in due course.

We are not alone in facing these painful choices. All countries are reconciling themselves not just to the health impact of the pandemic, but the economic impact of Covid-19. It is worth saying that on the 2019 OECD data, only one other G20 member allocated 0.5% or more of GNI to development spending, and that was before the pandemic. Many countries are reappraising their spending plans, as we have been forced to do. As a result, we nevertheless expect our development spending next year to total around £10 billion, maintaining our status as one of the leading countries in the world in ODA spend.

I can reassure the House that we will retain our position as a leader in the global fight against poverty. We will remain committed to following the rules set by the OECD's Development Assistance Committee, and we will ensure the maximum impact from our aid through the strategic integration we are driving as a result of the merger at the Foreign, Commonwealth and Development Office, the strategic thinking that is informed by the integrated review, and the further changes we are now making on how we allocate ODA to support a more integrated and overarching approach.

Let me say a little more on that integrated approach. Our starting point is the integrated review, with which we are setting the long-term strategic aims of our international work, based on our values and grounded in the British national interest. To achieve this, we will be taking a far more joined-up approach right across the breadth of government. That is why the Prime Minister created the Foreign, Commonwealth and Development Office, bringing diplomacy and development together, in lockstep with the work of our other departments. ODA is a vital, central and absolutely indispensable element of that strategic approach, but to maximise its effectiveness it must be used in combination with our development policy expertise, our security deployments and support abroad, and the strengthened global co-operation that we drive through our diplomatic network. We make our aid go further by bringing it together with all these other elements, and by making sure that they are all aligned and pushing in the same direction.

Last week, the Prime Minister set out how we are strengthening our defence and security capabilities. That will boost our standing in the world, while also contributing to our development efforts, including our soft power abroad. The clearest illustration of that is the peacekeeping that we do. We have British troop deployments in Afghanistan, South Sudan, Somalia, the Democratic Republic of the Congo and elsewhere, which work hand in hand with our development and diplomatic efforts. Indeed, we are demonstrating that with our latest deployment of 300 UK troops to Mali. Our security and defence budget also helps countries to deal with new, emerging and evolving threats, for example, in supporting Nigeria and Kenya to assess and strengthen their cybersecurity resilience. We will set out the full detail of the integrated review early in the new year, as we launch our presidencies of the G7 and COP 26, with 2021 a year of leadership for global Britain as a force for good in the world.

This new strategic approach will allow us to drive greater impact from our £10 billion of ODA spending next year, notwithstanding the very difficult financial pressures we face. I will prioritise that £10 billion of spending in five ways. First, we will prioritise measures to tackle climate change, protect biodiversity and finance low-carbon and climate-resilient technologies, such as solar and wind, in poor and emerging economies. I can reassure the House that we will maintain our commitment to double international climate finance, which is vital to maintain our ambitions in this area as we host COP 26. We will leverage our aid support through our diplomatic network, to galvanise global action and to make sure that countries come forward with ambitious, game-changing commitments in the lead-up to November next year.

Secondly, we will prioritise measures to tackle Covid, and promote wider international health security. We will maintain our position as a world leader, investing in Gavi the Vaccine Alliance, COVAX, the Global Fund to Fight AIDS, Tuberculosis and Malaria, and the International Finance Facility for Immunisation. We will continue to support and strengthen the World Health Organization, as the second largest state donor; I spoke to Dr Tedros just yesterday about our efforts in that regard. We will also use all our other levers to maximise British impact. For example, we have magnified our COVAX contribution through our diplomatic efforts, which helped to convince the board of the World Bank to announce additional funding last month of up to $12 billion for Covid vaccines, tests and treatments. Again, I spoke to World Bank president David Malpass just last night about our important collaboration in that area.

Thirdly, we continue to prioritise girls' education, because it is the right thing to do and because the fortunes of so many of the poorest countries depend on tapping the full potential of all their people, which

[Baroness Scott of Bybrook]
must include women and girls in education. Our global target, working with our partners, is to get 40 million girls into education and have 20 million more girls reading by the age of 10. It is a major priority for global Britain as a leading supporter of the Global Partnership for Education, and just next year we will raise $4 billion globally, including through our UK-Kenya summit.

Fourthly, we will focus ODA on resolving conflicts, alleviating humanitarian crises, defending open societies, and promoting trade and investment, including by increasing UK partnerships in science research and technology, because these are the building blocks of development and they require a long-term strategic commitment.

Finally, at all times we will look to improve our delivery of aid in order to increase the impact that our policy interventions have on the ground, in the countries and the communities that they are designed to benefit and help. We will strengthen accountability and value for money, reducing reliance on expensive consultants for project management and strengthening our in-house capability to give us more direct oversight and control, including by removing the total operating cost limits that were introduced when the Department for International Development was established—a limit that applied only to DfID.

As a result of this spending review, the FCDO will take on a greater role in ensuring the coherence and co-ordination of development-related spending right across Whitehall. To maximise the strategic focus that I have talked about, I will run a short cross-government process to review, appraise and finalise all the UK's ODA allocations for next year in the lead-up to Christmas.

This is a moment of unprecedented challenge. On all sides of the House, we are defined by our willingness to make the difficult choices, not just the easy ones. With the approach that I have set out, we will maintain our international ambition. We will deliver greater impact from our aid budget at a time of unparalleled financial pressure.

Like many in the House, I am proud of our aid spend. I am proud of the big-hearted generosity of the British public, which we amplify with our diplomatic energy on the world stage. I am proud of the huge amount we do to support the poorest and the most vulnerable, right around the world. The United Kingdom is out there every single day—our people on the ground in the disaster zones, in the refugee camps, tackling famine and drought, helping lift people out of poverty, striving to resolve conflicts and striving to build a more hopeful future for the millions of people struggling and striving against the odds. Even in the toughest economic times, we will continue that mission. We will continue to lead. I commend this Statement to the House."

1.27 pm

Lord Collins of Highbury (Lab): My Lords, I would like to mention the noble Baroness, Lady Sugg, to start with. Like her, I feel immensely proud that the United Kingdom has been a development superpower and contributed so much to the world. Our support and leadership on development has saved and changed millions of lives. Last week the Minister told this House that the development priorities would remain the same, but a cut from 0.7% to 0.5% would represent a 30% reduction in funding. NGOs have estimated that, if applied across aid spending in areas previously managed by DfID, could mean that each year 5.6 million fewer children will be immunised and 105,000 lives will not be saved; 940,000 fewer children will be supported to gain a decent education; 7.6 million fewer women and girls will be reached with modern methods of family planning; 2 million fewer people will be reached with humanitarian assistance; 3.8 million fewer people will be supported to access clean water and better sanitation; and 16.5 million fewer women and children will be reached with nutrition programming.

I am also proud of the UK's contribution to the global efforts to tackle Covid-19, particularly on vaccine development through Gavi and the breakthrough at Oxford, but does the Minister agree that these efforts will be hampered without strong health systems to deliver and administer vaccines, and that UK aid is critical to this?

As the noble Baroness, Lady Sugg, said, our ODA spend in tackling global issues, such as the pandemic, climate change and conflict, has been firmly in our national interest. She emphasised that cutting UK aid risks undermining efforts to promote a global Britain and will diminish our power to influence other nations to do what is right.

Is the noble Lord familiar with the words of General James Mattis, who said that if development funding gets cut,

"then I need to buy more ammunition"?

Does he share my concern that the effect of this cut in aid spending on instability will be to reduce the impact of the Government's announced increase in defence spending? It will make it harder for us to pursue our national interest and to create a safer, healthier, fairer and better world for us all.

We know that we need a dramatic acceleration in the pace and scale of global climate action. As we approach 2021, when the UK will host both the G7 and COP 26, the UK has an opportunity to lead the response to the Covid pandemic and the climate crisis. This cut reduces the funds available for both these efforts and shows that the UK is stepping back when its support is needed most. For the climate conference to be a success, we must harness the political will of other countries. As hosts, it falls to the United Kingdom to lead by example, not to withdraw,

Does the Minister agree with President-elect Joe Biden that effective foreign policy relies

"not only on the example of our power, but on the power of our example"?

The example that these cuts set is of stepping back when, in the midst of this global pandemic, we should be stepping up.

Mark Lowcock, UN under-secretary-general for humanitarian affairs, has this week made clear that the impact of these cuts will not only affect the world's most vulnerable but damage the UK's global reputation. Have the Government abandoned their plan for a global Britain? What plans do the Government have to legislate for this cut to aid spending, in the light of

the responsibilities outlined in the international development Act 2015? When do they plan to bring a Bill forward, and do they intend to include a sunset clause to ensure a return to 0.7%—the agreed OECD global target?

The noble Baroness, Lady Sugg, understood that this decision is not a necessity but a political choice by this Government. I will work hard with her and with all like-minded Peers across this House to oppose this ill-conceived, short-sighted decision.

Baroness Sheehan (LD) [V]: My Lords, I thank the Minister for bringing this Statement to your Lordships' House. In her resignation letter to the Prime Minister, the former FCDO Minister, the noble Baroness, Lady Sugg, called the cut to the aid budget "fundamentally wrong". She could not in all integrity defend the betrayal of a manifesto commitment made less than a year ago. Her view is endorsed by many others in the Minister's own party in both Houses. No fewer than five former Prime Ministers—three from the Minister's own party—and the most reverend Primate the Archbishop of Canterbury have said that this cut to international aid is morally wrong and harmful to Britain's standing on the international stage. Not so long ago—in July and again in September—the Secretary of State, Dominic Raab, agreed.

To tie the cuts in the aid budget to the £4 billion increase in the defence budget is to rub salt into the wound. The Secretary of State would do well to heed the words of the noble Lord, Lord Dannatt, in your Lordships' House last week. He said that the UK's influence comes,

"largely through the integration of our hard power ... with our soft power",

and that reducing the international development budget will significantly

"reduce the impact of so-called global Britain".—[*Official Report*, 25/11/20; col. 250.]

In his Statement, the Secretary of State says that the cut to the aid budget nevertheless means that Britain's aid spend remains at No. 2 among the G20. This misses the point. The outcry is because the Government are reneging on an unequivocal manifesto commitment and cutting aid over and above the fall in GNI at a moment unprecedented in global history. Future generations will rightly be appalled. It is akin to kicking someone when they are down. The British people have a strong sense of fair play. It is wrong to suggest, as I have seen in the press, that public opinion is on the side of these cuts. There is no evidence to support this assertion.

The 0.7% of GNI aid target, enshrined in law, is a proud Liberal Democrat achievement. It was spearheaded in the other place by the Private Member's Bill from my right honourable friend Michael Moore. In your Lordships' House, it was ably led by my noble friend Lord Purvis of Tweed, supported by my noble friend Lady Northover—then a DfID Minister in the coalition Government. Do the Government intend to change that law to reduce the aid target to 0.5%? If so, do they intend to use a Finance Bill as the vehicle for it?

Can the Minister state categorically that the 0.7% will be met this year? I regret that I need to ask this, but doubt remains. Will any shortfall caused by the overenthusiastic £2.9 billion cut announced in July be managed in a way that alleviates poverty and offers taxpayers value for money?

The Secretary of State does not mention scrutiny either in this Statement or in his letter to the noble Baroness, Lady Anelay, chair of the International Relations and Defence Committee. Can the Minister assure your Lordships' House that monitoring and assessment of the effectiveness and value for money of ODA spend will not be the preserve of internal FCDO processes, but rather subject to independent, open and transparent scrutiny, including by parliamentarians?

What assessment have the Government made of how many UK international NGOs will go under next year as a consequence of the economic situation and of this cut? How many jobs will be lost in the UK? Does the Minister agree that these NGOs, particularly the small ones, have the trust of local community leaders and so have been able to go that vital last mile to deliver essential healthcare, nutrition and—crucially today—vaccines? Surely he accepts that the COVAX initiative will fail unless we can get supplies to where they are needed. We must have robust health systems on the ground to vaccinate people. I fear that this Statement shows that joined-up thinking is not currently a strength of the new FCDO.

The Minister of State, Foreign, Commonwealth and Development Office (Lord Ahmad of Wimbledon) (Con): My Lords, first, I thank the noble Lord, Lord Collins, and the noble Baroness, Lady Sheehan, for their comments. I also thank them for making time last week, in calls that I and colleagues made, to discuss their obvious concerns about this cut, some of which they have articulated today.

I say at the outset in responding to both the noble Lord and the noble Baroness that, as my right honourable friend the Foreign Secretary mentioned specifically in his Statement, the decision was taken given the effects of the global pandemic on the economy and, as a result, the public finances, but it was taken with deep regret. It was felt that at the moment we cannot meet our target of spending 0.7% of GNI on ODA next year. The Statement was very up front, setting out the Government's intent. As my right honourable friend the Foreign Secretary made clear in the Statement, it is our intention to return to that target as soon as the fiscal situation and the challenges permit. As I am sure the noble Lord and the noble Baroness acknowledge, those challenges are immense.

They both mentioned the manifesto commitment. Like many in your Lordships' House and in the other place, and like many people across the country, we are proud that the Conservative Government enshrined the 0.7% target in law. Equally, the commitment in the manifesto at the time of the election did not for a moment predict—I do not think that anyone could have done so—the challenge not just to the UK but to the world of a health pandemic, coupled with the challenges to the economy that we face.

I shall pick up, first, on some of the specific points made by the noble Lord, Lord Collins. Rightly, he talked about the impact on aid. I do not deny that if you have a reduced pot of money, you will spend less

[Lord Ahmad of Wimbledon]
on many of the important causes that we are currently engaged in around the world. I have seen for myself the importance and strength of those contributions. Our development spend brings about stability in countries, ensures that peace agreements are sustained and, importantly, empowers communities around the world.

The noble Baroness, Lady Sheehan, mentioned the importance of transparency. I do not agree with her on that. As someone who started his life in the Foreign Office as a Minister of State, was then a double-hatted Minister across both departments and is now a Minister at the FCDO, I have seen in my portfolio, and have direct experience of, the benefits of bringing together the important tools of diplomacy and development. In ensuring that decisions are expedited, we can make more efficient decisions, and the focus of those decisions can more readily be seen in the different parts of the world with most need.

In particular, I emphasise to the noble Baroness and the noble Lord that we remain absolutely committed to helping the world's poorest. The measures that the Government have announced will ensure that every penny that we spend goes as far as possible towards sustaining our position as a world-leading development power, notwithstanding the cut that has been announced. The noble Baroness acknowledged where we stand.

I have always felt that the importance of any spend lies in its effective delivery on the ground. We stand with pride in comparison with many of our G20 and G7 partners, and it is important to recognise that we have seen some real benefits from our spend over many years. In particular, we will continue to spend over £10 billion on many of the key priorities which I know are close to the hearts of the noble Lord, Lord Collins, and the noble Baroness, Lady Sheehan.

The strategic framework on ODA spend that my right honourable friend the Foreign Secretary is setting up—the double lock, which he announced with my right honourable friend the Chancellor—will ensure that the money spent is targeted on achieving many of the key goals highlighted by the noble Lord and the noble Baroness, including being at the forefront of meeting the challenge of the Covid pandemic. In that regard, I am proud that when my right honourable friend the Prime Minister returned to work following his own challenge from Covid, one of the first events in which he participated and led on was the Gavi summit. That raised over $8 billion—far in excess of the estimate.

Equally, the Gavi summit ensured that the vaccines and the support that they will give to many vulnerable communities, including those that I often see on my own patch—I give the specific example of polio eradication in places such as Afghanistan and Pakistan—are sustained at a time of great challenge for people across the world. Specifically on the Covid-19 pandemic, we have also been at the forefront of the COVAX Facility. I believe we all welcomed the news this morning about the further progress that has been made on developing vaccines.

I also assure the noble Baroness and the noble Lord that, as these vaccines come on line, including the important Oxford-AstraZeneca one, we are committed to ensuring a scaling up of vaccine production. Indeed, the FCDO has been instrumental in facilitating the agreement reached between AstraZeneca and the Serum Institute of India for that very purpose—to scale up production of a vaccine that, through the COVAX Facility, as well as through direct distribution, will allow vulnerable communities to be reached as quickly as possible.

In addition, the noble Lord, rightly raised our chairmanship of the G7 and the important leadership that we are showing as president-elect of COP 26 in Glasgow next year. I have a personal interest in this, in that I was the one who stood up at the UN and declared the £11.6 billion of climate financing. We will stand by that over the five-year period. It is important that we show leadership on these issues.

We remain very committed to the SDGs as the basis of our aid. There are many challenges, but arguably the biggest two international challenges in the area of development are the Covid-19 pandemic and facing the climate emergency. The United Kingdom continues not just to lead the narrative but to provide support through direct financing for both initiatives, to ensure that the most vulnerable communities and developing states benefit from our continuing support.

The noble Baroness mentioned the 0.7% target. As I have mentioned to her previously, and as I believe I said in responding to a Question last week, our spend this year will meet the target of 0.7% of GNI. She also raised the issue of scrutiny of ODA spend. The fact that I appear before your Lordships' House today, as do colleagues in the other place, and the fact that we continue to have discussions and debates about this, shows that scrutiny takes place. I fully acknowledge and respect that. During my discussions last week, I talked directly to the commissioner of ICAI, not only to reassure her about our commitment to our development programmes but to gain a sense from her of what this means for the independent assessments that ICAI is able to make. As noble Lords will be aware, the Government have committed to ensuring that ICAI retains its role in making sure that our development spend is appropriately scrutinised.

Finally, I come to the important point that the noble Lord, Lord Collins, and the noble Baroness, Lady Sheehan, raised about the importance of legislation. Again, I fully understand why that was mentioned, and it was raised also by noble Lords in other discussions. At this juncture, I acknowledge not only what the noble Lord and the noble Baroness said but the important work done by my noble friend—not just my noble friend but my very good friend—and colleague Lady Sugg in the development sphere. She will be missed at the FCDO. It is often said in the context of your Lordships' House that it is much more welcome to have two hands on the pump rather than just one. I will personally miss her insights, experience and friendship, but I respect the decision that she took. Equally, I acknowledge the work of the noble Lord, Lord Purvis, in enshrining in law the 0.7% target.

It is right that noble Lords ask questions about the Government's recognition of their statutory obligations. As I said only last week, we are cognisant of our duties to Parliament. Under the 2015 Act, the Secretary of State is under an ongoing legal duty to ensure that that 0.7% target is met. However, as has been

acknowledged by noble Lords, the framework of the Act envisages that 0.7% may not be met in certain circumstances, including by reference to economic and fiscal circumstances.

On that basis, it is permissible to depart from the duty where the fiscal and economic circumstances justify doing so, reporting to Parliament under the Act. The noble Lord, Lord Collins, and the noble Baroness, Lady Sheehan, asked me specifically about this issue. I assure noble Lords that we are considering legislation in the context of the projected long-term fiscal circumstances and the need to plan over successive years. That kind of long-term planning is not easy to square with Parliament's intention as set out in the framework of the Act, and therefore I believe it is right in the context of that planning to ensure that we engage further with Parliament by bringing forward legislation.

The noble Lord and noble Baroness asked me specifically about timing. All I can say is that we intend to bring forward legislation in due course because, at the current time, it is difficult to predict the end date and this 0.5% figure moving back to 0.7% in light of the fiscal circumstances. It is right that we look carefully at that. As I said, we are considering the issue and will bring forward legislation in due course. As the noble Lord, Lord Collins, and the noble Baroness, Lady Sheehan, know—and I look forward to hearing from other noble Lords on this issue—I understand the strength not just of the sentiment but of the principle behind 0.7% and its value in establishing the UK as both a respected partner and a development power in the world.

Regarding the merger and the bringing together of the Foreign, Commonwealth and Development Office, the noble Baroness talked about defence spend. Earlier today we had a Question on the importance of women, peace and security. That is why the integrated review, on which further announcements will be made earlier in the new year, brings together all the key strands of our diplomacy and defence to ensure that the UK has been, is and will continue to strengthen its position as global Britain on the world stage.

The Deputy Speaker (Lord Lexden) (Con): My Lords, we now come to the 20 minutes allocated for Back-Bench questions. I ask that questions and answers be brief so that I can call the maximum number of speakers.

1.52 pm

Lord Hamilton of Epsom (Con): My Lords, does my noble friend share my concern about the whole principle of hypothecation of revenues being spent on particular areas of public spending? Why should overseas aid be so deserving rather than health, education or any other area? Surely this seriously inhibits the ability of the Chancellor to deal with crises, such as the one that we are facing now in the finances of this country, if money is hypothecated for certain causes? Secondly, does my noble friend welcome the fact that the British people are some of the most generous when it comes to giving their money to good causes that they choose? That is not the same thing as government Ministers using other people's money to spend on causes that the Government choose.

Lord Ahmad of Wimbledon (Con): My Lords, my noble friend raises two points. Respecting his insights and his own experience as a Minister, I say to him that I have seen myself the direct benefit that our development spend has brought in the field and the opportunities that it has brought to communities in different parts of the world. I am proud of the fact that our development spending has lent itself to strengthening the opportunities for different communities, but that also has a knock-on positive impact on what we as the UK are trying to achieve in the international arena. Our development spend and our commitment to it, our commitment to the SDGs and our commitments to alleviating poverty, providing support for famine relief and ensuring that girls are educated wherever they might be in the world are things that we can proudly stand up and say the UK has supported and will continue to support.

I agree with my noble friend in as much as I accept that the British people are among the most generous in the world—we see that in the pandemic that we are currently facing—but equally we as the Government are trustees of public spending to ensure that, as we look at our priorities domestically, we also look to invest wisely internationally, including in supporting the most vulnerable communities and people around the world.

Baroness Hayman (CB) [V]: My Lords, I declare my interests as set out in the register, and I echo the comments made about the much-respected noble Baroness, Lady Sugg.

The scale of these cuts will be brutal for those affected but also, I believe, damaging in the long term to this country and its interests. The Statement gives priorities in general and I welcome the commitments on climate change, girls' education and health, but it is very short on detail. So I have a specific question: will the Government be honouring their other commitment made in their manifesto—namely, to lead the fight against malaria? Will they do so by maintaining investment in malaria at its present level?

Lord Ahmad of Wimbledon (Con): My Lords, I commend the work of the noble Baroness's campaign to eradicate malaria. We have worked together on this, particularly in relation to the last CHOGM. She asks for quite specific details on the programmes and prioritisation. My right honourable friend has laid out the framework for how we will look at those priorities. I cannot give her a specific commitment on a particular programme on a particular issue, but I can say, where we have given commitments in the past, we will ensure that we look at how we can sustain our support, whether technical or financial. In due course, as decisions are made on how we prioritise our aid spend specifically, I am sure that we will return to these questions. I regret that I cannot give her a specific commitment on the issue of malaria at this time.

The Lord Bishop of St Albans [V]: My Lords, I ask the Minister to answer the question from the noble Lord, Lord Collins: will Her Majesty's Government include a sunset clause in any legislation amending the International Development Act? Secondly, do the Government intend to produce and publish any impact assessment of the reduction in spending on official development assistance?

Lord Ahmad of Wimbledon (Con): My Lords, I cannot go into the details of the legislative proposals that will be coming forward; as I said, I am not party to them yet, but they are being looked at. He asked some specific questions about sunset clauses, as did the noble Lord, Lord Collins, which I have noted, but beyond what I have said about the status of the legislation there is little more that I can add at this juncture.

Baroness Jay of Paddington (Lab) [V]: My Lords, I too am concerned about the lack of clarity about where the axe will fall on the UK's very effective aid programme. Is the Minister able to give specific examples of where the severe cuts may occur? For instance, will women's education funding be at the same sort of level or a much lower one? In health, will maintaining help with Covid mean reducing HIV/AIDS projects when their importance was very much emphasised yesterday on World AIDS Day? The Government really owe those receiving assistance and those delivering it much more proper transparency.

Lord Ahmad of Wimbledon (Con): My Lords, I assure the noble Baroness that as we look at our priorities for spend in 2020 those will become much clearer. My right honourable friend the Foreign Secretary is looking quite specifically at the issue of ODA spend for next year. The noble Baroness is right to raise the important gains that we have seen on key priorities that the UK has supported. I assure her that we will look at each programme to ensure that we can sustain not only the leadership that we have shown but the gains that we have made. Again, I have to say to her that I cannot give her details about specific programmes and projects at this time.

Lord Purvis of Tweed (LD): My Lords, when asked about the domestic economic situation, the Minister for Africa, James Duddridge, told the House of Commons:

"We are bound by law to spend 0.7%, so it is not a choice; it is in the law, and we will obey the law."—[*Official Report*, Commons, 30/6/20; col.147.]

We now know that the Government believe it is a choice and they will break the law. As the Minister said, they will in fact bring forward legislation to repeal that law, which does not sit with what the Government said about it being a temporary measure. So will the Minister give me this commitment: will the Government publish the fiscal criteria that will have to be met in order for the 0.7% commitment to be re-met before any legislative proposals to repeal the 2015 Act? If they do not, how can we believe the Government in the same way that we believed James Duddridge in June?

Lord Ahmad of Wimbledon (Con): My Lords, the noble Lord, again, asked quite specific questions and understandably, I cannot share with him information on the nature and detail of the legislation at this point. I assure him that, as I have said before, the Government fully recognise their obligations to Parliament. As I said earlier in my response to the noble Lord, Lord Collins, and the noble Baroness, Lady Sheehan, this is important and we are looking at legislation to ensure that we fulfil those obligations to Parliament.

Baroness Buscombe (Con): My Lords, I entirely support the 0.2% reduction in our development spend in the light of the economic emergency that we all face. It is also right to strengthen our defence and security capabilities, working hand-in-hand with our soft power. In line with this strong, integrated approach, does the Minister agree that if those in the party opposite are serious about protecting the world's poor, it is incumbent upon them—unlike their colleagues in another place—to support the overseas operations Bill when it comes to your Lordships' House? That Bill will support our Armed Forces, some of whom are risking their lives in some of the most dangerous places in the world, such as Mali, South Sudan and Afghanistan—places where, every day, they seek to work hard with our soft power to save and change millions of lives.

Lord Ahmad of Wimbledon (Con): My Lords, my noble friend raises an important point with which I totally agree—and I am sure that many other noble Lords would also agree—regarding the important role that our Armed Forces play in bringing about and sustaining peace and in ensuring humanitarian corridors. The increase in spending that we have seen in other areas—including in the MoD budget—testifies to the important role of the military when it comes to peacekeeping operations and sustaining humanitarian corridors. We can all be proud of the role that our military plays in delivering support to the most vulnerable communities around the world.

Lord Kerr of Kinlochard (CB) [V]: My Lords, a detected lie is the clock striking 13: it is wrong and it casts doubt on all past and future chimes. In June, the Prime Minister formally renewed the 0.7% commitment on the record in the other place. I was reassured, but it turns out that I was deceived. The aid community around the world was reassured, but it turns out that they were deceived. I suspect that the noble Baroness, Lady Sugg, was deceived: she was an excellent Minister and will be much missed. The cut to our aid projects now is 30%; the cut to our credibility is much greater. I ask the Minister: why do we lie?

Lord Ahmad of Wimbledon (Con): My Lords, as I said earlier, we are proud of our commitment to 0.7%; it was a Conservative-led Government who brought that into legislation. I can assure him that we made this decision after very careful consideration. We needed a temporary reduction in order to meet the unprecedented challenges that we face in terms of both health and the economy. I reassure him, however, that our intention is to return to 0.7%.

Lord Grocott (Lab) [V]: My Lords, does the Minister agree with me that there are few parts of the world where our continued development assistance is needed more desperately than in Afghanistan? Does he further agree that any reduction in our support for that country—given the decades of conflict, the huge numbers of displaced people and our deep involvement there, both militarily and economically—could have devastating effects? Can he assure us that, whatever changes are envisioned in our aid budget, the funding for Afghanistan will remain a top priority?

Lord Ahmad of Wimbledon (Con): My Lords, just recently, I participated in the pledging conference where we announced a further £155 million in development support for Afghanistan for the next year, contingent, of course, on the situation with the peace talks. Equally, we have committed a further £70 million to the important strides that we are making in ensuring the security situation in Afghanistan. As the Minister for Afghanistan, I recently discussed this with President Ghani directly. We remain committed to ensuring that the gains that have been sustained in Afghanistan continue through our security support as well as our development support.

Lord Bruce of Bennachie (LD) [V]: My Lords, I draw attention to my entry in the register of interests. Does the Minister agree that severe cuts on top of the departmental merger and the fundamental restructure of delivery are likely to prove deeply disruptive for development programmes? Strengthening management and capacity within the department, referred to in the Foreign Secretary's Statement, may well be essential, but does the Minister accept that the success of UK aid delivery has been built on a model of partnership with the UK's world-leading NGOs and development specialists? These cuts will test their resilience. How soon will the department be able to provide clarity on bidding and programme-planning to enable the Government's development partners to manage their own capacity to ensure that crucial aid and development work can be sustained and that resources on which the Government depend for delivery will still be there when called upon?

Lord Ahmad of Wimbledon (Con): My Lords, I agree with the noble Lord that we have great development expertise. Where I differ from him is that, in bringing the departments together and creating the FCDO, I believe that we have further leveraged the expertise of our development officials in contributing to our diplomatic priorities as well. Let me further assure him that I have spoken directly to a range of international partners, both within the UN context and key NGOs. We will continue to liaise with them on specific allocations; those decisions are in progress, and we will update NGOs and other key partners on them as they are taken.

Lord Sarfraz (Con): My Lords, does the Minister agree that, while we build back better at home, we now have an opportunity to give back better overseas by addressing significant cost inefficiencies in our aid programmes? Will he confirm that humanitarian commitments, such as ensuring distribution of a Covid vaccine to Rohingya refugees, will remain a priority?

Lord Ahmad of Wimbledon (Con): My Lords, I formally welcome my noble friend: this is the first time I have answered a question that he has posed. I agree with him on both fronts. The creation of the FCDO allows for things to be done more efficiently. As the Minister for Bangladesh, I am directly engaged on the Rohingya issue, which I know is close to my noble friend's heart. We gave a further commitment to Bangladesh of £47 million—£37 million for Rohingya support and £10 million for support for Bangladesh itself—at the recent pledging conference that we hosted.

Lord Wigley (PC) [V]: My Lords, we are still among the world's richest countries. If the problem is finding the money, let us adjust the top level of income tax to share the fiscal burden fairly. The Government were elected on a manifesto pledge to maintain overseas support. If this manifesto pledge can be jettisoned, can this House, too, pick and choose which manifesto commitments we should respect?

Lord Ahmad of Wimbledon (Con): My Lords, on the proposals on tax, I am sure that the Chancellor will listen very carefully to the noble Lord. On the issue of the manifesto pledge, I have already answered that question.

Lord Hannay of Chiswick [CB] (V): My Lords, will the Minister be so kind as to respond to the very forceful letter that was sent to the Foreign Secretary by your Lordships' International Relations and Defence Committee last Wednesday, arguing that the decision taken was wrong economically and wrong politically? Does he not think that it is shameful that in none of the statements made by the Government, including his own answers to questions, has it been admitted that we have already cut £2.9 billion from our aid by applying the 0.7% calculator, and that all that is proposed now comes on top of, and in addition to, that?

Lord Ahmad of Wimbledon (Con): My Lords, I agree with the noble Lord on his final point. The reduction in GNI has meant a circa £2.9 billion reduction in the current aid spend, but we will fulfil our commitment to the GNI for this year. I also accept the principle that the proposal of 0.7% going down to 0.5% for 2021 presents an additional reduction. I know that the letter from my noble friend Lady Anelay to the Foreign Secretary is in the course of being responded to.

Lord Sikka (Lab) [V]: My Lords, I draw attention to my entry in the register of interests. There is another aspect of the ODA which the Government continue to neglect: the amount of taxes which are avoided in emerging economies and low-income countries. Last year, they lost $144 billion due to tax avoidance by corporations and the rich. The tax avoidance industries in the UK and the Crown dependencies and overseas territories are particularly responsible for that. What steps will the Minister take to ensure that the emerging economies get the taxes which are due to them? That would give them plenty of resources for development.

Lord Ahmad of Wimbledon (Con): My Lords, it needs political leadership within country, but we should be lending technical support to ensure that a greater level of tax is collected within developing parts of the world. I note what the noble Lord has said.

Baroness Northover (LD): My Lords, what the noble Lord calls the "fiscal situation" that we are currently in was already apparent when reassurances were given, until a very few days ago, on our commitment to development by a department—DfID—renowned for its efficiency and transparency, including working on governance and tax collection. We could be in this so-called fiscal situation for the next decade or generation,

[Baroness Northover]
because of Covid and Brexit. Can the Minister honestly say that he anticipates that we will ever return to 0.7% of GNI for development?

Lord Ahmad of Wimbledon (Con): Having hope and optimism is part and parcel of what defines the Government's thinking. While we have been challenged this year, and our decision on this issue reflects that, as I have already said, it is our intention to return to 0.7%. We have recently seen news on the Covid vaccine, and the steps that are being taken. I again underline the United Kingdom's leadership on the important issues of facing up to the Covid challenge and ensuring that, through the COVAX facility and other support, we access vaccines and provide them to the most vulnerable. This underlines this Government's commitment to ensuring that the most vulnerable and those who need assistance continue to get the support that they need, notwithstanding the challenges and this decision.

2.13 pm

Sitting suspended.

Arrangement of Business

Announcement

2.18 pm

The Deputy Speaker (Baroness Henig) (Lab): My Lords, the Hybrid Sitting of the House will now resume. Some Members are here in the Chamber while others are participating remotely, but all Members will be treated equally. I ask all Members to respect social distancing. If the capacity of the Chamber is exceeded, I will immediately adjourn the House.

I will call Members to speak in the order listed in today's list. Interventions during speeches or "before the noble Lord sits down" are not permitted, and uncalled speakers will not be heard. Other than the mover of an amendment or the Minister, Members may speak only once on each group. Short questions of elucidation after the Minister's response are permitted but discouraged; a Member wishing to ask such a question, including Members in the Chamber, must email the clerk.

The groupings are binding, and it will not be possible to degroup an amendment for separate debate. A Member intending to press an amendment already debated to a Division should have given notice in the debate. Leave should be given to withdraw amendments. When putting the Question, I will collect voices in the Chamber only. If a Member taking part remotely intends to trigger a Division, they should make this clear when speaking on the group.

United Kingdom Internal Market Bill

Third Reading

2.20 pm

The Lord Privy Seal (Baroness Evans of Bowes Park) (Con): My Lords, before the House begins its Third Reading on the United Kingdom Internal Market Bill, it may be helpful to say a few words about Third Reading amendments. In line with the procedure agreed by the House, the Public Bill Office advises the usual channels that Amendment 2 in the name of the noble Baroness, Lady Ritchie of Downpatrick, on the Marshalled List for Third Reading today, falls outside the guidance in the *Companion* on Third Reading amendments. On the advice of the Public Bill Office, the usual channels met and have recommended to the House that Amendment 2 should not be moved. The noble Baroness, Lady Ritchie, was informed of the view of the usual channels. She has confirmed to my office that she will not move her amendment today.

I am grateful to the noble Baroness and the other signatories of the Report stage amendment and for the positive engagement with the noble Baroness that took place yesterday with my noble friend Lord Callanan and Ministers in the Northern Ireland Office, of which the House will hear more later.

The Deputy Speaker (Baroness Henig) (Lab): I call the Minister to make a Statement on legislative consent.

The Parliamentary Under-Secretary of State, Department for Business, Energy and Industrial Strategy (Lord Callanan) (Con): My Lords, I am required to inform the House that on 7 October the Scottish Parliament voted not to grant legislative consent because of its assertion that the Bill negatively impacts the devolution settlements. We have remained open to engagement with the Scottish Government on the contents of the Bill, and this offer still very much stands. The Senedd and Northern Ireland Assembly have not yet voted on legislative consent, but we have continued to engage with both Administrations on the Bill's contents in recent weeks. This engagement has been fruitful, and the Government have listened closely to concerns. It has resulted, for example, in the Government tabling an amendment to ensure that the devolved Administrations have a strong role in appointments to the Office for the Internal Market panel, in light of Welsh Government proposals.

We appreciate the significance of the UK Government legislating without consent for this Bill. Our ambition, of course, remains to secure legislative consent Motions for the Bill. As I have said throughout the passage of the Bill, the UK Government remain open to discussions with all the devolved Administrations.

Clause 12: Modifications in connection with the Northern Ireland Protocol

Amendment 1

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

1: Clause 12, page 8, line 30, leave out subsections (6) and (7)

Lord Stevenson of Balmacara (Lab) [V]: My Lords, my original Amendment 21 on Report, also signed by the noble Lords, Lord Anderson and Lord Wigley, and the noble Baroness, Lady Bowles, on which I spoke on 18 November 2020 and moved formally on 23 November 2020, replaced the original Clause 10 with a new clause listing public interest derogations from market access principles. I was pleasantly surprised and

grateful that the Government accepted the amendment without a Division. The clerks subsequently advised us that the amendment required some consequential changes to the Bill to remove minor inconsistencies. These changes are set out in the amendments before your Lordships' House today. Amendment 1 removes two subsections on page 8 and Amendment 3 removes Schedule 1 entirely. I beg to move.

Lord Callanan (Con): The Government regret the changes made to the previous Clause 10 on Report, but I will not reopen that debate here. I appreciate the need for these amendments to tidy up the Bill text so the Government will not oppose them.

Amendment 1 agreed.

Amendment 2 not moved.

Schedule 1: Exclusions from market access principles

Amendment 3

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

3: Schedule 1, leave out Schedule 1

Amendment 3 agreed.

2.25 pm

Motion

Moved by ***Lord Callanan***

That the Bill do now pass.

Lord Callanan (Con): I thank noble Lords from across the House for the quality of the debates and the scrutiny provided throughout the passage of this Bill. I am grateful for the constructive engagement from many noble Lords from all parts of the Chamber that we have had both in and out of the Chamber, and hope that we can continue these discussions in the same spirit. I extend my thanks to other members of the ministerial team: my noble friends Lord True, Lady Bloomfield of Hinton Waldrist, Lady Scott of Bybrook and Lady Penn, as well as Shreena and the rest of the excellent civil servants on the Bill team.

I have said throughout the debates that this Bill is essential for guaranteeing the economic and political integrity of the United Kingdom. It will ensure much-needed certainty for businesses as we leave the transition period. It will preserve our ability to trade freely across all parts of the United Kingdom. Having listened to all the debates in this House on this Bill, I believe I can say that all noble Lords share this objective. While noble Lords and I may not have always agreed on every single point—to put it mildly—the challenges posed by noble Lords and debates we have had have always been conducted in a constructive and courteous manner—except, obviously, the noble Lord, Lord Foulkes, but we accept his contributions.

On a related note, I want to touch briefly on an amendment in the name of the noble Baroness, Lady Ritchie of Downpatrick, referred to by the Leader of the House. As I committed to do on Report, I facilitated and joined a meeting on this issue between my honourable friend Robin Walker, Minister of State in the Northern Ireland Office, the noble Baronesses, Lady Ritchie, and Lady Suttie, to discuss this in more detail. I thank the noble Baronesses for a good meeting, which assuaged their concerns on this issue.

For the benefit of the House, let me be clear: Article 2 of the Northern Ireland Protocol is vital, and the Government are fully committed to upholding it. I assure noble Lords that the rights for individuals in Northern Ireland captured within the scope of the Article 2 commitment will continue to be protected going forward, and will not be impacted by the workings of this Bill. I have explained this in greater detail in a letter to the noble Baroness, Lady Ritchie. To reassure noble Lords who may have similar concerns, I will place a copy in the Library. I beg to move.

2.28 pm

Baroness Finlay of Llandaff (CB) [V]: My Lords, it is a great honour to be speaking at this point. My noble friends on the Cross Benches have brought their wide range of experience, wisdom and differing views to crucial amendments to the Bill.

The Bill is of huge constitutional significance: it goes to the heart of our history, to the devolution settlements that have matured as we enter a new era outside Europe. As the UK takes back control and seeks to be more independent than over recent decades, decision-making and mutual respect among the four nations of the United Kingdom will be more important than ever.

We now see that Scotland is withholding legislative consent and Wales is pending, as is Northern Ireland. To lose those nations would compound the threat to the union from a party that is called the Conservative and Unionist Party. In each nation, elected representatives know the intricacy of local problems and ways to achieve solutions to make our nations attractive for innovation and new ways of working. Covid has made the challenges greater, as many in the population have been deeply traumatised by bereavement, isolation and rising unemployment.

This House has examined every word of this Bill with rigour. The amendments it has made have been resoundingly supported around the House and outside. They have laid a foundation for the UK's reputation to be restored, as we foster new relationships and rebuild older ones around the globe. Through its amendments, the House has shown its commitments to the future well-being of our national relationships and constitution. We have delivered a clear beheading sentence to Henry VIII's dangerous clauses, and the rumble of Llewellyn the Great and Robert the Bruce turning in their graves was audible at times.

We have ensured that there is a secure negotiating framework on the face of the Bill to achieve that consensus across our four nations, which history has taught us achieves so much more than mere directive dominance. We have removed one clause that would allow the Government to use the allure of taxpayers' money to work around, not with, the devolved Governments and to undermine their priorities. We have removed another that would explicitly impose new reservations on their competence in respect of state

[Baroness Finlay of Llandaff]
aid. We have protected the devolved institutions' ability to introduce ecological and environmental improvements and new public health initiatives in their nations, the learning from which will benefit us all.

This Bill has posed a major threat to the union itself. With my noble colleagues on these Benches, particularly the noble and learned Lords, Lord Hope of Craighead and Lord Thomas of Cwmgiedd, we have done all we can to ensure that threat diminishes. It has been an enormous privilege, if daunting at times, to be able to participate in this Bill. So many across the House have brought their expertise—from the Select Committees on which they serve, particularly on common frameworks, as well as past experience as elected representatives of widely differing areas—to a shared goal of improving the Bill.

Now we send the Bill on to the next part of its journey, and I hope the Government will continue to listen hard and will reflect on the importance of the amendments and the eloquent speeches of many, including my noble and learned friend, Lord Judge. I genuinely believe that noble Lords should and will resist the reinsertion of distasteful parts of the Bill and the deletion of key amendments.

Finally, it is my pleasure to thank all those who have contributed to the Bill's passage: the outstanding Public Bill Office and parliamentary clerks, the Bill team and the many who work to support us behind the scenes, particularly the digital team and broadcasting hub, which enabled so many smoothly unmuted contributions—I beg your pardon that mine failed just now—and efficient votes. We have shown that we can function very effectively as a hybrid House, voting remotely, with numbers that showed how clearly the Lords can express its collective views.

The Ministers, Whips and Peers showed they can still maintain a sense of humour under pressure. I would particularly like to thank the Lord Speaker and my fellow deputies, who chaired us through very complex parliamentary procedures. I thank them all very much indeed. Once again, to all in this House who supported these critically important changes to the Bill, I give a huge thank you.

2.33 pm

Baroness Ritchie of Downpatrick (Non-Afl) [V]: My Lords, it is a pleasure to follow the noble Baroness, Lady Finlay of Llandaff. At this stage, I thank the Ministers, the noble Lords, Lord True and Lord Callanan, the Opposition Front-Bench team, the noble Baroness, Lady Hayter, the noble Lord, Lord Stevenson of Balmacara, and the noble and learned Lord, Lord Falconer of Thoroton. I thank the noble Lord, Lord Purvis, on the Liberal Democrat Benches, and the noble Baroness, Lady Finlay of Llandaff, and the noble and learned Lord, Lord Judge, from the Cross Benches.

In his speech today, the Minister, the noble Lord, Lord Callanan, referred to the meeting that he had with the noble Baroness, Lady Suttie, and myself yesterday on the non-discrimination principle in relation to Clause 11 of the Bill, which specifically refers to Northern Ireland and the two commissions: the Northern Ireland Human Rights Commission and the Equality Commission for Northern Ireland, which have agreed today with the dedicated mechanism in respect of the Northern Ireland protocol. Our meeting yesterday was very productive, and, in fact, the Minister's subsequent letter to me, following our exchanges on Report, was also productive and provided good clarification on the point of the market access principles and the non-discrimination principle in relation to the Bill.

Both commissions found it very helpful, because the issue was central to the recent amendment and recent correspondence with the Minister and concerned the operation of those market access principles introduced in the Bill, particularly the non-discrimination requirement. The question was whether these principles applied to legislation introduced to ensure that there will be no diminution of certain rights in Northern Ireland resulting from the exit of the UK from the EU, as required by Article 2 of the protocol. As already referred to, the two commissions have direct responsibility, as they have agreed to act as the dedicated mechanism responsible for monitoring, supervising, advising, reporting on and enforcing the Government's commitment under Article 2 of the Northern Ireland protocol of the withdrawal agreement from the end of the transition period.

Following that period of uncertainty, shall we say, the Minister's letter to me of last Friday—which was productive—and our meeting yesterday proved a very useful exchange, providing the necessary clarifications, for which the noble Baroness, Lady Suttie, and I are extremely grateful. I further note that the Minister has agreed to our request to put that letter, plus another one to do with procurements, in the Library of your Lordships' House.

Robin Walker, Minister at the Northern Ireland Office in the other place, has agreed to write to both commissions: the Northern Ireland Human Rights Commission, for which he has responsibility, and the Equality Commission for Northern Ireland, which is the responsibility of the Northern Ireland Executive. In that letter, he will state what the Minister, the noble Lord, Lord Callanan, has already stated to me.

I thank Ministers for their deliberations with us and productive outcomes, and I hope it all works well. I hope that Part 5 of this Bill, which deals specifically with the Northern Ireland protocol, will not be reinstated in the other place, because I firmly believe in the principle of reconciliation. Breaking international law and the other international agreement, the Good Friday agreement, at any point would not be good for peace or political progress in Northern Ireland.

2.38 pm

Lord Garnier (Con): My Lords, to save time, I ask your Lordships' House to read into my remarks the kind words of the noble Baroness, Lady Ritchie, about those behind this Bill. I think it is appropriate for me, a disagreeable Conservative Back-Bencher, to congratulate the Ministers, my noble friends Lord Callanan, Lord True and Lady Bloomfield, as well as my other friends on the Front Bench, for their conduct of the Bill, good spirit and sense of humour, as they have watched large parts of the Bill of which they had conduct, crumble during its passage. The Bill has had a bumpy ride; I do

not think that is controversial. Today, we will return a somewhat different Bill to the other place compared to the one that it sent to us.

None the less, I urge that we do let it pass and go back to the other place. As I implied on Report, it has, on occasion, been tempting to think that, in relation to the progress and development of the Bill, Downing Street had

"learned nothing and forgotten nothing".

Of course, Talleyrand was referring to the Bourbons after the abdication of Napoleon: they seemed determined endlessly to repeat the mistakes of their predecessors who had been swept away in the French Revolution. That is clearly not a fate I wish for the Government, although last night's revolt in the Commons suggests that they need to have a care.

It may be said that all that needs to be said has already been said about the Bill. In the other place, that is often seen as a good reason to say it all over again. I will not say it all over again, but I will point out two themes that have emerged from our consideration of the Bill, which I hope the other place will not ignore when it considers the Bill we return to it.

The first relates to the rule of law. The Bill did not start well. It began with my right honourable friend the Secretary of State for Northern Ireland announcing that the Government would deliberately renege on their international treaty obligations, albeit, as he said, in a very specific and limited way. It was not a slip; it was a deliberate statement. But it was certainly a mistake, and it made the Government look ridiculous.

The Government sought to cure that error by passing the buck to the other place, and then sought to avoid the error by arguing that they were not breaking their rule of law obligations, or that there was a difference between our international law and domestic rule of law duties, or that it did not matter, or that they had to break their obligations because, in some unspecified manner, the EU was going to act in bad faith. I sincerely regret that the Lord Chancellor and the Attorney-General took part in this because, objectively observed, they did not assist. Few Britons who believe in the rule of law and in our respecting treaty obligations were convinced by any of that.

Part 5 of the Bill was unsupportable and it was rightly removed for the reasons set out by the noble and learned Lord, Lord Judge, and many other thoughtful contributors, from all parties and none. I therefore gently ask the Government and the thinking majority in the other place not to put Part 5 back into the Bill.

Lord Cormack (Con): Hear, hear.

Lord Garnier (Con): It is always a joy to have the support of my noble friend.

No British Government, and certainly no British Conservative Government, should be in the business of persuading the United Kingdom Parliament to enact a law that breaks a treaty that is barely a year old, the terms of which were put into domestic law earlier this year by the very same Government and Parliament. They cannot break the law, still less the law of their own making, and expect to engender respect at home or abroad.

My second theme relates to the maintenance of the United Kingdom—something already touched upon by the noble Baroness, Lady Finlay. I am a unionist, and I want to see the United Kingdom of Great Britain and Northern Ireland continue and thrive. Of course, I know that there are some people in Scotland, Wales and Northern Ireland who want to see a different constitutional arrangement, whether that be through greater devolution, a federal system or the separation of Wales and Scotland from the United Kingdom and the unification of Northern Ireland and the Republic. But there are, and there were, provisions in the Bill—no doubt sincere arguments were made in favour of them by the Government—that will encourage those against the continuance of the union to conclude that the United Kingdom Government do not care about their views and that they should therefore try even harder to leave. My noble friend Lord Callanan's statement at about 2.20 pm exemplified that.

The law too often passed by Parliament is the law of unintended consequence. If we are not more aware of the effect of our words and deeds upon the minds of those who want to bring the union to an end, it is we unionists who will live to regret it. It was, after all, the leader of the Scottish Conservatives, my honourable friend Douglas Ross, who recently said that the case for separation was being won in London, not in Scotland.

I therefore ask the Government, in relation to this second theme—the maintenance of the United Kingdom—not to do anything that will give the separatists any excuse to say that the United Kingdom has had its day and that London knows nothing and cares less for the opinions and self-respect of the devolved Administrations. Of course separatists will find insult where none is intended and make good use of every slight, actual or perceived, so let us not give them any excuse to do so. Let us treat the devolved Administrations with respect and co-operate together as a functioning union, with more to gain from being one country than four separate ones.

I urge the other place to rest content with the Bill as we return it to them. It is in better shape now than it was and it will do less damage to the union and our country's international reputation.

2.44 pm

Lord Fox (LD): My Lords, when the Bill entered your Lordships' House, it presented many problems—not to put too fine a point on it. It is a great honour to follow the noble and learned Lord, Lord Garnier, who, among his many pieces of advice, advised Peers not to rehearse the arguments that we have heard over the course of the Bill. So I will not do that, but I agree that the Bill leaves your Lordships' House in a better state than when it arrived, though it is of course still far from perfect.

During the scrutiny process, as the noble Baroness, Lady Finlay, alluded to, over 30 amendments have been inserted into the Bill through your Lordships' overwhelming votes. At the same time, as other Peers have said, large and important parts of the Bill were removed as a result of this process. I hope this gives Her Majesty's Government cause to reflect further, rather than simply trying to move on.

[LORD FOX]

Additionally, the Government themselves have made more than 30 amendments to the Bill, and that indicates that the Ministers have been listening to and participating in this debate. I thank the noble Baronesses, Lady Bloomfield, Lady Penn and Lady Scott, and the noble Lords, Lord True and Lord Callanan—the full cadre of Ministers—for their stamina and general good humour through this process. I agree that the Ministers listened, and the government amendments are testimony to that. The departmental Bill teams must get much credit for keeping Ministers on the straight and narrow—if indeed they did. The Bill has been drafted and debated on an extremely tight schedule, and I am sure that the Bill team lost many weekends and evenings as it stewarded Ministers through this process—as well as drafting the many letters for my noble friend Lord Purvis that have emerged.

I thank all the Cross-Bench and Labour speakers, the Bishops and their teams for the great collective effort on the Bill. It is invidious to pull out names but I would like to thank the noble Baronesses, Lady Hayter and Lady Finlay, the noble Lord, Lord Stevenson, and the noble and learned Lords, Lord Judge, Lord Hope, Lord Thomas and Lord Falconer, who put in many hours to get us to where we are today. Perhaps the Law Society of Scotland and the Welsh Government should also get a special mention for the hours that they have put into drafting amendments.

I would also like to mention the parliamentary clerks, as well as the Whips' Office and the usual channels, for helping to get the Bill timetabled and get us through it. It was not an easy task in the circumstances. From our team, I would single out Elizabeth Plummer and Sarah Pughe in the Lib Dem Whips' Office, who have done a fantastic job. Finally, I thank the cadre of colleagues I have on the Benches today, my noble friends Lady Bowles and Lord Purvis, and the 20 other Lib Dem Peers who have participated in the various stages of the Bill.

It is clear from what I have been saying over the past weeks that this is not the way the Liberal Democrats would have done it, but I feel that the debates have been deep as well as wide, and serious and well considered on all sides. It is important that this is considered as the Bill leaves this House and goes forward.

The Minister mentioned legislative consent. Other speakers have said how important it is that Part 5 remain out of the Bill; that is very true. Many of the other amendments were also targeted at the grab at devolution that the Bill seeks. The principle of legislative consent requires that those amendments be given full consideration in the other place. If they are summarily dispatched, as is often the case with your Lordships' amendments, the message will be sent clearly to the devolved authorities about what this Government consider to be important in terms of the devolution settlement. That runs far past this Bill, and far past the term of this Parliament. It is a very important issue—and not one that I think the Government, in the end, want to have on their hands.

I am wont to give Ministers advice, and they are wont to ignore it, but there are many other people wiser than me who are also giving Her Majesty's Government this advice. I hope that, when it all comes out in the wash, that advice will be listened to—because this issue is far more important than just this Bill.

2.49 pm

Lord Stevenson of Balmacara (Lab) [V]: I thank the ministerial team for their time and accessibility while we have been working on the Bill. Bills that span departments—three, in this case—are a nightmare to run. Credit is due to those involved, in BEIS, the Cabinet Office and the Treasury, for their seamless performance. We tried hard to find divisions between them, but we failed. I particularly want to thank the Minister from the Cabinet Office, Chloe Smith MP, at a difficult time for her. I am sure the whole House will want to join me in wishing her well for the next six months, and a speedy recovery.

Our team in the Lords is used to working collaboratively, and we have tried to blend our experiences and interests to good effect in working on the Bill. I thank in particular my noble friend Lady Hayter for her endless supply of wit and wisdom, and my noble and learned friend Lord Falconer, who must have been a terrifying vision when he rose at the Dispatch Box to take on the combined ministerial skills that he was dealing with. We have also worked closely with Commons colleagues, and we now pass to them the responsibility for defending the changes that we have made.

The Bill team has supported the parliamentary processes very well and has managed the large number of Zoom meetings and letters with huge professionalism. We thank them. We should also thank the technical teams who have supported the hybrid House so well. Last, but not least, I thank Dan Harris, our legislative support team member, who has absorbed huge amounts of work and juggled his other commitments so as to keep us on track, drafting all our amendments and dealing with the Public Bill Office to get us to where we are. He celebrates a big birthday this week, and he deserves the break that he is taking.

As the noble Lord, Lord Fox, said, it is customary to say that Bills that have been sent to us for consideration by the other place leave here much improved by the detailed scrutiny that your Lordships' House brings to legislation. I am not sure that this Bill—with, as the noble and learned Lord, Lord Garnier, observed, its 65 amendments in all, and shorn of about one third of its original material—can qualify for that appellation. It still seems to have some problems and deficiencies. However, we think it has been improved.

My colleagues and I were heartened by the handover meeting we held yesterday with the ministerial team, involving Commons Ministers as well, which seemed to open up possible joint solutions to many of the remaining issues. Of course, external events may well intervene, but we are not far apart on many issues, and we remain willing to work together with the Government to resolve the outstanding issues over the next period.

2.52 pm

Lord Callanan (Con): My Lords, let me first thank all those who have contributed to the debate for their remarks. Again, all noble Lords have approached the

subject in a timely and constructive manner, in the finest traditions of this House, as has been demonstrated throughout the passage of the Bill. It is now up to the other place to scrutinise the changes that this House has made to the Bill. It would be wrong of me to prejudge what will happen there, but I can say that should the Bill return for further consideration in this House, I look forward to working with all noble Lords in the spirit of constructive—well, sometimes constructive—co-operation that we have all shown so far.

Bill passed and returned to the Commons with amendments.

2.53 pm

Sitting suspended.

State Aid (Revocations and Amendments) (EU Exit) Regulations 2020

Motion to Approve

3.01 pm

Moved by ***Lord Callanan***

That the draft Regulations laid before the House on 29 October be approved.

Relevant document: 30th 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, these draft regulations are made under the powers in the European Union (Withdrawal) Act 2018 as amended by the European Union (Withdrawal Agreement) Act 2020, which I will refer to as the withdrawal Act. The purpose of these regulations is to remove redundant EU state aid law from the domestic statute book after the end of the transition period. This is both appropriate and necessary to provide legal certainty for UK businesses and public authorities that EU state aid rules no longer apply in the UK, except where they apply directly under the Northern Ireland protocol.

I begin by explaining the European Union's approach to subsidy control, which is known as state aid. State aid is support in any form, from any level of government, which gives a business or other entity an advantage that could not be obtained in the normal course of business. If this advantage has the potential to distort competition within the internal market and affect trade between EU member states, then state aid is present and the rules for state aid are triggered. The state aid rules were devised by the European Union to ensure that EU member states operate in a way compatible with the internal market, and the rules are of course very much a European Union concept. They derive from Articles 107 to 109 of the Treaty on the Functioning of the European Union, which, together with the EU regulations and decisions made under that treaty, control how and when member states can grant aid. Responsibility for enforcing the rules sits with the European Commission. However, having left the European Union and the single market, the UK will no longer be bound by EU state aid rules after the end of the transition period.

If changes to domestic law are not made in time for the end of the transition period, EU state aid law would become part of UK law, as retained EU law through the withdrawal Act, but the law would then contain some fundamental deficiencies. These deficiencies would make this retained EU law on state aid inoperable in the United Kingdom. Revoking the EU law on state aid will make it clear to businesses, courts and public authorities that state aid rules will no longer apply in the UK, except, as I said, where they apply directly under the Northern Ireland protocol. Instead, the UK has announced that we will have our own subsidy arrangements to support a competitive, dynamic market economy.

From 1 January, the Government will follow World Trade Organization rules on subsidies and other international commitments agreed in free trade agreements, and we will consult on whether to go further, including whether to legislate on this matter. We will, of course, work closely with businesses and public authorities across all parts of the United Kingdom to consider how best to design an approach to subsidy control that works for the United Kingdom economy.

In terms of the technical detail, this statutory instrument disapplies and revokes retained EU state aid rules that are preserved by Sections 3 and 4 of the withdrawal Act. As I mentioned earlier, Articles 107 to 109 of the Treaty on the Functioning of the European Union, together with the EU regulations and decisions made under that treaty, govern the state aid regime. Article 107(1), for example, defines state aid and sets out the general prohibition on giving aid. That prohibition operates by providing that aid is incompatible with the EU internal market in so far as it affects trade between member states, unless the aid has been approved by the European Commission.

Article 107(2) and (3) sets out when the Commission must give approval and those areas where the Commission has discretion over whether to approve aid or not. Article 108 sets out the Commission's role in monitoring state aid and obliges member states to notify aid to the Commission in advance. Aid cannot be awarded until approved by the European Commission; this is known as the standstill obligation. While the Commission has exclusive competence to decide whether aid is compatible with the internal market, national courts can enforce the standstill obligation. In effect, national courts can suspend an aid measure until the Commission has considered whether the measure is compatible with the internal market. However, after the transition period, the UK will no longer be bound by EU state aid rules. The rights and obligations I have just described will no longer be relevant. This SI ensures that they are not retained in UK law by the withdrawal Act.

Other EU regulations that enable the EU state aid regime to operate across member states would, after the end of the transition period, become retained EU law through the withdrawal Act. These broadly consist of procedural and exemptions regulations. The procedural regulations, for example, set out how the state aid regime operates and make clear the roles and responsibilities of the Commission and the member states. They set out the procedures to be followed in notifications and investigations and give the Commission information-gathering powers. The exemptions regulations set out

[Lord Callanan]
the conditions under which an aid measure is exempt from the requirement to notify the Commission in advance. Yet these provisions would not be able to be complied with or enforced in the United Kingdom because the Commission will not have a role in the UK's domestic subsidy control arrangements. The SI will therefore revoke these now redundant provisions.

Removing retained EU law from the UK statute book that is both deficient and no longer relevant avoids any possible confusion about whether state aid rules must be complied with or not. Importantly, this SI also ensures that domestic legislation can continue to operate appropriately beyond the transition period, when EU state aid rules will no longer form part of domestic law. The SI does this by making consequential amendments to other retained EU law and UK domestic legislation which refers to state aid rules.

It is important at this point for me to make it clear how these regulations will operate in light of the Northern Ireland protocol. While these regulations remove retained EU law from the UK domestic statute book, Article 10 of the Northern Ireland protocol will allow state aid rules to continue to apply after the transition period. The application of state aid rules under the protocol will be limited to measures relating to goods and wholesale electricity affecting trade between Northern Ireland and the EU. The regulations will not affect the application of the Northern Ireland protocol, which is given effect through Section 7A of the withdrawal Act made in 2018: they make amendments only to UK domestic law.

This SI is necessary to make corrections to domestic law, by revoking retained EU law on state aid from the UK statute book and fixing any technical deficiencies in other retained EU law and UK domestic legislation which refers to state aid rules. This instrument will ensure legal certainty for businesses, aid-granting authorities and the courts from 1 January 2021, when EU state aid rules will cease to apply in the United Kingdom. I therefore commend these regulations to the House.

Amendment to the Motion

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

At end insert "but that this House regrets that the Regulations replace retained European Union State Aid rules with a yet to be defined new subsidy regime, and calls on Her Majesty's Government to delay implementation of the regulations until (1) they have consulted widely on their proposals, (2) they have sought the agreement of the devolved administrations, and (3) the primary legislation detailing how the United Kingdom's new subsidy regime will operate after the end of the transition period has received Royal Assent."

3.09 pm

Lord Stevenson of Balmacara (Lab) [V]: My Lords, I thank the Minister for his introduction of the statutory instrument. My amendment calls on the Government to delay implementation of these regulations until they have consulted widely on their proposals; in particular, until they have consulted and sought the agreement of the devolved Administrations and the primary legislation detailing how the UK's new subsidy regime will operate after the end of the transition period has received Royal Assent. I will listen very carefully to comments made during the debate, particularly to the response of the Minister, but I give notice that I intend to divide the House on this issue.

This amendment stems from three primary sources. First is the 30th report of the Secondary Legislation Scrutiny Committee, which, inter alia, said:

"The disapplication of EU State aid rules appears to be a reversal of the previous Government's policy position, which sought a continuity approach in the case of a 'no deal' scenario",

and that:

"This approach raises the question whether it would have been more appropriate to take forward such a policy change through primary rather than secondary legislation, enabling Parliament to scrutinise the new approach more fully".

The second is an amendment in the name of the noble and learned Lord, Lord Thomas of Cwmgiedd, supported by a vote on Report deleting Clause 44 of the internal market Bill, which he said purported

"to make state aid a reserved matter by the device of expanding or extending the competition policy reservation."—[*Official Report*, 25/11/20; col. 317.]

The third is the fact that the rollover continuity free trade deal with Japan, discussed in your Lordships' House last week, replicates the restrictions on subsidies being repealed by this very SI. If we are still honouring international treaties, this will need to be legislated for, so why is this SI being progressed today?

The SLSC commented that when the previous Government laid the 2019 state aid regulations before Parliament, the plan was to transfer the EU's enforcement functions to the CMA and to enable the continued application of state aid law in the UK in a domestic policy context in the event of no deal. However, these 2019 regulations were withdrawn in February without being made. The SLSC also points out that this new SI is being

"made under the Withdrawal Act which, according to the Explanatory Notes … 'does not aim to make major changes to policy or establish new legal frameworks in the UK beyond those which are appropriate to ensure the law continues to function properly from exit day' and commits the Government to 'introduce separate primary legislation to make such policy changes which will establish new legal frameworks'."

Why is this happening? Why is there no primary legislation? I hope the Minister will deal fully with the points made by the committee, particularly its general concern about using secondary legislation to introduce policy changes that should be done via primary legislation.

The noble and learned Lord, Lord Thomas, prefaced his introduction to his amendment proposing to delete Clause 44 of the internal market Bill by saying that

"the regime of state aid is plainly necessary, and it is necessary to have one for the whole of the UK".—[*Official Report*, 25/11/20; col. 316.]

I agree with him. The Minister has previously made it clear that the UK needs to design a bespoke state aid, or what he calls a "subsidy control", regime. He has also said he hopes that it

"will operate in a way that works best for all UK businesses, workers and consumers",

and promises

"a consultation on whether we should go further than our World Trade Organization and international commitments, including whether further legislation … is necessary."

So far, so good. However, with no supporting evidence, he asserts that:

"Reserving subsidy control is the best way in which to guarantee that a single, unified subsidy control regime could be legislated for in future."—[*Official Report*, 25/11/20; col. 325-26.]

The noble and learned Lord, Lord Thomas, suggested that this was clear evidence that the Government want to use the internal market Bill to alter the devolution settlement. In the Third Reading debate a few minutes ago, the noble and learned Lord, Lord Garnier, spoke eloquently about the need for all unionists to tread very carefully when progressing legislation that affects the current rights and responsibilities of the devolved Administrations. I agree with him.

Whatever the truth here, this is a worryingly centralising Bill. As we learned in the Autumn Statement only last week, the shared prosperity fund which replaces EU funding for regional and local structural projects will in future be controlled and spent by UK government Ministers from Whitehall. The Minister might wish to clarify whether, under the guise of promoting competition, the Government are set on unravelling the devolution settlement.

There is a bit of a mystery about what the Government are up to here. Why are they currently spurning the sensible and pragmatic way forward suggested by the Welsh and Scottish Governments of using the well-regarded common frameworks process? Reinforcing as it does the need for all four nations to work together for mutually agreed solutions, it seems a complete no-brainer.

On international trade agreements, it is an open secret that level playing field issues are one of the main sticking points in the ongoing EU FTA negotiations. It is said that London has been strongly resisting demands from Brussels for the UK to remain in the EU state aid regime. It has even been suggested that this SI has been brought forward and modified from its original form to bolster the UK's negotiating position. However, as we debated last week, the state aid provisions included in the UK-Japan free trade agreement are effectively the same as the current EU rules and include what one distinguished commentator called

"hard-edged commitments not to provide open-ended … support"

to UK companies. To give effect to these commitments, there will need to be legislation. I do not need to point out the irony if this SI has to be brought back in primary legislation to give effect to the Japan free trade agreement. Will the Minister comment on this? What are the plans for legislation to implement the Japan free trade agreement?

State aid has received little attention during the UK's 47 year-long membership of the EU, but its importance has been highlighted repeatedly during the parliamentary stages of the internal market Bill, as well as remaining one of the sticking points in the EU-UK negotiations. We have no sense of where the Government want to take their policy on state aid, other than that it cannot be the same as it has been under the EU. Removing a well-understood policy framework that has been in place for half a century and replacing it with a reliance on WTO rules, which are widely discredited, seems a perverse way of making policy, even if the Government need more time before deciding what to do. There is no doubt that state aid can be beneficial. If deployed as part of a robust industrial strategy, it can help create decent jobs, kick-start businesses, rebalance regional inequalities and power the UK's internal market. However, it can also be harmful.

The Secondary Legislation Scrutiny Committee said that this change

"is neither a welcome nor indeed acceptable use of secondary legislation".

Scotland, Wales and Northern Ireland do not understand where they fit into this process, and it is complicated by the Northern Ireland protocol. In the internal market Bill, the Government stand accused of attacking the devolution settlement. Even if that is not the case, they have a lot of ground to make up before their proposals have buy-in from the devolved Administrations and are seen as legitimate and politically uncontroversial in all four nations. The criticism from the SLSC, the gaps in the IM Bill and the need for clarity following international trade treaty commitments suggest in combination that there is a powerful case for delaying this Bill until Ministers have consulted widely and sought the agreement of the devolved Administrations and the necessary changes to existing primary legislation have been agreed. This pause for reflection is what this amendment in my name would achieve. I beg to move.

3.17 pm

Baroness Altmann (Con): My Lords, I thank my noble friend for his presentation and explanation of these regulations. I recognise the difficult position the Government are in this year as a result of the pandemic's impact on preparing the UK's rules after the end of 2021. However, as I explained during the passage of the internal market Bill, I have significant concerns about the Government's adherence to issues such as the Northern Ireland protocol and the delicate balance of power within all four devolved Administrations of our United Kingdom.

On the measures we are debating today, I have significant sympathy with all the points made by the noble Lord, Lord Stevenson of Balmacara. I too regret that these measures are being proceeded with. The Welsh Government, for example, have particularly expressed concerns that these regulations will amend UK legislation in devolved areas which hitherto were supposed to require consent under the intergovernmental agreement, especially issues that relate to the water industry and other areas. The Welsh Government have stated their concerns about removing current state aid rules without putting any alternative subsidy regime in place.

Concerns about these measures were reinforced by the House of Lords Secondary Legislation Scrutiny Committee saying that this

"is neither a welcome nor … acceptable use of secondary legislation"

and that it should rather be done with full parliamentary scrutiny in primary legislation. Following the concerns expressed by the Welsh and Scottish Administrations, can my noble friend say how the proposed shared

[Baroness Altmann]
prosperity fund will interact with any new state aid regime? When will the details of the future proposals for this regime be produced? What consultation will happen?

Finally, I repeat my concerns at the Government's proposal to break the terms of the Northern Ireland protocol. Article 10(1) of the protocol requires the UK to follow EU state aid rules rather than the WTO rules, which are more like a free-for-all. I know that we have dealt with a number of these issues in the United Kingdom Internal Market Bill and that a number of these concerns have been addressed by various amendments made by your Lordships' House. However, I ask my noble friend, in the light of the ongoing free trade negotiations that have been, and continue to be, under way with other nations, and in the light of the concerns expressed by the devolved Administrations and the House of Lords Secondary Legislation Scrutiny Committee, whether the Government might consider it appropriate to delay the introduction of these measures in order to offer time either to agree a deal or to have the necessary consultations and consents from the other areas of the United Kingdom.

3.21 pm

Lord Dodds of Duncairn (DUP): My Lords, I am grateful to the Minister for his explanation of these regulations and their effect in revoking retained EU state aid rules so that they are not part of domestic law for part of the United Kingdom. However, nothing in these regulations affects the continued application of EU state aid provisions, as provided for in Article 10 and Annex 5 of the Northern Ireland protocol, after 31 December 2020. The Minister, when he was introducing the regulations, somewhat skirted over that issue. This has significant and far-reaching implications for businesses and consumers in Northern Ireland. I know that time was short, but it was very much an afterthought and will have significant effects on business in Northern Ireland.

Great Britain will have its own domestic subsidy control regime that follows WTO rules and other international commitments agreed under free trade agreements. It would be good to have some idea of what the Great Britain regime is going to be. We in Northern Ireland need to see the detail. Some flexibilities have been promised, given that we are going to have this hybrid situation in the United Kingdom. I would be grateful if the Minister could indicate when we are going to see the Great Britain rules for the subsidy control regime.

In his reply, will the Minister spell out which areas will be covered in Northern Ireland by the EU state aid regime? He mentioned goods and electricity. Services, as I understand it, will not be covered. However, that can lead to a problem when it comes to which businesses will be subject to which regime in Northern Ireland. We know about manufacturing, but a lot of the value is in services. Will businesses in Northern Ireland be under the EU regime, the Great Britain regime or what? That needs to be clarified as a matter of urgency. We are almost four weeks away from these matters having to be settled and it is important that they are settled and clarified very quickly.

In the Command Paper in May 2020, the Government set out that the state aid provisions in the Northern Ireland protocol would apply only narrowly. Again, I would be grateful if the Minister could reaffirm that and answer the questions that I have raised.

The United Kingdom Internal Market Bill has been mentioned. The Minister and noble Lords will know the concern in Northern Ireland that rules will be applied under the protocol, not least in this area, over which there will be no democratic oversight or input for anyone from Northern Ireland. Stormont, the devolved Government, the Executive and the Assembly will have no say in those rules, and neither will Westminster. There is a massive democratic deficit. That is unacceptable, and yet it has been imposed upon Northern Ireland. Yesterday, we discussed a democratic consent statutory instrument in Grand Committee, and we were told that, in four years' time, the Northern Ireland Assembly would be able to vote on the matter. The Northern Ireland Assembly and the people of Northern Ireland would like a vote now. It is entirely democratic and reasonable to expect such a thing.

In closing, can the Minister outline how Her Majesty's Government will ensure that Northern Ireland companies will not be placed at a competitive disadvantage compared to their counterparts in the rest of the United Kingdom? If Northern Ireland companies are following EU state aid rules and their counterparts in the rest of the United Kingdom are following a different subsidy regime, that has the potential to cause problems for Northern Ireland companies. Will he ensure that Northern Ireland businesses can access the United Kingdom schemes as well, or at least offer compensation in some shape or form to make up for that competitive disadvantage, if there is any?

It is important to put on the record that, while these are technical regulations, they seem to be putting in place the state aid rules that will apply after Brexit for the whole of the United Kingdom; but in fact, they will apply only to part of the United Kingdom. For Northern Ireland, these regulations have very serious implications indeed, and that needs to be highlighted and addressed.

3.25 pm

Baroness Noakes (Con): My Lords, it will not surprise the House to hear that I strongly support these regulations and do not support the amendment tabled by the noble Lord, Lord Stevenson of Balmacara. I particularly welcome any statutory instrument that removes EU-derived law from our statute book. It may take a long time to remove it all, and it is clearly not a top priority, but when excellent opportunities such as this arise, we should grasp them.

The amendment in the name of the noble Lord, Lord Stevenson, mirrors the concerns expressed by the Secondary Legislation Scrutiny Committee of your Lordships' House in relation to not using primary legislation to introduce a new state aid regime. We are not being asked to approve a replacement state aid regime. We are being asked to approve this statutory instrument, which should be judged on its own merits and not in relation to the legislative process that may or may not be followed for any replacement state aid regime. The merits of these regulations are clear. They

will remove from our statute book the state aid rules that apply to those within the single market. We will no longer be in the single market at the end of this year, except to the extent required by the Northern Ireland protocol. That should be the end of the story.

I have to say to my noble friend Lady Altmann that I do not understand the concerns expressed by the Welsh Government that she relayed. The legislation is redundant and keeping it would be confusing.

The question of what kind of state aid rules we need for the UK's own internal market is an entirely separate issue and should have no bearing on this order. As noble Lords are aware, the Government have committed to consulting on their plans for a scheme of subsidy control for the UK's internal market. I am sure that this will include consultation with the devolved Administrations, and so we do not need this amendment to bring that about.

A regime for the UK's internal market is not an urgent issue, and it is important that the Government take their time to get the details right. As my noble friend the Minister has said, the UK will of course be bound by the WTO's rules and the terms of any free trade agreements, as it will whether or not we create new rules for our own internal market.

Equally, whether or not the mechanism for creating any new state aid scheme is by way of primary or secondary legislation does not affect these regulations. As noble Lords know, the Government had intended to use the power in the United Kingdom Internal Market Bill before your Lordships' House took another swipe at the Bill with its wrecking ball last week. Whether the Government decide to use primary or secondary legislation is not a big issue for me, provided that their consultation is thorough. Primary legislation can take a big chunk of the finite time available under our parliamentary processes. I would prefer to use up any spare legislative time for things such as our levelling-up agenda. I would certainly not get excited if secondary legislation were used.

The Secondary Legislation Scrutiny Committee also seemed to misdirect itself when it said, at paragraph 17 of its 30th Report, that part of the reason for drawing the order to the attention of the House was because,

"on this occasion, the policy is one that appears central to the UK's negotiation position with the EU."

Your Lordships' Select Committees never miss an opportunity to drag Brexit into the story, which is, I am afraid, another sign that many noble Lords—perhaps a majority—still have not yet come to terms with the fact that we have left the EU. But our negotiating position with the EU on our future relationship is nothing whatever to do with this statutory instrument. The EU may well be making a fuss about our future internal state aid regime and may want to try to dictate its terms, but that is not relevant to excising irrelevant law from our statute book.

3.30 pm

Baroness Jones of Moulsecoomb (GP): My Lords, it is always a pleasure to follow the noble Baroness, Lady Noakes, who is such a strong and loyal Member of the Benches opposite. I particularly liked her reference to the "wrecking ball" that we took to the internal market Bill, because, obviously, we were in fact helping the Government not to break the law. I think that is part of what we should be doing in your Lordships' House. I know that when I follow her, all I have to do is go in the opposite direction and I will be absolutely fine.

The Minister was very soothing in his description of what this statutory instrument does, but I had some fears about it being done through secondary, and not primary, legislation, which were reinforced by the comments of the noble Lord, Lord Stevenson. It seems that, rather than the usual EU exit tweaks that most statutory instruments do, this is actually repealing the whole body of EU state aid laws—all the rules—except for Northern Ireland, under the Northern Ireland protocol, leaving us only with WTO rules and anything that is agreed with other countries in our future trade deals. Somehow it seems quite a lot within a very simple mechanism that, I feel, is not perhaps appropriate for it. It does feel like too big a change to be a legitimate use of the statutory instrument powers in the EU withdrawal Act and goes way beyond anything the Government actually said they would use these powers for.

The change should be made by primary legislation. There has been lots of time to do it; there has been time in our schedule but, because the Government have not actually decided their policy, they are just falling back on WTO rules. Also, the fact that this statutory instrument is coming so late in the day rather suggests that this is another hard-line tactic for the EU negotiations, which I think is very sad. What kind of state aid rules are the Government negotiating in their trade deals? Is that something we have access to? What kind of state aid restrictions will the UK subject itself to? Are the Government going to ensure that public authorities are aware of the state aid rules and the changes that will result from this SI?

EU state aid law is well understood by public authorities at the moment, but I would argue that this fast change to WTO rules and trade agreements creates uncertainty—and none of us wants any more uncertainty. I am minded to vote for the amendment to the Motion, because consultation with the devolved authorities does seem like something we really ought to do—if not just through courtesy, at least through gathering more information and understanding exactly what is going on elsewhere. I thank the Minister for his explanation, but I would, if possible, like an answer to my questions.

3.33 pm

Viscount Trenchard (Con): My Lords, I thank the Minister for introducing these regulations and welcome them. They are necessary to prepare for the introduction of a UK domestic subsidy control regime. As my noble friend has made clear, the EU state aid rules, which would otherwise have been transposed into UK law, would have been inoperable under the withdrawal Act and, in any case, they would have been redundant.

The Government have made it clear that the UK will follow the WTO's subsidy rules and will also adhere to any relevant obligations entered into under free trade agreements. Among those obligations are those entered into under the CEPA with Japan. Could the Minister explain what the difference is between the Government's offer to the EU on state aid, which,

[Viscount Trenchard]
I understand, is similar to that included in the EU-Canada free trade agreement, and what has been agreed between the UK and Japan? The *Financial Times* has reported that the UK-Japan agreement replicates the restrictions on subsidies in the EU-Japan deal that went into effect last year. That agreement prohibits the Governments from indefinitely guaranteeing the debts of struggling companies or providing an open-ended bailout without a clear restructuring plan in place.

Of course, as far as state aid is concerned, the EU should put its own house in order. Accusations of dumping cannot easily be made against the UK. As the Prime Minister said in his inspiring Greenwich speech in February:

"France spends twice as much on state aid as the UK, and Germany three times as much … In fact, the EU has enforced state aid rules against the UK only four times in the last 21 years, compared with 29 enforcement actions against France, 45 against Italy—and 67 against Germany."

But as my noble friend Lady Noakes pointed out with her usual forensic acumen, today's debate is about our domestic state aid rules. In that regard, I do not support the amendment to the Motion in the name of the noble Lord, Lord Stevenson of Balmacara.

Of course the Government will consult widely on our new domestic subsidy regime, including with the devolved Administrations. I am not quite sure whether creating a statutory requirement to seek the agreement of the devolved Administrations goes further than the requirement to consult, but I am certain that the devolved Administrations will argue that it is tantamount to requiring that their agreement must be given. I would ask the noble Lord if he has not noticed that on every single relevant question the devolved authorities want to do things slightly differently to show their powers. I think the noble Lord's proposal is, therefore, most unhelpful.

I agree with the noble and learned Lord, Lord Thomas, as quoted by the noble Lord, Lord Stevenson, that it is very important that we have a single set of rules across the United Kingdom. The noble Lord's wish to extend devolved powers to include all those powers until now held by the European institutions for the purpose of harmonising rules across the EU does not fit well with his view that, at the UK level, the UK Government should not reserve the powers necessary to ensure harmonised state aid rules across the United Kingdom. I think I can see some inconsistency in the noble Lord's position, and I would ask my noble friend the Minister if he agrees.

The Deputy Speaker (Lord Faulkner of Worcester) (Lab): The noble Lord, Lord Mann, and the noble Baroness, Lady McIntosh of Pickering, have withdrawn from this debate, so I call the noble Lord, Lord Liddle.

3.37 pm

Lord Liddle (Lab) [V]: My Lords, I very much want to support the amendment that my noble friend Lord Stevenson is moving. I think that the proposal before us today is symptomatic of the poor quality, dysfunctional Government that we now have. I do not think that I am going to express myself in quite the polite terms that he did, because I think that what is happening is appalling.

As a member of the Secondary Legislation Scrutiny Committee, we thought it very strange indeed that such a major decision was being taken by statutory instrument. It is a major change of policy. It is a change from the policy that the noble Lord, Lord Callanan, himself advocated in this House during the passage of the EU withdrawal Act, when he explained how the European state aid regime would be adopted by the UK but be run in future not by the European authorities but by the British authorities—the CMA. Yet the Government are casting that aside, abolishing the present regime, without frankly having a clue—a clue of the slightest clue—about what they are going to replace it with.

The WTO regime is not a credible state aid regime. I am a strong supporter of trying to build up the WTO—it is very important that our effort goes into that in future and, with the change of President in the US, it might be possible—but, frankly, its regime on state aid is a bit of a joke. There is no need to secure prior notification of any kind, there is no proper enforcement mechanism and there is a tribunal that President Trump has made largely ineffective. The Brexiteers' greatest friend, President Trump, is the person who has done more to damage the WTO than any other figure.

There is no clarity on the Government's part about what kind of state aid regime they want. All they know is that they think it is essential that the London Government should be in control of whatever it is. That is the argument we have had on the internal market Bill, where they insist that state aid is a reserved matter when in fact the devolved Administrations have had considerable discretion over how they allocate public funds in support of economic development. The Government's behaviour on this undermines the devolution settlement as well as being economically incoherent.

The Minister kept repeating that what we are doing here gives business certainty. It gives business no certainty whatever, because who knows what the regime is going to be? The refusal of the British Government to set out a state aid regime is one reason why it is so difficult to conclude the trade agreement with the EU. The EU does not have a clue how the Government intend to sustain any kind of level playing field, which is a perfectly reasonable request in a trade deal.

This is a very bad policy and a very bad move. I believe in state aid; I believe it is necessary to support restructuring. I am not in favour of subsidising lame ducks, but I am in favour of trying to give companies in difficulties a viable future. State aid is important in promoting innovation, particularly in the high-tech industries that are our future. Frankly, though, this does not get us anywhere near having a credible state aid policy. It is a typical Brexit act, taking a leap into the unknown without a clue about what you are actually trying to achieve.

3.43 pm

Baroness Wheatcroft (Non-Afl) [V]: My Lords, state aid has the potential to distort market competition. As a member of the EU, we were governed by its state aid rules. This SI does away with that, but there is a degree of flexibility to those rules. In 2015, for instance, the

Government wanted to subsidise the Drax power station to enable it to convert one of its units from coal to biomass fuel. The European Commission investigated and gave its approval. Clearly there were advantages for all in making that contribution to its own carbon emissions, and the EU state aid rules did not get in the way.

I am grateful to the noble Viscount, Lord Trenchard, for explaining to us how the EU state aid rules have been used so fairly, largely to keep France and Germany in line and to allow the UK to do most of what it wanted. They are not overly unfair. We should not characterise EU state aid rules as necessarily preventing the UK doing what is right. As Theresa May said in Florence in 2017, the UK and EU understand and agree about the purpose of state aid rules and

"trying to beat other countries' industries by unfairly subsidising one's own is a serious mistake".

Some of us fear that the Government are about to make that serious mistake.

That is why I take issue with the noble Baroness, Lady Noakes. The Government can now define their own state aid rules but those have implications far beyond the UK. After all, we are a great trading nation, and everything being said about our future outside the EU is about how we are going to trade brilliantly all around the world. State aid rules that are not approved by those we wish to trade with will make that increasingly difficult. That is why we shall not be able to escape completely from state aid rules. The WTO operates its own and, as the noble Lord, Lord Liddle, pointed out, they are far from adequate, but in every trade deal, as we have heard, state aid will be an issue that has to be agreed on.

So what state aid are the Government so keen to be able to dispense that it stood, in part, in the way of a Brexit deal being negotiated? Perhaps the Minister could tell us what the Government want to do. It seems very strange to see a Conservative Government so apparently keen on being able to dispense state aid. In the past, we have seen plenty of instances where government interventions in industry have been disastrous. It gave us the Austin Allegro, for instance, a car that was not only unattractive but prone to breaking down. That failed to rescue the British car industry; being open to overseas investment was what did that.

Backing winners is not something that we have shown particular acumen in doing, but perhaps that is what the Government have in mind to try again. The partial purchase of the bankrupt satellite company, OneWeb, in the summer seemed to be a move in that direction, but hopes for that business have already begun to fade. At the time of the partial purchase, which civil servants definitely were not comfortable with and had to be mandated to do, OneWeb appeared to be caught in the UK's efforts to find a replacement for the crucial Galileo project and the GPS system that it fuels. Five months on from that purchase, I am no clearer about how we plan to replace Galileo. I would be grateful if the Minister could tell the House whether he envisages pumping more public money into OneWeb and indeed if he could provide reassurance about how Galileo is to be reproduced in just a matter of weeks.

As the noble Lord, Lord Stevenson, pointed out, we still do not know what state aid policies the Government have in mind. It seems wrong to do away with one policy without explaining what will take its place. I can understand why the EU would be concerned about that, and why it could be standing in the way of a deal. Whatever importance the Government put on being able to dispense state aid as they wish, that cannot be as important as securing a deal with our largest trading partner.

Baroness Bloomfield of Hinton Waldrist (Con): I remind the noble Baroness that the time limit for speeches is five minutes.

Baroness Wheatcroft (Non-Afl) [V]: In debate after debate, we hear more stories of the chaos that looms with a no-deal Brexit, particularly on top of Covid, so surely the Government could make clear what state aid regime they favour and whether they no longer believe that British companies are capable of competing fairly on the world stage. Four years after the decision to leave the EU, could the Minister tell us how close the Government are to developing their state aid regime?

The Deputy Speaker (Lord Faulkner of Worcester) (Lab): The noble Lord, Lord Berkeley, has withdrawn from the debate, so I call the noble Lord, Lord Moylan.

3.49 pm

Lord Moylan (Con): My Lords, we have had so much contentious legislation in this Chamber recently, some of it causing noble Lords—including myself—genuine anguish, that my sole purpose originally in putting my name down to speak in this debate was simply to thank my noble friend for bringing forward an instrument around which I thought we would all be able to unite quite joyfully. After all, we as a country voted to leave the ambit of EU law, and noble Lords from all sides of the House have bought into that. Indeed, I recall that the noble Baroness, Lady Jones of Moulsecoomb, whom it is always a pleasure to follow, was a keen advocate of Brexit alongside us at the time. We achieved our objective.

Brexit was an inherently constitutional vote. It did not decide policy, nor what our future laws would be. It decided dramatically to change the locus of where those laws would be made, restoring that to our own democratic institutions and to the electorate on which they depend. Yet, here we are, four years later, still subject to the full panoply of EU law. So we should really be rejoicing at this statutory instrument which, for the first time, is wholly devoted to abolishing a whole range of EU laws—clause after clause. It does almost nothing else. It simply sends regulations bowling like ninepins off the statute book and out of existence.

The noble Lord, Lord Stevenson of Balmacara, seeks to persuade your Lordships to introduce a note of regret into this inherently joyful event. He is not happy for a number of reasons, principally—as far as I can make out—because he is not content to see elements of the existing regime abolished without knowing what will take their place. We might all want to know that; what will replace the Government's state

[Lord Moylan]
aid regime is a matter of keen interest. The Chancellor of the Duchy of Lancaster has promised us that it will be robust, and that is all we know. However, as my noble friend Lady Noakes has explained, this is almost entirely ungermane to the current instrument before us. She gave a number of reasons why it was not relevant —but there is another. It would be naive of the Government to put forward their state aid subsidy regime in the context of protracted negotiations with the European Union about our future relationship. The European Union intends to take that regime and, if it approves of it, seek to codify it in an international treaty or make it a precondition of such an international treaty. It wishes to recover its influence over our industrial subsidy strategy before it has even relinquished it—to de-democratise it and take it out of the hands of the electorate.

This seems a very strange path for a Labour Front-Bencher to pursue. The noble Lord, Lord Stevenson of Balmacara, will be well aware that, in recent years, even among the leaders of the Labour Party there has been a wide range of views as to the role of industrial subsidies. There is nothing wrong with that; in a democracy, there is bound to be a wide range of views. His Motion effectively begs a Conservative Government to take their as yet unknown policy and see it embedded in an international treaty. This would remove the opportunity for other political parties which may put themselves forward for election in future to make any meaningful change to it, which is a strange and difficult path to go down.

In the interests of our democracy and of maintaining democratic control over our policy, this amendment to the Motion should be rejected.

3.54 pm

Baroness Fox of Buckley (Non-Afl): My Lords, it gives me great pleasure to follow the noble Lord, Lord Moylan. I can only emulate his wit and clarity. In this instance, I agree with him. I will make some additional points.

I am opposed to the amendment from the noble Lord, Lord Stevenson of Balmacara, just as for many years I was totally opposed to the EU's state aid rules. It was one reason why I voted to leave in 2016. I was glad to escape them then and I do not want any further delays. I note with some irony that this means I will be supporting the order put forward by the noble Lord, Lord Callanan. During the years before the referendum, even the most ardent Eurosceptics in the Conservative Party were rather lukewarm in highlighting the egregious nature of the EU state aid rules. Indeed, Margaret Thatcher was happy to use those rules to roll back the state at home. The Eurosceptic left might well be a dying breed, although there are a few of us left—but, in contrast, for many years they objected to the EU's state aid rules. The much-missed RMT leader, Bob Crow, the former Labour leader, the right honourable Jeremy Corbyn, and others on the left, such as me, recognised that those rules were anti-democratic. Whatever the UK electorate might have voted for, if those policies involved certain state subsidies to create new jobs or to help certain industries survive, they could be blocked.

EU rules stipulate that Governments need to notify the European Commission in advance for permission. This is an affront to popular sovereignty and why I support this order. This outrageous mechanism, which allows the Commission to overrule elected finance Ministers and claw back payments, is uniquely prescriptive in the world. It goes far further than other economic blocs, such as the World Trade Organization. The WTO allows subsidies by default. Prior notification and approval are not required. Despite what the noble Lord, Lord Liddle, might say, this makes it more democratic than the EU.

Apart from noting the irony that today's Labour Party seems keen to retain the EU's anti-worker, anti-state rules, and that the Conservative Party seems committed to escaping them, it is worth considering why there is so much focus on state aid in the withdrawal agreement negotiations, and in this House. Surely, it cannot be because the EU thinks that the UK will be chomping at the bit to increase state aid, once it is free from Brussels, or that the present Government are likely to launch a campaign for the mass nationalisation of industry. Even when it was in the EU, Britain conducted less approved state aid than most other EU members. In 2018, Britain's official state aid spending amounted to 0.34% of GDP—about half the EU's average of 0.76% and far below Germany's 1.45%. Why do the EU and its avid remainer cheerleaders in the UK constantly take such a robust stance over rules that cover a relatively small part of the UK's GDP and overall state spending? This seems more politically than economically driven. After all, state aid rules are often used by the European Commission as a mechanism for asserting its overall authority and supremacy over its member states, on pain of punishment and at the expense of their sovereign rights. The rules are used as a punitive and enforcing mechanism.

While the UK has formally left the EU, it seems that it wants to use state aid to curtail the UK as a genuinely autonomous nation. That is why I think it is right that the Government seek to protect against a maximalist interpretation of Article 10 in the Northern Irish protocol, because it could give the European Commission extensive jurisdiction over subsidies granted throughout the UK. It is why it was so important to retain Clause 45 of the Internal Markets Bill, but more of that another time. More broadly, regardless of the economic impact of adhering to any version of the EU state aid rules, the main issue is one of national sovereignty. If the British people want more nationalised industries or state support, it is they—and not the European Commission—who should have the final say.

We have heard much hectoring from some noble Lords about the importance of sticking to international law. Interestingly, despite the rigidity of the EU state aid rules, those same rules were effectively waived during the recent European lockdown-induced recession —just as they were during the financial crisis a decade ago—to allow for emergency bailouts and job protection schemes. This rather calls into question the supposed inviolability of international legal rules in all instances. Is this not a case of one rule for them and another rule for the rest of us? I want to get rid of state aid rules as quickly as possible.

4 pm

Baroness Bowles of Berkhamsted (LD) [V]: My Lords, this has been an interesting short debate. If the Minister did not already know it from the UK internal market Bill, how state aid—if such a thing is to exist as a definition in future—is to work is a sensitive and significant matter of public policy that merits primary legislation. The changes go beyond what would be permitted under the withdrawal Act. I will concentrate on the mainstream state aid point, although I am sure that the Minister will appreciate that I have seen the amendments to recognise third-country state aid instruments as core tier 1 equity for bank capital. If only there had been such clarity all round.

The problem is that, given the double whammy of, "delete all and maybe start something else—or maybe not", as we are told in connection with this statutory instrument, and the attempted power grab without consultation in the UK internal market Bill, it all looks like a high level of disregard for stakeholders and devolution, or a high level of disorganisation, or both. The truth of the matter seems to be that policy is at the mercy of trade agreements on the one hand and the avowed distancing from all things EU on the other. It is not even an attempt to cherry pick. There are some cherries to pick, not least the ones that we put into the legislation.

By now, one would have hoped for the emergence of some ideas on alternative shape; if this is how the negotiation is proceeding with the EU, I am not surprised that it got stuck. So instead of an independent policy we have a hole that might or might not get filled. That hole is carved out by secondary legislation, which is a major policy change. Does this mean that, from January, public authorities can start to make subsidies, secure in the knowledge that if they fit within the WTO rules—which means among other things a free-for-all on services—there will be no retrospective prohibition, interruption or comeback? How will that sit in making trade deals if it has already started?

Paragraph 10 of the Explanatory Memorandum says that there have been technical discussions with the devolved Administrations. I find that interesting, given the onslaught against the UKIM Bill. Can the Minister explain more about those technical discussions? Paragraph 11 says that there will be guidance given about the new subsidy control arrangements, but paragraph 12 indicates that, indeed, all that public authorities need to worry about are the WTO rules. Will that guidance include any forward-looking advice beyond compliance?

I do understand that contraction of geographical scope of the state aid rules is sensible, but maybe there could have been a general continuation of the principles until completion of the consultations or some other commitment to co-ordination, not least because of Northern Ireland. Now there will be notional freedoms but concern that it may be temporary or governed solely by Treasury stinginess. The Business Secretary has said—reported, for example, in the *Financial Times* on 9 September—that the,

"guiding philosophy remains that we do not want a return to the 1970s approach of picking winners and bailing out unsustainable companies",

and some of that is indeed now in the Japan trade agreement. Is there an intention to enforce that on public authorities and devolved Administrations, or are they being given free rein to see how it works out?

The noble Lord, Lord Stevenson, has proposed in his amendment that the policy be delayed until after the consultation, when devolved Administrations are on board and the legislative context in which state aid rules sit is more certain. These Benches can broadly agree with those sentiments. We think that the Government's approach to state aid policy, and the wider context of the UKIM Bill, has been deeply unsatisfactory, with important details left undetermined and the devolution settlements neglected. We will, therefore, be supporting the amendment.

4.04 pm

Lord Callanan (Con): I thank all noble Lords for their interesting contributions to this debate. There have been many contributions on a range of subjects, very few of which had anything to do with this instrument. Fascinating though discussions were on the fate of the Austin Allegro, and Galileo, I say to my noble friend Lady Wheatcroft that they were totally irrelevant to today's debate and nothing to do with the instrument being discussed.

The EU state aid rules were created to meet the needs of the European Union. With the UK's departure from the European Union, we will no longer be bound by EU state aid rules after the transition period. We have been clear that we will not align with EU rules as part of any free trade agreement. My noble friends Lady Noakes and Lord Moylan were absolutely right to say that what subsidy control regime we have in future is an extremely valid debate. We will, no doubt, have that discussion in this House at great length, but it is nothing to do with the merits, or otherwise, of this statutory instrument. Many noble Lords who contributed seem to be confused about that. The point of this instrument is that businesses must have clarity on the UK statute book to plan for investments and to receive the support that they need to innovate and grow.

The noble Lord, Lord Stevenson, has moved an amendment expressing regret, as he is perfectly entitled to do. However, I hope that noble Lords can see that revoking retained EU state aid law is appropriate and necessary. Furthermore, consequential amendments to other retained EU law, and UK domestic legislation which refers to state aid rules, will ensure that these regulations continue to operate appropriately. I repeat: state aid is support in any form, from any level of government which gives a business or other entity an advantage that could not be obtained in the normal course of business. In the way it is defined in the EU, if this advantage has the potential to distort competition within the internal market and affect trade between EU member states, then state aid is present and the rules for state aid are triggered.

The state aid rules were devised by the European Union to ensure that EU member states operate in a way which is compatible with the internal market. The rules are very much a European Union concept. We will no longer be part of the European Union or the single market and the EU will no longer have any jurisdiction in the United Kingdom, and nor will the

[Lord Callanan]
European Commission. At present, the UK Government or devolved Administrations proposing any form of state aid need to get the permission of the European Commission. In future, the Commission will have no jurisdiction in the United Kingdom. It makes no sense to leave these rules on our statute book, which is what noble Lords are proposing today.

From 1 January, the Government will follow the World Trade Organization rules on subsidies and other international commitments. Before the end of this year, the Government will publish guidance for UK public authorities to explain these commitments. As I have said before, during debates on the internal market Bill, we will also consult in the coming months on whether to go further, including on whether to legislate.

A number of noble Lords posed questions, very few of which had anything to do with this particular instrument. I will, nevertheless, endeavour to answer them. The noble Lord, Lord Stevenson, asked about legislating for the UK-Japan free trade agreement. In general, where implementation is required, the Government will use the European Union (Withdrawal) Act 2018. The Act ensures that existing laws which implement the EU-Japan free trade agreement continue to have effect.

The noble Baroness, Lady Wheatcroft, in another contribution that had nothing to do with this debate, asked what any new regime would mean for new subsidies. We are clear that we do not intend to return to the 1970s approach of government bailing out unsustainable companies. I shall say a little more about the negotiations later.

I was asked by the noble Lord, Lord Dodds, about the Northern Ireland protocol. It is important to note that after the end of the transition period the EU state aid rules will not apply to Northern Ireland as they do today. State aid provisions apply only to trade that is subject to the protocol, which is limited in scope to goods and wholesale electricity markets. Northern Ireland will enjoy new flexibilities with respect to support for its service industries, but let me be clear that the instrument that we are debating does not affect the application of the state aid principles in the Northern Ireland protocol.

My noble friend Lady Altmann, who I think was referring to our previous debates on the internal market Bill rather than to this statutory instrument, mentioned consultation with the devolved Administrations. Officials have been having technical discussions on this instrument with the devolved Administrations and other Governments' departments at the official level and no concerns have been expressed about it by their officials. I recognise that on the general issue of a future state aid policy they wish to make a contribution, and we have said that we will consult them, but they have expressed no concerns about this statutory instrument.

The noble Baroness also referred to the shared prosperity fund. Again, that has nothing to do with the instrument that we are debating, but it will be consistent with the UK's approach to subsidy control following the end of the transition period to ensure that it invests fairly in local economies. The noble Lord, Lord Stevenson, asked about common frameworks. Obviously, we debated these issues at length when considering the internal market Bill, but let me reiterate the points I made then. The devolved Administrations have never previously been able to set their own subsidy control rules, as covered by the then EU state aid framework. They will continue to have responsibility for spending decisions on subsidies within any future subsidy control system.

The noble Lord, Lord Stevenson, and my noble friend Lady Noakes asked why the Government are using secondary legislation to remove the state aid regime and whether this is a policy change. The answer is no. This is not a policy change and it is no more than is appropriate to revoke redundant retained EU law and make amendments to address deficiencies in other retained EU law and UK domestic legislation that refer to EU state aid rules.

The noble Lord, Lord Stevenson, also raised the UK-Japan agreement, on which I have already answered. My noble friend Lord Trenchard and a number of other noble Lords asked about the status of the negotiations. Obviously, they are ongoing literally as we speak and the future of state aid is, of course, an important subject within them. Noble Lords will understand that there are limits on what I can say about it, but perhaps I may refer to comments made by my noble friend Lord Frost when he spoke to your Lordships' committee about our approach that might be helpful. He said:

> "If subsidies are granted, for example, there must be clear statements that they must contribute to and be justified on public policy or market failure grounds. They must be proportionate. There must be openness and transparency about what they are. They must be aimed at bringing about a degree of change in behaviour. They must be the right instrument for the purpose, and you should not in general subsidise if there are negative effects on trade and investment. Those are all commitments that we are willing to make and that we think are important parts of a good subsidy system."

However, as I said, the negotiations on this matter are very much ongoing.

The noble Lord, Lord Liddle, asked whether we are swapping an effective regime for a dysfunctional one. I have said why we cannot retain the current EU regime: there is no point in giving the European Union jurisdiction over state aid in the UK when we are no longer members of the EU. The ASCM is the appropriate standard for global subsidy control and is a more appropriate basis for regulating subsidies than the EU state aid regime, which of course is designed for the European single market which we will no longer be a part of. Some 164 countries follow WTO rules on subsidy control, showing that they are a well-recognised common standard.

I am running out of time to speak, but I hope that I have explained why the statutory instrument before us is worthy of noble Lords' support and why it is essential to the clarity and well-being of the UK statute book. Noble Lords raised many concerns about other issues, to which I am sure we will return in the future, but in the meantime, I commend this statutory instrument to the House.

The Deputy Speaker (Baroness McIntosh of Hudnall) (Lab): My Lords, I have one request to ask the Minister a short question for elucidation. It is from the noble Baroness, Lady Jones of Moulsecoomb.

Baroness Jones of Moulsecoomb (GP): The Minister did not answer any of my questions, which I presume is because he felt they were out of order. At the same time, I did ask how we were going to make sure that public authorities understand the impacts of this statutory instrument. He did not answer that.

Lord Callanan (Con): I answered many questions. It is not a matter of being in order; it is whether questions were relevant to this particular debate. I think I said in my reply that of course we intend to publish guidance for local authorities, the devolved Administrations and others active in this field before the end of the year, but the noble Baroness will understand that this is still very much a live subject in the EU negotiations. When we have a complete picture of how the regime will operate in the UK, any commitments that we may wish to enter into as part of those negotiations will be legislated for in the future relationship Bill, but we will ensure that guidance is issued before the end of the year.

The Deputy Speaker (Baroness McIntosh of Hudnall) (Lab): My Lords, I have no further requests to speak after the Minister, so I call the noble Lord, Lord Stevenson of Balmacara.

4.15 pm

Lord Stevenson of Balmacara (Lab) [V]: My Lords, for context, I was originally going to introduce this debate on a different day—in other words, not on the same day as the Third Reading of the internal market Bill, but because of other pressures it was moved. I suppose that it was inevitable that the debate would be full of resonances from our recent discussions on the internal market Bill. If we wanted to take the optimistic view, this discussion on the amendment to the Motion could be treated as a sort of digestif after the main course of the Bill, but I shall come back to that point.

I thank the Minister for his full response to the debate. He might have worried about the wide-ranging issues that were raised, but at their heart, they were all about much the same thing. I thank the noble Baronesses, Lady Altmann, Lady Jones, Lady Wheatcroft and Lady Bowles, and my noble friend Lord Liddle for supporting the points I was trying to make. In addition, others have made good points that are relevant to the debate, in particular the noble Lord, Lord Dodds, who asked how companies in Northern Ireland can be expected to cope with both the internal market approach and the requirement under the state aid rules for limited use of the EU state aids that carry forward.

The underlying point that everyone touched on but was not really answered is how we are going to be aligned to the WTO rules for state aid while at the same time our growing number of international trade agreements are going to recognise state aid restrictions that will need to be taken into account as we go forward. The Minister is obviously not able to speak for another department on this, but there is an issue here that we need to resolve. We already have the idea that the Canada rollover agreement will be one set of state aid rules, but we know that the Japan FTA has a different set, which are much more like the current rules for the EU.

We do not yet have a satisfactory explanation from the Minister about why the choice was made to go for the reduction in the state aid rule continuation through secondary legislation. We need a debate on that, but on the basis of a proper consultation. If nothing else, I hope that will still happen. However, as I have just mentioned, we will gradually bring in elements of a state aid policy. It occurs to me that, although the Minister made a good job of trying to argue why this SI at this time is important, he did not really answer the question of why we could not retain the form and substance of the EU state aid rules, which have worked for 47 years, while stripping out any egregious issues that the Government do not like in relation to control by the EU or surrendering powers to the European Court of Justice, which of course is completely inappropriate post Brexit—we agree with that. But there are arguments on both sides that will not be resolved today.

A regret amendment is limited in its effect. It draws attention to points and provokes a good debate, which we have had today, but it has absolutely no effect on the Government unless they decide that it should. The Government should think seriously about the points made about the need for a delay, because there is a good case for that, but if they decide to go ahead, that is obviously their decision. However, as a prompt to their conscience, I would like to test the opinion of the House.

4.20 pm

Division conducted remotely on the amendment to the Motion.

Contents 278; Not-Contents 258.

Amendment agreed.

Division No. 1

CONTENTS

Aberdare, L.
Addington, L.
Adebowale, L.
Adonis, L.
Alderdice, L.
Allan of Hallam, L.
Alli, L.
Alliance, L.
Alton of Liverpool, L.
Anderson of Swansea, L.
Andrews, B.
Armstrong of Hill Top, B.
Ashton of Upholland, B.
Bach, L.
Bakewell of Hardington Mandeville, B.
Bakewell, B.
Barker, B.
Bassam of Brighton, L.
Beecham, L.
Beith, L.
Benjamin, B.
Bennett of Manor Castle, B.
Berkeley of Knighton, L.
Berkeley, L.
Best, L.
Billingham, B.
Blower, B.
Blunkett, L.
Boateng, L.
Bonham-Carter of Yarnbury, B.
Boothroyd, B.
Bowles of Berkhamsted, B.
Bowness, L.
Bradley, L.
Bradshaw, L.
Bragg, L.
Brinton, B.
Brooke of Alverthorpe, L.
Brown of Cambridge, B.
Browne of Ladyton, L.
Bryan of Partick, B.
Burnett, L.
Burt of Solihull, B.
Butler-Sloss, B.
Campbell of Pittenweem, L.
Campbell-Savours, L.
Carter of Coles, L.
Cashman, L.
Chakrabarti, B.
Chandos, V.
Chidgey, L.
Clancarty, E.
Clark of Calton, B.
Clark of Kilwinning, B.
Clark of Windermere, L.
Clement-Jones, L.
Cohen of Pimlico, B.
Collins of Highbury, L.
Colville of Culross, V.
Corston, B.
Cotter, L.
Coussins, B.

Cunningham of Felling, L.
Davidson of Glen Clova, L.
Davies of Brixton, L.
Davies of Oldham, L.
Davies of Stamford, L.
Desai, L.
Dholakia, L.
Donaghy, B.
Donoughue, L.
Drake, B.
D'Souza, B.
Dubs, L.
Eames, L.
Eatwell, L.
Elder, L.
Faulkner of Worcester, L.
Featherstone, B.
Finlay of Llandaff, B.
Foster of Bath, L.
Foulkes of Cumnock, L.
Fox, L.
Freyberg, L.
Gale, B.
Garden of Frognal, B.
German, L.
Giddens, L.
Glasman, L.
Goddard of Stockport, L.
Golding, B.
Goudie, B.
Grantchester, L.
Greaves, L.
Grender, B.
Grey-Thompson, B.
Griffiths of Burry Port, L.
Grocott, L.
Hain, L.
Hamwee, B.
Hanworth, V.
Harries of Pentregarth, L.
Harris of Haringey, L.
Harris of Richmond, B.
Haskel, L.
Haworth, L.
Hayman of Ullock, B.
Hayter of Kentish Town, B.
Healy of Primrose Hill, B.
Henig, B.
Hollick, L.
Hollins, B.
Hope of Craighead, L.
Howarth of Newport, L.
Hughes of Stretford, B.
Humphreys, B.
Hunt of Kings Heath, L.
Hussain, L.
Hussein-Ece, B.
Hutton of Furness, L.
Inglewood, L.
Jolly, B.
Jones of Cheltenham, L.
Jones of Moulsecoomb, B.
Jones of Whitchurch, B.
Jones, L.
Jordan, L.
Judd, L.
Kennedy of Cradley, B.
Kennedy of Southwark, L.
Kerr of Kinlochard, L.
Kerslake, L.
Kestenbaum, L.
Kidron, B.
Kingsmill, B.
Knight of Weymouth, L.
Kramer, B.
Krebs, L.
Layard, L.
Lea of Crondall, L.
Lee of Trafford, L.
Lennie, L.
Levy, L.
Liddell of Coatdyke, B.
Liddle, L.
Lipsey, L.
Lister of Burtersett, B.
Loomba, L.
Ludford, B.
MacKenzie of Culkein, L.
Mackenzie of Framwellgate, L.
Macpherson of Earl's Court, L.
Mair, L.
Mallalieu, B.
Marks of Henley-on-Thames, L.
Masham of Ilton, B.
Massey of Darwen, B.
Maxton, L.
McAvoy, L.
McConnell of Glenscorrodale, L.
McIntosh of Hudnall, B.
McKenzie of Luton, L.
McNally, L.
McNicol of West Kilbride, L.
Meacher, B.
Mendelsohn, L.
Miller of Chilthorne Domer, B.
Mitchell, L.
Monks, L.
Morgan of Drefelin, B.
Morgan of Huyton, B.
Morgan, L.
Morris of Aberavon, L.
Morris of Yardley, B.
Murphy of Torfaen, L.
Murphy, B.
Neuberger, B.
Newby, L.
Northover, B.
Oates, L.
Osamor, B.
Paddick, L.
Palmer of Childs Hill, L.
Pannick, L.
Parminter, B.
Patel of Bradford, L.
Patel, L.
Pendry, L.
Pinnock, B.
Pitkeathley, B.
Prashar, B.
Prescott, L.
Primarolo, B.
Prosser, B.
Purvis of Tweed, L.
Puttnam, L.
Quin, B.
Radice, L.
Ramsay of Cartvale, B.
Ramsbotham, L.
Randerson, B.
Razzall, L.
Rebuck, B.
Redesdale, L.
Rees of Ludlow, L.
Reid of Cardowan, L.
Rennard, L.
Ricketts, L.
Ritchie of Downpatrick, B.
Robertson of Port Ellen, L.
Rooker, L.
Rosser, L.
Rowe-Beddoe, L.
Rowlands, L.
Royall of Blaisdon, B.
Russell of Liverpool, L.
Sawyer, L.
Scott of Needham Market, B.
Scriven, L.
Sheehan, B.
Sherlock, B.
Shipley, L.
Sikka, L.
Simon, V.
Singh of Wimbledon, L.
Smith of Basildon, B.
Smith of Finsbury, L.
Smith of Gilmorehill, B.
Smith of Newnham, B.
Snape, L.
Soley, L.
Somerset, D.
Stern of Brentford, L.
Stern, B.
Stevenson of Balmacara, L.
Stone of Blackheath, L.
Stoneham of Droxford, L.
Storey, L.
Strasburger, L.
Stunell, L.
Suttie, B.
Taverne, L.
Taylor of Bolton, B.
Taylor of Goss Moor, L.
Thomas of Gresford, L.
Thomas of Winchester, B.
Thornhill, B.
Thornton, B.
Thurso, V.
Tonge, B.
Tope, L.
Touhig, L.
Triesman, L.
Truscott, L.
Tunnicliffe, L.
Turnberg, L.
Tyler of Enfield, B.
Tyler, L.
Verjee, L.
Wallace of Saltaire, L.
Wallace of Tankerness, L.
Walmsley, B.
Warwick of Undercliffe, B.
Watson of Invergowrie, L.
Watts, L.
Wheatcroft, B.
Wheeler, B.
Whitaker, B.
Whitty, L.
Wigley, L.
Willis of Knaresborough, L.
Wills, L.
Wilson of Dinton, L.
Winston, L.
Wood of Anfield, L.
Wrigglesworth, L.
Young of Norwood Green, L.
Young of Old Scone, B.

NOT CONTENTS

Agnew of Oulton, L.
Ahmad of Wimbledon, L.
Anelay of St Johns, B.
Arbuthnot of Edrom, L.
Arran, E.
Ashton of Hyde, L.
Astor of Hever, L.
Baker of Dorking, L.
Balfe, L.
Barwell, L.
Bates, L.
Bellingham, L.
Berridge, B.
Bethell, L.
Bhatia, L.
Blackwell, L.
Blencathra, L.
Bloomfield of Hinton Waldrist, B.
Borwick, L.
Bottomley of Nettlestone, B.
Bourne of Aberystwyth, L.
Brabazon of Tara, L.
Brady, B.
Bridgeman, V.
Bridges of Headley, L.
Broers, L.
Brookeborough, V.
Brougham and Vaux, L.
Brown of Eaton-under-Heywood, L.
Browning, B.
Brownlow of Shurlock Row, L.
Buscombe, B.
Butler of Brockwell, L.
Caine, L.
Caithness, E.
Callanan, L.
Cameron of Dillington, L.
Carey of Clifton, L.
Carrington of Fulham, L.
Carrington, L.
Cathcart, E.
Cavendish of Furness, L.
Chalker of Wallasey, B.
Chartres, L.
Chisholm of Owlpen, B.
Choudrey, L.
Clarke of Nottingham, L.
Coe, L.
Colgrain, L.
Colwyn, L.
Cork and Orrery, E.
Cormack, L.
Courtown, E.
Couttie, B.
Craig of Radley, L.
Craigavon, V.
Crathorne, L.
Cromwell, L.
Cumberlege, B.
Davies of Gower, L.
De Mauley, L.
Deech, B.
Deighton, L.
Devon, E.
Dobbs, L.
Duncan of Springbank, L.
Dundee, E.
Dunlop, L.
Eccles of Moulton, B.
Eccles, V.
Empey, L.
Erroll, E.
Evans of Bowes Park, B.
Fairfax of Cameron, L.
Falkner of Margravine, B.
Faulks, L.
Fellowes of West Stafford, L.
Field of Birkenhead, L.
Fink, L.
Fleet, B.
Flight, L.

Fookes, B.
Fox of Buckley, B.
Framlingham, L.
Fraser of Corriegarth, L.
Freud, L.
Fullbrook, B.
Gadhia, L.
Gardiner of Kimble, L.
Gardner of Parkes, B.
Garnier, L.
Geddes, L.
Glenarthur, L.
Glendonbrook, L.
Gold, L.
Goldsmith of Richmond Park, L.
Goodlad, L.
Goschen, V.
Grabiner, L.
Grade of Yarmouth, L.
Green of Deddington, L.
Greenway, L.
Griffiths of Fforestfach, L.
Grimstone of Boscobel, L.
Hailsham, V.
Haselhurst, L.
Hayward, L.
Helic, B.
Henley, L.
Herbert of South Downs, L.
Hill of Oareford, L.
Hodgson of Abinger, B.
Hodgson of Astley Abbotts, L.
Hoey, B.
Hogan-Howe, L.
Holmes of Richmond, L.
Hooper, B.
Horam, L.
Houghton of Richmond, L.
Howard of Lympne, L.
Howard of Rising, L.
Howe, E.
Howell of Guildford, L.
Hunt of Wirral, L.
James of Blackheath, L.
Jay of Ewelme, L.
Jenkin of Kennington, B.
Johnson of Marylebone, L.
Jopling, L.
Kakkar, L.
Kalms, L.
Keen of Elie, L.
Kilclooney, L.
King of Bridgwater, L.
King of Lothbury, L.
Kirkham, L.
Laming, L.
Lamont of Lerwick, L.
Lancaster of Kimbolton, L.
Lang of Monkton, L.
Lansley, L.
Lexden, L.
Lilley, L.
Lindsay, E.
Lingfield, L.
Lucas, L.
Mackay of Clashfern, L.
Maginnis of Drumglass, L.
Mancroft, L.
Mann, L.
Manzoor, B.
Marland, L.
Marlesford, L.
Mawson, L.
McColl of Dulwich, L.
McInnes of Kilwinning, L.
McLoughlin, L.
Mendoza, L.
Meyer, B.
Montrose, D.
Moore of Etchingham , L.
Morgan of Cotes, B.
Morris of Bolton, B.
Morrissey, B.
Moylan, L.
Moynihan, L.
Nash, L.
Neville-Jones, B.
Neville-Rolfe, B.
Newlove, B.
Nicholson of Winterbourne, B.
Noakes, B.
Northbrook, L.
Norton of Louth, L.
O'Loan, B.
O'Shaughnessy, L.
Parkinson of Whitley Bay , L.
Patten, L.
Pearson of Rannoch, L.
Penn, B.
Pickles, L.
Pidding, B.
Polak, L.
Popat, L.
Powell of Bayswater, L.
Price, L.
Rana, L.
Randall of Uxbridge, L.
Ranger, L.
Ravensdale, L.
Reay, L.
Redfern, B.
Renfrew of Kaimsthorn, L.
Ribeiro, L.
Ridley, V.
Risby, L.
Robathan, L.
Rock, B.
Rogan, L.
Rose of Monewden, L.
Rotherwick, L.
Saatchi, L.
Sanderson of Welton, B.
Sarfraz, L.
Sassoon, L.
Sater, B.
Scott of Bybrook, B.
Seccombe, B.
Selkirk of Douglas, L.
Sharpe of Epsom, L.
Sheikh, L.
Shephard of Northwold, B.
Sherbourne of Didsbury, L.
Shields, B.
Shinkwin, L.
Shrewsbury, E.
Smith of Hindhead, L.
St John of Bletso, L.
Stedman-Scott, B.
Sterling of Plaistow, L.
Stewart of Dirleton, L.
Stirrup, L.
Strathclyde, L.
Stroud, B.
Stuart of Edgbaston, B.
Sugg, B.
Suri, L.
Taylor of Holbeach, L.
Taylor of Warwick, L.
Tebbit, L.
Thurlow, L.
Trefgarne, L.
Trenchard, V.
Tugendhat, L.
Tyrie, L.
Ullswater, V.
Vaizey of Didcot, L.
Vaux of Harrowden, L.
Vere of Norbiton, B.
Verma, B.
Vinson, L.
Wakeham, L.
Walker of Aldringham, L.
Walney, L.
Warsi, B.
Wasserman, L.
Waverley, V.
Wei, L.
Wharton of Yarm, L.
Whitby, L.
Wilcox, B.
Willetts, L.
Williams of Trafford, B.
Willoughby de Broke, L.
Wyld, B.
Young of Cookham, L.
Young of Graffham, L.
Younger of Leckie, V.

Motion, as amended, agreed.

Human Medicines (Amendment etc.) (EU Exit) Regulations 2020

Motion to Approve

4.36 pm

Moved by ***Lord Bethell***

That the draft Regulations laid before the House on 20 October be approved.

The Parliamentary Under-Secretary of State, Department of Health and Social Care (Lord Bethell) (Con): My Lords, we all believe that we must protect the safety of patients, while preserving their access to new and innovative medicines. The instruments that we are discussing today, on the UK's regulation of medicines and medical devices, will ensure that there is a functioning statute book at the end of the transition period. This could not be more important in the context of the Government's Covid-19 response.

The instruments are generally technical in nature and broadly achieve three things: first, they make minor amendments to existing regulations to take account of the implementation period agreed under the withdrawal agreement; secondly, they implement the Northern Ireland protocol; and, thirdly, they implement certain changes to the regulatory regime in Great Britain to ensure that the regulatory framework is up to date and functioning correctly at the end of the transition period.

These regulations do not prevent the need for future changes but they do preserve the solid foundation of the UK regulatory environment to protect patient safety and to allow the UK to remain a world leader in science and innovation. I will set out some of the key changes in the medical devices SI and then the medicines SI. However, as the SIs are long and technical, I trust that noble Lords will understand that I will not address all elements in the time we have available.

The medical devices instrument will allow CE-marked medical devices to be placed on the Great Britain market for a period of two and a half years. This will ensure continued access to medical devices for patients, while providing time for industry to adapt to future regulations. The Government have created their own new product safety marking—the UK conformity assessed, or UKCA, marking—which will be used across goods regulation in Great Britain. The SI sets out that the UKCA marking can be used for devices certified in accordance with the regulations and placed on the market in Great Britain from the end of the transition period.

[Lord Bethell]

The instrument makes a change to the 2019 medical devices SI, which would have inserted into domestic law provisions of the EU medical device regulation, or MDR, and the in vitro diagnostic medical devices regulation, the IVDR. By not including these provisions, we can develop our own system based on patient access, international standards and public health considerations.

The report of the Independent Medicines and Medical Devices Safety Review, led by my noble friend Lady Cumberlege, has made it clear that we must do more to protect patient safety. The Government wholeheartedly agree. We will use the opportunity of leaving the EU to develop a robust, world-leading regulatory regime which prioritises patient safety, innovation and international best practice, using the powers of the Medicines and Medical Devices Bill.

Throughout recent constructive debates on the Bill, I have listened carefully to my noble friend Lady Cumberlege and other noble Lords. We listened to concerns and have incorporated the medical devices information system into the framework for a future regulatory system. We are also in discussion on a number of other important regulatory issues, the details of which I will not go into now for the sake of brevity. I look forward greatly to the public consultation on this future regime next year and to working closely with the life sciences and healthcare sectors on these important considerations.

I now turn to the human medicines SI. From 1 January 2021, the Northern Ireland protocol will apply, so marketing authorisations granted by the EU will continue to apply in Northern Ireland. However, medicines placed on the market in Great Britain must be authorised through the UK national route.

The human medicines SI allows the MHRA to have "regard to" decisions made by EU member states on products approved via decentralised and mutual recognition procedures when considering whether to authorise those products in Great Britain. This policy will ensure that the MHRA can continue to take effective regulatory and safety action on these products.

The medicines SI will ensure that new and existing medicines continue to be on the UK market after the end of the transition period, so that patients are still able to access them in a timely manner. This will be achieved by allowing recognition of decisions by the EU Commission to grant marketing authorisations for centrally authorised products. These products will receive a GB marketing authorisation.

Both the SIs we are discussing today uphold the Prime Minister's commitment to unfettered access for Northern Ireland's businesses to the whole of the UK market. The SIs include transparency requirements for medicines and medical devices moving from Northern Ireland to Great Britain, which will allow the MHRA to maintain oversight of products on the GB market and thus protect patient safety.

For medical devices, the transparency requirements mean that non-UK manufacturers placing devices on the UK market will be required to appoint a UK responsible person. The UK responsible person will be required to register devices with the MHRA in accordance with a transitional timetable set out in the regulations. Registration requirements will also apply to GB and Northern Ireland-based manufacturers. Both SIs make changes to ensure that the relevant EU laws will continue to apply in Northern Ireland after the end of the transition period, fulfilling the requirements of the Northern Ireland protocol. I reassure noble Lords that this Government will continue to regulate medicines and medical devices in a way which works for the whole United Kingdom, including, of course, Northern Ireland.

The MHRA will continue to regulate medicines and devices in Northern Ireland. This will ensure continuity for patients and for businesses. Moreover, the Medicines and Medical Devices Bill, currently passing through this House, will provide the powers for future changes to the UK's regulatory system. Within this, and having tabled an amendment in my name, what is now Clause 43 requires a public consultation on regulatory change before making use of the relevant designated powers in the Bill. The consultation process will help to ensure that the interests of the all interested parties, including devolved Administrations such as Northern Ireland, continue to be fully considered. Officials have kept the devolved Administrations informed of the drafting of this instrument and I am grateful for their continued collaborative approach. In particular, I thank the Minister of Health in Northern Ireland, Robin Swann, who agreed—despite policy for human medicines being a devolved matter—to the human medicines SI being signed solely by the Secretary of State for the Department of Health and Social Care.

To inform the industry, we have published a number of guidance documents which go into further detail on the changes included in the SIs on GOV.UK. In addition, an accompanying series of webinars were held where officials engaged directly with 11,500 industry representatives and provided them with an opportunity to ask questions. My officials also meet regularly with top industry companies and key trade associations, including the Association of the British Pharmaceutical Industry, the BioIndustry Association and the Association of British HealthTech Industries.

It is important to note that these instruments amend pre-existing EU exit legislation made in 2019. A full consultation process was conducted for this pre-existing legislation. Moreover, full impact assessments were conducted for this underlying legislation. As the nature of the changes in the instruments that we are discussing today are in many instances technical, the impacts of these SIs above and beyond the existing legislation do not meet the threshold for further impact assessments and hence these are not provided for. These instruments will ensure that the UK's exceptional standards of safety and quality regulation of human medicines and medical devices are maintained and enhanced. At a time when we have never been more reliant on all the elements of our public healthcare system for our survival, we must support this. I beg to move.

4.44 pm

Lord Blunkett (Lab): My Lords, I was going to make an esoteric and wide-ranging speech on the relationship between the protocol, the MHRA and the European Medicines Agency and wow the gathered hundreds of online Peers in order to demonstrate my technical knowledge, but I have abandoned that in favour of

saying something very brief on the relationship between these regulations and the Bill to which the Minister has already referred, and on today's announcement about the purchase of the Pfizer BioNTech vaccine.

I genuinely congratulate the Minister—he must have had nightmares over the last eight months of Questions and Statements on PPE, test and trace, and everything else—on actually managing to find the time to be entirely on top of, and extremely impressive in, the process of taking through the somewhat delayed legislation on medical devices. I also congratulate him on his willingness to be flexible. It is easier to be flexible with one's own side, but I actually am impressed that he, on behalf of the Government, has been able to respond so effectively to the superb campaign of the noble Baroness, Lady Cumberlege, in relation to the protections that we debated in Grand Committee. I know that my noble friend on the Front Bench has done a sterling job in supporting and working on that.

I want to test out this afternoon—in relation to what we are debating, because it is directly related to it, although it will be the subject of a Statement tomorrow—the extraordinary misunderstandings that appear to exist not just on the twittersphere, which you would expect because the very word "Twitter" brings that to mind, but in social media and the broadcast media as well. These relate to the relationship between the MHRA and the European Medicines Agency, and the relationship between what is possible now and what might change following the final conclusion of whatever deal is done at the end of the transition period in respect of our exit from the European Union at the end of December.

Perhaps the Minister—and this is a kind of run-out for tomorrow, seeing as there are so few of us gathered together—could confirm that the MHRA has powers, and has used them already when we were, and remain in the transition period, members of the European Union, in circumstances where it was appropriate to act swiftly when the European Medicines Agency was taking a longer period of time to come to a judgment on the efficacy of a particular procedure or vaccine. Regulation 137, I think, relates to this. Would it not be nice if we could join the German ambassador in welcoming international collaboration, rather than always having to believe that when we borrow someone else's horse we should get commended for riding it in in front of the others? I am very supportive of what has been done; I believe that the MHRA has done its job thoroughly and efficaciously. It is excellent that we have been able to move quickly, not least because we might be able to transport the vaccine during December, before whatever chaos exists from 1 January. It is a great move forward; we should all celebrate it, but we should do so within the context of the reality of the situation, the knowledge of what existed already, the relationship of continuity after 1 January and the celebration of international collaboration to tackle the virus which, after all, is a pandemic.

4.49 pm

Lord Goddard of Stockport (LD) [V]: I do not intend to take up too much of the time of the House, but I want to make a couple of comments and ask the Minister three questions about the SIs and the context in which they sit. These instruments are technical in nature, but the subject area—the regulation of medicines and medical devices—is a key issue for millions of people across the United Kingdom.

It is clear that in a no-deal EU exit scenario, the UK's current participation in the European regulatory network for medical devices would end. The MHRA would then take on the responsibility for the UK market currently undertaken through the EU system, to ensure the continued safety of patients. The instruments are designed to enable the regulation of medical products and devices across the UK to be continued beyond the implementation period, so the regulations need maximum scutiny.

The EU and the UK markets for medicines and medical devices are closely linked, and enormous numbers are involved. I doubt whether the general public have any idea of the scale. According to the Association of the British Pharmaceutical Industry, every month at least 45 million packs of medicines are exported from the UK to the EU, and 37 million packs are supplied from the EU to the UK. The UK still also relies heavily on the EU for its supply of medical devices, with more than half its £5 billion budget for imported medical technology being spent on devices originating from the EU.

From January 2021, changes to legislation on these issues will no longer flow through from updates at EU level. I therefore hope that the Government will explain clearly how this vital supply chain will be not only maintained but improved. A number of issues in relation to the Medicines and Medical Devices Bill have raised concerns about the Government's approach to the future regulation of medicines and medical devices. I will pick out just three for the Minister to consider.

The first issue is patient safety. There is a balance to be struck between innovation and patient safety. The Government need to provide assurances that patient safety will be an overarching consideration in their approach to new devices, some of which have been controversial in the past. The scandal of the women affected by mesh implants is an obvious example of where things have gone wrong.

The second issue is about alignment and collaboration. The EMA centralises the process for licensing and the monitoring of drug safety. Pharmaceutical companies could prioritise the EEA market over the UK market if the processes diverge too far, leading to delays in medication and medical devices being available in the UK.

The third issue—to me, possibly the most important—is patient data. The Government need to provide assurances that patient data will be protected and used appropriately. That should be front and centre of their approach, to give confidence that patient data will be protected and will not be shared with third parties.

4.52 pm

Baroness Bennett of Manor Castle (GP) [V]: My Lords, it is a pleasure to follow the noble Lords, Lord Blunkett and Lord Goddard, with another northern perspective. The noble Lord, Lord Blunkett, made a good choice of location today, being in your Lordships' House rather than in Sheffield, because here the emergency services are dealing with an unexploded World War II

[Baroness Bennett of Manor Castle]
bomb just up the road from me. I thank those emergency services workers. This is a reminder that all our essential services and workers have so many things to deal with at the moment, including all the medical professionals dealing with the complexities that we are discussing today.

I agree with the noble Lord, Lord Blunkett, about the importance of acknowledging international collaboration. Whether we are talking about vaccines or medical research, the nature of science today is innately collaborative, and we need to keep that in focus.

I also agree with the noble Lord that the Minister has been highly informative and helpful to your Lordships' House right through the pandemic. That has built trust, which is so crucial. I hope that the Government will ensure that the information they provide is always accurate and trustworthy—as other representatives, I am afraid, have not been today, in their claims that exiting the EU made it possible to approve the vaccine so quickly.

Turning to the detail of these complex and detailed instruments, I decided to engage in the debate because I have also been heavily involved with the Medicines and Medical Devices Bill. As the Minister said in his introduction, it is clear that these instruments and the Bill are closely interrelated. It is also clear from our debates on the Bill, and from the report by the noble Baroness, Lady Cumberlege, that we need a great deal of improvement in our regulation and oversight of medicines and medical devices.

These statutory instruments also address the issue of falsified medicines. With fake medicines estimated to cost the pharmaceutical sector about €10 billion, and considerable evidence that the Covid-19 pandemic has accelerated that problem, this is truly a key issue.

I shall address four key points. The first is the Northern Ireland complexities, with which the SIs are heavily involved. The second is the extra costs for the NHS, and potentially for private patients, for medicines and medical devices. The third is falsified medicines, which I have already mentioned, and the fourth is the risk of shortages in the immediate post-transition period and the later post-transition period.

In relation to the first point, about Northern Ireland, the Explanatory Memorandum says, at paragraph 7.10:

"To ensure unfettered access only benefits NI businesses, these regulations require that:

a) only an NI business should be able to apply for a licence from MHRA … and

b) the market authorisation holder … will need to be located in NI."

It will have to provide information and data, and take

"legal responsibility for the medicine once on the GB market, including access to a suitably qualified person for UK regulators to interact with on ongoing safety monitoring … related to those medicines"

and medical devices. My first question for the Minister is: are there enough qualified, appropriately registered, people in Northern Ireland for those roles? Secondly, are small independent businesses, such as small pharmacies in rural areas, ready for this situation?

As of early November, a phased process for implementing medicines regulation in Northern Ireland up to 31 December 2021 has been agreed, which means that the current batch testing, importation, and falsified medicines directive requirements will remain in place for another 12 months. December 2021 is not very far away. Are these regulations future-proofed? Will they still cover the situation in 12 months' time?

The Explanatory Memorandum also notes all the extra costs—for example, £18,000 for a new active substance, £10,000 for a complex abridged application, and so on. Can the Minister provide any information on what extra costs the end of the Brexit transition period will bring, for drugs both for the NHS and for people with private prescriptions?

On the third point, about falsified medicines, in October the Royal Pharmaceutical Society wrote to the Health Secretary, Matt Hancock, asking for "robust plans" to be put in place

"to help authenticate the legitimacy of medicines".

The RPS also said:

"We are concerned that removal of these safeguards could leave the UK vulnerable to an influx of counterfeit medicines, impacting on patient care in the UK and across the EU".

Can the Minister provide assurances on that point?

Finally, I want to ask about shortages. In August the Government recommended that pharmacies and hospitals build up a six-week stockpile before 31 December. Is the Minister confident that that is in place, given all the many other pressures from Covid-19, normal winter illnesses and the general pressure on our medical systems? In the shorter long term, at the end of those six weeks, will the supply be secured? Can we be confident that we will have the medicines we need?

4.58 pm

Baroness Wheeler (Lab): I thank the Minister for introducing the regulations, and other noble Lords for their contributions and key questions on these two important instruments. I also thank my noble friend Lord Blunkett for the speech he decided not to make. As noble Lords have said, it is timely to discuss these instruments now, as we take stock of the Medicines and Medical Devices Bill Committee discussions and outcomes, await Report dates and deliberations, and meanwhile continue the so far helpful discussions on a number of key issues taking place between the Minister, ourselves and other noble Lords involved with the Bill.

For the record, the Bill has changed substantially as a result of government amendments agreed in Committee —not by consensus among participants, as we normally would have expected, but by the Government's insistence that it was necessary to agree the amendments in Committee to comply with the requirements and timescales for consultation on the Bill with the Department of Health in Northern Ireland and the Northern Ireland Assembly.

We are now working our way through the "new" Bill to assess the full impact of this departure from established procedure and, in particular, the response from the Government to the deep concerns of the Delegated Powers and Regulatory Reform Committee and the Constitution Committee on the use of delegated powers across a range of provisions in the Bill. I note that the Government have not formally responded to these committees, as is also usual practice, other than

broadly commenting in the course of their response on individual proposed amendments, or in general correspondence from the Minister in his letter to Peers of 13 October and to the noble Lord, Lord Lansley, of 18 October. Can the Minister tell the House if he plans to respond to the committees, explaining not only how their concerns have been addressed but by which specific government amendment? This information is pretty crucial to all involved as we continue to discuss the Bill with Ministers prior to Report.

The regulations today are confirmed through the affirmative procedure instruments. I would be grateful if the Minister can today confirm that the Government will use this procedure in all regulations on human medicines and medical devices, as also promised in his letter of 13 October.

We have had a good, if short, debate on these SIs, which are long, complex and technical, but which we recognise as a necessary step towards ensuring that people are kept safe when using medicines and medical devices after the end of the implementation period for exit from the EU. I will not repeat the content and purpose of the regulations, which have been well explained by the Minister and other noble Lords and also documented in the very helpful Explanatory Notes and Library briefing, and by the most helpful summary of all, in my view, the Commons Minister Edward Argar's bullet-points letter of 20 October. In the main, the key issues are the ones we have closely examined in Committee, and which continue to be under discussion.

I want to reinforce and add to the questions raised by some noble Lords. First, on the landmark Cumberlege report, I referred earlier to the helpful discussions taking place on the implementation of this vital review, in particular the establishment of a patient safety commissioner. The Minister referred to these discussions, but he knows that a clear statement of commitment from the Government is needed on this and is long overdue. Can he update the House further on the progress of the discussions? The Minister in the Commons promised strengthened regulations to do more to protect patients, and to use the powers in the MMD Bill for this. He said that plans are in development which will take into consideration both international standards and global harmonisation in the establishment of our future system. I look forward to further information from the Minister about these budding plans and the timescale for when we can expect information and consultation on them.

My noble friend Lord Blunkett touched on the powers of the MHRA in relation to vaccines, and the powers generally in the Bill. There have been deep concerns about how the MHRA is to be staffed and resourced to meet the huge challenges of its future role as the UK regulator of all medicines coming into Great Britain and Northern Ireland. It is a much respected body, but its capacity and expertise will need to be hugely expanded to meet its new obligations and duties. The £13 million in additional funding from the Government up to the end of March 2021 will, I suspect, be just a pump-priming starter. Can the Minister tell the House the planned annual budget for the MHRA up to the end of year three of its operation under its extended remit?

The conformity assessment—the UKCA mark—will be available for industry to use for medical devices placed on the market in Great Britain from the end of the transition period. Is the Minister confident that manufacturers have been given sufficient time and guidance to prepare for the UKCA marking?

What assessment have the Government made of the impact these new regulations could have on the number of approved medical devices in the next few years? According to GlobalData's pipeline products database, there are more than 17,000 active medical devices currently in the pipeline, with approximately 42% of these devices in the early stages of development. The high proportion of products being developed in the EU and UK indicates that a vast majority of devices will be caught in transitioning approval processes, which may lead to a temporary decline in the volume of approved devices—and, indeed, to the delays that noble Lords have talked about. Many companies are already struggling with the demands of the medical device regulations, including the increased costs. Does the Minister share my concern that this, coupled with the additional authorisation process required to reach the UK market, may lead to delays or deter companies from selling their products in the UK altogether?

Under these regulations, the UK will continue to recognise the CE marking on medical devices and in vitro diagnostic devices which have demonstrated their conformity with EU regulatory requirements, until July 2023. Will the UKCA marking be recognised by the EU? Can the Minister confirm whether the EU falsified medicines directive, referred to by the noble Baroness, Lady Bennett, will apply in the UK after Brexit? If not, packs of medicine intended for the UK that are not compliant with the directive may not be lawfully dispensed in Northern Ireland.

The complexities businesses face are considerable and have been exacerbated by the Northern Ireland protocol, which requires companies seeking marketing authorisation to be able to sell a new medicine in the UK to continue to follow EU procedures in respect of Northern Ireland. Can the Minister confirm whether a single marketing authorisation will suffice or whether new companies will have to obtain a double "EU plus UK" marketing authorisation to sell throughout the UK?

For those of us deeply concerned about the risks of regulatory divergence on medicines and medical devices between Great Britain and Northern Ireland, can the Minister tell the House about the specific work that is being done, in response to the Bill and these regulations, to mitigate the adverse consequences of possible divergence in the medium and longer term? One has to look only at the timely and expert analysis of the noble Lord, Lord Patel, of the MHRA guidance on this issue in Committee to see that there are key issues that remain unclear and unresolved, and deep confusion around how the dual systems will work in the future.

5.06 pm

Lord Bethell (Con): My Lords, I am enormously grateful for the penetrating and thoughtful questions on this important set of SIs. There were far too many for me to be able to cover them in all the detail they

[Lord Bethell]
deserve this afternoon, but I will undertake to write to noble Lords if I have failed to address any specific questions.

I start by sharing with the noble Lord, Lord Blunkett, the very positive vibe he gave out about the vaccine. He is entirely right that I have been at this Dispatch Box answering questions on PPE, test and trace and all manner of government challenges, but today is a great day. I do not want to bang on about it, but it is a huge relief to see the authorisation of this vaccine: it is a huge triumph for medical science and a massive breakthrough for humanity. I cannot help emoting so positively on it.

On the precise procedures used, I reassure the noble Lord that, in fact, the procedures used for the authorisation of this vaccine were exactly the same as those we could have used, and do use, under current EU regulations—as he probably knows. Those will change at the end of the month, but, as he probably knows, in October, we brought in specific regulations to allow us to have this opt-out procedure. I pay tribute to the EMA, which is a fantastic regulator with which we intend to work extremely closely. I pay enormous tribute to the MHRA, which has worked with phenomenal diligence, enormous scientific insight and great precision and confidence in order to get this authorisation done so promptly. Dr June Raine, who runs the MHRA, has done a fantastic job, and we should be extremely proud of the role of British regulation in this matter.

On a serious point, this incident demonstrates some of the benefits that will come to Britain's life sciences industries from the transition. As noble Lords will know very well, we are not planning a massive divergence from either the EMA or the cohort of other regulators—the FDA and others—on a large number of matters. In fact, we have a huge amount of respect for our partners in other countries, especially the EMA. However, in the areas of innovative medicine, where there are new techniques and novel science, and where thoughtful, rapid processing makes a huge impact on the velocity of innovation and where expertise and scientific insight are particularly important, Britain can make a difference. This is where the MHRA will help not only British industry but all of humanity. I very much look forward to reporting back to the House on the progress that we can make in that area.

There have been a large number of questions from noble Lords on whether we are ready for these changes. I assure all noble Lords that we are in great shape. We are in constant liaison with industry and I have regular phone calls, meetings, webinars and bilaterals with industry to ensure that things are in good shape. When it comes to batch testing, which was raised by the noble Baroness, Lady Wheeler, the stockpiling of medicines, and the other matters raised, I can assure noble Lords that we are indeed in good shape. The noble Baroness asked specifically about our conversations with the DPRRC; I cannot give precise answers to her detailed and very reasonable questions, but I will write to her.

I am particularly abreast of the matter of stockpiles, having presented to the Project Defend board earlier today for three hours. I assure noble Lords that the Government are considering the resilience of the country as we approach not only the transition, but also the ongoing pandemic and the winter, simultaneously. We are in very good shape. There is a nationwide, government-wide project to ensure that we are truly resilient. In terms of health provisions, this means not only having stockpiles, but also strengthening our relationships with our suppliers, ensuring the provenance of those supplies and, where necessary—I emphasise that—building up domestic supply. Phenomenal progress has been made regarding medicines and devices, as well as PPE, which typically one associates with production in Asia. We are currently producing more than half our PPE in the UK, and it is possible that we will be producing more than that.

The noble Baroness, Lady Wheeler, is entirely right about the MHRA. We have a winning organisation there, but the emphasis and pressure on it going forward will be extremely important. I assure her that I have regular meetings with the MHRA through the spending review, and its financial plans have been gone through with a fine-toothed comb. Both the MHRA management and the policymakers at the department are reassured that the budgets and the human resources are in place for the MHRA to step up to that challenge.

These are important regulations. I am extremely grateful for the scrutiny that noble Lords have given them and, in that spirit, I commend them to the House.

Motion agreed.

Medical Devices (Amendment etc.) (EU Exit) Regulations 2020

Motion to Approve

5.13 pm

Moved by ***Lord Bethell***

That the draft Regulations laid before the House on 10 November be approved.

Motion agreed.

5.13 pm

Sitting suspended.

Arrangement of Business

Announcement

6.01 pm

The Deputy Speaker (Baroness Fookes) (Con): My Lords, the hybrid sitting of the House will now resume. I ask Members to respect social distancing.

Patrick Finucane: Supreme Court Judgment

Statement

The following Statement was made in the House of Commons on Monday 30 November.

"The murder of Patrick Finucane on 12 February 1989 in front of his family was an appalling crime that has caused tremendous suffering. It occurred during a difficult and dark period in this nation's history, which brought untold pain to many families across the United Kingdom and, indeed, Ireland.

Northern Ireland has made massive strides since the Belfast/Good Friday agreement to create a vibrant, inclusive and forward-looking future. However, the legacy of the Troubles for many still hangs like a shadow over society. This Government are determined to work hand in hand with the people of Northern Ireland from all communities, with victims and survivors, and with our Irish partners. We want to find a way to bring truth and reconciliation where there is currently hurt, and where too many people continue to suffer due to the absence of information about the circumstances of the deaths of their loved ones.

It is plain that the levels of collusion in the Finucane case, made clear by previous investigations, are totally unacceptable. Former Prime Minister David Cameron rightly apologised publicly in 2012, and I unreservedly repeat that apology today. I also acknowledge that an apology cannot undo history, and nor can it alleviate the years of pain that the Finucane family have felt. It is none the less right that this Government acknowledge that, at the height of the Troubles, actions were taken that fell far short of what can and should be expected.

The murder of Patrick Finucane has been the subject of a considerable number of investigations and reviews, including the Stevens 3 investigation and the de Silva review. These investigations led to the conviction of Ken Barrett, a loyalist terrorist who pled guilty to the murder.

In February 2019, the Supreme Court made a declaration that the state had not discharged its obligation to conduct an Article 2-compliant investigation into the death of Mr Finucane. That judgment specifically set out that it is for the state to decide what form of investigation, if indeed any is now feasible, is required in order to meet that requirement. It did not order a public inquiry, but in considering all the options open to me to meet the state's obligations under Article 2, I have considered whether a public inquiry would be the most appropriate step to address the specific findings of the courts at this time.

I have, this afternoon, spoken to the Finucane family. I advised them of my decision not to establish a public inquiry at this time. Our public statement, published this afternoon, set out the considered rationale for this decision, which I will now explain directly to the House.

In reaching its conclusion, the Supreme Court identified a number of issues with previous investigations in this case. First, there was no identification of the officers within the Royal Ulster Constabulary, Security Service and Secret Intelligence Service who failed to warn Patrick Finucane of known threats to his life in 1981 and 1985, together with the circumstances in which these failures occurred. Secondly, there was no identification of the RUC officers who, as Desmond de Silva said, probably did propose Mr Finucane as a target for loyalist terrorists in December 1988. Thirdly, there was no identification of the police source who provided intelligence about Patrick Finucane to Ken Barrett.

The Supreme Court identified these shortcomings and other failures of process, but it did not render the previous reviews and investigations, which resulted in significant findings and information being released into the public domain, null and void. The work conducted by, and the findings of, those previous independent investigations and reviews remain valid. The state's Article 2 obligations can be met through a series of processes taken by independent authorities on the initiative of the state, which, cumulatively, can establish the facts and identify the perpetrators and hold them to account where sufficient evidence exists.

In June 2019, an independent review of previous investigations was commissioned by my right honourable friend the Member for Staffordshire Moorlands (Karen Bradley). The first purpose of this review was to gain a clear understanding of what investigative steps had already been taken to identify all individuals of concern. Its second purpose was to understand the actions taken as part of previous investigations in respect of these individuals. The review was conducted by independent counsel from Northern Ireland. It highlighted that steps had in fact been taken during previous investigations which had not been considered by the Supreme Court but which were relevant to the issues it identified. For example, it found that a number of officers from the Royal Ulster Constabulary and the Army's force research unit had been interviewed as part of the Stevens investigation, and that Stevens accepted that there was no direct breach of policy by any individual officer at the time. As my right honourable friend the Member for North Shropshire (Mr Paterson) stated in 2011, accepting that collusion occurred is not sufficient in itself.

The Government recognise the need to ensure sufficient levels of public scrutiny of critical investigations and their results. I am today publishing further information that was considered by the independent counsel in its review since the Supreme Court judgment, some of which has not previously been released into the public domain. That includes information pertaining to a Police Service of Northern Ireland review conducted in 2015.

As set out in the 2015 police review, a number of issues were referred to the Police Ombudsman for Northern Ireland in 2016, and also remain subject to investigation. In addition, the legacy investigation branch of the PSNI informed my department on 2 November 2020 that Patrick Finucane's case is shortly due to undergo a process of review in accordance with the priorities set out in its case sequencing model. The chief constable confirmed that that is expected to begin early in the new year.

To be clear, this is a purely operational police matter. The UK Government, rightly, have no role whatsoever in determining how or when the police deal with their outstanding legacy caseload. However, the fact that a decision on a police review is due shortly is an important development and was a factor in determining the next steps in this case. Critically, a review would consider whether further investigative steps could be taken in this case and whether the PSNI should do this—these were key elements of the Supreme Court judgment. It is, quite properly, for the chief constable of the PSNI to determine the precise scope and format of any review, in accordance with their own priorities and review procedures, and the police have indicated that they expect that any review would need to be conducted independently of the PSNI. Such a process, in addition to the ongoing investigations being conducted by the police ombudsman, can play

[Baroness Fookes]
an important role in addressing the issues identified by the Supreme Court. I want to be clear: I am not taking the possibility of a public inquiry off the table at this stage. It is important that we allow the PSNI and police ombudsman processes to move forward, and that we avoid the risk of prejudicing any emerging conclusions from their work. I will then consider all options available to me to meet the Government's obligations.

I assure the House that this decision has been taken following careful consideration of the facts, the findings of the Supreme Court judgment, the outcome of the independent counsel review and the United Kingdom's obligations under Article 2 of the European Convention on Human Rights. This Government have demonstrated that, when the public interest requires it, we will establish public inquiries to look at any potential failings by government or state bodies, as, for example, we have done in the case of the Manchester bombing. In this instance, I believe it is in the public interest to allow the police and ombudsman processes to proceed before taking any decision on whether the state's Article 2 obligations have been discharged or whether further steps are required.

This case, it has to be said, is, sadly, just one example of the violence and tragedy experienced by so many individuals and families across Northern Ireland, the rest of the United Kingdom and indeed Ireland during the Troubles. That is why, as a Government, we remain committed to dealing with the legacy of the past in its entirety. We are determined to get this right, working closely with communities. This is vital, so that society in Northern Ireland can look beyond its divisive past and towards a shared future. I commend this Statement to the House."

6.01 pm

Baroness Smith of Basildon (Lab): My Lords, I first take a moment to pay tribute to Brian Kerr, Lord Kerr of Tonaghmore, whose death was announced by the Lord Speaker in your Lordships' House earlier today. I am sure that the whole House will want to pay tribute to him and, on behalf of our Benches, I thank him for his service on the Supreme Court and as the Lord Chief Justice for Northern Ireland. The whole House will offer its condolences but I also offer my personal condolences to his family and friends. His membership of the Supreme Court and judgments in the Finucane case are relevant today.

I appreciate that our way of working now means that Ministerial Statements are not repeated in your Lordships' House. I understand why, but today in particular it would have been helpful for the House to have heard the words from the Secretary of State before we started on questions.

Few of us can even imagine the unspeakable horror of losing a loved one in a bloody and violent attack. During the euphemistically named Troubles, over 3,500 people lost their lives in Northern Ireland, many thousands more were injured and so many today continue to carry the physical and mental scars of that time. The 1989 murder of Pat Finucane is horrific. As he sat down at home for a meal with his family, he was shot 14 times by the Ulster Defence Association, the UDA. His wife Geraldine was also injured. Since then, the Finucane family have sought the full and complete truth about his murder and how it came about.

As a former Northern Ireland Victims Minister, I met many victims, cross-community, who had suffered and survived in different ways. Of all the ministerial posts and positions that I held, this was the one that had the greatest impact on me personally. I can still vividly recall the details of discussions and conversations —it is many years ago now—with individual victims and survivors. I had only to listen but they lived with the consequences each and every day. If there was one thread that ran through so many of those conversations, it was the search for the truth. Time and again, in different circumstances and from different sides of the community, I would hear that they wanted to know what had really happened. Why had their loved ones died in this way? Why had they been singled out? How could this have happened? As many in your Lordships' House will know, the truth can be difficult and painful, but the dignity, sadness and perseverance of those families in that search for truth was humbling.

The truth can also be difficult for the Government. I welcome the repeat of David Cameron's apology in the Minister's Statement. It was genuinely made and it is right for it to be repeated. Mr Cameron was also correct when he said that it was not enough. For the Finucane family, the search for truth—the whole truth—continues. The Statement, however, is a bitter blow to them.

There have been several inquiries, including that by Sir Desmond de Silva, who found that there were "shocking levels" of state collusion. He concluded in his report that:

> "I am left in significant doubt as to whether Patrick Finucane would have been murdered by the UDA in February 1989 had it not been for the different strands of involvement by elements of the state".

That report was, and still is, absolutely devastating.

In a further attempt for a full public inquiry, Geraldine Finucane took the case to the Supreme Court, and the Minister's Statement recognises that the Supreme Court in its judgment held that

> "Mrs Finucane did have a legitimate expectation that there would be a public inquiry into Mr Finucane's death",

but Lord Kerr added that the Government had not taken decisions in bad faith or without genuine policy grounds but—and this is the part of the judgment that the Government have failed to adequately address in the Statement—the Supreme Court makes

> "a declaration that there has not been an article 2 compliant inquiry into the death of Patrick Finucane".

Article 2 of our Human Rights Act is the right to life.

The Secretary of State outlined and clearly understands the reason why the Supreme Court came to that decision. But he appears to take the view that the three steps he outlined in the Statement could—and I repeat could—mean that the Government have fulfilled their obligations under Article 2 as outlined by the Supreme Court. Just to recap, the steps were, first, the information from the review announced by the Secretary of State in 2009, the current PSNI review and the review of the police ombudsman, which, if I have understood correctly, is dealing with issues referred to it in 2016. But then, if you read the rest of the Statement, you see that the Government are not convinced that is the case, because

the Secretary of State says that he told the Finucane family that he would not establish a public inquiry "at this time".

I know these things take time, and I know how difficult they are but, given that phrase the Secretary of State used in the House of Commons, about not having an inquiry "at this time", could the Minister say when he thinks the Government think it would be right to do so? What is preventing the Government seizing the opportunity now? I think the Minister has to understand that this issue will not go away until everyone is satisfied that the full story and the full truth has been told.

Baroness Suttie (LD) [V]: My Lords, I too would like to thank the Minister for repeating the Statement this evening, but share the view of the noble Baroness, Lady Smith, that it would perhaps have been better if he was able to do it in person. From these Benches, I also pay tribute to the Finucane family, and particularly to Geraldine—Patrick Finucane's widow—who have all endured so much since his brutal murder in 1989. My heart truly goes out to them for what they must have had to endure over these past 31 years.

The Secretary of State for Northern Ireland's announcement two days ago is as regrettable as it is concerning. As the Minister knows, and as the noble Baroness, Lady Smith, has said this evening, the UK Supreme Court has stated that none of the previous investigations into the murder of Patrick Finucane met the required human rights standards. He will equally know that the Law Society of Northern Ireland yesterday expressed its concern about the decision at this time not to establish a public inquiry into his murder.

The approach announced by the Secretary of State for Northern Ireland will not provide for witnesses and documents to be compelled, as would have been the case under a full public inquiry. Can the Minister say how he believes this decision is compatible with Article 2 of the European Convention on Human Rights and the necessary requirements for independence? This unfortunate decision is compounded by the sidelining of the Stormont House agreement that would do so much to provide a more holistic approach for all victims of the Troubles.

We are also facing continued delay to implementing the commitments to legacy, as set out in the *New Decade, New Approach* agreement. Can the Minister tell the House when he believes we will see an announcement on taking forward those proposals on legacy? Apologies, although welcome, are not enough. A public inquiry would do much to help both the Finucane family and the wider community get to the truth and find some closure. It is therefore some consolation that a future public inquiry has not been entirely ruled out. Patrick Finucane's case raises serious questions about the rule of law, actions of the state and accountability. The Government's decision raises serious public interest issues. I hope they will reflect on this and reconsider their decision.

Viscount Younger of Leckie (Con): My Lords, I echo the words of the noble Baroness, Lady Smith: I am very sorry to hear today that the former Justice of the Supreme Court, the noble and learned Lord, Lord Kerr, sadly died earlier this week. I thank him for his service, and I give my condolences to his family.

I also agree with the noble Baroness that it would have been better if the procedures of the House allowed me to repeat the Statement, particularly on a subject that is so serious and important. It is often better that that is the case and I think this is one of those cases, so I completely agree with her points there.

I thank the noble Baroness, Lady Smith, the Leader of the Opposition, and the noble Baroness, Lady Suttie, for their statements. I state unequivocally that the murder of Patrick Finucane was an appalling crime, as the noble Baroness said. It caused tremendous suffering to all his family and to his wife Geraldine, as with so many other events that occurred during the Troubles and for so many other families from all communities across Northern Ireland and the rest of the United Kingdom and Ireland.

The Government are clear that the shocking levels of collusion made clear by previous investigations are totally unacceptable. The former Prime Minister, David Cameron, apologised publicly for that in 2012, as the noble Baroness said. This afternoon I echo the words of the Secretary of State in the other place on Monday by reiterating that apology today. I am very aware of the service and experience that the noble Baroness, Lady Smith, has had in Northern Ireland, and I listened carefully to what she said. She is right: at the end of the day, whether it is the dreadful murder of Patrick Finucane or any other murder, it is essential to get to the bottom of what actually happened.

I want to take a step back by saying that, over the years, as the noble Baroness said, the murder of Patrick Finucane has been the subject of a considerable number of investigations and reviews, including the three Stevens investigations and the de Silva review. As is well known, those investigations led to the conviction of Ken Barrett, a loyalist terrorist who pleaded guilty to the murder.

Then, jumping well ahead, in February 2019 the Supreme Court made a declaration that the state had not discharged its obligation to conduct an Article 2-compliant investigation into the death of Mr Finucane. That judgment specifically set out that:

> "It is for the state to decide … what form of investigation, if indeed any is now feasible, is required in order to meet that requirement",

but it did not specifically order a public inquiry.

As the noble Baroness, Lady Smith, said, following the 2015 police review of the de Silva report, a number of issues arose; they were referred to the Police Ombudsman for Northern Ireland and remain subject to investigation. On 2 November 2020, the Northern Ireland Office was informed by the Police Service of Northern Ireland that Pat Finucane's case was shortly to undergo a process of review, expected to begin early in the new year. I want to clarify that both those processes are independent of government.

I hope I can give some reassurance to both noble Baronesses that, having considered all the options open to him to meet the state's obligations under Article 2, the Secretary of State has concluded that at this time it is right to let the upcoming PSNI review process and the ongoing police ombudsman investigations

[Viscount Younger of Leckie]
move forward before making a further assessment of whether any further steps should be taken. The Government are clear that we are not taking the possibility of a public inquiry off the table at this time, as the noble Baroness said, but we wish to see the processes conclude.

To answer a question asked by the noble Baroness, Lady Suttie, concerning the breach of Article 2, the Government have acknowledged the Supreme Court finding that there is yet to be an Article 2-compliant investigation into the death of Mr Finucane, and we acknowledge that there has been some delay in setting out the way forward. However, I say again that we believe the two-pronged approach of allowing those two investigations to progress is the right way forward at this time.

The Deputy Speaker (Baroness Fookes) (Con): We now come to the 20 minutes allocated for Back-Bench questions. I ask that questions and answers be brief so that I can call the maximum number of speakers.

6.15 pm

Lord McCrea of Magherafelt and Cookstown (DUP): My Lords, over 3,500 people were murdered, many butchered to death in the cruellest fashion, and tens of thousands were injured and scarred for life. Every murder, including that of Pat Finucane, is to be unreservedly condemned. Coming from a family whose loved ones were also murdered, I know the pain and heartache caused to the family circles. Everyone is equal under the law and equally subject to it, but the Finucane case, as it has been presented, places his family in a class of its own—a hierarchy of victimhood.

Is the Finucane case the only one in which the claim of collusion has been made? If not, what makes it different to others? Is it that it is regarded as high profile because of its political backing from pro-republican sources across Europe and America? Does this mean that the well-connected republican elite have a right to a different kind of justice to others? Is this what justice has really come to? If so, those with highly ranking political connections are treated preferentially, the ordinary citizen really does not stand a chance.

Can the Minister detail to the House the number of investigations which have already been carried out in the Finucane case? Can he say how many millions of pounds have been spent on it and compare that to the expenditure on investigations endeavouring to give answers to the families of those burned alive at La Mon and of the eight innocent workmen brutally murdered at Teebane, not forgetting the IRA atrocities carried out at Enniskillen and Kingsmill, to name but a few? The decision made by the Secretary of State for Northern Ireland is the right one, if justice is to be equal.

Viscount Younger of Leckie (Con): I agree that the Finucane murder was particularly dreadful and high profile. We should never forget it, but it would be wrong to make comparisons with other dreadful crimes that took place. We are adamant that the right way forward is to make progress in dealing with the legacy of the past in Northern Ireland. I reassure the House that this remains a high priority for the Government. We remain committed to bringing forward legislation as soon as possible because we want information recovery and reconciliation to be at the heart of a revised legacy system that is fair and proportionate and delivers for victims from all communities. As part of this, we will engage closely with the Northern Ireland parties on proposals in the near future. It is important that we listen to a wide range of voices on this to find a way through. The point is that we need to look forwards, not backwards, while equally looking at the legacy of the past.

Lord Caine (Con): My Lords, I declare an interest in that, from 2010, when the new Government inherited a complete impasse, to 2019 I participated in every key meeting on the Finucane case and helped to draft David Cameron's statement in 2012. On that basis, I assure my noble friend that the announcement made by the Secretary of State on Monday is the right one. It has my full support and is entirely consistent with the requirements set out in the Supreme Court judgment.

This was a vile murder for which there was no justification, as with many thousands of others in Northern Ireland over the period of the Troubles. Does my noble friend agree that the right approach to legacy is not having highly selective, one-sided, open-ended and costly public inquiries but establishing mechanisms which have broad community support and the potential to offer better outcomes for all those who lost loved ones in the Troubles? David Cameron was right to say that collusion is always wrong, but we should never forget that the vast majority of those who served in Northern Ireland in the RUC and the Armed Forces did so with exemplary professionalism, integrity and bravery.

Viscount Younger of Leckie (Con): I acknowledge the experience of my noble friend and all the time he has spent dealing with Northern Irish matters. I assure the House that this decision has been taken following very careful consideration of the facts, the findings of the Supreme Court judgment, the outcome of the independent counsel review, and the UK's obligations under Article 2. It is important to remember that the Supreme Court judgment did not mandate a public inquiry, as I said earlier, and it specifically set out that it is for the state to decide.

On another question that he raised, there is no doubt that the collusion identified in this case is, as I said earlier, totally unacceptable. But we must also be clear about the high standards that almost all those who serve in our Armed Forces adhere to, performing in incredibly difficult circumstances to protect this country. So many people from both the Armed Forces and the security services give so much to protecting us, in Northern Ireland and across the UK. Finally, we agree that finding a way forward on legacy that works for all victims is a priority.

Lord Empey (UUP): My Lords, the issue that runs through this particular case and the differing opinions about it is one of double standards. The vast majority of victims have no lobby groups working on their behalf and their cases are barely mentioned. In this

particular case, there was collusion; that has been admitted. Why is it that this collusion is clearly an issue for the Irish Government, when the fact that, in the 1970s, senior Cabinet Ministers were involved in the creation, financing, equipping and training of the Provisional IRA is never mentioned? Other legal figures were killed in Northern Ireland, including several elected members of my own party, such as Edgar Graham, Robert Bradford and a number of councillors. There appears to be a different stream for people with big political connections, in the United States in particular, and the rest—the majority—of the victims, who are left to stew in their juice. Why is there no focus on the involvement of the Irish Government, and an apology sought from them as well as from our own?

Viscount Younger of Leckie (Con): I have said it before and I will say it again: collusion is totally unacceptable, and this was made clear by David Cameron back in 2012. We believe that the way forward is to allow the independent reviews of the PSNI and the ombudsman to follow their course. To perhaps reassure the noble Lord, as the Secretary of State said on Monday, some new information is being published today from two sources—the 2015 PSNI review, or the de Silva report, and the government-commissioned review by the independent counsel. The new information will, we hope, through the independent reviews, lead to some progress. It includes the failure to identify RUC security services and secret intelligence services officers who failed to warn Patrick Finucane of threats to his life, and the failure to identify RUC officers who probably proposed Patrick Finucane as a target, and I could go on. This is part of the decision to allow these two independent reviews to run their course.

Lord Dodds of Duncairn (DUP): My Lords, I support the Government in their decision in this case. The murder of Pat Finucane in 1989 has been, and should be, condemned as wrong and wicked. So too are the murders of all innocent victims, in Northern Ireland and elsewhere. There have been other, all too often forgotten, judges, lawyers and family members murdered by the IRA, whose brutal murders Sinn Féin—which is very prominent in this case—and its fellow travellers refused to condemn. Indeed, it still eulogises and glorifies their terrorist killers.

We should remember resident magistrate William Staunton, murdered in 1972; Judge Rory Conaghan, murdered in 1974; resident magistrate Robert McBirney, murdered in 1974; Judge William Doyle, murdered in 1983; Mary Travers, murdered in an attack on her father, Tom Travers, as he left church in 1984; Lord Justice of Appeal Maurice Gibson and his wife Cecily, murdered in a savage attack in 1987; the dear family Robin and Maureen Hanna and their six-year-old son David, murdered in an attempt to kill High Court Justice Higgins in July 1988; and Edgar Graham, who has been mentioned by the noble Lord previously, a human rights barrister, law lecturer and Assembly man, murdered in December 1983. Sadly, these dear people do not receive the same attention, concern, calls for inquiry or media coverage. Their families, too, deserve to know who planned and colluded in their murders. We remember them also this evening.

Viscount Younger of Leckie (Con): Indeed. The noble Lord read out, powerfully, a list of not only those who were caught up in the Troubles but those who were murdered. This is exactly what we want to do in looking forward and finding solutions. Those solutions have to deliver for victims, whose families need to find out what happened to the loved ones whom they lost during the Troubles. I say again that we are committed to bringing forward legislation that focuses on reconciliation, delivers for the victims, as I have said, and ends the cycle of reinvestigations into the Troubles in Northern Ireland that has failed victims and veterans alike. We need to look forward.

Lord Dubs (Lab) [V]: My Lords, of course every murder is to be condemned, whenever it happened, and I share the concern that the noble Lord, Lord Dodds, expressed about the horrible murders that he mentioned. But before us is the issue of justice and decency for the Finucane family. The Minister said that the PSNI was one way forward and that the police ombudsman was the other way forward. Is he aware that the chief constable said that there were no new lines of inquiry and that the police were reluctant to be involved because they would not be seen as independent in this matter? For all the good work that the police ombudsman does, she does not have the resources for the sort of full public inquiry that the Finucane family is asking for and which I think would be the right way forward in this case.

Viscount Younger of Leckie (Con): I am certainly aware of that element in the statement from the PSNI. Perhaps I may say two things. First, we are adamant that the way forward is to allow the PSNI review process to run its course. Secondly, I think that the noble Lord will be aware that the chief constable has said that, in order to be quite clear that the review is independent, it is likely that an independent force, beyond him, will be asked to take this forward. It is also important to say that the indications are that the PSNI review will start very soon in the new year, although it is up to the PSNI to decide on all other aspects, including the timings of the review.

Baroness Ritchie of Downpatrick (Non-Afl) [V]: My Lords, at the outset, I say that all murder in Northern Ireland is wrong. Some of those opposed to a public inquiry into the Pat Finucane murder use the spurious argument that it would be unfair to favour the Finucane family over other victims' families, thus creating a hierarchy of victims. However, does the Minister agree that the requirement for a public inquiry here goes well beyond seeking justice for the family, in that it is essential for all citizens in the whole of the UK, and not just in Northern Ireland, to know the truth of the central role that their Government played in this level of collusion, which has already been referred to and acknowledged by the former Prime Minister, David Cameron? As we know, the PSNI and the police ombudsman stated earlier this week that they are not ready to carry out such work because of issues to do with resources.

Viscount Younger of Leckie (Con): I hear what the noble Baroness says. I reiterate what the Secretary of State said on Monday, which is that, with so much

[Viscount Younger of Leckie]
history of all the reviews that have taken place since the dreadful murder in 1989, it has made sense at this time to look at what we know now. On the noble Baroness's comments about public inquiries, the Government have demonstrated that, when the public interest requires it, we will establish public inquiries to look at potential failings by government or state bodies. As she will know, we have done so in the case of the Manchester bombing. However, I reiterate that it is right that we allow the police and the ombudsman processes to proceed before taking a decision on whether further steps are required.

Baroness O'Loan (CB) [V]: My Lords, there can be no doubt that grounds exist for establishing a public inquiry into the murder of Patrick Finucane. An inquiry should be established because the matter is related to state collusion, leading to the murder, and there are major unanswered questions. As noble Lords know, both the PSNI and the Police Ombudsman for Northern Ireland have said they have no ongoing work in relation to the murder. The work of the police ombudsman, which was referred as a consequence of de Silva, relates to other terrorist murders carried out in Northern Ireland. When I was police ombudsman, I knew that I could not investigate matters surrounding the murder of Patrick Finucane because I did not have the powers. That continues for the current police ombudsman. She can only investigate the activities of police officers. She has no remit to investigate, with a view to prosecution, loyalist paramilitaries, the staff of the Ministry of Defence or the Security Service—that is what is required in this case. Moreover, the police ombudsman does not have the resources to do the work she should be doing; she is grossly underresourced. Yet, as I found when I carried out my investigations, while the crime in question may have occurred decades ago, what emerges from the investigation may have implications for policing today. Do the Government have plans to provide further funding to the police ombudsman to allow her to discharge her statutory duties? It is not a matter of double standards, an inquiry for one and not for the other. It is a matter of learning from the wrongdoing of the past to enable the anti-terrorism work of today.

There are hundreds of unsolved murders, as noble Lords have said. The current system is not working. We urgently need the independent historical investigations unit, which has been promised. It must be properly resourced and needs to do the type of investigation carried out by Chief Constable Boutcher in Operation Kenova. This is not a matter on which the Government can delay; it is urgent. Can the Minister tell us when a new, independent, properly resourced, historical investigations unit will be established?

Viscount Younger of Leckie (Con): I am not able to give a timing for the historical unit. The noble Baroness has raised a number of questions and I have taken on board her views about the decision that has been made. I reassure her that funding for the PSNI is there. There is no issue over that funding or indeed for the ombudsman investigation. There is much to do; it is for both independent investigations to decide how they will progress, and it is up to them to let us know how they will do that. We have every confidence they will do the best job possible in looking at these matters.

Baroness Kennedy of The Shaws (Lab) [V]: I say at the outset that I agree entirely with the words of the Leader of the Opposition on the Labour Benches when she described the full horror of events in Northern Ireland, the losses involved and the particular case that we are dealing with today. One speaker asked what makes this case different, and others have alluded to the other horrifying killings in Northern Ireland and that there should not be a hierarchy regarding those losses and terrible deaths.

I want to make an argument that this case is different, because it goes straight to the heart of the rule of law. All murders are crimes against the people of a nation—there is no doubt about that. I remind people that the rule of law is not something to be easily dismissed, although the Secretary of State, Brandon Lewis, was unfortunately the author of that famous statement that it might sometimes be possible to breach the rule of law and international treaty law in limited and particular ways. I remind the House that the rule of law should not be broken—and certainly not by the state.

There are two elements of the Finucane case that are important to all of us, as a society: here you had a lawyer, whose role is fundamental to the rule of law; and you had collusion by the state in his killing. You had one part of the state interfering with another—the rule of law, which is fundamental.

Thirty years ago, a special moment took place when the basic principles on the role of lawyers were adopted by the United Nations. In that same year, 1990, the International Bar Association also laid down principles connecting lawyers and their role to the rule of law. It said—

Baroness Bloomfield of Hinton Waldrist (Con): Could the noble Baroness please make her point swiftly, because we are over the time allowed for this question?

Baroness Kennedy of The Shaws (Lab) [V]: The independence of lawyers, and the opportunity for them to properly fulfil their function, should never be confused with the cases that they conduct. The lawyer is not to be identified by the authorities, or the public, with the client or the client's cause, however popular or unpopular it may be. The killing of Pat Finucane was basically an assault on the legal system.

Baroness Bloomfield of Hinton Waldrist (Con): The noble Baroness really must make her point swiftly, please.

Baroness Kennedy of The Shaws (Lab) [V]: I will ask my question quickly. Does the Minister agree that the rule of law is fundamental and that the murder of Pat Finucane takes on particular significance because of the collusion of the state in it?

Viscount Younger of Leckie (Con): The rule of law is indeed fundamental. I take note of the points made by the noble Baroness about the Finucane murder. The decision that has been made was taken following very careful consideration of all the facts, the findings

of the Supreme Court judgment, the outcome of the independent counsel review, and the United Kingdom's obligations under Article 2 of the European Convention on Human Rights.

House adjourned at 6.37 pm.

Grand Committee

Wednesday 2 December 2020

The Grand Committee met in a hybrid proceeding.

Arrangement of Business

Announcement

2.30 pm

The Deputy Chairman of Committees (Baroness Barker) (LD): My Lords, the hybrid Grand Committee will now begin. Some Members are here in person, respecting social distancing, others are participating remotely, but all Members will be treated equally. I must ask Members in the Room to wear a face covering except when seated at their desk, to speak sitting down and to wipe their desk, chair and other touch points before and after use. If the capacity of the Committee Room is exceeded, or other safety precautions are breached, I will immediately adjourn the Committee. If there is a Division in the House, the Committee will adjourn for five minutes. The time limit for the following debate is one hour.

Official Controls (Animals, Feed and Food, Plant Health etc.) (Amendment) (EU Exit) Regulations 2020

Considered in Grand Committee

2.31 pm

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

That the Grand Committee do consider the Official Controls (Animals, Feed and Food, Plant Health etc.) (Amendment) (EU Exit) Regulations 2020.

The Parliamentary Under-Secretary of State, Department for Environment, Food and Rural Affairs (Lord Gardiner of Kimble) (Con): My Lords, the matters in the four instruments are closely related, and I hope that it will help your Lordships if I speak to them all together. These instruments list the EU to enable imports from EU and EEA member states to continue. We have taken the decision to list the EU to import live animals and animal products because, following an assessment of the EU's sanitary and phytosanitary regime, we do not believe that its risk status will change on 1 January.

The instruments will allow for decisions to be made about a country's certification processes for plant reproductive material and whether they are equivalent to our own. We have amended our legislation so that, by the end of the transition period, the EU will become Part 1 listed for the non-commercial movement of pets into Great Britain. Practically, this means no change for EU travellers. We are maintaining the current health requirements on pet movements from the EU based on the unchanging disease risk from 1 January, and to ensure that there is minimal impact on pet owners and users of assistance dogs travelling with their pets into Great Britain under the EU pet travel scheme. I emphasise that these instruments are minor and technical in nature. They do not make new policy or change existing policy; instead, they will make existing policy and legislation operable at the end of the transition period.

The Official Controls (Animals, Feed and Food, Plant Health etc) (Amendment) (EU Exit) Regulations 2020 amend retained EU regulations governing official controls on imports to Great Britain of animals and animal products, and plants and plant products, including food and other imports relevant to the agri-food chain—collectively known as sanitary and phytosanitary checks. The amendments make these regulations operable in UK legislation after 1 January—for example, by replacing references to powers exercised by the Commission with the same powers exercised by the Secretary of State or other appropriate authority. The intention is to continue to ensure delivery of a robust import controls mechanism for all sanitary and phytosanitary imports to the UK, while maintaining or improving biosecurity and welfare standards.

The Import of, and Trade in, Animals and Animal Products (Miscellaneous Amendments) (EU Exit) Regulations 2020 make amendments to ensure the continuing operability of provisions related to the import of live animals, including horses, animal products and reproductive material used for animal breeding, and the non-commercial movement of pets. They confer functions previously exercised by EU institutions on to the appropriate domestic authorities and treat EU member states as a third country.

This instrument also amends references to EU laws and systems to ensure that law continues to function after the transition period. It introduces transitional arrangements for imports from the EU and EEA states, maintaining an effective sanitary and phytosanitary regime, while allowing businesses time to prepare for our new import requirements.

The Aquatic Animal Health and Alien Species in Aquaculture, Animals, and Marketing of Seed, Plant and Propagating Material (Legislative Functions and Miscellaneous Provisions) (Amendment) (EU Exit) Regulations 2020 cover seven policy areas: aquatic animal health, transmissible spongiform encephalopathies and animal by-products, livestock, zoonotic diseases, pet travel, alien and locally absent species in aquaculture, and seed, plants and propagating material.

These regulations make provision for legislative functions that are currently carried out by the EU to be made instead by appropriate authorities in Great Britain after the transition period. They also amend previously made EU exit statutory instruments to reflect the changes needed to implement the Northern Ireland protocol, specifically replacing "United Kingdom" with "Great Britain". Furthermore, they make amendments to EU exit statutory instruments to reflect changes made to EU regulations. They also make minor corrections to previously made EU exit statutory instruments.

The regulations will also allow for the continued movement of pet animals into Great Britain from all third countries, including EU member states. They guarantee the minimum amount of disruption possible to enable these movements to continue in a manner that protects our biosecurity, as well as the health and welfare of the animals being moved.

[Lord Gardiner of Kimble]

I turn finally to the Veterinary Medicines and Residues (Amendment) (EU Exit) Regulations 2020. The existing UK Veterinary Medicines Regulations 2013 set out requirements for the manufacture, authorisation, supply, possession and administration of veterinary medicines in the UK. The regulations before your Lordships address technical deficiencies in our legislation to ensure that it continues to operate effectively after the transition period. For example, minor corrections have been made to the text to address references concerning EU membership that are no longer accurate.

They also make changes that are necessary to reflect the Northern Ireland protocol, as well as implementing the Government's commitment to ensuring unfettered market access for Northern Ireland businesses in relation to veterinary medicines. This will mean that the current legislative basis for approving veterinary medicines will be split into separate Great Britain and Northern Ireland regulations. Northern Ireland will continue to follow the EU acquis. The Veterinary Medicines Directorate will continue to operate on behalf of the United Kingdom, and pharmaceutical companies will continue to be able to market veterinary medicines across the whole of the United Kingdom.

These instruments introduce parts of the previously announced phasing-in of border controls on imports from the EU, beginning in January. This will prioritise flow at the border and give both businesses and industry longer to prepare for the introduction of full controls. I beg to move.

2.37 pm

Baroness McIntosh of Pickering (Con): I am most grateful to my noble friend for bringing these four instruments before us today and for his very comprehensive introduction. I have a few comments and questions that I know my noble friend will answer as fully as he can.

The Explanatory Memorandum to the Official Controls (Animals, Feed and Food, Plant Health etc.) (Amendment) (EU Exit) Regulations 2020 helpfully sets out the purpose of this instrument:

> "These controls are integral to the protection of human health and biosecurity in the UK, as they deliver a risk-based and closely defined regime for checking the provenance, health and lack of contamination of SPS goods before they are allowed to pass beyond the control points at the UK border."

If my reading is correct, some of these may take place internally as well. So I ask my noble friend the fairly obvious question: will we have enough agents? Will customs officers or Food Standards Agency agents perform this? I know that Defra has had an enormous campaign to put enough in place, so I would be interested to hear. Will the controls be actually at the UK border or will some of them be done internally? Will it create a lot of extra work, because we will effectively be a third country, so an import from an EU country will be considered as if from a third country, and we will therefore be asking them to do the checks that would otherwise have been done in other EU countries and that we would have accepted. Will this increase the workload in any way, and do we have the resources, agents, or FSA or customs officers to cover it?

On the second instrument, the Import of, and Trade in, Animals and Animal Products (Miscellaneous Amendments) (EU Exit) Regulations 2020, I am most grateful to the Secondary Legislation Scrutiny Committee for its work. I understand that the new arrangements are being phased in, in time to come into place and allow businesses to adjust by 1 January 2021. Do we think we have given them enough time?

I accept that the new IPAFFS—import of products, animals, food and feed system—will replace TRACES, but is there any benefit to our remaining part of TRACES or will we drop that completely? There are also issues of resources. Do we have enough staff involved? Will a new computer system be involved and is it already up and running? Is my noble friend convinced that that will suffice?

I think it is this instrument that relates to the trade in horses. I was very keen, as I know were a number of noble Lords and honourable and right honourable Members next door, to continue the agreement that relates to the movement of horses—I have forgotten what it is called—that France, Britain and Ireland were members of. Have we managed to read that across and will it remain in place, at least with those countries, or have we lost it completely?

The third instrument relates to aquatic animal health and alien species. The Secondary Legislation Scrutiny Committee raised a number of interesting questions. As its 34th report was published in mid-November, the situation may have changed. Paragraph 56 states:

> "We note that it is not clear at this stage what the process and requirements will be for moving pets from GB to Ireland via NI after the end of the TP."

Has that now been resolved?

It was good to know that there are no additional processes, paperwork or restrictions in Northern Ireland, as noted in paragraph 57, but that there will be a requirement for export health certification. My noble friend will be aware that a number of us have concerns. I declare that I am an associate fellow of the British Veterinary Association—the BVA. There is concern about whether there will be a sufficient number of qualified vets in place to consider all these issues at the point of entry, presumably, with products moving across to Great Britain, delivering unfettered access. Does my noble friend share my concern or is he able to put my mind at rest in that regard? I welcome the fact that, I think, 600 new places have been found at veterinary schools this year—that is good news indeed—but, if we are losing the expertise of the European Union vets, many of whom have voted with their feet to leave the United Kingdom, will that be a problem as of 1 January?

Paragraph 57, quoting the department, states:

> "A new Trader Support Service, available to all traders at no cost, will be established".

We took evidence on this in the EU Environment Sub-Committee, and it is a source of concern. My question is simple: when does my noble friend expect that the trader support service will be open for business and to give advice as required?

On the last instrument, on veterinary medicines and residues, the 34th report of the Secondary Legislation Scrutiny Committee helpfully looked at this. In paragraph 60,

Defra confirms that if the conditions set out are met and an application has been made to a,

"dedicated place of establishment … and has provided the same application dossier and supporting information to the Veterinary Medicines Directorate as they would have provided to the European Medicines Agency or the relevant authority in an EU Member State"—

there are no safety concerns and a certificate will be issued to allow the products to be marketed in Great Britain. Again, my question is simple: does my noble friend expect any initial delays in coming to terms with the possible volume of applications or the setting up of the new system? Does he expect any costs to apply?

I understand that Friends of the Earth raised a number of concerns, in particular about one requirement from EU law which does not come into effect until November 2022, after we have left and after the end of the transition period. Are there any possible measures that may have been agreed to by the United Kingdom, relating to draft veterinary medicines and residues or the other instruments before us this afternoon, that will not have been implemented before 31 December? If that were to be case, what would be the legal position? My noble friend may not have that information at his fingertips, and I would be grateful if he could write to me.

I am very grateful to have the opportunity to consider the instruments before us today and I thank my noble friend and his department for all their work in putting these in place and making us ready for 1 January.

2.47 pm

Baroness Bennett of Manor Castle (GP) [V]: My Lords, I thank the Minister for his outline of this very complex and rather packed schedule for the hour, and it is a pleasure to follow the noble Baroness, Lady McIntosh of Pickering. I will do my best not to repeat any of her questions, because I will cover some similar ground.

I will start where she left off, with the Veterinary Medicines and Residues (Amendment) (EU Exit) Regulations 2020. The Minister in his introduction—and the Government right through this whole process—stressed that this is a straight transfer over. But, like the noble Baroness, Lady McIntosh of Pickering, I have relied heavily on the work of Friends of the Earth, which retains significant concerns, having looked at this in great detail.

One specific question that it has raised concerns Regulation 5 of this SI, which deletes Regulation 18 of the Animals and Animal Products (Examination for Residues and Maximum Residue Limits) (England and Scotland) Regulations 2015, which set out the EU-authorised methods of analysis. Defra has said that this is covered under article 7 of the EU regulation 2019, but that refers to a different EU regulation, so a significant part of Regulation 18 has been omitted. This suggests that there is a disapplication of the requirements within the context, despite claims to the contrary. I appreciate that this is very complex, and if the Minister is unable to respond now, perhaps he might write on this. I would be happy to put it in writing if that would be easier.

Also, Regulation 7(8) omits an update to reference points for action that are set out in retained EU law, in Article 8 of regulation 2019/1871. That refers to things such as chloramphenicol, malachite green and nitrofurans. This appears to be a weakening of the previous intent, so do the Government plan to put in place RPAs on or before 28 November 2022 that are as strong as or stronger than those that will exist up until 31 December?

Finally in this section, I come to Regulation 8(3), which removes references to MRL levels, as previously agreed at EU level and set out in regulation 37/2010, and replaces them with references to regulation 470/2009. It has been suggested that administrative processes will be the way this will be achieved, but it has not been clarified when this will happen, and whether the EU levels will be used as a baseline. Can the Minister set out what the Government's immediate plans are for setting out relevant MRLs and other restrictions relating to the use of veterinary medicines in food-producing animals, and say whether this process will be complete before the end of the transition period?

I will move on to something that is perhaps a little simpler. The noble Baroness, Lady McIntosh of Pickering, referred to the issue of pet passports. We know that, certainly before Covid, around 300,000 pets were moving into the UK every year through the pet travel scheme. The report of the Secondary Legislation Scrutiny Committee noted that much will depend on the category of third country that Great Britain falls in after the transition period—which in turn, of course, will depend on what happens in the talks that are still going on, with less than a month to go. On the practicalities, and putting this in everyday language, it may be that, despite Covid, some people are thinking of travelling with their pets over the Christmas period. What advice would the Minister give—what security and certainty can he provide—to people travelling with their pets on the circumstances that will prevail when they return to the UK after 1 January?

Finally, I will move on to the Import of, and Trade in, Animals and Animal Products (Miscellaneous Amendments) (EU Exit) Regulations. Here I am again relying heavily on Friends of the Earth, to whom I pay tribute for the huge amount of work it has done on this. Again, we have had reassurances that things are not changing, but there appear to be some very clear changes. For example, Regulation 16 omits Regulation 21 of the Trade in Animals and Related Products Regulations 2011, covering in particular where a consignment is regarded as a serious threat to animal or human health and the official veterinary surgeon or fish inspector must immediately place the consignment under official detention and order that the person responsible for it should destroy it or arrange for the appropriate treatment. This has now been deleted, which could result in consignments being released from border control posts without detention. Can the Minister clarify whether this change illustrates a difference in government intent regarding the way in which goods that may endanger human or animal health are dealt with at border posts? If not, what future legislative or regulatory changes are planned to deal with this apparent gap?

I will refer also to Regulation 17, which amends Regulation 22 of the TARP regulation, covering situations where products entering the UK have been the subject

[Baroness Bennett of Manor Castle]
of serious contraventions of an import requirement, or contraventions that form part of a series, or where checks reveal that maximum residue levels have been exceeded. That regulation states that a person

"must carry out a physical check"—

but it seems that this is now being removed. Perhaps the Minister could clarify in what circumstances it would be acceptable for the appropriate person to refrain from carrying out a physical check on goods suspected of being non-compliant with UK import standards. How do the Government envisage that physical checks will be guaranteed in the light of this legislative change?

I move on to Regulation 29(a) to (d), which deletes references to a number of offences. Will the Minister clarify whether it is the intention that activities such as consigning an animal without a health certificate will no longer be considered offences under the TARP regulation? If so, why is enforcement effectively being abandoned? If this provision is seen to be duplicative of provisions elsewhere in legislation or regulations, can the Minister clarify where they are?

I had a question about equine health certificates, which I think the noble Baroness, Lady McIntosh, covered, so I will skip that. I now come to Regulation 40(4), which amends Commission decision 2000/572. I will boil this down, as I am aware of the time. This is all about EU forms. Do the Government intend to replicate EU forms, are they in the process of developing new forms, and how will they ensure ongoing consistency in this area?

I have two final points. The first is on official controls on composite products at the border. This refers to Regulation 49, which adds a new article 3. Will the Minister clarify whether future UK controls on composite products at the border will cover these products, as set out in the annexes of Commission decision 2007/275? Will a complete list be published by the end of the transition period? If not, do the Government expect to be able to clarify which composite products will be subject to controls at the border?

Finally—noble Lords will probably be pleased to hear—I come to Regulation 53(26)(a)(i)(bb), which amends annexe 8 of the Commission's regulation that refers to poultry and eggs sourced from establishments with conditions

"as strict as those laid down"

in the EU. This appears to be an opportunity for equivalence to be applied in ways that will allow imports that do not meet standards as strict as those laid down in EU legislation. Will the Minister clarify whether there is any significance in the change from reference to standards "laid down" to those described in the regulation? What processes or criteria do the Government plan to use to determine equivalence of standards in future, and how will the Government ensure that, where direct references to standards are replaced with references to equivalence, this does not lead to a weakening of standards in practice?

I can only say at this point that I thank the Committee for its patience.

2.57 pm

Baroness Bakewell of Hardington Mandeville (LD) [V]: My Lords, I thank the Minister for his extensive introduction and for his time and that of his officials in a briefing on these four statutory instruments—quite a number to be taking in a one-hour debate.

The Official Controls (Animals, Feed and Food, Plant Health etc.) (Amendment) (EU Exit) Regulations deal with the operability of import controls, border controls and checking, with easements between January and July. The instrument is Great Britain-wide and consistent with EU regulations. It deals with a range of important changes to the agri-food chain, known as "sanitary and phytosanitary"—SPS—products. The SI does not change SPS import control policy but ensures that a robust import control mechanism is in place for imports into the UK, maintaining and improving biosecurity and welfare standards.

In annexe 2 of the Explanatory Memorandum, under paragraph 3, "Regulations revoked in this instrument", at bullet point 4 the heading is "Commission Implementing Regulation (EU) 2019/530 designating European Reference laboratories for pests of plants on insects and mites, nematodes, bacteria, fungi and oomycetes, viruses, viroids and phytoplasmas". Can the Minister say, as this regulation is revoked, where, if anywhere, the insects and plant life will be listed and covered? Is there another SI that covers this area? I am particularly interested in nematodes. Perhaps the Minister can provide clarification.

Turning to the second instrument, the draft Import of, and Trade in, Animals and Animal Products (Miscellaneous Amendments) (EU Exit) Regulations 2020, consent has been received from Scotland and Wales to implement an identical SI. The SI was previously used for third countries. Products of animal origin—POAO—can pose a risk, including African swine fever. However, outside the transition period the country can have better control, including over importation of olive trees and preventing the importation of Xylella, which we debated last year.

From January 2021, importers of animal by-products and live animals will be required to pre-notify via GB's new system for notification of imports: IPAFFS. From April 2021, importers of POAO will also be required to pre-notify via IPAFFS. This is likely to add to staffing costs in 21,600 firms. Can the Minister say whether there is an estimate of what those staffing costs are likely to be?

The Secondary Legislation and Scrutiny Committee noted:

"While the instrument proposes extensive amendments in this policy area over more than 18 pages … the Explanatory Memorandum provides limited explanation of the proposed changes".

The SI itself is extremely complex and refers to numerous other statutory instruments which are being amended or deleted, as we have heard from other speakers. The Explanatory Memorandum really does not make any detailed comment about those. As I am not an expert in these matters, I feel somewhat at a disadvantage on this instrument, which does not provide legal clarity. The Government's legislation website does not yet reflect all changes made. It is unclear in many cases if any errors or weakening have been introduced

through combined changes. Can the Minister say at what point the Government expect the GOV.UK website to be bought up to date to reflect changes made by Brexit statutory instruments?

The third statutory instrument, the Aquatic Animal Health and Alien Species in Aquaculture, Animals, and Marketing of Seed, Plant and Propagating Material (Legislative Functions and Miscellaneous Provisions) (Amendment) (EU Exit) Regulations 2020 sounds very much like a catch-all statutory instrument. This SI takes account of the Northern Ireland protocol and the movement of animals into Great Britain. This is an important SI as it covers several policy areas: seed, plant and plant propagating materials; aquatic animal health; transmissible spongiform encephalopathies and animal by-products; livestock zoonotic diseases; pet travel; and the use of alien and locally absent species in aquaculture, as the Minister already listed. From my previous contributions in Defra SI debates over the last 18 months, I understand something of most items on that list. I understand the use of alien species in aquaculture, which will include American crayfish. But I am afraid I do not understand what is covered by "locally absent species". Are these species which are not alien to Great Britain but which may be alien to a particular area of Great Britain, as they usually live in a specific region? Can the Minister give an example of what this might mean?

I have questions on several paragraphs in the Explanatory Memorandum. Paragraph 2.7 talks about the transfer of zoonotic diseases from animals to humans. Presumably, this also works the other way around. Mink in Denmark spring to mind as an example of Covid moving from humans to animals. Paragraph 7.8 refers to pet passports, which allow UK-based owners of dogs, cats and ferrets to travel between EU member states and certain listed third countries. Given the similarity between mink and ferrets, does the Minister think it is currently safe for ferrets to travel out of the UK into an EU country and then return to the UK? Is there a restriction for those travelling with ferrets on visiting certain areas of Denmark?

The last SI, the draft Veterinary Medicines and Residues (Amendment) (EU Exit) Regulations 2020, includes provision for the Northern Ireland protocol. The instrument protects animals, people handling the medicines, consumers of produce from treated animals, and the environment. It is essential that animal welfare is high on the agenda, and the treatment of animals with veterinary medicines to relieve suffering and discomfort is important. However, this must be balanced with the impact and effect on the public consuming animal products.

During the pandemic we have become especially conscious of the effect of antibiotics. For some time, we have been aware that that overconsumption of antibiotics for minor ailments which easily heal themselves in a short time should be avoided. Overuse of antibiotics for minor conditions can harm our chances of relying on these drugs when we are seriously ill and desperately need their intervention.

Ensuring that antibiotics are not overpresent in animal products for human consumption is all part of essential management of veterinary medicines. Can the Minister give reassurance that this SI will indeed ensure that the maximum residue limits are not reached in foodstuffs? Can he also give reassurance that non-allowed pharmacologically active substances will not be found in foodstuffs? Can he clarify whether future UK rules on MRL levels will be as strong as or stronger than the current EU baseline as set out in the annexes of regulation 37/2010? Can he provide an update on the process of setting out relevant MRLs and other restrictions relating to the use of veterinary medicines in food-producing animals, and say whether this process will be complete before the end of the transition period?

These are varied and complex statutory instruments, but I am happy for them to be approved so that Great Britain and Northern Ireland can continue to operate effectively at the end of the transition period. I look forward to the Minister's response to the questions raised and points made in this debate.

3.07 pm

Baroness Jones of Whitchurch (Lab): My Lords, I thank the Minister for his introduction to these SIs and for the helpful briefing he organised beforehand. I accept that a number of technical and operational updates have been included, which makes sense. It is of course important that we have a functioning import system once the transition is over. However, I have a few questions that it would be helpful if the Minister could address.

First, as a minor point, I note that paragraph 7.1 of the EM for the first SI states that the intention is to continue delivery of robust import controls for all sanitary and phytosanitary imports while

"maintaining or improving biosecurity and welfare standards."

Perhaps the Minister could explain what these improvements might be, as I could find no clear explanation of the Government's intention in this regard.

The second SI has been substantially rewritten, based on the earlier SIs, as a result of the substantial amendments needed, and I agree that that approach makes sense and allows for easier scrutiny of the proposed text. There are obvious sanitary and phytosanitary risks from animal and animal product imports. Paragraph 2.2 of the EM refers to the need for

"appropriate safeguard actions to be taken in case of a reported non-compliance with official controls or disease outbreak in exporting countries."

What do these actions include? Do they include banning imports from specific individual countries? Would we be able to target individual countries, or would there need to be an EU-wide ban for certain products if a particular section within the EU was involved?

Paragraph 7.2 explains that a new approach to managing biosecurity risk will be introduced from 1 April 2021. What arrangements are in place between 1 January and 1 April, and can we be confident that the new arrangements will be in place from 1 April? Paragraph 12.3 refers to importers of animals and animal products having to pre-notify the Government of imports from 1 January using the new technical system, IPAFFS, which replaces TRACES. Can the Minister confirm that IPAFFS has been fully tested, is a secure and reliable system and is able to deal with the volume of import trade which will come its way? Can

[Baroness Jones of Whitchurch]
he also clarify whether the devolved nations will be using IPAFFS as a pre-notification system so that all that information can be shared?

Turning to the third SI, on aquatic animal health et cetera, there are a number of technical changes to maintain control of aquatic animal diseases and to continue biosecurity standards which seem to make sense. However, all noble Baronesses have raised the issue, covered in the report of the Secondary Legislation Scrutiny Committee, of pet passports for the 300,000 pets moving across the border annually. As it points out, the SI allows pets travelling from the EU to the UK to continue to use the EU-issued pet passport. However, that does not yet mean that pets travelling the other way, from the UK to the EU, will have equivalent rights. When will we hear whether the EU has granted us part 1 listed status, which would allow this mutual benefit of travel both ways to continue? Is that part of the current Brexit negotiations, or a completely separate process? If part 1 listed status is denied by the EU, will we also review our attitude to the status of pets coming the other way, into the UK?

The Secondary Legislation Scrutiny Committee also asked about the impact of separate zoonotic and biosecurity disease requirements for GB and Northern Ireland. It was told that goods moving from GB to Northern Ireland would need export health certification and that a trader support service will be available to support businesses. This issue was raised by the noble Baroness, Lady McIntosh, who asked whether the trader support scheme was already up and functioning and, if not, when it will be. The EM goes on to say that there will be no significant impact on businesses. May I ask the Minister to reflect on that statement, given the cost and potential complexities of providing export health certification to businesses that will be exporting to both Northern Ireland and the EU?

Turning to the fourth SI, which deals with veterinary medicines and residues, there is clearly concern about the potential risks to human health and the environment, as well as to animal welfare—issues echoed by the noble Baronesses, Lady McIntosh, Lady Bennett and Lady Bakewell. For example, we have made considerable progress in the UK on cutting back on the use of antibiotics in animal husbandry. However, I read recently that over the same period, the US has doubled its use of antibiotics. There are similar concerns about the use of hormone-injected beef in the US, which is currently banned in the UK. So, there is a need to be vigilant about our protections for the future.

In a submission to the Secondary Legislation Scrutiny Committee, Friends of the Earth referred to the forthcoming EU regulation, due to be enacted in November 2022, which will update the reference action points for antibiotics and antimicrobials. There will not be an equivalent update in the UK. May I ask the Minister to assure the House that a regulation at least equivalent to the latest scientific evidence and safeguards in the EU will be introduced in the UK, and can he explain whether that will be on a timely basis?

The EM also refers to the provision of a surveillance programme for residues of veterinary medicines in foodstuffs. What will be the nature of this surveillance? Will it include visiting the country of origin to check on animal welfare and potential contamination of animal products? What measures are contained in the SI for countries and export businesses that do not comply with our high food quality standards? Does the SI also apply to manufacturers of insecticide flea products for pets, which have been shown recently to be contaminating our watercourses?

Finally, these SIs have not been consulted on because the changes they make are relatively minor. What will be the formal consultation process for changes in policy post transition? A number of them have been flagged up in the SIs as coming on stream in the future. Will those future policy consultations meet the Cabinet guidelines for consultation?

I look forward to the Minister's response to these questions.

3.15 pm

Lord Gardiner of Kimble (Con): My Lords, I hope that all noble Baronesses will appreciate that a very considerable number of detailed questions have been posed, and I think it would be helpful to us all if I write in some detail on some of the more technical matters.

I will open by saying that none of these statutory instruments is about a change in policy. There is absolutely no weakening of the very high bar of security for this country that we all want. I say to the noble Baroness, Lady Jones of Whitchurch, that if there were any potential changes in this area, there would need to be, and we would want, consultations with the devolved Administrations and interested parties as we seek to enhance and strengthen our arrangements.

I turn, in no particular order, to the points that were made. The noble Baroness, Lady Bakewell, asked about the revoking of regulations covered in the official controls instrument. All revocations in this instrument relate to designation of European reference centres. These EU designations will no longer be applicable in Great Britain after 31 December.

The noble Baroness also referred to the African swine fever outbreak in parts of Europe. Obviously, we are keeping these matters under close scrutiny. Pork products, for instance, are products of animal origin that are at high risk of being contaminated with African swine fever. Specific safeguard measures are already in place to prevent the introduction of such diseases. We do not expect the biosecurity risk from EU imports to change after 1 January, but I emphasise again that this a matter on which I have regular discussions with the Chief Veterinary Officer, because we clearly need to watch the profile of this disease and be ready to act.

The noble Baroness, Lady Jones of Whitchurch, asked about checks on products of animal origin coming into force on 1 April, rather than 1 January. We are introducing import controls for EU countries in a phased approach in order to give businesses, many impacted by Covid, time to adjust, while maintaining effective biosecurity controls. As I have said, we do not expect there to be changes in biosecurity risk in that period. From 1 April, there will be new requirements for products of animal origin to be pre-notified, and

all goods must be accompanied by a British health certificate and will undergo remote documentary checks. From July, products of animal origin imported from the EU will be subject to risk-based identity and physical checks. Some commodities, such as shellfish, will be subject to higher check levels. This will allow us to maintain the highly effective sanitary and phytosanitary regime, while allowing businesses time to prepare for our new import requirements.

The noble Baroness, Lady Jones, asked about safeguard measures. If there is a disease outbreak in a country approved to export to Great Britain, the Secretary of State, with agreement from the devolved Administrations, may publish a written declaration banning all restricted imports from the affected area. The legislation allows us to regionalise a country where an outbreak has occurred, so that imports can continue from those parts of the country that are free of disease.

My noble friend Lady McIntosh and the noble Baronesses, Lady Bakewell and Lady Jones, asked about IPAFFS. Non-EU countries were able to use IPAFFS for live animals from 23 November and can use it from 7 December for products of animal origin and high-risk food of non-animal origin. EU countries can currently use IPAFFS for live animals and germinal products, and from April 2021 will be able, as I have described, to use it for products of animal origin and high-risk food of non-animal origin. I can tell the noble Baroness, Lady Jones of Whitchurch, that, yes, the devolved Administrations will use IPAFFS.

My noble friend Lady McIntosh asked how it was going. The system is working well and has received positive feedback from border control posts. We have been supporting countdown communications and webinars, and are working very closely on that matter with all concerned. On the creation of additional BCPs, we are working with ports and airports to develop a delivery programme that will be supported by the investment fund of £705 million announced in July of this year.

On pet travel, I say to the noble Baroness, Lady Bennett, that continuous guidance has been put out to pet owners. I understand and appreciate that pet owners want to know about this. The noble Baroness, Lady Jones of Whitchurch, asked about Part 1 listed status. We will continue to press the Commission on this as we are confident that the United Kingdom fulfils all the criteria and obligations required of a Part 1 listed third country as a minimum. We operate one of the most rigorous pet-checking regimes in Europe to protect our biosecurity. As I said, we have announced our plans. That is because we have respect for the EU's checking regimes. I think we deserve Part 1 listed status. I know that many will wish to have further updates on this, and if I have any further information I will of course provide it.

The noble Baroness, Lady Bakewell, asked about locally absent species and alien species in aquaculture. I have an example: warm-water prawn. An alien and locally absent species is a species or subspecies of an aquatic organism occurring outside its known natural range, or any artificially modified species irrespective of its natural range or dispersal potential. What a form of words, my Lords.

The issue of ferrets is historical: ferrets were included in the non-commercial pet travel scheme following discussions between EU member states when the regulations were made. I reassure all noble Lords that the Chief Veterinary Officer keeps these matters under constant review. We will risk assess individual applications made for imports. We are not banning the importation of ferrets at this time as there is no evidence to suggest that pets can directly transmit the virus to humans. That is a different context from the issue of large mink farms in certain parts of Europe, where there are very large concentrations of numbers. As I said, I would not want anyone to think anything other than that we will keep all these matters under close review.

The noble Baronesses, Lady Bakewell and Lady Jones, asked about the position on antimicrobial resistance. The UK has always played a key role on this, and indeed in the revision of the EU veterinary medicines legislation. The Government intend, like the EU, to strengthen significantly our national law on the use of antibiotics in animals, including restricting the use of antibiotics for prevention of disease. The UK's unique model of collaborative working between government, farmers and the veterinary profession has halved antibiotic use in livestock, and we now have one of the lowest usages of veterinary antibiotics in Europe—and this must continue.

The noble Baroness, Lady Jones of Whitchurch, asked about surveillance. A new expert body is being developed, co-ordinated with Defra, to assess and inspect trading partners that apply for market access to the UK. We will repatriate audit and inspection functions from the EU to ensure that trading partners continue to meet our very important import conditions.

On flea products, I will just say to the noble Baroness, Lady Jones, that the Veterinary Medicines Directorate has commissioned the University of Sussex to carry out additional research to determine the extent—if any—to which these treatments have an impact on the aquatic environment. The results as yet are not available, but it is obviously very important.

On unfettered access, my noble friend Lady McIntosh asked about certificates. They are intended to be tough. The VMD has considerable expertise on a UK national basis and previously as part of the EU regulatory network.

I should say to the noble Baronesses that all current EU maximum residue levels will continue to apply in the UK from the end of the transition period. In Great Britain, these will be set out in the maximum residue limits register. The amendments do not change the scientific methodology used to establish individual limits. This will remain unchanged.

My noble friend Lady McIntosh asked about resources. We have been working in the department to ensure that there are sufficient resources, in all respects, on the very important issue of vets. We have been working to ensure that there are sufficient numbers. We have also introduced a new certification support officer to help carry out administrative aspects of that process.

I am conscious that I have many more questions to answer, some of which are technical. I hope the noble Baronesses will understand that I have made a very

[Lord Gardiner of Kimble]
careful note of all the detailed points that have been made and I will ensure that they are attended to in the form of a letter. In the meantime, I beg to move.

Motion agreed.

Import of, and Trade in, Animals and Animal Products (Miscellaneous Amendments) (EU Exit) Regulations 2020

Considered in Grand Committee

3.25 pm

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

That the Grand Committee do consider the Import of, and Trade in, Animals and Animal Products (Miscellaneous Amendments) (EU Exit) Regulations 2020.

Relevant document: 33rd Report from the Secondary Legislation Scrutiny Committee

Motion agreed.

Aquatic Animal Health and Alien Species in Aquaculture, Animals, and Marketing of Seed, Plant and Propagating Material (Legislative Functions and Miscellaneous Provisions) (Amendment) (EU Exit) Regulations 2020

Considered in Grand Committee

3.25 pm

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

That the Grand Committee do consider the Aquatic Animal Health and Alien Species in Aquaculture, Animals, and Marketing of Seed, Plant and Propagating Material (Legislative Functions and Miscellaneous Provisions) (Amendment) (EU Exit) Regulations 2020.

Relevant document: 34th Report from the Secondary Legislation Scrutiny Committee

Motion agreed.

Veterinary Medicines and Residues (Amendment) (EU Exit) Regulations 2020

Considered in Grand Committee

3.26 pm

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

That the Grand Committee do consider the Veterinary Medicines and Residues (Amendment) (EU Exit) Regulations 2020.

Relevant document: 34th Report from the Secondary Legislation Scrutiny Committee

Motion agreed.

3.26 pm

Sitting suspended.

Common Fisheries Policy (Amendment etc.) (EU Exit) Regulations 2020

Considered in Grand Committee

3.31 pm

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

That the Grand Committee do consider the Common Fisheries Policy (Amendment etc.) (EU Exit) Regulations 2020.

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

The Parliamentary Under-Secretary of State, Department for Environment, Food and Rural Affairs (Lord Gardiner of Kimble) (Con): My Lords, I hope it will be helpful to your Lordships if I speak to both regulations on the Order Paper, given the close connection between them.

These two instruments cover all four nations of the United Kingdom. We have worked closely with the devolved Administrations and they have given their consent to the instruments. This ensures an approach that is consistent with both the devolution settlements and the existing system of fisheries management.

The common fisheries policy imposes a common approach to the sustainable management of fisheries across the European Union and its waters. Under Annexe 2 to the Northern Ireland protocol, several provisions of the CFP will continue to be directly applicable in Northern Ireland from the end of the transition period.

The first instrument is needed to make operability amendments to retained EU law, update changes made by previous fisheries SIs and remove elements of retained EU law that are not relevant to the UK. It makes technical amendments to retained EU law in three policy areas: discards, quota and data collection.

This instrument amends the EU's 2019-21 discard plans, as amended by the EU in 2020, to take account of the latest scientific advice regulations, which set out scientifically justified exemptions to the landing obligation. The amendments replace references to EU bodies with references to the relevant UK ones and remove the requirement to report data to the Scientific, Technical and Economic Committee for Fisheries, or STECF. We have removed this requirement because the UK, not the EU, will now take the decision on discards exemption and our future catching policy. This is in line with our approach taken throughout our EU exit SIs.

The UK will still continue to collect and review data, guided by the scientific evidence objective in the Fisheries Act. We have been very clear throughout the parliamentary debates on the new Act that future fisheries decisions will be based on scientifically robust evidence. We are working closely with our world-class scientists in Cefas, our partners around the UK and their scientists, many of whom previously advised STECF.

In the longer term, we expect that the process of reviewing any new exemptions we propose to bring forward will be undertaken by a replacement scientific body, which will provide UK-wide independent reviews.

We will continue to ensure that any new exemptions are subject to robust scientific review. We are currently developing options for how to deliver authoritative UK-wide independent advice, with an expectation that it will be in place later in 2021.

This instrument amends the 2020 total allowable catch and quota regulations in retained EU law, amending references to ensure that the rules continue to apply effectively to UK vessels once they cease to be within the scope of the CFP. The instrument also makes amendments to the Data Collection Framework, which requires EU member states' vessels to conduct certain surveys at sea. The list of surveys is being replaced with a reference to the UK's national data collection work plan to avoid UK vessels being required to conduct surveys in areas not relevant to the United Kingdom.

Moving on, the second instrument is needed to enable the enforcement of EU law where it is directly applicable in Northern Ireland. This will also help the UK to play its part in ensuring sustainable and traceable fishing practices, and enable the UK to meet its obligations under the withdrawal agreement and accede to the UN's Agreement on Port State Measures—PSMA—at the end of the transition period.

This regulation also contains provisions implementing our obligations to a number of regional fisheries management organisations—RFMOs—to which the UK is in the process of acceding as an independent contracting party. These international organisations are ones of which we were previously members by virtue of our EU membership.

This instrument makes technical amendments in three policy areas: enforceability; sustainable and traceable fishing; and illegal, unreported and unregulated fishing.

This instrument amends the Fisheries (Amendment) (EU Exit) Regulations 2019 in order to equip the Northern Ireland and UK Governments with powers to enforce EU legislation that will apply in Northern Ireland. It will also amend regulations concerning sustainable and traceable fishing to reflect the direct application of EU law in Northern Ireland and allow the UK to fulfil its obligations under the International Commission for the Conservation of Atlantic Tunas—ICCAT—and the Commission for the Conservation of Antarctic Marine Living Resources, or CCAMLR. To clarify, these changes do not reflect a change in policy. The UK will continue to submit the same level of information to the ICCAT and CCAMLR secretariats required by these international agreements, to which the UK is an independent contracting party.

This statutory instrument applies certain aspects of retained EU law relating to IUU fishing to Northern Ireland, which is necessary to ensure the UK is able to comply with its obligations under the PSMA once it accedes to that agreement after the transition period. The PSMA requires the UK to apply controls to non-UK vessels; this legislation serves to implement that requirement in relation to EU vessels landing in Northern Ireland. The PSMA does not require the UK to apply controls to vessels registered in the UK.

The instruments make amendments that remove previous amendments to the retained EU law versions of regulations implementing the European Maritime and Fisheries Fund—the EMFF. I should say that ClientEarth expressed a concern about a gap in legislative powers. However, I assure your Lordships that this is not the case. The withdrawal agreement contains specific rules that will apply to the EMFF during the period when the fund will be wound up and closed, ensuring that there are consistent rules in place to manage payments to the sector. Furthermore, the Fisheries Act 2020 includes a financial assistance power that will govern any future domestic scheme. A further statutory instrument will be brought forward in spring 2021 to detail any domestic plans.

These instruments also make other minor operability and clarifying amendments to retained EU law, ensuring that the law can function effectively in the United Kingdom after the end of the transition period. These instruments do not make amendments that represent any changes in fisheries management policy. I commend them to the Committee.

3.40 pm

Baroness McIntosh of Pickering (Con): My Lords, I am once again grateful to my noble friend for these important regulations, which, as he will recall, cover a lot of the ground we debated at the time of the Fisheries Act, but put meat on the bones. Taking the fisheries regulations in turn and looking at the first set in the order in which my noble friend took them, it is obviously a matter of note that we will no longer be part of and therefore cannot request or receive advice from the Scientific, Technical and Economic Committee for Fisheries. Will there be a gap between our receiving that advice and the new regime to which he referred coming into place?

I am sure that my noble friend will expect me to ask the question that I ask on every occasion we discuss fisheries. He has said on many occasions that we will continue to support the International Council for the Exploration of the Sea. Has the memorandum of understanding with ICES been signed? If so, that is great, but on what date? If not, when does he expect it to be signed? Can he confirm that the resources and budget that the Government will allocate matches what we are already paying? I understand that we are one of the major contributors to ICES: we contribute between 13% and 16% of its total budget. What is more important to me is that my noble friend stated—I welcome this—that, going forward, all our proposals will be based on scientifically robust evidence. I can think of no better body to subscribe to than that one. It would be very helpful if he could confirm that.

I know that ClientEarth and others have expressed concern about the first set of regulations, saying that it might weaken requirements in relation to scientific information and research surveys, sustainability of stocks and reporting. I hope that my noble friend will take this opportunity to put our minds at rest by saying that that is not the case. He went on to say that there will be a new form of financial assistance coming forward from the Government—I presume in relation to both regulations. Can he say in outline what he thinks that financial assistance will look like and who will pay for it? Are the Government considering moving towards an industry-paying basis? If that is the case, I make a plea that is in the form of a levy into a central

[Baroness McIntosh of Pickering]
fund so that there is some distance between industry paying and the resources being taken out at the other end.

It would also be helpful to know the type of activities and schemes that will be funded and, once again to put my mind at rest, to know that there will not be a gap between the level of funding to date and the new funding schemes coming into place. We reach the end of the transition period at the end of this month and my noble friend said that the plans will not come forward until the first quarter of next year. I would be most grateful for any illumination on that.

If I have understood correctly, the second instrument may remove our requirements under and support for certain international agreements. My noble friend will recall that, on many occasions during the passage of the Fisheries Act, I asked the Government to repeat their commitment to international obligations, most of which seemed to stem from the Johannesburg convention in 2002. It would be helpful to know that that co-operation with other countries on marine and fisheries post Brexit—post the end of the transition period on 31 December—will continue. It is obvious that fish do not respect boundaries; we need a commitment to international co-operation in that regard.

I share the concern expressed by many environmental groups that the instrument removes our membership of the Scientific, Technical and Economic Committee for Fisheries. To what extent will discards have a role to play? I quite understand that fishermen were keen to be rid of the landing obligation; during the passage of the then Fisheries Bill, my noble friend confirmed that it would be removed. I refer to paragraph 42 of the 33rd report of the Secondary Legislation Scrutiny Committee, which has been most helpful in preparing for today's debate. It states that there will be a requirement for the UK

"to impose controls on all non-UK vessels, including those flying the flag of EU Member States. According to Defra, these controls include requirements to use designated ports, to obtain authorisation prior to using ports and to submit certain documents in advance of using ports as well as a regime of inspection."

Will discards feature here or have we lost the landing obligation completely? Who will be required to enforce those controls? Concern was expressed during the Bill's passage that we were losing access. It would be interesting to know how many fisheries vessels and other vessels of marine organisations will be on standby to implement completely the new policy to which the Government have committed.

If the landing obligation has gone, can my noble friend put my mind at rest that the replacement will offer an equivalent level of environmental protection to prevent illegal by-catch and overfishing? Will Regulation 7(7) of the first instrument ensure the sustainable management of fish stocks and that it is not threatened? Can my noble friend the Minister confirm that the total allowable catches will be set in line with sustainable levels at the end of the transition period this month? Also, under Regulation 11(5), can he confirm that any future UK financial assistance will be given only to operators that comply with fisheries management rules, including those on sustainability under existing EU law?

On both instruments, we will have the opportunity to ensure that any EU flag state that flies into our ports will meet all the obligations required of them. If we are losing the landing obligation, it is important to know that illegal discharges will be stopped and that by-catch will be monitored in the most efficient way possible. With those remarks, I am grateful to have had the opportunity to discuss the two regulations before us.

3.49 pm

Lord Teverson (LD) [V]: My Lords, it is a regular occurrence that I follow the noble Baroness, Lady McIntosh. Her knowledge of this area is absolutely excellent. I thank the Minister and his officials for having offered to meet before this session; regrettably, I could not do so because of other parliamentary business.

One of the general points to make first, coming back to what the noble Baroness, Lady McIntosh, was saying, is that we are only 29 days away from the common fisheries policy regime and all the regulations around it ending. I realise that most of those will continue, but one of the great occasions of Brussels was the Fisheries Ministers' bun-fight before Christmas, when they all sorted out TACs and quotas, and did deals around the scientific evidence. We have got better in recent years at recognising the scientific evidence. I do not understand what quotas UK fishers will be operating to from 1 January. The fishing industry does not cease operating for a new year, so I would be interested to hear from the Minister exactly what the rules will be for quotas by species and how they will be distributed. This is an immediate problem.

I hope that the noble Baroness, Lady McIntosh, is not correct about the landing obligation and discards ban. I understand that the Government will keep to their undertaking. The first of these regulations changes the demersal discard plans slightly in terms of some of the exemptions, but I would be very concerned if the discard ban did not continue. The Government have very much promoted it within the European Union and the common fisheries policy, through correct pressure from the public, and I hope that it will continue. I will come back to the discard ban in a while.

The sub-committee that I chair has always been pleased to hear that the Government intend to continue their relationship with the International Council for the Exploration of the Sea. This is an important body and it would make no sense for us to operate a separate system from those that fish in the same waters and fish the same stocks as we do. I welcome that, but I look forward to the clarifications on detail that the noble Baroness, Lady McIntosh, asked of the Minister.

I entirely understand why the Government will remove references to the European Union Scientific, Technical and Economic Committee for Fisheries from the legislation, as we are clearly out of the common fisheries policy now. But I would be interested to understand in more detail from the Minister how or if that is likely to be replaced. Does ICES give enough information and scientific advice for decisions to be made? I suspect that it does not. I would be concerned if Cefas, which the Minister mentioned, took on this role because, although I greatly admire the work that Cefas does, it is not an independent body; it is part of

the Defra family. Therefore, like all Defra bodies and other public bodies, it is financed directly by a department and is not necessarily completely independent in its views.

Although I understand that the Government must, rightly, come out of that organisation, I would be very concerned if we did not still swap data on a voluntary basis. Not to do so would seem to show a rather dog-in-the-manger attitude. So I ask the Minister whether he and his officials will open a dialogue, so that we can still share that scientific debate and information, as many of the fish discussed by that committee are shared stocks. We would hope to have a reciprocal basis as well. It would be a great shame if that relationship did not continue, at least on an informal and voluntary basis. Needless to say, if you want to solve the data issue, remote electronic monitoring is the way to do it. Data is one of the key pluses of that technology.

I move back now to the landing obligation. There is some change to the demersal regulations or exemptions in terms of the ban. Apart from the Government's commitment to this, which I hope the Minister will confirm, I ask whether it is working at all. In the two reports that my committee did, we found that it had made very little difference to either the EU 27 members—and certainly those in the littoral states of the North Sea and the Channel—or the United Kingdom. I would be interested to hear from the Minister whether the department feels that the landing obligation and discards ban has made any difference yet to the working practices of the industry.

I very much welcome the Government's call for evidence on remote electronic monitoring. That call ended at the beginning of this month. Perhaps the Minister could tell us how many people or organisations submitted evidence to it and when he anticipates the next consultation on REM will start.

One of the things that will happen with single market rules, with us coming out of the common fisheries policy—although we have built a framework in the Fisheries Act—is that we can have divergence between the nations of the United Kingdom. I would be interested in how quickly the Minister feels there will be divergence and how it will be treated or worked around by the Government and the devolved authorities.

I welcome how the Government have, on a number of occasions, reconfirmed to the committee that they will operate a similar scheme to the EMFF, but when will it start? It is very important to the industry. The EMFF is not a large fund—it is small in comparison with many other EU structural funds—but it is well targeted and focused on making a difference, particularly to smaller fishing communities and fleets. So when will that fund be up and running?

Lastly, I admit that I find Northern Ireland fisheries incredibly difficult to understand, but I would like to understand from the Minister whether, when a Northern Ireland fishing vessel lands in the Republic of Ireland or back in Great Britain, its catch is treated as a UK or an EU catch. What are the implications of that for any future tariffs, quotas or phytosanitary regulations? Those questions take me through everything I need to say.

3.57 pm

Baroness Jones of Whitchurch (Lab): My Lords, I thank the Minister for his introduction and for his helpful briefing beforehand. It felt very strange reading the first SI, as I felt transported to a bygone age, long before all our efforts to produce the Fisheries Act and before an anticipated announcement with the EU on post-transition trade, which will of course have a major impact on future fisheries provision.

The first SI refers to a targeted consultation with key stakeholders on the Fisheries White Paper that took place in 2018, as though the last couple of years had not happened. I know from our briefing that this SI has been in development for some time and is necessary partly to incorporate changes to EU regulations that have occurred this year. So, given that some of the references in the SI are rather out of date, could the Minister clarify when exactly it was drafted, why it was not introduced before now and why it makes no reference to the impact of the Fisheries Act? We would have thought that would have had at least some impact on the details enclosed in it. It would help—to echo points raised by other noble Lords—if the Minister could clarify when he sees our legislative framework fully transitioning from the common fisheries policy to our ambition as an independent coastal state, as set out in the Fisheries Act. We seem to be treading water rather at the current time.

The Minister referred to ClientEarth's submission to the Secondary Legislation Scrutiny Committee about the potential weakening of requirements in relation to scientific information and research surveys, sustainability of stocks and reporting. Again, his point was echoed by other noble Lords. It suggests that the detailed reporting requirements contained in EU law have not been replicated in this SI. I would be grateful if the Minister could address this.

In the Defra response to ClientEarth, the department says that it

"will comply with all of its reporting and data sharing requirements under the CCAMLR Scheme."

Are these reporting requirements indeed equivalent to those in the EU? Are the mechanisms to begin that reporting from 1 January in place? Is the information published in a publicly available format? Will the Government continue to exchange information with EU colleagues, at least on an informal basis, as suggested by the noble Lord, Lord Teverson?

The Secondary Legislation Scrutiny Committee talked about a lack of clarity around the direction of future policy. Can the Minister give an indication of when the department intends to make more detailed policy announcements and when we will see the legislation to back that up? The SLSC drew particular attention to the issue of

"financial assistance for rewarding or deterring behaviour related to sustainability."

I echo the specific questions of detail asked by the noble Baroness, Lady McIntosh, in this regard. How will the application of financial assistance work in practice? Defra says that this will be included in a separate SI. To clarify: is that the regulation that the Minister referred to in his opening remarks—the one to be published in the spring—or a separate one? He is looking at me quizzically so perhaps it is the latter.

[Baroness Jones of Whitchurch]

The second SI focuses on the application of the Northern Ireland protocol. Like the noble Lord, Lord Teverson, I have struggled somewhat with some of the fishing implications of the protocol, but we are beginning to work our way through them. The SI explains that the UK intends to accede to the multilateral Agreement on Port State Measures to Prevent, Deter and Eliminate Illegal, Unreported and Unregulated Fishing—the PSMA. Once the UK joins the PSMA, it will be required to impose controls on all non-UK vessels. The Explanatory Note states:

"The controls include: a requirement to use designated ports; a requirement to obtain authorisation prior to using ports; requirements to submit certain documents in advance of using ports; and a regime of inspection."

What will be the practical difference in the implementation of the PSMA rules on Northern Ireland and GB fishers? How will it differ for each of those groups? Does a list of designated ports already exist? If so, where is it published? Who will be responsible for imposing the regime of inspection and controls? Will it include the British Navy?

The Explanatory Memorandum states:

"There is no, or no significant, impact on business".

However, the regulations significantly alter the fishing rights of and controls on Northern Ireland and GB fishers. Were they consulted on the new requirements? If so, are they content with them? Do those in the different categories understand the different rights and responsibilities that they will have in future? Would the Minister like to comment on what he sees as being the consequences in real terms? In our earlier briefing, the Minister said, rather colloquially, that he thought that it meant that Northern Ireland fishers will be able to "face both ways". Can he clarify what he meant by that? This may be a rare occasion when Northern Ireland actually benefits from the Northern Ireland protocol in terms of trade provision.

I do not know whether the Minister saw the recent press report that Scottish fishers on the western coast of Scotland are considering re-registering their boats in Northern Ireland ports. This would enable them to land their shellfish, most of which is destined for European markets, without paying any EU tariffs or taxes. Can the Minister that this would be perfectly legal, provided that it represented a genuine move in the place of operation? Has any further thought been given to the consequences of this? Is there a concern that it might spark a wider practice of companies switching their base of operation to Northern Ireland to avoid tariffs?

I look forward to the Minister's response to these questions.

4.04 pm

Lord Gardiner of Kimble (Con): My Lords, I am grateful for noble Lords' comments. A number of key questions were asked.

The first question concerns science. I stress to the noble Lords who spoke—particularly the noble Lord, Lord Teverson, and my noble friend Lady McIntosh—that this is the basis of what we need to do going forward. The UK will continue to ensure that relevant data is collected and reviewed by a replacement scientific body. The replacement UK advisory structure is in development; in the meantime, as I said in my opening remarks, we retain access. Let me also say—although I will embellish this—that our discards policy will continue to be scientifically justified. The UK fisheries administrations will also need to comply with obligations under all other legislation to ensure that our discards policy is scientifically justified, including the Fisheries Act with its scientific evidence objective.

The noble Lord, Lord Teverson, and my noble friend Lady McIntosh referred specifically to ICES. The UK has been an independent member of ICES since it was established in 1902 and will continue to play a strong role in its future. The UK will continue to set the gold standard for sustainable fishing and the protection of the marine environment around the world after the transition period ends. The MoU will be signed, ready for it to come into force on 1 January.

On funding, I repeat that the Government made a manifesto commitment to maintain funding for the sector and will replace the EMFF with new domestic schemes from 2021. The devolved Administrations will lead on their own schemes. In addition to the EMFF, we committed an additional £2 million to support health and safety projects and a further £10 million to establish the Seafood Innovation Fund; that will run until 2022.

The important issues of discard plans and the landing obligation were raised. From next year, we can, for the first time, develop a discards policy that is tailored to our marine environment and industry. In our 2018 fisheries White Paper, we were clear that the UK Government will

"continue to work towards ending the wasteful practice of fish discards",

but challenges stemming from the EU-implemented landing obligation are widely recognised. In future, we will have the opportunity to be creative and adopt new measures outside of the current CFP toolkit to implement a workable discard ban. Sections in the Fisheries Act set out provisions that will allow us to introduce one such measure: a discard prevention charging scheme. This will provide a mechanism allowing fishers to pay for additional quota to cover any excess catch that would otherwise push them into illegal fishing.

On who is responsible for enforcing discard rules, I can reaffirm for the noble Lord, Lord Teverson, that no changes are intended. Enforcement will continue via the MMO and the relevant devolved Administration enforcement authorities.

The noble Lord, Lord Teverson, mentioned quotas. Under Section 24 of the Fisheries Act, the Secretary of State may make a determination of the UK quotas. This would usually occur in accordance with any obligations resulting from negotiations with other coastal states, but the Secretary of State could make a determination that did not flow from negotiations. Such a determination may cover fishing effort as well as quota.

On the Maritime and Fisheries Fund, while the devolved Administrations will lead on their own schemes, as I said, in England, the Government's objectives include innovation, improving port infrastructure, boosting

coastal communities and supporting the sector in adjusting to the new arrangements. As I said, England has also repurposed £5 million from its MFF scheme for Covid support in that regard.

The noble Baroness, Lady Jones of Whitchurch, raised timing and whether we were dealing with an out of date SI. It is a moot point. Changes we are making to the EU regulations that will form part of retained law will come into effect only at the end of the year, when that retained EU law begins to function. We thought that there would be no advantage in fixing these earlier. In fact, we felt that two SIs now would be appropriate, rather than perhaps multiple SIs throughout the year, particularly given the fact that parliamentary time was limited.

We had a good discussion about REM throughout the passage of what was then the Fisheries Bill. We were all on the same page. I will reply in particular to the noble Lord, Lord Teverson. There were 45 responses to the consultation. I think we all agree that the basis for REM is that it will provide many advantages, which will help us ensure that we have more sustainability.

My noble friend Lady McIntosh asked about the TAC and sustainability. Achieving healthy fish stocks is the first step to vibrant commercial and recreational fishing industries. The Fisheries Act sets out our commitments to sustainable fishing. The joint fisheries statement, which will be drafted and adopted by the UK Government and the devolved Administrations, will set out our policies to achieve the fisheries objectives set out in Section 1 of the Act. As an independent coastal state, we are committed to working closely with our partners, including the EU, Norway and the Faroe Islands, to manage shared fish stocks sustainably. The noble Lord, Lord Teverson, in particular raised that. Of course all of us in these waters need to be responsible. The UK will work with others to have vibrant fish stocks in all our waters and shared waters.

On Northern Ireland, yes, this is technical, and it took me a few readings to get what I understand to be correct. The Northern Ireland protocol recognises that a technical exercise is required to ensure that Northern Ireland fishing vessels landing into Northern Ireland are exempt from custom duties. The UK Government fully recognise the importance of the fishing industry to Northern Ireland and are clear that there should be no unacceptable new requirements.

The noble Baroness, Lady Jones of Whitchurch, asked about reporting requirements and our international obligations. They will remain the same. We will continue to report, as we have done before, as an independent coastal state, while being mindful that we can make some proper decisions from the data we all supply. PSMA requirements would be enforced by the ports into which foreign vessels land, as they are now.

I should also refer to a point that I think addresses the ClientEarth issue. As explained in the Explanatory Memorandum that accompanies the instrument, Article 138 of the withdrawal agreement provides for EU legislation relating to the 2014-20 EMFF to apply in the UK directly. By virtue of the wording of the European Union (Withdrawal) Act 2018, legislation that applies in this way is not replicated in retained EU law. As such, our amendments are simply to remove previous deficiency corrections made before the withdrawal agreement was entered into, in recognition of the fact this legislation will no longer form part of EU law.

A number of points came up on this issue, but I absolutely confirm that we have been working with interested parties and businesses to ensure that arrangements are in place across the nation and in Northern Ireland for 1 January. As I said, we are working to ensure that all is in order for 1 January. There are bound to be some further points that I will relate in more detail in a written reply. The issue of the designation of ports was raised. I am pretty confident that we will set out the list of designated ports vis-à-vis Northern Ireland by 16 December, which is a key part of that preparedness. On that basis, and with the promise of further correspondence, I beg to move.

Motion agreed.

Common Fisheries Policy (Amendment etc.) (EU Exit) (No. 2) Regulations 2020

Considered in Grand Committee

4.15 pm

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

That the Grand Committee do consider the Common Fisheries Policy (Amendment etc.) (EU Exit) (No. 2) Regulations 2020.

Relevant document: 33rd Report from the Secondary Legislation Scrutiny Committee

Motion agreed.

The Deputy Chairman of Committees (Lord Alderdice) (LD): The Grand Committee stands adjourned until 4.30 pm. I remind Members to sanitise their desks and chairs before leaving the Room.

4.15 pm

Sitting suspended.

Arrangement of Business

Announcement

4.31 pm

The Deputy Chairman of Committees (Lord Alderdice) (LD): My Lords, the hybrid Grand Committee will now resume. Some Members are here in person, respecting social distancing; others are participating remotely, but all Members will be treated equally. I must ask Members in the Room to wear a face covering except when seated at their desk, to speak sitting down and to wipe down their desk, chair and any other touch points before and after use. If the capacity of the Committee Room is exceeded or other safety requirements are breached, I will immediately adjourn the Committee. If there is a Division in the House, the Committee will adjourn for five minutes.

The microphone system for physical participants has changed. Members' microphones will no longer be turned on at all times in order to reduce the noise for remote participants. When it is your turn to speak, please press the button on the microphone stand. Once you have done that, wait for the green flashing light to turn

[LORD ALDERDICE]
red before you begin speaking. The process for unmuting and muting for remote participants remains the same. The time limit is one hour.

Export Control (Amendment) (EU Exit) Regulations 2020

Considered in Grand Committee

4.32 pm

Moved by ***Lord Grimstone of Boscobel***

That the Grand Committee do consider the Export Control (Amendment) (EU Exit) Regulations 2020.

Relevant document: 32nd Report from the Joint Committee on Statutory Instruments (special attention drawn to the instrument)

The Minister of State, Department for Business, Energy and Industrial Strategy and Department for International Trade (Lord Grimstone of Boscobel) (Con): My Lords, I am pleased to be able to open this debate. These regulations, which were laid before the House on 15 October, are necessary to ensure a functioning export control regime at the end of the transition period on 31 December this year. Their aim is to complete the process of transposing the existing system, which is reliant on European Union law, into purely UK law. At the same time, they implement certain EU regulations in Northern Ireland to the extent required by the Northern Ireland protocol. They do not make any change in export control policy.

As noble Lords know, the European Union (Withdrawal) Act 2018 enables a functioning statute book at the end of the transition period by providing Ministers with the tools to deal with deficiencies in domestic law arising because of our exit from the European Union. Noble Lords with good memories will remember that this House has already debated and approved legislation to ensure the continued functioning of retained EU law in the UK in respect of export controls. The Trade etc. in Dual-Use Items and Firearms etc. (Amendment) (EU Exit) Regulations 2019 were debated here on 26 March 2019 and the Trade etc. in Dual-Use Items and Firearms etc. (Amendment) (EU Exit) (No. 2) Regulations 2019 were debated here on 8 May 2019.

These new regulations are necessary because under the Northern Ireland protocol, which forms part of the withdrawal agreement, the EU regulations and directives relating to export control of dual-use items, civilian firearms and goods usable for capital punishment or torture will continue to apply directly to and in Northern Ireland. The provisions of the EU directive on the intra-community transfer of defence-related products will also continue to apply to the movement of military goods between Northern Ireland and the EU. Therefore, these regulations amend provisions of retained EU law to accommodate the Northern Ireland protocol.

Let me explain in more detail how this will work. Beginning at 11 pm on 31 December 2020, the export control rules applying in Great Britain will be derived solely from domestic law, which will include retained EU law. In contrast, the export control rules applying in Northern Ireland will continue to be derived from EU law as required by the protocol on Ireland/Northern Ireland in the European Union withdrawal agreement. My department will continue to be the licensing authority for strategic exports from the whole of the United Kingdom, but items exported from Northern Ireland will do so technically under a licence issued under European Union regulations.

To make this work these regulations, the Export Control (Amendment) (EU Exit) Regulations 2020, amend existing legislation. First, they amend the Export Control Order 2008, which has been the centrepiece of domestic export control legislation since April 2009. Next, they amend two instruments, the Export Control (Amendment) (EU Exit) Regulations 2019 and the Trade etc. in Dual-Use items and Firearms etc. (Amendment) (EU Exit) Regulations 2019, which were made last year in preparation for EU exit. In addition, they amend the Trade in Torture etc. Goods (Amendment) (EU Exit) Regulations 2020. These regulations were debated and approved by both Houses but have not yet been made. It is necessary to amend them to remove a dependency on the now non-existent Customs Tariff (Establishment) (EU Exit) Regulations 2019.

Let me be clear: these regulations do no more than is necessary to ensure the continued functioning of export control law, and therefore the continued effective operation of our export control system, in both Great Britain and Northern Ireland. Without them, our ability to control the export of these goods would be undermined. This legislation will enable the Secretary of State to continue to control exports from all parts of the United Kingdom of dual-use items, firearms and goods that could be used for capital punishment, torture or other cruel, inhumane or degrading treatment or punishment.

The Government believe that the procedures for assessing licence applications and our decision-making processes are robust, and will remain so following the end of the transition period. The eight criteria used to assess export licence applications, as set out in the consolidated criteria, will remain the same. The Foreign, Commonwealth and Development Office and the Ministry of Defence will continue to provide my department with advice and analysis of the relevant foreign, defence and international development policy aspects of each licence application. A licence would not be granted if to do so would be inconsistent with any of the criteria. My department will also continue to provide detailed advice and guidance about export controls and the end of the transition period in order to support legitimate exporters.

I take this opportunity to remind the Committee that these regulations are solely about preparing for the end of transition and ensuring that we have a functioning statute book after the end of the year. These amendments must happen, and Parliament needs to ensure that these controls remain in place. Negotiations about the future relationship between the United Kingdom and the European Union or the wider world are of course a separate matter, and I hope I may say to noble Lords that they play no part in this debate today. I hope that the House will work in the interests of the nation to ensure the passage of this legislation, which

is essential to ensuring that we are prepared for the end of transition and continue to control the trade in strategic exports.

This legislation is necessary to ensure that we are prepared for the end of transition and continue to have a fully functioning export control regime on 31 December this year. I commend the Motion to the Committee and I beg to move.

4.39 pm

Baroness McIntosh of Pickering (Con): My Lords, I am grateful to my noble friend for taking us through this statutory instrument this afternoon, and I am delighted to see him back in his place.

Rather than comment on what is set out in the regulations, I will first comment on what is not set out. In preparing for today, I am grateful to the House of Lords and House of Commons Joint Committee on Statutory Instruments and the conclusions in its 32nd report, on which I will rely heavily.

In particular, I will quote two paragraphs and how the conclusions were reached. In paragraph 5.4, the committee concludes:

"The Committee accordingly reports regulation 7(9) for defective drafting, acknowledged by the Department."

This could have been put right. The committee states that

"it would have been open to the Department to withdraw the instrument and re-lay it before Parliament with the defect in article 42N(2) corrected".

Apparently, the department chose not to do this because it intends to include the correction in amending legislation to be made early in 2021. It considers the likelihood of the defect in the legislation having any practical impact before the correcting legislation in 2021 to be very low.

The Joint Committee in its 32nd report states:

"The Committee is not convinced by this explanation. In the view of the Committee, the Government should not make legislation which it knows will have an effect which is significantly different from what is intended, unless doing so cannot reasonably be avoided. Nothing is said in the Department's memorandum to indicate that laying a corrected draft would not have been practicable."

So, with regret, I argue that the statutory instrument before us today will not lead to a fully functioning customs and excise move. Why did the Secretary of State for Trade choose not to submit a corrected statutory instrument for today's purposes? Why was the procedure open to the department in this regard not used?

I understand that the department entirely acknowledges the error. Paragraph 5.3 of the 32nd report of the Joint Committee states:

"It appeared to the Committee that the exception in article 42N(2) may have been drawn too narrowly in requiring both the conditions in sub-paragraphs (a) and (b) to be met. It is inconsistent with the position under article 12 of the 2008 Order as it currently has effect before IP completion day. The current position is that a transfer to a destination within the EU customs territory is allowed if either the final destination for the transfer is within the EU customs territory, or the software or technology will be subject to processing or working within the EU customs territory."

So we seem to be in the very unhappy situation where there will be a hiatus between what is currently on the statute book and what will be on the statute book early in 2021, which is highly regrettable. Will my noble friend explain why we are in this unhappy position and why the Secretary of State and the department chose to go down this particular path?

Equally, paragraph 5.7 of the 32nd report states:

"The Committee is not convinced by the Department's explanation. It seems to the Committee that Government should as a matter of general principle avoid making legislation which it knows to be defective. In this case, the Trade in Torture Regulations were approved in draft by both Houses more than 18 months ago. Since that time there has been a significant change in circumstances in that the EU withdrawal agreement has been entered into, including the Protocol on Ireland/Northern Ireland. The amendments made by Part 5 include amendments in regulation 15 which are needed to take account of the effect of the Protocol. Accordingly, the Committee reports Part 5 of the Regulations as making an unusual or unexpected use of the enabling powers."

In a previous paragraph of the report, paragraph 5.5, the Committee states why that is the case:

"Part 5 of the draft Regulations amends the Trade in Torture etc. Goods (Amendment) (EU Exit) Regulations 2020 ('Trade in Torture Regulations"). The Trade in Torture Regulations have not yet been made and accordingly the Committee asked the Department to explain why Part 5 of these Regulations is being used to amend another statutory instrument which has not yet been made, rather than making that other instrument with the necessary changes incorporated in it."

So, for the reasons set out in the report, with which I entirely agree, I ask my noble friend to explain why the department has drafted a defective instrument. Why has it opted for an unexpected use of enabling powers which have been overtaken for the reasons I have given, as set out in the 32nd report of the Joint Committee on Statutory Instruments, with which I entirely concur. We seem to find ourselves in an extremely unfortunate position. I repeat my question: why have the department and the Secretary of State put us in the position that we find ourselves in today? With those few remarks, I ask him to explain the circumstances in which we find ourselves today.

4.48 pm

Lord Bhatia (Non-Afl) [V]: My Lords, this statutory instrument has been prepared by the Department for International Trade. It will make the necessary changes to maintain the United Kingdom's robust export control regime at the end of the transition period on 31 December 2020.

The export control regulations in Northern Ireland will continue to be EU law; in Great Britain, export control regulations will be domestic law at the end of the transition period. The domestic law needs to be amended before the end of the transition period so that it continues to function effectively in both Great Britain and Northern Ireland.

The SI will also amend the Export Control Order 2020 to correct the existing reference to EU law. It will ensure that EU regulations relating to export control and listed in Annexe 2 of the Ireland/Northern Ireland protocol will continue to operate effectively in Northern Ireland after 31 December 2020. It will also make major amendments to the Export Control Order 2008 and amend the trade in torture goods regulations.

From 1 January 2021, part of the law controlling strategic exports in Northern Ireland will be EU law, which in accordance with Section 7A of the withdrawal Act is

"without further enactment to be given legal effect or used in the United Kingdom".

From 1 January 2021, the control of strategic exports in Great Britain will be through domestic laws, which include retained EU law at the end of the transition period.

[Lord Bhatia]

This instrument is being made in part to address deficiencies in retained EU law and to accommodate the NI protocol. It relates to the withdrawal of the UK from the EU. In my view, exports from the UK to the world over will be important when we have exited from the EU. I would like to ask the Minister what plans are being made to reach agreement with countries all over the world, including the USA and the those in the EU.

4.50 pm

Lord Purvis of Tweed (LD): My Lords, this is a short debate on necessary measures, as the Minister indicated, and I am grateful for the clarity with which he outlined them. We cannot have gaps, uncertainties or confusions in the issuing of export licences and in the interaction between UK law and European law. I need not refer to the 32nd report, because the noble Baroness, Lady McIntosh of Pickering, outlined the issue so clearly; I look forward to the Minister's response to her questions.

As the Minister indicated, we have debated dual use and export control in the past—I took part in some of those debates. Given that dual use potentially applies to the civil and military use of goods and intermediary goods, this could be a delicate and controversial area. It is delicate because sometimes it is not easy to draw lines for component goods that can be exported for civil purposes but where the recipient country does not share the same high standards in its approach to human rights as the United Kingdom and can use those goods for different ends. It is not always easy for the Government, when issuing licences, to have a clear understanding of all the potential uses of some of these goods. I sit on the International Relations and Defence Committee, where we have debated areas of controversy around export licences. We know that the Government have changed their position on certain export licences and have paused licences when human rights abuses have been raised. Ensuring that there are no gaps or uncertainties is vital, as the Minister said.

This is even more complex because, for the first time in our country's history, I think, the licensing system will operate under two systems of law: European Union law and United Kingdom law. That adds a greater burden on those businesses that are seeking a licence for export from the United Kingdom, whether from GB or from Northern Ireland. We know that there is a huge amount of trade between Northern Ireland and GB in intermediary goods, so there is complexity around component parts.

That leads to the wider issue that I wish to raise with the Minister, with which he will be familiar from our discussions on the Trade Bill and other measures. The noble Lord, Lord Empey, and others have also raised this issue. Businesses and people in Northern Ireland will be operating under continuing EU law, without democratic accountability for those who are making the decisions, while the United Kingdom Government will operate for GB, so in this area there will need to be good communication between the European Union and the United Kingdom and clear ways of working between the Minister's department and the European Commission.

A situation that will almost inevitably arise in the future, although not necessarily under the measures that the Minister has indicated are being reformed, is when there are differences of approach between the United Kingdom and the European Union. Almost by definition that will happen, because one of the motives for leaving the European Union is for the United Kingdom to be able to make its own decisions. I would like the agreement with the European Union, which we hope will be signed this weekend, to ensure close working on how the licensing system will operate and on definitions for goods relating to torture or execution or goods with a civil or military use. I hope that there will be specific ways of working between the European Union and the United Kingdom so that a situation does not arise where the Government are operating a licensing system in which there are two different sets of policy purpose. As the Explanatory Notes indicate, some of these measures fall under UN obligations that we have adopted, so I hope that that will not arise, but I would be grateful if the Minister could offer that reassurance.

My second question is linked to the movement of goods—they could be component parts or intermediary goods under the licensing regime—between Northern Ireland and GB before they are then exported. We do not need in this short debate to rehearse the export procedures from Northern Ireland to GB, but it is likely that some of the goods for which export licences will be sought for export from Northern Ireland and/or Great Britain will contain components manufactured in different parts of the United Kingdom. The original source of a component could be Northern Ireland; when that component is moved to GB, it would be exported from there under UK law—or, vice versa, it would be exported under a licence under EU law. If we are to have unfettered access, which is the Government's policy, and there are no checks, will the Minister say whether specific mechanisms are in place to ensure that there is no unintended loophole with regard to component parts?

My final question is on a point of clarity. If the Minister cannot answer it today, I would be happy for him to write to me. We still do not know what the border operating model for Northern Ireland will be. We hope that we will get a degree of clarity from the European trade agreement. We know what the border operating model is for Great Britain, but we are still waiting for that information for Northern Ireland. What role will the European Union have in checks on goods leaving exit ports in Northern Ireland? We need clarity so that exporters know with a high degree of certainty what the procedures will be. What has been beneficial in the past is that NGOs, human rights organisations and others have been able to observe and monitor the trade and know that proper rules are being followed and that there is a degree of accountability. I am aware that that is probably broader than what these proposals aim to correct and amend, but if the Minister can reassure me that there will not be loopholes in this area, I would be most grateful.

There may be a period after January next year when we can review the relationship between the European Union and the United Kingdom in the interaction of

legislation on export licensing. We have raised these questions in the past, so I know that the Government always say that they keep the licensing regime under constant review—that is the terminology the Government always use. I hope that part of that constant review will be an ability to come back to Parliament within a set period to ensure that this is one area where there is no benefit for either the European Union or the UK in not having close working relationships. I do not need to remind colleagues that the licensing of these goods is to protect people from the worst excesses of human rights abuses from Governments in countries that we do not wish to have these products. If the Minister could respond to those points, I would be grateful.

5 pm

Lord Bassam of Brighton (Lab) [V]: My Lords, I always know I am in good company when I am on the same speakers' list as the noble Lord, Lord Purvis, and the noble Baroness, Lady McIntosh. Their eye for detail and content is almost a legend in the House.

These regulations make amendments to legislation relating to the export and transfer—including other trade controls—of military and, more importantly for the purposes of this debate, dual-use goods. The Government have estimated that, on a rolling 10-year basis, the UK is the second-largest global defence exporter and a major exporter of arms, so it is extremely important that the UK must have a robust export control regime now and after the transition period ends. Any steps taken to guarantee its robustness are obviously welcome. The noble Lord, Lord Purvis, made the point well: we must not have gaps and holes in this regulatory system. That is extremely important.

This instrument will make changes at the end of the transition period, when export control regulations will be domestic law in Britain while export control regulations in Northern Ireland will, as the noble Lord, Lord Purvis, pointed out, continue to follow EU law. Although the changes are mainly technical, I have some broader questions for the Minister on the specifics of the regulations.

The Explanatory Memorandum states:

"Regulation 7(4) provides for an exception to certain prohibitions to continue in relation to a certified person who is a part of the armed forces, a police force, or a public authority … who is a hunter or sport shooter, or who holds a Manx firearms certificate."

How many people is this in total? How many people will it affect?

The Explanatory Memorandum also states that Regulation 9 amends the Secretary of State's

"regulation-making powers in the Export Control Act 2002".

I want to find out from the Minister whether these regulations are made under the affirmative or negative procedure. Also, who will the Secretary of State consult before using the powers?

The Explanatory Memorandum also states:

"Regulation 15 provides for certain authorisations granted by the Secretary of State under the Torture Regulation that have effect before the end of the transition period to continue to have effect after"

the end of the year. How many authorisations does the Minister expect to be granted between now and 31 December?

The noble Baroness, Lady McIntosh, has already gone through the report from the Joint Committee on Statutory Instruments and raised serious concerns about the SI. As she said, the committee says in its report that the regulations are defectively drafted. The noble Baroness also pointed to Regulation 7(9), which has the effect of inserting new Part 6A into the Export Control Order 2008. That part includes new Article 42N(2), concerning the transfer by non-electronic means of software or technology intended for weapons of mass destruction purposes, which, the committee says, has been too narrowly drafted. The Government say that they recognise this mistake, so, along with the noble Baroness, I have to ask: why have these draft regulations not be withdrawn and relaid if they are defective? Surely this cannot be right.

The committee also said that the Government must

"not make legislation which it knows will have an effect which is significantly different from what is intended, unless doing so cannot reasonably be avoided."

I appreciate that we are coming to the end of the transition period, but what is the urgency with these regulations? Why can they not be corrected in time? I must ask when these errors will be put right. When will they be corrected in amending legislation? If we are told "early in 2021", frankly, that is not good enough as an answer. We must have a more specific date because we need certainty in the process. Certainty and clarity are what people in the export markets want at the forefront.

The committee also highlighted that Part 5 of the draft regulations amends the trade in torture regulations. These regulations have not yet been made, as far as I am aware. Perhaps the Minister can explain why. As I understand it, they are currently approved in draft only and do not yet take account of the Northern Ireland protocol. That seems a significant failing and gap. Again, the committee said this was "defective" and reported that Part 5 of the regulations makes an

"unusual or unexpected use of enabling powers".

We need an explanation for that. Why are Ministers using powers in this way and when will the trade in torture regulations be published, so that they can be considered by both Houses?

We recognise that we have left the EU and have a domestic export control regime in Great Britain, but these regulations, especially in how they relate to Northern Ireland, are interesting in the context of developments with our European friends. In November, the German presidency of the EU Council and Parliament agreed to new rules for the trade of dual-use items. This could lead to stricter export controls, including in Northern Ireland, on cyber surveillance technology and items, and cryptographic items. Such items could include facial recognition and spyware. This could introduce greater safeguards to minimise the risk of human rights violations. Do the Government want to expand controls to cover new and emerging technologies, as part of the UK's export control regime? Will they hold a consultation on this?

We also have to put our export control regime in the context of the Government's actions concerning arms sales to Saudi Arabia, where the true robustness of the UK's regime has often been called into question.

[Lord Bassam of Brighton]
Last year, the Court of Appeal ruled that the Government had acted unlawfully by approving arms sales to Saudi Arabia without any assessment of whether the coalition had breached international law. The ruling was dismissed by the Government in July, when the International Trade Secretary said that more than 500 alleged incidents of war crimes by the coalition in Yemen were "isolated" and showed no pattern or trend.

I know that noble Lords are aware that the UN has described the war in Yemen as the largest humanitarian crisis in the world, with more than 100,000 people being killed. The Campaign Against the Arms Trade said that

"the government has provided very little information on how it reached the conclusions it did, including how it decided there was no 'pattern' of violations."

Will the Government now provide detailed information relating to their decision-making process? The public need answers on this and we, as Members of the Lords, do too. It was also reported recently that the Government approved a backlog of hundreds of applications to export arms to Saudi Arabia. How many has the DIT approved since July?

As the transition period ends, we need to make sure our export control regime is fit for purpose in recognising human rights violations and new technology. These technical changes do little to reassure on these points. That the Joint Committee has described the SI as "defective" in several regards worries me more. I look forward to hearing the Minister's answers to these questions.

5.08 pm

Lord Grimstone of Boscobel (Con): My Lords, I thank all noble Lords for their contributions. It is always a pleasure to respond to these debates when noble Lords speak with the expertise displayed today. I thank my noble friend Lady McIntosh of Pickering for drawing our attention particularly to the comments made by the Joint Committee on Statutory Instruments. I also thank the noble Lord, Lord Bassam, in this regard. I say without reservation that it was regrettable that a situation arose in which this will have to be corrected in due course.

As we have heard, at its meeting on 25 November, the JCSI scrutinised the instrument in accordance with Standing Orders, and it was, rightly and properly, agreed that the special attention of both Houses should be drawn to this instrument on two grounds. These are that the instrument in one respect is defectively drafted and makes unusual or unexpected use of the enabling powers in another. Of course, for the former point, I apologise unreservedly.

Let me go into more detail about the drafting error, its impact and what the Government intend to do about it. It is a drafting error in new Article 42N(2) of the Export Control Order 2008. The purpose of that new article is to re-enact in relation to transfers from Northern Ireland an existing exception that allows the transfer of software or technology for WMD purposes from the United Kingdom by non-electronic means if: the final destination of the software or technology is the customs territory of the European Union; or processing or working is to be performed on the software or technology in the customs territory of the European Union—in which case the law of the destination member state will be responsible for the control of any subsequent transfer.

The problem is that re-enactment is necessary because the existing exception, which applies in relation to the United Kingdom, is to be removed at the end of the transition period. The error was the insertion of the incorrect conjunction in new Article 42N(2)—an "and" was inserted instead of an "or" between sub-paragraphs (a) and (b). This makes the exception less permissive in relation to transfer from Northern Ireland after the transition period than the existing exception. Nothing is weakened by this error; indeed, the situation is strengthened for this particular category of software that might be used for weapons of mass destruction.

The department thought about this carefully—I have discussed it with officials—and does not consider the error to have sufficient impact to warrant the withdrawal, correction, and re-laying of the draft regulations. That is because it could not have been done in time for the regulations to be effective by the end of this year. I think all noble Lords want to avoid a gap between the existing and future systems. The department has assessed very carefully the consequences of that, and I reassure my noble friend that we believe there is a very low likelihood that a person would wish in early 2021 to transfer software or technology from Northern Ireland to the customs territory of the European Union by non-electronic means despite awareness that that software is, or may be intended, in entirety or in part, for WMD purposes.

I hope that if noble Lords take a step back from the regrettableness of the error, they will realise that the chances of that happening early in 2021 are very low. We undertake—I do so unreservedly—to correct this error in early 2021, when we will be making routine amendments to the Export Control Order 2008. The noble Lord, Lord Bassam, talked about urgency and the importance of there being no gap. I am sure that noble Lords will monitor this situation very carefully to make sure that we live up to our undertaking to correct it early in 2021. Again, I apologise to noble Lords and the House that the error arose. Regrettably, these things sometimes happen, and we took the view that the lesser of the two evils was to continue in this way with this very small error so as to avoid a gap, and to correct that very small error early in 2021.

The second point raised by my noble friend and drawn attention to by the noble Lord, Lord Purvis, was what was described by the JCSI as the

"unusual or unexpected use of enabling powers."

Part 5 of the draft regulations contains amendments to an instrument that has not been made: the draft Trade in Torture etc. Goods (Amendment) (EU Exit) Regulations. These regulations have been debated in the House; they were ready to be laid but they have not yet been laid, so they have been through the normal scrutiny processes.

Our intention is for the unmade instrument to be made the same day, so that instrument will be made before this instrument is made, which will mean it will come into effect before these regulations come into effect. The making of the instruments in this sequence

will allow the draft regulations to correct the deficient commencement regulation in the Trade in Torture etc. Goods (Amendment) (EU Exit) Regulations before it comes into force.

This was not an error; it was done deliberately, but it came about because those regulations were approved by Parliament in April 2019—noble Lords will know how long ago that seems in the history of negotiations with the European Union—before ratification of the agreement on the withdrawal of the United Kingdom from the European Union. I assure noble Lords that there are precedents for a draft instrument requiring affirmative approval to correct a deficient commencement clause in an earlier draft instrument that has been approved by Parliament but not made by making both instruments on the same day and in sequence.

I humbly submit that Part 5 of the draft regulations is appropriate considering the precedent and, more importantly, the additional parliamentary time that would be required if the Trade in Torture etc. Goods (Amendment) (EU Exit) Regulations had to be relaid following, I stress, technical but not substantive amendment and debated again in their entirety by each House of Parliament. I am the first to admit that this is a messy situation. It would have been far better if it had not arisen, but we believe that the path we are taking is the best way to correct it.

The noble Lord, Lord Purvis of Tweed, raised the important question of dual use. I absolutely agree with him on this. He made the comment that the underlying importance of the regulations is to protect excesses of human rights abuse. I am sure that every noble Lord would agree with his sentiments on that matter.

We are right that, at the moment, on 1 January the same laws will apply in Northern Ireland and GB, but there is of course a theoretical risk that divergence will occur. I stress that this is how it will operate: there will have to be close co-operation between the European Union and the United Kingdom on this matter. It would be far preferable if there was no divergence, but because the matters to which these regulations obtain often come about due to wider considerations in the United Nations context, or others, the risk of divergence is low. However, we will do all we can to ensure that divergence does not occur between these two sets of regulations. The protocol is, of course, subject to the continued consent of the people of Northern Ireland, who must approve its continued application every four years.

I will quickly refer to the arguments that the noble Lord, Lord Bhatia, made. I assure him that promoting trade is an important feature of our new free trade agreements.

The noble Lord, Lord Bassam, asked about intercept and cybersurveillance equipment. All cyber, cryptographic and intercept exports are subject to the same thorough risk assessment against the consolidated criteria as other controlled exports.

I appreciate that I have not answered a couple of the detailed points raised by the noble Lords, Lord Bassam and Lord Purvis. I commit to answering those by letter as soon as I possibly can. On that basis, I hope that these matters find favour with the Committee.

Motion agreed.

The Deputy Chairman of Committees (Lord Alderdice) (LD): The Grand Committee stands adjourned until 5.30 pm. I remind Members to sanitise their desks and chairs before leaving the Room.

5.19 pm

Sitting suspended.

Conflict Minerals (Compliance) (Northern Ireland) (EU Exit) Regulations 2020

Considered in Grand Committee

5.30 pm

Moved by ***Lord Ahmad of Wimbledon***

That the Grand Committee do consider the Conflict Minerals (Compliance) (Northern Ireland) (EU Exit) Regulations 2020.

Relevant document: 31st Report from the Joint Committee on Statutory Instruments (special attention drawn to the instrument)

The Minister of State, Foreign, Commonwealth and Development Office (Lord Ahmad of Wimbledon) (Con): My Lords, these regulations, laid on 15 October, are necessary for the application

"to and in the UK in respect of Northern Ireland"

of the EU Conflict Minerals Regulation, which is listed in Annexe 2 of the Northern Ireland protocol. The regulation establishes the due diligence obligations of the largest importers of tin, tantalum, tungsten, and gold, or "3TG". Supply chain due diligence here is absolutely crucial. A large proportion of these so-called conflict minerals originate from conflict-affected and high-risk areas. The EU regulation makes voluntary guidance set by the OECD mandatory. It aims to break the link between armed conflict and the exploitation of 3TG and to put an end to abuses of local communities, including mine workers, which are often linked to violations of human rights.

Parts of the EU Conflict Minerals Regulation have applied in the UK since 2017. However, its key operative provisions do not apply until 1 January, after the end of the transition period. These include the relevant obligations on business and member state competent authorities to ensure its effective implementation throughout the EU. Those key provisions will not take effect in Great Britain and will not form part of retained EU law. The regulations we laid before Parliament make that provision for Northern Ireland, as required under the protocol, and establish an enforcement framework for non-compliance.

This means that from the 1 January 2021, the largest importers into Northern Ireland of tin, tungsten, tantalum and gold will need to demonstrate due diligence to ensure that their imports have been mined and processed responsibly. They will have to demonstrate that they are managing any risks that their supply chains are linked to human rights violations or to the fuelling of conflict.

[Lord Ahmad of Wimbledon]

To enforce this in Northern Ireland, we are proposing powers for the Secretary of State to require businesses to report on their due diligence systems. The regulations also make provision for inspectors to enter business premises to inspect documents, data and records. These powers are necessary to ensure that the largest importers of "conflict minerals" into Northern Ireland do so in a way that is fair to everyone in the supply chain.

The regime follows a civil sanctions route and provides for a power to issue civil compliance notices and financial penalties where businesses do not comply. The decision to impose a financial penalty may be appealed to the First-tier Tribunal. The regime does not impose penalties for substantive breaches of due diligence obligations, as this is considered outside the scope of the EU Conflict Minerals Regulation. As required by the regulations, we will publish guidance at the earliest opportunity on how the civil sanctions will be used.

We accept the comments by the Joint Committee on Statutory Instruments that Regulation 8, which enables the Secretary of State to serve a notice requiring "a person" to produce information, is only enforceable against "Union importers"—importers into Northern Ireland—and that the regulations do not make provision for enforcing a requirement under Regulation 8 that is imposed on a person who is not a "Union importer". We also accept as a point of principle that the imposition of obligations in statutory instruments should be accompanied by enforcement measures with equivalent scope.

It is necessary for these regulations to be made before the end of the transition period to meet the UK's obligations under the Northern Ireland protocol. We are proceeding with the regulations as currently drafted but will bring forward as soon as possible amending legislation to amend Regulation 8, as I said.

This amendment will make explicit that the power to require the production of information can be exercised only in relation to a "Union importer"—an importer into Northern Ireland. In the meantime, the Secretary of State undertakes not to exercise the power to require production of information under Regulation 8 against persons other than "Union importers". When the amending regulations are laid, they will also implement some minor administrative and clarifying corrections.

Our intention through these regulations is to allow businesses to operate responsibly in conflict-affected and high-risk areas. 3TG minerals are key components for much of our technology and our view is that, under the right conditions, their mining can build prosperity and security for local communities. Conducting due diligence, in accordance with OECD guidance, is key to managing the risks and to ensuring that businesses along the supply chains behave responsibly.

Our proposed regime for Northern Ireland is in line with the spirit of OECD guidance, incentivising businesses to continually improve their due diligence processes. The approach taken in the regulations, including the financial penalties for failure to co-operate with procedural requirements, corresponds with the European Commission's stance on the scope of the EU regulation. We consider that this approach to the implementation of the EU conflict minerals regulations in Northern Ireland will meet our obligations under the protocol. I beg to move.

5.36 pm

Lord Bradshaw (LD) [V]: I am grateful to the Minister for his introduction. I do not think we need to detain the Committee long, as I have only two questions, about how these regulations are enforced. First, in his introduction, the Minister referred to inspectors employed by the Secretary of State. Can he be more explicit on who these inspectors are, and whether they are acting in Northern Ireland on behalf of the European Union or the Northern Ireland Executive? Secondly, can he please tell us what parallel arrangements will be in force in the rest of the country when we have left the European Union?

The Deputy Chairman of Committees (Baroness Henig) (Lab): I call the next speaker, the noble Baroness, Lady Northover. Could the noble Baroness please unmute?

5.37 pm

Baroness Northover (LD) [V]: My apologies—I was finding it quite difficult to hear the Minister, but I caught most of what he said and I thank him for introducing this SI. I declare my interests as in the register.

The Minister is right that the global attempts to tackle the association of minerals with conflict must be supported. We have long known about the resource curse which has afflicted countries with weak development and poor governance. I saw that clearly in Angola, where oil helped to fuel a 30-year civil war and then untold corruption—a situation which is at last being tackled.

The Kimberley process was brought in to try to ensure that diamonds were sourced in a transparent way, unsullied by conflict. The minerals needed for our mobile phones and electric batteries are sourced from some of the most conflict-affected countries in the world and we cannot turn a blind eye. The whole supply chain is rightly coming under increased spotlight.

The OECD emphasises that companies in the minerals supply chain must be more than simply reactive in this area; they need to be proactive in making sure that they respect human rights and do not contribute to conflict. We have seen many examples of this. We see it still in Latin America, and certainly in Africa. The DRC is blessed with substantial mineral reserves but the people living there are currently condemned to suffer violence from those fighting over extracting them.

The OECD published guidance in 2016 to assist companies in adhering to these guidelines. The EU followed suit in 2017 but strengthened it, so that the guidelines became mandatory. This is therefore yet another change that we need to address because of leaving the EU. The regulations relate to one part of those EU arrangements for certain minerals, which were due to come into force on 1 January, as the Minister has laid out. The regulations ensure that this is in place in Northern Ireland from 1 January.

Northern Ireland has the charmed status, as government Ministers have said, of being in the internal market of the UK and the internal market of the EU—just as we used to be. Therefore, under the Northern Ireland protocol, this needs to go into place. Can the Minister tell me whether the rest of the United Kingdom will also adhere to these rules, as my noble friend Lord Bradshaw asked? The Government are always saying that we will meet the highest of standards, outclassing the EU. Are we doing so here? What will happen to companies in the rest of the UK after the transition period ends?

I note that the Joint Committee on Statutory Instruments said that these SIs were "defectively drafted" and the Minister's department acknowledged this. In its report discussing the draft regulations, the committee stated:

"Regulation 8 enables the Secretary of State to serve a notice requiring a person to provide information"

on imports, where necessary, and that this may be imposed on, but is not limited to, EU importers. It goes on:

"Regulations 14 and 15, and the Schedule to the Regulations, contain provision for enforcing obligations imposed by the Regulations. However, this is limited to enforcing obligations imposed on Union importers."

Therefore, the committee argued,

"the Regulations contain no provision for enforcing a requirement under regulation 8 imposed on a person who is not a Union importer."

The Minister's department has acknowledged that Regulation 8 was enforceable against EU importers only. Consequently, it said that it would

"bring forward amending legislation as soon as possible and that … the Secretary of State will not exercise the power to require production of information under regulation 8 against persons other than Union importers."

Can the Minister tell us when this amending legislation will be brought forward? He does not have much time. Is this not a reflection of the overburdened department, for which he is now the single Minister in the Lords? It is in a state of reorganisation, at the same time as the country battles Covid and the Government have decided to take the United Kingdom out of both the single market and the customs union. My sympathies here are with the civil servants who drew up these regulations.

Can he also say when these regulations will be considered in the House of Commons, given that we have very little time before the transition period ends? There may well be one particularly large piece of business to get through before the Commons rises for Christmas—of course, if there is not, heaven preserve us. I look forward to the Minister's response.

5.42 pm

Lord Collins of Highbury (Lab): My Lords, I echo many of the comments that have already been made in this short debate. I, too, welcome the regulations and their need to address some important issues. When one looks at the title of the SI, it seems rather dry, but think about its impact. If, when people used their mobile phones, they realised the impact they have on certain conflict-afflicted countries, they may think twice about the need for such regulations.

I will pick up on a couple of points. The Minister mentioned defects and the report of the Joint Committee on Statutory Instruments in relation to Regulation 8. The department has acknowledged this defect and said—the Minister repeated this—that it will

"bring forward amending legislation as soon as possible and that … the Secretary of State will not exercise the power to require production of information under regulation 8".

What does "as soon as possible" mean? What is the timeframe for that? The noble Baroness, Lady Northover, made the point that this is a time-constrained issue. These regulations should be in force once the transition period ends, so can the noble Lord give us a clear assurance that we will not be in breach of the protocol and that these regulations will be properly enforced, as required by that? I would like that reassurance.

The other thing that was mentioned—the noble Lord, Lord Bradshaw, in particular focused on this—was the question of who is responsible for the people required to enforce. The powers are designated to the Secretary of State rather than to the devolved Administration. Can the Minister confirm whether it is in line with precedent that such issues are reserved competencies and not ordinarily devolved to the Northern Ireland Administration?

The other point raised was on what we are doing. The Minister referred to the fact that parts of the requirement, the guidance and the statutory decision of the EU have applied in the rest of the UK. However, what are we doing to ensure that the spirit and letter of this requirement covers all parts of the United Kingdom? I am sure that all parties across the House would support this, because we know how important it is in terms of addressing conflict, which is often financed by the extraction of these minerals or caused by people wanting to extract them. It is therefore important that we get a clear indication that this policy will not be confined simply to the requirements of implementing the protocol.

My final point—I think that the Minister mentioned this—is that as an independent department DfID was a world leader in many of the developmental projects central to conflict minerals, including through support of the World Bank's mineral sector reform programme, PROMINES. Can the Minister detail whether UK aid is today supporting similar programmes and whether any will be cut in the coming year? As we mentioned earlier in the House today, not many people realise how important ODA is for securing a safer and more secure world.

According to Global Witness, $3 billion in high-risk gold, including conflict gold from east and central Africa, flows to Dubai annually. Can the Minister confirm whether the UK is making any representations to other Governments regarding responsible importing of conflict materials, in particular those we are seeking agreements with on trade?

5.48 pm

Lord Ahmad of Wimbledon (Con): My Lords, first, I am grateful to all three noble Lords for their participation; I hope that the noble Baroness, Lady Northover, can hear me clearly. As all noble Lords have acknowledged and as I mentioned in my opening remarks, the EU Conflict Minerals Regulation comes into full force on

[Lord Ahmad of Wimbledon]
1 January 2021 and imposes a legal obligation on EU importers over the 3TG. We will also, in accordance with OECD guidance, issue further guidance in this respect in the early part of 2021 to ensure adherence.

Various questions were raised and I will seek to answer them as specifically as I can. First, on the report and the regulations mentioned, in particular the additional amendments we will seek to make in line with the committee's report on Regulation 8, I do not have a specific date but I will of course endeavour to ensure that noble Lords are updated at the earliest opportunity to ensure that we are fully compliant in this respect. However, to answer the specific questions from the noble Lord, Lord Collins, these regulations will ensure we comply fully with our obligations under the Northern Ireland protocol.

The noble Lord, Lord Bradshaw, raised the competent authority that will operate for the Northern Ireland inspectors, who will be appointed on behalf of my right honourable friend the Foreign Secretary to exercise his powers with respect to entry and inspection. For the purposes of the regulations, the Foreign, Commonwealth and Development Secretary will take the role of the competent authority. This is also part and parcel of our fulfilling our obligations in this respect.

The noble Lords, Lord Collins and Lord Bradshaw, and the noble Baroness, Lady Northover, also rightly raised the issue of other parts of the UK, since we are taking these regulations forward only in Northern Ireland, in line with the Northern Ireland protocol. They asked specific questions on this. Outside of the EU, the UK is not obliged to enforce the substantive provisions of the EU conflict minerals regulation. However, the UK will continue to be an active member of the OECD and to promote the OECD's due diligence guidance. In this respect, the UK Government fully expect all UK businesses to adhere to the OECD guidance. Since the EU minerals regulation is listed in Annexe 2 of the Northern Ireland protocol to the withdrawal agreement, the UK Government, in introducing the SI, are taking the necessary steps to ensure that the regulation is implemented and enforced in Northern Ireland. We will in due course consider what, if any, further regulatory framework might be appropriate for Great Britain.

In this regard, the noble Lord, Lord Collins, also asked about our work elsewhere in the world. We have of course been very effective in bringing regimes across the world to the fore regarding this issue. In particular, the UK is committed to addressing risks around conflict minerals through promoting and encouraging compliance with the OECD's due diligence guidance, which has been issued for responsible mineral supply chains for conflict-affected and high-risk areas. We will of course continue to be a member of the OECD outside of the EU and we expect all businesses to take appropriate steps.

The UK is also a founding member of the European Partnership for Responsible Minerals. This initiative aims to increase the proportion of responsibly sourced minerals by working across the whole of the supply chain. In this regard, the UK Government funded projects, including in the African Great Lakes region, and supported the development of a due diligence hub to provide information for businesses to progress their supply chain due diligence.

The noble Baroness, Lady Northover, specifically flagged the importance of the Kimberley process. I have worked directly on this so I can reassure her. The Kimberley process, as noble Lords know, groups 55 like-minded participants, covering 82 states, with framework regulations designed to prevent the flow of conflict diamonds, which is also pertinent to our debate. We have been part of the Kimberley process since 2002. The UK remain committed to the policies and principles of the Kimberley process. We will become an independent participant at the end of the transition period.

I trust that I have answered most if not all of the questions raised. As I said, I will come back to noble Lords on the specific timetabling of the related amendments under Regulation 8. We seek to do that as soon as practicable and possible. I am sure that we will update noble Lords through the usual channels. With that, I once again thank all noble Lords for their participation. This is another important step forward in the passing of these regulations to ensure our compliance with the obligations under the withdrawal agreement as we prepare for the end of the transition period.

Motion agreed.

The Deputy Chairman of Committees (Baroness Henig) (Lab): That completes the business before the Grand Committee this afternoon. I remind Members to sanitise their desks and chairs before leaving the Room.

Committee adjourned at 5.55 pm.