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PARLIAMENTARY DEBATES
(HANSARD)

HOUSE OF LORDS
OFFICIAL REPORT

ORDER OF BUSINESS

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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 9 December 2020

The House met in a hybrid proceeding.

Noon

Prayers—read by the Lord Bishop of Newcastle.

Arrangement of Business

Announcement

12.06 pm

The Deputy Speaker (Lord Lexden) (Con): My Lords, the Hybrid Sitting of the House will now begin. Some Members are here in the Chamber, 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. Oral Questions will now commence. Please will those asking supplementary questions keep them no longer than 30 seconds and confined to two points. I ask that Ministers' answers are also brief.

Public Service Broadcasting Online

Question

12.07 pm

Asked by ***Baroness Bonham-Carter of Yarnbury***

To ask Her Majesty's Government, further to the report by Ofcom *Review of prominence for public service broadcasting: Recommendations to Government for a new framework to keep PSB TV prominent in an online world*, published on 4 July 2019, what plans they have to introduce legislation to ensure the prominence of public service broadcasting online.

The Parliamentary Under-Secretary of State, Department for Digital, Culture, Media and Sport (Baroness Barran) (Con): My Lords, the Government have engaged with industry to understand fully the impact of Ofcom's proposals. The Government remain committed to acting on Ofcom's prominence recommendations, including through legislation. It is important to ensure that prominence and the balance of benefits and obligations support a sustainable future for PSBs. These issues will be considered as part of the Government's strategic review of PSBs, where we will set out the next steps next year.

Baroness Bonham-Carter of Yarnbury (LD) [V]: I thank the Minister as usual for her response. As stated in the Ofcom report published yesterday on the future of PSBs, viewers of all ages and backgrounds value PSBs. The pandemic has highlighted their importance as trusted sources of information, and they will be equally important going forward into a vaccine phase. Does the Minister agree that for viewers to continue to be able to find them across the many connected, ever-changing devices that now exist, they must be kept prominent? Otherwise, what we watch will be dictated by the interests of global tech giants, not the interests of our society. Can the Minister reassure the House that this Government are committed to public service broadcasting, that they recognise that introducing this long overdue—

The Lord Privy Seal (Baroness Evans of Bowes Park) (Con): I am afraid that the noble Baroness has been asking for far too long. Can we please keep questions short to give everybody a chance to ask their question?

Baroness Bonham-Carter of Yarnbury (LD) [V]: Introducing this long-overdue legislation is urgent, and can the Government say when they will do so?

Baroness Barran (Con): I will reiterate briefly what I have already said. Of course, the Government have always supported public service broadcasting and continue to do so. We are conducting a wide-ranging review but remain committed to legislation in relation to prominence.

Baroness Wheatcroft (Non-Afl) [V]: [*Inaudible*]—of high-quality content made for UK viewers, including current affairs. Does the Minister agree that this is more important than ever, given the amount of dangerous propaganda that those with malign intent pump out on social media all the time?

Baroness Barran (Con): I apologise for missing the beginning of the noble Baroness's question, but I think I got the gist of it. The Government take the importance of impartial and reliable information very seriously and, conversely, are clamping down on both misinformation and disinformation. We have made good progress with social media platforms in this regard.

Lord Lucas (Con) [V]: My Lords, I am absolutely delighted by the Minister's answers. Does she share with me a sense that us all having access to a truthful public service broadcaster is an essential component of keeping a coherent and happier society?

Baroness Barran (Con): My noble friend is right to raise these points. Indeed, it is vital also for practical reasons. Given that just over half of the country have access to a video-on-demand service, the role of public service broadcasting continues to be crucial.

Baroness Lane-Fox of Soho (CB) [V]: I declare my interests as noted in the register. Can the Minister confirm that there will be a special focus, in the strategic review that she mentioned was coming next year, on the relationship between young people, public service broadcasting and information? With just two minutes a day of news being consumed by people under 24, as other noble Lords have said, the case for the veracity of news and the authenticity of information is so important at the moment.

Baroness Barran (Con): The noble Baroness is absolutely right. Obviously, I do not want to pre-empt the conclusions of that committee, but across our legislative programme, the importance of children and young people is pre-eminent.

Baroness Bakewell (Lab) [V]: I raise the issue of urgency about this Bill. There are two circumstances: first, as has already been said, the increasing abundance of fake news on the internet, with its damaging effect on public trust; and, secondly, the renewed sense of civic responsibility engendered by the pandemic. Will

[Baroness Bakewell]
the Minister press the Government to seize the moment and give a date when they will introduce this timely legislation?

Baroness Barran (Con): The Government are actively working with all the key stakeholders in this area—the TV manufacturers, the platform gatekeepers and the PSBs—but I am afraid I cannot give the noble Baroness a firm date.

Lord McNally (LD) [V]: My Lords, will the Minister explain to some of the Neanderthals on her own Benches in both Houses that support for public service broadcasting includes giving stimulation to our creative industries and giving voice to our national and regional identities in ways that the big international providers never will?

Baroness Barran (Con): I have to say that I do not recognise the description the noble Lord gives of either my noble friends behind me or those in the other place. We absolutely recognise the importance of the investment in our creative industries of more than £2.5 billion a year, and we welcome that and the ecosystem it creates.

Lord Moylan (Con): In my Neanderthal fashion, I have found that BBC Radio 3 has been the mainstay of my life for nearly 50 years, and it is a fine example of public service broadcasting—but in recent years, it has been infected by a sort of relentless "wokeness", which is a tendency of public service broadcasting. So, while my noble friend is correctly promoting the prominence of PSB, will she also tell us what she will do to try to ensure that it meets a broader spectrum of cultural views across the country?

Baroness Barran (Con): I think that the new director-general, and the most recent comments from Ofcom, support my noble friend's final comments about breadth of views and voices—but, as he will know, the BBC is editorially independent, so decisions in relation to Radio 3 rest with it.

Lord Stevenson of Balmacara (Lab) [V]: My Lords, British broadcasting relies to a significant extent on keeping the funding of public service broadcasters separate. What response do the Government have to the decline of mass advertising revenue referred to in the Small Screen: Big Debate consultation recently issued?

Baroness Barran (Con): I think that the Government are concerned, and my colleagues in the department are working closely with the industry to understand what a sustainable funding model looks like.

Viscount Colville of Culross (CB): The Ofcom report on prominence recommends that there may need to be new obligations to ensure the continued availability of PSB on-demand content to viewers equivalent to the existing "must offer" and "must carry" rules for PSBs' traditional channels. What plans are there for the PSBs to be available on a wide range of platforms?

Baroness Barran (Con): The noble Viscount raises an important point. Our view is that this is a commercial issue between the platforms and the PSBs. We will continue to keep it under review as part of our review of the future of PSBs, but in the meantime, we hope that they will achieve a mutually beneficial arrangement.

Lord Roberts of Llandudno (LD) [V]: Will the Minister give an assurance that the Welsh language channel S4C will be defended? We depend on the licence fee and are supported by up to £70 million a year in that way. If there is any change, Welsh language broadcasting will be in danger.

Baroness Barran (Con): I can reassure the noble Lord that this will be part of the review that we will be undertaking.

Lord Blunkett (Lab): My Lords, I would be deeply comforted by the noble Baroness's answers this afternoon if it were not for the fact that the Secretary of State has established an advisory panel whose membership, it has to be said, is imbalanced in terms of their experience, history and known views. What is the role of the advisory panel in sustaining PSB when so many members are clearly against it?

Baroness Barran (Con): I am grateful to the noble Lord for his question. Obviously, all members of the panel are expected to operate in an independent capacity. Their role is in relation t advising the Government on some of the complex policy issues, with which the noble Lord is very familiar.

The Deputy Speaker (Lord Lexden) (Con): My Lords, all supplementary questions have been asked and we will now move to the next Oral Question.

Covid-19: Community Resilience Development Framework

Question

12.18 pm

Asked by ***Lord Lancaster of Kimbolton***

To ask Her Majesty's Government what plans they have to review the Community Resilience Development Framework in the light of the COVID-19 pandemic.

Baroness Scott of Bybrook (Con): The ongoing response to the Covid-19 pandemic demonstrates the value of a whole-community approach when responding to emergencies. As envisaged in this framework, we have seen how collaboration between local and central government, statutory responders, businesses and the voluntary and community sector, community networks and individuals have been critical to our response. While there are no current plans to review the 2019 framework, we continue to learn lessons and evolve processes and guidance as appropriate.

Lord Lancaster of Kimbolton (Con): I declare my interest as chairman of the Reserve Forces 2030 review. One of the few silver linings of the pandemic has been

the response from more than 200,000 members of the public to be an NHS volunteer. The challenge, though, has been utilising them, partly because of a federated NHS and partly because of a relatively frail national resilience structure. With that in mind, what plans do the Government have to harness this latent appetite to volunteer, perhaps with the creation of a civilian or NHS reserve—a reserve that right now could be used to help vaccinate the general public?

Baroness Scott of Bybrook (Con): My Lords, our reservists, particularly in the military, have been playing a key role in the Covid-19 response. They form an exceptional group of people with specialist skills and expertise. Veterans from the Armed Forces have also played an active role in their communities and their skills have been used to really good and practical effect during the pandemic. As we have said before, including Army volunteers and others who have been working with the NHS, some 500,000 people signed up and by early April, over 750,000 had done so and started undertaking tasks such as delivering medications from pharmacies, driving patients to appointments and making regular phone calls to isolated individuals. The Government continue to review the learning from the emergency and the ways to improve these arrangements.

Baroness Verma (Con): My Lords, does my noble friend agree that while many local authorities have done a very good job, some will really need to revisit their own resilience plans? It may be that once the pandemic is over, the Government could consider whether all local authorities should revisit their resilience plans and look at how they interacted with all the other stakeholders to see where the gaps were. Perhaps my noble friend could then give guidance to local authorities on what is expected of them during any future pandemic or crisis.

Baroness Scott of Bybrook (Con): My noble friend is right. The *Community Resilience Development Framework* is only that—a framework of things. We need to take the learnings from the pandemic, so far, and to work with local government representatives to ensure that they have learned the lessons.

Lord Walney (Non-Afl): My Lords, volunteers give their time for free, but the act of organising volunteers is often a considerable expense. Will the Government look at a windfall tax on those few companies which have done exceptionally well through the crisis to help to unleash and support the goodwill of the British people in this regard?

Baroness Scott of Bybrook (Con): The Government have no plans for a windfall tax, but I can say that we have pledged £750,000 to help those in the voluntary, community and social enterprise sectors so that they could continue their work to support the country during the coronavirus outbreak.

Lord Reid of Cardowan (Lab): My Lords, as the Minister has said, the relationship between the centre, local government and communities before, during and after a crisis event is absolutely essential. This has been reinforced during the Covid problem. Does she agree that true resilience means learning from crises and moving forward far more than the engineering definition of resilience, which comes back to the status quo ante? How will she implement learning the lessons of the Covid crisis as regards moving forward?

Baroness Scott of Bybrook (Con): In June this year, the Prime Minister asked Danny Kruger MP to set out proposals to sustain exactly this: the community spirit and high levels of voluntary action undertaken during the Covid crisis. The report was published in September as *Levelling Up Our Communities: Proposals for a New Social Covenant*. The Government are looking at the recommendations made in that report.

Baroness Jolly (LD) [V]: My Lords, in reviewing the work of various community resilience development forums in my region, there seems to be a considerable variety of activities and information being made available to the public; it is likewise for the approaches followed by the different forums. What does the Minister expect them to achieve and is she content that they are all operating as anticipated?

Baroness Scott of Bybrook (Con): I cannot comment on the particular area of the noble Baroness, but I think that the framework this document provides should be used by the whole of the voluntary sector. There is a key role for local government in this area to hold the ring around local groups and organisations to make sure that they all work to the same end.

Baroness Sherlock (Lab) [V]: My Lords, during the pandemic, many faith groups have played a key role in supporting not just their own members but their local communities. They can also be key conduits for information. I declare an interest as an Anglican priest. I read recently that the London Resilience Forum is the only one to have a faith panel. Does the noble Baroness know of any others? If not, would the Minister like to meet the London chair of the panel to learn from that experience?

Baroness Scott of Bybrook (Con): I know about London, but I do not know of any others that have faith from outside the capital. It is an important area, and I would be very willing to meet the noble Baroness to talk further about this issue.

Baroness Warsi (Con) [V]: My Lords, following on the question put by the noble Lord, Lord Reid, have the Government made an assessment of outstanding examples of the implementation of the *Community Resilience Development Framework* during the Covid-19 pandemic, and will they publish examples of best practice as learning tools? I note the recommendations made in the Kruger report, but will they also publish the best examples as a learning tool for others?

Baroness Scott of Bybrook (Con): We have many examples of really good practice. At the moment, the Covid pandemic is taking up so much time but I am sure that, at the end of it, the relevant department will make known all the good practice that is happening and which can be learned from.

Baroness Jones of Moulsecoomb (GP) [V]: Presumably, the framework will need some bolstering after Covid, and perhaps some extra resources. I am thinking in particular of things such as broadband. I heard the noble Baroness say that there would be an extra £750,000, but quite honestly that does not sound very much when we look at the whole framework and the valuable work being done. Are the Government thinking about improving the provision of resources for the framework?

Baroness Scott of Bybrook (Con): There are no plans to improve resources for the framework at the moment. The noble Baroness will understand that a lot of government money has gone into all of our communities through the pandemic, but we keep everything under review.

Baroness Ritchie of Downpatrick (Non-Afl) [V]: My Lords, the Minister referred to gaining information from the best practice that has been deployed during the pandemic. Will she take on board the best practice in volunteering from the devolved Administrations as part of any review into the *Community Resilience Development Framework*?

Baroness Scott of Bybrook (Con): I should say to the noble Baroness that we certainly will do that. In fact, I have here information that Monkstown Boxing Club in Northern Ireland has delivered a wide range of programmes to those young people who are the hardest to reach, aiming to help them through the difficult times due to the coronavirus.

Baroness Uddin (Non-Afl): My Lords, I thought that I would not get my question in. We have witnessed examples of immense heroism among individuals and groups who have shown courage in the face of this harsh pandemic. Given that that is selfless kindness towards the well-being of others, will the Government commit to ensuring that sufficient funds are made available, as raised by other noble Lords, for the third sector to ensure that groups are financially strengthened to match the ambition of the *Community Resilience Development Framework*? In the process, will they empower and promote women's leadership in its delivery?

Baroness Scott of Bybrook (Con): The noble Baroness is right. We hope that come the end of this spring and over the summer, a lot of people involved in the community and charity sectors will be out working again and getting their money as they normally do. In the meantime, we are keeping all of this under review.

The Deputy Speaker (Lord Lexden) (Con): My Lords, the time allowed for this Question has now elapsed.

Gambling Legislation

Question

12.29 pm

Asked by ***Lord Browne of Belmont***

To ask Her Majesty's Government what plans they have to review gambling legislation.

The Parliamentary Under-Secretary of State, Department for Digital, Culture, Media and Sport (Baroness Barran) (Con): My Lords, yesterday, we launched the first part of our comprehensive review of the Gambling Act with a call for evidence. This is an opportunity to take stock of the significant changes in gambling over the last 15 years. We want to make sure we have the right protections and balance between protecting freedom of choice and preventing harm. I take this opportunity to thank all of your Lordships who served on the Select Committee for your work.

Lord Browne of Belmont (DUP): My Lords, I welcome the reply from the Minister. She will be well aware of the significant concern in this House and wider society about the extent of gambling advertising. As was pointed out by the excellent Select Committee report on the social and economic impact of the gambling industry, the industry currently spends around £1.5 billion a year on advertising. This budget has substantially increased since 2014. Will the Minister first confirm that, in the review promised by the Government, strong consideration will be given to implementing restrictions on gambling advertising to protect individuals who are vulnerable to gambling-related harm? Secondly, will the noble Baroness confirm that the needs of Northern Ireland will be considered, as many forms of advertising are UK-wide rather than solely regional? Finally, can I ask the noble Baroness—

Noble Lords: No!

Baroness Barran (Con): I reassure the noble Lord that progress is being made on advertising. We are calling for evidence on gambling advertising but obviously, we cannot prejudge the findings. The Advertising Standards Authority's strict rules on gambling advertising apply across the UK.

Lord Sikka (Lab) [V]: My Lords, I welcome the review, but have concerns about the process. The overreliance on written evidence will inevitably favour gambling companies and marginalise their victims. I urge the Government to establish a truth commission or Leveson-type inquiry, so that victims of the industry and their families can speak and corporate executives who have failed to honour their promises can be examined under oath.

Baroness Barran (Con): The noble Lord raises an important point: that the voices of those who have been harmed by gambling should be heard. My right honourable friend the Secretary of State's first meeting on this issue was with a group of experts with lived experience of gambling harm. I encourage the noble Lord to submit evidence to this review.

The Lord Bishop of St Albans [V]: My Lords, I am disappointed that significant parts of this statement read as if they were written by the gambling industry. They pointedly ignore the facts with which we began the Select Committee report: there are nearly 400,000 problem gamblers, plus 60,000 teenage gamblers, materially affecting the lives of 2 million people. Just last night, I spent an hour with yet another family who had lost their 25 year-old son to gambling. As most of the recommendations in the Select Committee report do not require legislation, why will Her Majesty's Government not implement them now to save lives? Why will they not make this a public health issue?

Baroness Barran (Con): I am genuinely surprised and disappointed that the right reverend Prelate reads the response in that light, because we felt that the report of the committee on which he sat was extremely helpful and constructive, and it has informed much of our thinking. There is no way that we are waiting for the outcome of the review to make gambling safer, and we have announced significant progress in the last 12 months, in particular the ban on gambling with credit cards.

Lord Smith of Hindhead (Con): My Lords, I refer to my interests as set out in the register. Does the Minister agree that part of this welcome review should consider the benefits of the gambling industry in terms of employment, revenue to the Exchequer and social cohesion—for example, racecourses and lotteries? A measured, regulated industry, as proposed in recommendations by the Lords Select Committee, would avoid the increase in black market activity that has been so prevalent in, for example, Sweden.

Baroness Barran (Con): The Government absolutely recognise the contribution of the industry, both in fiscal terms and in employing some 100,000 people in this country. We also acknowledge that a gap exists between what the industry says it is doing and what some people experience, and we are keen to close that.

Baroness Benjamin (LD): My Lords, it is well established that loot boxes are a form of gambling disguised within innocent online games played by children. This is a huge concern to parents and child protection organisations, including the Children's Commissioner, who want loot boxes to be defined by gambling legislation as a form of gambling. What plans do the Government have to regulate loot boxes within any new legislation?

Baroness Barran (Con): I thank the noble Baroness for her question. We are delivering on our manifesto commitment to tackle issues around loot boxes. We had a bespoke call for evidence, which closed on 22 November. We plan to publish our response early in 2021.

Lord Flight (Con): My Lords, I share the late Lady Thatcher's discomfort with gambling, which encourages addictive behaviour. I am keen to know what key issues the Government intend to focus on in the forthcoming review of gambling legislation.

Baroness Barran (Con): I thank my noble friend for his question. The scope of the review is intentionally very broad, because we aim for it to be as comprehensive as possible. The three big priorities are the safety of children and whether we are doing everything we can to keep them safe; whether advertising and promotion are carried out responsibly; and whether the regulatory framework is working. Within that, are the voices of those with lived experience being heard?

Lord Alton of Liverpool (CB): My Lords, I congratulate the noble Lord, Lord Browne of Belmont, for his dogged and unwavering determination, which led to the creation of GAMSTOP and 173,000 people availing themselves of online exclusion. But this does not extend to unlicensed websites. Will the Government therefore consider further action to deal with this, specifically IP blocking, which would protect British people from unlicensed illegal sites? They could at least include this in the review the Minister mentioned.

Baroness Barran (Con): I reassure the noble Lord and my noble friend Lord Smith of Hindhead that unlicensed sites are within the scope of the review. Again, we very much encourage your Lordships and those in your networks to submit evidence.

Lord Stevenson of Balmacara (Lab) [V]: My Lords, following up on the question of the noble Lord, Lord Alton, I welcome the review, although we point out that it is much delayed. I particularly like the Secretary of State's description of it as a review of

"analogue law in a digital age".

As has been said, most of the egregious behaviour is caused by companies that, in this digital age, operate outwith our boundaries and so evade UK statute. We will surely need digital solutions in a digital world. Will the review really consider this issue?

Baroness Barran (Con): I am slightly puzzled by the noble Lord's question, because the location of the gambler is where our laws prevail, irrespective of the location of the operator.

Lord Foster of Bath (LD) [V]: My Lords, what further evidence do the Government need to establish a gambling ombudsman?

Baroness Barran (Con): The Government continue to have an open mind about the role of an ombudsman. We are gathering evidence on the effectiveness of the regulatory regime and whether the Gambling Commission needs additional powers. We are already considering commission proposals for a fees uplift.

Baroness Finlay of Llandaff (CB) [V]: My Lords, I declare my role as chair of the Commission on Alcohol Harm. Do the Government recognise the link across addictions, which means that we need an alcohol strategy linked to a gambling strategy? Almost a quarter of gamblers drink as a coping mechanism while gambling, but the incidence is much higher among veterans. When they drink they also use gambling to enhance the adrenaline buzz, which fuels both addictions.

Baroness Barran (Con): The Government absolutely understand that different addictions are interrelated and interconnected. The Department of Health is leading on a cross-issue addiction strategy.

The Deputy Speaker (Lord Lexden) (Con): My Lords, the time allowed for this Question has elapsed.

Criminal Justice: Imprisonment for Public Protection

Question

12.40 pm

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

To ask Her Majesty's Government what plans they have to implement the reforms proposed in the report by the Prison Reform Trust *No life, no freedom, no future*, published on 3 December.

Baroness Scott of Bybrook (Con): My Lords, the Government will carefully consider the recommendations in this report. However, it is not the case that those serving an IPP sentence have no life, future or freedom. Many have been released and not been recalled. When it has been necessary on public protection grounds to recall offenders, HM Prison and Probation Service works closely with them so that the Parole Board may direct their re-release as early as it is safe to do so.

Lord Brown of Eaton-under-Heywood (CB) [V]: My Lords, I confess that I am disappointed in that response. Surely it is obvious that the recall provisions are causing real problems and injustices and need radical change. How many IPP prisoners following release have completed 10 years on licence? Of these, how many have applied for the cancellation of their licence and how many have been successful?

Baroness Scott of Bybrook (Con): The latest published figures show that the unreleased IPP population now stands at 1,895. It has reduced from 2,223 at the end of September. This is good progress, especially as, at its highest in 2012, it was 6,000. I do not have time to give the other figures, but I will make sure the noble and learned Lord gets them in writing.

Lord Brooke of Alverthorpe (Lab): My Lords, does the Minister agree that there is much neighbouring European evidence of successful rehabilitation of all prisoners? They do far better than we do on recidivism. Not only do they do better, but they do it in a more humane way and, in many instances, much more cost-effectively than in this country. In those circumstances, would the Minister be prepared to invite some of our more successful present European partners, such as the Danes, to come here to help us look at what is happening with our prison system and help us to improve it to the kind of standards they have?

Baroness Scott of Bybrook (Con): I will take the noble Lord's ideas back to the service. However, we have to remember that an offender serving an IPP sentence may only be recalled when they have breached their licence conditions in such a way as to indicate that they are a risk, and that risk has escalated to a level where they can no longer be safely managed in the community.

The Deputy Speaker (Lord Lexden) (Con): The noble Lord, Lord German, has withdrawn, so I call the noble Lord, Lord Farmer.

Lord Farmer (Con): My Lords, the report recognises the importance of good family and other relationships in stabilising the inherently unstable IPP situation. It particularly mentions how meaningful activities such as caring responsibilities provide positive structure. The report also frequently refers to released IPP prisoners becoming resettled into good family and other relationships, only for these to be re-ruptured when they are recalled. How is the protective factor against reoffending, that is rehabilitative relationships, taken into account in recall decisions?

Baroness Scott of Bybrook (Con): My Lords, when considering recalling an offender whose escalating behaviour is increasing their risk, offender managers will look at all protective factors in place, especially where there is a positive, family support network, and ensure that any safe alternatives to recall are explored in the first instance.

Lord Woolf (CB) [V]: My Lords, I declare my interest as set out in the register, in particular my position as a joint life president of the Prison Reform Trust. Does the Minister accept the contents of that report and, if so, does she agree that, unfortunately, the method of getting rid of this category of prisoners is being too long delayed?

Baroness Scott of Bybrook (Con): As I have previously answered, the Government are carefully considering the recommendations in the report—it came out only on 3 December—and we will look at those recommendations for the future.

Lord Ponsonby of Shulbrede (Lab) [V]: My Lords, the Minister seems to be defending the recall of prisoners when they breach their licensing conditions. As the report has shown, this is a source of an increasing number of prisoners on IPP sentences being recalled for breaching their licence conditions. Is the Minister satisfied that there needs to be a positive review of this way back into the prison sentence, given that the offenders who are recalled are very often mentally unstable and need protection as much as they are offending criminals?

Baroness Scott of Bybrook (Con): My Lords, public protection has to be the Government's priority. We recall only those IPP offenders who are assessed by those managing them to present an unacceptably high risk of harm to the general public. However, of course, we need to look after them, support them, and try to help them to stay out in our communities safely.

Baroness Burt of Solihull (LD) [V]: With recalls in the last five years up 187%, at this rate some IPP prisoners will never be released, under a sentence that has now been discredited and abolished. Does the Minister agree that we need to give them a date after which they cannot be recalled, as well as proper resources, planning and support to help redress the injustice they face every day and to help them make a success of life on the outside?

Baroness Scott of Bybrook (Con): As I have said before, public protection has to be our priority. We recall only those assessed as posing an unacceptably high risk of harm to the general public. But of course we need to keep this under review, and each of those cases and offenders is under constant review.

The Deputy Speaker (Lord Lexden) (Con): The noble Baroness, Lady Fox of Buckley, has withdrawn, so I call the noble Lord, Lord Vaizey of Didcot.

Lord Vaizey of Didcot (Con): My Lords, imprisonment for public protection is a controversial sentence, but it has been seen to be effective in some high-profile

cases. Has the European Court of Human Rights looked at these sentences and, if so, what conclusions has it drawn?

Baroness Scott of Bybrook (Con): My Lords, the European Court of Human Rights and the Supreme Court looked at the IPP issue and found that detention post-tariff for such sentences could become arbitrary and thus unlawful where no opportunity for progress was provided by the state, but the state does provide opportunity for progression.

Lord Loomba (CB) [V]: My Lords, what assessment have the Government made of the number of IPP prisoners who have mental health issues, especially recall prisoners? Were they suffering from mental health issues before or because of their prolonged incarceration? Also, what specialist mental health provision, tailored to their specific, individual needs, are the Government providing for IPP prisoners before and after release?

Baroness Scott of Bybrook (Con): My Lords, every prisoner has a key worker, who is dedicated to providing support for individual prisoners at any one time and to understanding any mental health issues they might have. We are also working very closely with the Samaritans in our prisons and are supporting the excellent Listener scheme, in which prisoners help other prisoners with emotional support. Last but not least are the four key priorities for prison managers' training. This includes an awareness training module for staff to identify and recognise mental health issues and substance misuse.

The Deputy Speaker (Lord Lexden) (Con): My Lords, the time allowed for this Question has now elapsed.

12.51 pm

Sitting suspended.

Arrangement of Business

Announcement

1 pm

The Deputy Speaker (Lord Russell of Liverpool) (CB): The Hybrid Sitting of the House will now resume. I ask Members to respect social distancing.

Malaria Vaccine

Private Notice Question

1.01 pm

Asked by ***Lord Young of Norwood Green***

To ask Her Majesty's Government, further to reports on the development of a vaccine for malaria, what plans they have to continue to meet their commitment to spend £500 million a year on addressing that disease.

The Minister of State, Foreign, Commonwealth and Development Office (Lord Ahmad of Wimbledon) (Con): My Lords, I assure the noble Lord and your Lordships' House that fighting malaria remains a priority for this Government. There are very encouraging reports, and I congratulate all scientists in the UK who are working towards the creation of a malaria vaccine, which would be a game-changer in our vital work to protect the world's most vulnerable people. While my department does not directly fund malaria vaccine development, our investments in multilateral organisations, including the WHO, UNITAID and Gavi, have recently contributed to a malaria vaccine candidate being piloted in three African countries.

In relation to the spending review, as communicated only last week, we are working through our priorities and will be able to provide more information in the new year. That said, we are very much concerned that the knock-on effect of the Covid-19 pandemic poses additional threats to progress on malaria and other causes of preventable death. We cannot stand by and let that happen.

Lord Young of Norwood Green (Lab) [V]: My Lords, I thank the Minister for his reply; I am sure that he agrees with me that the impact of malaria, which kills hundreds of millions of people a year, is probably even worse than the Covid epidemic. Can the Minister confirm that the proposed reduction in the overseas aid budget will not impact the funding of this vital vaccine, which will do so much to enhance the reputation of the United Kingdom overseas?

Lord Ahmad of Wimbledon (Con): My Lords, I assure the noble Lord that I agree with him on the important work being done to fight malaria. I have been involved in some of the direct campaigns, and we have seen some real benefits. In relation to the ODA reduction, as I said during the repeat of the Statement in your Lordships' House, there will of course be reductions across the budgets. We are currently working through that exercise, and my right honourable friend the Foreign Secretary is overseeing that programme directly. At this point, as I have said previously in your Lordships' House, I cannot give the specific commitment that the noble Lord desires, but we hope to have more details of our planned priorities and spend, including important projects that we will be protecting, in the new year.

Lord Hunt of Kings Heath (Lab) [V]: My Lords, this is very good news. My question to the Minister is on the cost of a vaccine. The Government have signed up to COVAX to allow for the procurement of vaccines at a negotiated price from vaccine manufacturers on behalf of low and middle-income countries. Will this apply to the malaria vaccine we have been discussing, and will costs to the countries involved—mainly in sub-Saharan Africa—be kept as low as possible?

Lord Ahmad of Wimbledon (Con): My Lords, I agree with the noble Lord—the leadership that the United Kingdom has shown on equitable access in relation to the Covid-19 vaccine certainly underlines our commitment to ensuring that the most vulnerable receive the vaccines required. On the malaria vaccine, we are working closely through multilateral organisations that fund the continued research into and testing of those vaccines. I agree with the noble Lord that, as these vaccines come online, it is important that they are game-changers on the ground, particularly in the most vulnerable parts of the world. We should ensure the lowest cost for and equitable access to those vaccines.

Lord Dholakia (LD): My Lords, I thank the Minister for his opening Answer. Whenever there are cuts in public expenditure, the first things to suffer are projects connected with research and training. I read very carefully the letter circulated yesterday by the Foreign Secretary, where he stated his hopes to provide £10 billion, which takes into account funds to fight coronavirus, Ebola and malaria. Can the Minister indicate what proportion of funds would be available for tackling malaria and ensuring that the valuable work that has already been done is not lost? What is the likely impact of cuts on projects related to malaria in future years?

Lord Ahmad of Wimbledon (Con): My Lords, I cannot provide the noble Lord with specific numbers at this time, as I said earlier. However, we should not only bank but look to strengthen the successes we have seen in fighting malaria. We have provided extensive support, particularly through multilateral organisations, and there are programmes that work well, but some perhaps not as well as was intended. In the ODA scoping exercise, we want to ensure that we get the maximum return from the important steps forward and progress made in relation to malaria so that we can continue to provide the most vulnerable in the world with the support that they need—particularly because, as the noble Lord knows, those impacted by malaria are primarily in the developing world and are often mothers, pregnant women and young children.

Lord Randall of Uxbridge (Con) [V]: My Lords, I am delighted to hear of Her Majesty's Government's ongoing commitment in this area. If or—let us hope—when this breakthrough comes, can my noble friend assure me, as best he can, that our commitment will even include delivering the vaccine to make sure that it gets to all those countries? Will we work with other European countries to ensure that it goes to those sub-Saharan countries?

Lord Ahmad of Wimbledon (Con): My Lords, my noble friend is right to raise the issue of distribution—I must admit that, with the current pandemic, I have been on a journey in relation to learning about the distribution of vaccines. I have also been heartened to hear that some of the areas I cover, such as Pakistan, have been able to take what they have learned from polio eradication and vaccine distribution and apply that to the Covid-19 challenge. It is that kind of positive engagement and learning that we need to ensure that, in the hardest parts of the world, including sub-Saharan Africa, where it is difficult to reach the most vulnerable, we can apply what we have learned and work with key partners to deliver that vaccine, as my noble friend said.

The Lord Bishop of Newcastle: My Lords, I thank the Minister for his answers, but I am concerned that he cannot give a specific commitment that the cut in development aid funding will not affect the development of this vaccine. Does the Minister accept that now is not the time to slacken our efforts in the search for a malaria vaccine? We have heard of hopeful improvements before, but history has shown that complacency and slacking off will lead to resurgence. Does the Minister also accept that it has taken us more than four decades to recover the ground lost since the 1970s, when anti-malaria funding dried up, and that we must not allow that to happen again?

Lord Ahmad of Wimbledon (Con): My Lords, the right reverend Prelate raises an important element and I share her concern about ensuring that we can sustain the wins that have been gained in fighting malaria. As I said in an earlier answer, one primary area where we have seen success is in our work through multilateral organisations. I am sure that the right reverend Prelate will have seen our recent support for the World Health Organization, for example, and the strength, political capital and money that we have put behind the COVAX Facility. Only this morning, I was talking to a Caribbean Foreign Minister about ensuring equitable development of the vaccine—we of course support that, but we also support equitable access and distribution, which will remain priorities. I have been very open about not being able to give specific figures for our support for fighting malaria because we are still going through that process at the FCDO, but we do provide support through various funds that will continue to support the important development of the vaccine, I am sure.

Lord Collins of Highbury (Lab): My Lords, this is a success story. The UK is the second largest international donor to the fight against malaria: 7.6 million lives have been saved, and 1.5 billion cases prevented. The noble Baroness, Lady Sugg, in her recent letter to Boris Johnson, emphasised that cutting the UK aid budget from 0.7%,

"will diminish our power to influence other nations to do what's right."

In 2021 we have the UK-hosted G7, and CHOGM in Rwanda—an opportunity for this country to give a clear lead. Will the Minister at least say that we will continue to give such a lead, and to encourage other countries to step up in the fight against malaria?

Lord Ahmad of Wimbledon (Con): My Lords, when the noble Lord started, calling this a success story and talking about facts and figures, I thought he had stolen a bit of my brief. I certainly welcome his strong support and recognition. Equally, he is right to challenge the Government to ensure that, with the major conferences and other events happening next year, we continue to show leadership, through our chairing of the G7, through CHOGM—as Commonwealth Minister, that is very much at the top of my mind—and, of course, as we lead into COP 26. I assure the noble Lord that, although there is a reduction in the financial spend, we should, and will, continue to leverage all our diplomatic capability to ensure that these important priorities are understood, not just by our development partners but by other member states, in their support for various campaigns around the world. As the noble Lord knows, we remain among the most generous of G7 donors in such development support and leadership.

Baroness Uddin (Non-Afl): My Lords, I declare my interest as an officer of the APPG for Africa and a member of the APPG on Malaria and Neglected Tropical Diseases. I commend to the House the work of Jeremy Lefroy and his leadership in persisting with these causes. I welcome the progress that the Oxford

team is making in leading on the vaccine, and in proposing to test nearly 5,000 children in Africa. Every two minutes a child dies of malaria in Africa. Is the Minister aware of the concerns expressed publicly by some African leaders who have said that they will co-operate fully on the basis of there being the highest standards of compliance and consent, to safeguard any such trials? I thank the Minister for his assurance to the House. Will he continue to assure our partners across Africa, to address any scepticism?

Lord Ahmad of Wimbledon (Con): My Lords, the noble Baroness is right. As I said to the noble Lord, Lord Collins, it is important that, although we have taken difficult decisions on the ODA budget, we continue to leverage to the utmost our diplomatic efforts to ensure that the priorities remain, through our multilateral partners and other member states, and to provide the level of reassurance that she described in Africa, and also compliance within countries. I have been proud of the leadership we have shown, particularly in supporting multilateral funds such as the Global Fund, which, as she knows, has helped to fight AIDS, TB and malaria, particularly in Africa. We are proud of that relationship. As we look at revising our ODA spend, I assure the noble Baroness that, when we face challenges on finance, we will look to bridge those gaps through extensive diplomatic engagement and leadership in that area.

The Deputy Speaker (Lord Russell of Liverpool) (CB): My Lords, all supplementary questions have been asked. We will now pause for a minute before the next piece of business.

Covid-19 Vaccine Rollout

Commons Urgent Question

The following Answer to an Urgent Question was made in the House of Commons on Tuesday 8 December.

"At 6.31 this morning, 90 year-old Margaret Keenan from Enniskillen, who lives in Coventry, became the first person in the world to receive a clinically authorised vaccine for Covid-19. This marks the start of the NHS's herculean task to deploy vaccine right across the UK, in line with its founding mission to support people according to clinical need, not ability to pay. This simple act of vaccination is a tribute to scientific endeavour, human ingenuity and the hard work of so many people. Today marks the start of the fight back against our common enemy, coronavirus.

While today is a day to celebrate, there is much work to be done. We must all play our part in suppressing the virus until the vaccine can make us safe and we can all play our part supporting the NHS to deliver the vaccine across the country. This is a task with huge logistical challenges, including the need to store the vaccine at ultra-low temperatures and the clinical need for each person to receive two doses 21 days apart. I know that the NHS will be equal to the task. I am sure we will do everything we can—everything that is humanly possible—to make sure that the NHS has whatever help it needs.

The first 800,000 doses of the Pfizer/BioNTech vaccine are already here in locations around the UK and the next consignment is scheduled to arrive next week. This week, we will vaccinate from hospitals across the UK. From next week, we will expand deployment to start vaccinations by GPs and we will vaccinate in care homes by Christmas. As more vaccines come on stream in the new year, we will open vaccination centres in larger venues, such as sports stadiums and conference halls.

People do not need to apply. The NHS will get in touch at the appropriate time and, when that time comes, we have one clear request: please step forward for your country.

I want to thank all those involved—the international team of scientists; the globally respected regulator, the Medicines and Healthcare Products Regulatory Agency; Public Health England; the vaccines taskforce; all the volunteers who took part in the trial; all those who have come forward for vaccination so far; and all those who will do so in future. Months of trials involving thousands of people have shown that this vaccine works and is safe. By coming forward, you are taking the best possible step to protect yourself and your loved ones, and to protect the NHS.

Help is on its way and the end is in sight—not just of this terrible pandemic but of the onerous restrictions that have made this year so hard for so many—but even while we can now see the route out, there is still a long march ahead. Let us not blow it now. There are worrying signs of the virus growing in some parts of the country, including parts of Essex, London and Kent. Over the coming weeks and months, we must all keep following the rules to keep people safe and make sure we can get through this safely together."

1.13 pm

Baroness Thornton (Lab) [V]: My Lords, I thank the Minister for the update today, and for the all-Peer Zoom this morning. Yesterday was indeed a happy day. Like many—including, it has to be said, the Secretary of State—I was very moved watching 90 year-old Margaret Keenan get her jab. However, the challenges of the next period are as acute as, if different from, those of the period we have been through. What is the timeline for the vaccine for people who are housebound or shielded and cannot attend a surgery, whether in a hospital or anywhere else? It seems that the easy distribution of the vaccine will depend on the new vaccines coming down the track: communications will be vital. So what communications will people receive, from whom? Will that be centrally controlled or will it be done locally—through primary care networks, for example?

The Parliamentary Under-Secretary of State, Department of Health and Social Care (Lord Bethell) (Con): My Lords, the JCVI has laid out a clear prioritisation, putting great emphasis on those who are older—the over-80s—and those in social care. The vaccine will come to those who are shielded and living alone in due time. There are some practical issues with getting the current Pfizer vaccine: as the noble Baroness undoubtedly knows, it has to be kept in cold storage and comes in substantial batches, which are difficult to break up. The initial cohort consists of 6 million people—those over 80, and the health and social care workers who support them. As for future vaccines, those looking forward to being vaccinated should wait for a letter.

[LORD BETHELL]
Those letters are being organised through their doctors, who have access to a central database to ensure that the right prioritisation takes place.

Baroness Jolly (LD) [V]: I thank the Minister for the update, and join others in celebrating the good news about the first vaccines, administered yesterday. There are several different vaccines in the pipeline. Can the Minister update us on where they all are in terms of MHRA approval, and therefore of uptake? How many doses will be available, and by when?

Lord Bethell (Con): My Lords, the precise status of each vaccine in the pipeline is a subject for dialogue between the vaccine manufacturers and the MHRA. I can tell the noble Baroness that we are extremely encouraged by the substantial number of vaccines in the pipeline. The safety data for all those for which we know the response is also extremely encouraging. AstraZeneca—the one that most eyes are on—is making good progress, but I am afraid that I cannot give a clear or confirmed time for when, or if, it will be authorised. As for doses, as the noble Baroness probably knows, we have committed to more than 320 million doses overall. The precise details of those are published on the Vaccine Taskforce website, and I would be glad to send her a link to that, so that she can get all the details.

Lord Bates (Con): I thank my noble friend for this very good news, and for his tireless work in keeping us informed. Throughout this crisis, we have been given an object lesson in who are truly the key workers in our society, such as those working on farms and in supermarkets, and those servicing utilities, cleaning streets, organising deliveries and keeping us safe. Will he ensure that this lesson is remembered when ordering the front of the queue for the rollout of the vaccine?

Lord Bethell (Con): I am grateful to my noble friend for his kind comments, and endorse his tribute to all those who have worked hard on the front line of healthcare during this pandemic, at times putting themselves at risk, and all of them under great stress. We owe them enormous gratitude. The JCVI has made a clear priority list and advised that the first priorities for any vaccination programme should be the prevention of mortality and protection of healthcare staff and systems. Therefore the vaccine is being rolled out to the priority groups, including care home residents and staff, people over 80, and healthcare workers. They are the ones who will be at the top of the list, and that seems to me proportionate, fair and right. As we work through the later prioritisations, others in the population will have access to the vaccine.

Lord Bilimoria (CB) [V]: My Lords, many congratulations to the Minister, the Government, Kate Bingham and the Vaccine Taskforce on V-day, yesterday. Does the Minister agree that this has been possible only because of the collaboration, in just six months, between the private sector, the Government, the NHS, universities, including Oxford, and the pharmaceutical sector, including AstraZeneca? In due course, could business help to roll out the vaccines, through inoculations taking place in offices, factories and business premises, thus causing less disruption? The CBI, of which I am president, stands by, ready to help.

Lord Bethell (Con): I am enormously grateful to the noble Lord for his clear and heartfelt offer of help, and I completely endorse his comments. The collaboration between the NHS, the Government and business has been at the heart of our entire response to the pandemic. This collaboration has been termed the "triple helix"—a phrase that I like very much indeed. It is going to be at the heart of our building back of the healthcare system in the years ahead. On the noble Lord's kind offer, I remind him that when someone takes any medical treatment, including a vaccine, they have to have the space to take stock and recover from the excitement of the vaccine, and they have to be supervised in that space by someone with some kind of clinical experience. So, while his offer is kind, it is likely that vaccine distribution will be in locations where we can put clinical supervision.

Baroness Blackstone (Ind Lab): My Lords, do the Government intend to create some kind of vaccination passport, which will allow people to attend events across the UK and to travel to and from the UK without quarantine, if they have been vaccinated?

Lord Bethell (Con): My Lords, the noble Baroness raises an extremely intriguing prospect. If it is indeed the case that those who have been vaccinated are not themselves contagious and cannot transmit the disease, there is the possibility that the vaccination will enable them to do things that might not be open to other members of the public. However, it is too early to call that one. We do not have the scientific evidence to demonstrate that the vaccine stops any infectiousness. We are working hard to try to understand that better. If it can be proved, we will look at an enable strategy.

Lord McLoughlin (Con): My Lords, there have been many bleak days since the early part of this year, but yesterday was a day in which we can take great pride in the MHRA and all the people who were involved in bringing this vaccine quickly to the public in this country—the first in the world. In the past, a lot of criticism has been made of Kate Bingham. She has done a remarkable job in the way she has helped secure these vaccines from across the world. Will the Government be sure to learn the lessons of involving both private and public sectors in this remarkable venture?

Lord Bethell (Con): My Lords, I join my noble friend in paying tribute to the MHRA. We have all seen Dr June Raine in her flawless presentation and authoritative explanation of the authorisation of the vaccine. I am sure that, if she were here today, she would want to pay tribute to her incredibly impressive team at the MHRA. I also pay tribute to Kate Bingham and the very many people from the private sector who have stepped forward during the pandemic to take on onerous, sometimes high-profile and sometimes quite controversial roles in the battle with the pandemic. We owe them a huge tribute. They have often given up their time and put themselves in the firing line in order to do this work. Kate Bingham has massively delivered

for this country and I am grateful to all those, either at the top of the task force or in local community work, who have stepped forward and made a contribution to our battle against Covid.

Lord Foulkes of Cumnock (Lab Co-op): My Lords, does the Minister agree that there is a danger that this whole programme could be undermined by crazy anti-vaxxers, particularly on social media? What are the Government going to do to counteract this?

Lord Bethell (Con): The noble Lord speaks truth, as always, in this matter. We are naturally concerned by those who deliberately seek to undermine the integrity of the vaccine. However, we are also considerate of those who might have quite reasonable questions about it or might even have what we think are completely unreasonable ones but who have concerns about, or an emotional response to, vaccines. Our approach is to handle those doubts and questions in a dialogue and a spirit of partnership, trying to answer them as considerately as we possibly can. Yes, we should battle those who seek to profit commercially or are acting in their own narrow, national interest to undermine the vaccine in this country. But we want to answer those in our community who have questions about the vaccine with transparency, reassurance and science.

The Deputy Speaker (Lord Russell of Liverpool) (CB): My Lords, the time allowed for this question has now elapsed. We will pause for a minute before the next item of business.

Social Security Co-ordination (Revocation of Retained Direct EU Legislation and Related Amendments) (EU Exit) Regulations 2020

Motion to Approve

1.25 pm

Moved by ***Baroness Stedman-Scott***

That the draft Regulations laid before the House on 16 November be approved.

Considered in Grand Committee on 8 December.

Motion agreed.

Ecodesign for Energy-Related Products and Energy Information (Amendment) (EU Exit) Regulations 2020

Motion to Approve

1.26 pm

Moved by ***Lord Callanan***

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

Relevant document: 32nd Report from the Secondary Legislation Scrutiny Committee. Considered in Grand Committee on 1 December.

Motion agreed.

1.27 pm

Sitting suspended.

United Kingdom Internal Market Bill

Commons Reasons and Amendments

1.31 pm

The Deputy Speaker (Lord Russell of Liverpool) (CB): My Lords, hybrid proceedings will now resume. If the capacity of the Chamber is exceeded, I will immediately adjourn the House.

Proceedings on consideration of Commons reasons and amendments on the United Kingdom Internal Market Bill will follow guidance issued by the Procedure and Privileges Committee. When there are counterpropositions, any Member in the Chamber may speak, subject to the usual seating arrangements and the capacity of the Chamber. Any intending to do so should email the clerk or indicate when asked. Members not intending to speak on a group should make room for Members who are. All speakers will be called by the chair. 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. Leave should be given to withdraw. When putting the Question, I will collect voices in the Chamber only. Where there is no counterproposition, the Minister's Motion may not be opposed. If a Member speaking remotely intends to trigger a Division, they should make this clear when speaking on the group. Noble Lords following proceedings remotely, but not speaking, may submit their voice, content or not content, to the collection of the voices, by emailing the clerk during the debate. Members cannot vote by email. The way to vote will be via the remote voting system. We will now begin.

Motion A

Moved by ***Lord True***

That this House do not insist on its Amendments 1, 19 and 34 to which the Commons have disagreed for their Reason 1A.

1A: Because they will create legal uncertainty, which would be disruptive to business.

The Minister of State, Cabinet Office (Lord True) (Con): My Lords, I think I was on mute for a minute there.

Lord Adonis (Lab): Keep it up.

Lord True (Con): The noble Lord, Lord Adonis, says, "Keep it up," which I know is a sentiment widely shared.

Noble Lords have been clear throughout this debate on the UKIM Bill about their support for the common frameworks programme. I and the Government concur with those sentiments, and I reiterate the Government's continued commitment to this programme. I am pleased to update your Lordships' House that common frameworks are developing well, with three common frameworks currently undergoing scrutiny, including in this House's committee chaired by the noble Baroness, Lady Andrews—and I pay tribute to the work of that committee.

[LORD TRUE]

Out of 33 active frameworks that we have assessed are needed, we expect 30 to be agreed by the end of 2020, mostly on a provisional basis, pending scrutiny by Parliament and the devolved legislatures. The common frameworks programme embodies the value of strong intergovernmental relations. The UK Government and the devolved Administrations are working together, on a voluntary basis, in support of cohesive policy-making and the maintenance of high standards in respect of the specific needs of each part of the United Kingdom. While recognising this positive collaboration, we also need to acknowledge that the common frameworks were always intended to cover only a specific set of issues where powers are returning from the EU. Common frameworks support the functioning of the internal market but cannot by themselves ensure regulatory coherence across the whole UK internal market—the key objective of this Bill.

As the Government have noted previously, we regret that the Scottish Government walked away from the joint internal market workstream in spring 2019. Detailed engagement has been ongoing with the Welsh Government and Northern Ireland Executive on this Bill, and the door remains open to the Scottish Government to join similar discussions. The strength of common frameworks lies in the fact that they provide a forum for discussion and collaboration, with a clear process in defined, but limited, areas of economic activity.

I thank the noble and learned Lord, Lord Hope, for his thoughtful participation in these debates and his considered amendments to the Bill, which he has now partly revised. I welcome also the willingness of the noble and learned Lord to continue engaging in discussions on his amendment with my officials, and those discussions may continue. I also thank noble Lords opposite for their own positive and practical engagement on these matters. Discussions are not exhausted on this topic.

On the amendment before us, I have cautioned your Lordships' House before, regarding the previous amendments of the noble and learned Lord, Lord Hope, that this would lead to the automatic disapplication of the market access principles, creating a very broad exclusions regime, with the attendant risk of legal uncertainty for businesses and consumers over whether or not market access principles apply. It is the Government's view that these revised amendments carry similar risks, both in terms of the breadth of the exclusions regime created and in terms of uncertainty. As to the latter, there is no safeguard against different Administrations attempting to implement different interpretations of an agreement into law, potentially leaving the courts in the unenviable position of adjudicating on these different interpretations. That would potentially invite the courts into the common frameworks process, which is inherently undesirable. Any such litigation would create great uncertainty for businesses. This is clearly not in keeping with the need to provide certainty and a stable trading environment for citizens across our United Kingdom.

Moreover, Amendments 1B and 1C prevent the introduction by a UK Government Minister of any new regulations in any area where discussions under the common frameworks process are ongoing. This could mean Ministers would be unable to act, even if there were an urgent need to do so.

Furthermore, the common frameworks programme was established in 2017 to manage the powers returning from the EU in devolved policy areas. In line with its voluntary nature, the programme has not been put into legislation, although I recognise that it is alluded to, in very high-level terms, in Schedule 3 to the European Union (Withdrawal) Act.

While it is a key objective of common frameworks to agree consistent regulatory standards, in practice there may be cases where divergent approaches could be agreed through a common framework. If this were to occur, and if any such divergence were to fall within the scope of the market access principles, we should be in no doubt that the market access principles set out in the United Kingdom Internal Market Bill would apply. That means that even if divergence is agreed in a particular case, it would not prevent businesses from other parts of the United Kingdom being able to sell their products into the relevant place. This would ensure that barriers to trade are not erected through the introduction of divergent policy.

We must also bear in mind that common frameworks are jointly owned by the devolved Administrations. Any proposal to legislate them into this Bill would need to take into account their involvement in the programme. While we have carefully reflected on the arguments made in both Houses, I respectfully suggest that the approach put forward in these amendments brings significant drawbacks to the Government's ability to provide businesses with the certainty they need to operate across the United Kingdom.

I and colleagues across government look forward to discussing further with our partners in the devolved Administrations and devolved legislatures to consider how we can capitalise on the ways of working agreed through common frameworks. We are also working towards concluding a joint review of intergovernmental relations with the devolved Administrations. These future intergovernmental structures will create a system that secures strategic co-operation and proactive discussions on shared areas of interest, including on common frameworks. The aim of any reform will be to establish an adaptable and effective system of governance that facilitates building long-term trust between the Governments.

We are, of course, open to considering how to put these areas of co-operation on a sustainable footing for the longer term, complementing the IGR review and the market access principles to the benefit of citizens and businesses. I beg to move.

Motion A1 (as an amendment to Motion A)
Moved by ***Lord Hope of Craighead***

At end insert "and do propose Amendments 1B, 1C and 1D in lieu—

1B: After Clause 1, insert the following new Clause—

"**Common frameworks process**

(1) The United Kingdom market access principles shall not apply to any statutory provision or requirement that gives effect to a decision to diverge from harmonised rules that has been agreed through the common frameworks process and states that its purpose is to give effect to that agreement.

(2) No regulations may be made by a Minister of the Crown with regard to a matter that is under consideration under the common frameworks process while that process in relation to that matter is still in progress.

(3) The common frameworks process is a means, established by the Joint Committee on European Negotiations, by which a measure of regulatory consistency to enable a functioning internal market within the United Kingdom may be mutually agreed between the United Kingdom and the devolved governments."

1C: After Clause 18, insert the following new Clause—

"**Common frameworks process**

(1) The mutual recognition of authorisation requirements shall not apply to any regulatory requirement that gives effect to a decision to diverge from harmonised rules that has been agreed through the common frameworks process and states that its purpose is to give effect to that agreement.

(2) No regulations may be made by a Minister of the Crown with regard to a matter that is under consideration under the common frameworks process while that process in relation to that matter is still in progress."

1D: Clause 25, page 19, line 13, at end insert—

"( ) Section 22(2) does not apply if the provision has been agreed through the common frameworks process and it states that its purpose is to give effect to that agreement.""

Lord Hope of Craighead (CB) [V]: My Lords, I shall speak to Amendments 1B, 1C and 1D in lieu, which are in my name. The fact that the Commons have disagreed with your Lordships' amendments about the common frameworks process is a matter for regret, but they were good enough to give us a clear and simple reason. They told us that these amendments

"will create legal uncertainty, which would be disruptive to business."

I took this to be a reference to what the noble Lord, Lord True, said when we were considering these amendments on Report:

"No one could know for sure, until the question was determined in court, whether a regulation or requirement, or a combination of regulations or requirements, was giving effect to an agreement reached within a common framework. There would be uncertainty as to whether or not the market access principles applied".—[*Official Report*, 18/11/20; col. 1466.]

I can well understand the point that he and the other House are making, but I do not believe that it is incapable of being met, so I have added some words of my own to each of my proposed amendments to suggest how this could be done.

To be given the benefit of exemption from the market access principles, the regulation or exemption would need to state that it was their purpose to give effect to an agreement that had been reached through the common frameworks process. It seems to me that, if this were to be stated in the relevant instrument, the problem that the noble Lord referred to on Report would be overcome: everyone would know what it was and why it was there. No doubt there are other and better ways of achieving this, but my point is that, if there really is a will on the Government's part to make this system work, a solution can be found. There is surely room for further discussion on this issue; the door must be kept open—and I am encouraged by some of the points that the noble Lord, Lord True, made in opening this debate. I ask your Lordships to invite the Commons to think again, and I will be seeking the opinion of the House as to whether we should do so.

Of course, I appreciate that it is not as simple as that; there are important issues of principle too. The Parliamentary Under-Secretary, Paul Scully, said in the other place that to legislate the common frameworks into the Bill would,

"not sit well with the flexible and voluntary nature of the common frameworks programme."—[*Official Report*, Commons, 7/12/20; col. 601.]

I appreciate, as has been stressed many times in your Lordships' House, that the whole purpose of the market access principles is to enable traders to do business without internal barriers to trade across the UK. It is about

"a job, someone's pay packet at the end of the week",

as the Minister, Chloe Smith, said in evidence to the Common Frameworks Scrutiny Committee last week. But it all depends on how this is done.

It has to be said, too, that the issues about market access and the problems it may create are not all one way. Spare a thought for the trader in one of the devolved nations who has to have regard to the relevant requirements of all the other parts of the UK when considering whether a good which does not meet his own area's requirements is something that he can properly market in his own area. It is not sunshine and roses for everyone.

Simply to say that the market access principles do not apply to an agreed decision, which is all that my amendments seek to do, does not seem to me to justify the concern that this would deprive the common frameworks process of its flexible and voluntary nature. Whether a given policy divergence really does create what amounts to a barrier, given its purpose, nature and effect, should be a matter for examination and assessment: that is what the common frameworks process is designed for. It is not about creating barriers, but about allowing for policy divergence in ways that are found, by agreement, to be consistent with the internal market.

1.45 pm

The problem with the interaction between the common frameworks process and the market access principles is that, in the case of the principles, as the noble Lord has just been telling us, there is no room for any such assessment at all. Take a divergence about food standards, for example. Suppose that a devolved Administration secures agreement for a higher standard for its own purposes, because it has been judged that, overall, it was not a barrier to trade across the UK. This would be an agreement to which the UK Government were party, because that is what the process requires. It would, nevertheless, be incapable of effective enforcement because of the automatic application of the UK Government's own market access principles—that is the conundrum. Traders from other parts of the UK who had no regard for the higher standard could simply ignore it, irrespective of how simple and easy it was to comply with. That is not where we should be going.

A balance needs to be struck here, if devolution is to be respected. We want this to be a United Kingdom internal market, after all. That means that it needs to suit the needs and aspirations of all parts of the UK, which may differ greatly from one part to another.

[Lord Hope of Craighead]
This is particularly the case for the smaller nations, which are part of our United Kingdom family. That is why the common frameworks process is so important and why it deserves support. Ministers still say they support it, but they have to do what they say. The two approaches to the creation of the internal market need to be reconciled if that process is to remain alive. That should not be beyond the Government's reach, if they are willing to put their minds to it. I very much hope that they are, and that discussions on these important issues can continue before it is too late. I beg to move.

The Deputy Speaker (Lord Russell of Liverpool) (CB): The following Members in the Chamber have indicated that they wish to speak: the noble Lords, Lord Moylan and Lord Naseby. I call the noble Lord, Lord Moylan.

Lord Moylan (Con): My Lords, I recognise that the noble and learned Lord, Lord Hope of Craighead, and many other noble Lords who have spoken on this subject burn with a passion for their interpretation of the rule of law, but I ask them to reflect that statute needs to have more than principle; it needs to have practicality in its application as well. The effect of these clauses resubmitted in lieu would be to tie the Government's hands completely in response to any emergency that might arise in Northern Ireland which might need to be addressed. I look in vain in these clauses for any exception that says, for example, "in an emergency", "if the food in the supermarkets runs out" or "if there is a shortage in supply of medicines". In such cases, those matters, as I understand these clauses, would need to be addressed through the joint committee, and if the European Union was not willing to accept them, it would need to go through a lengthy process of arbitration. I do not believe that that is acceptable.

My second point relates to devolution and democracy in Northern Ireland. The effect of these clauses is to privilege a particular interpretation of a particular international treaty, the withdrawal agreement.

Lord Cormack (Con): You have got the wrong bit of the Bill.

Lord Moylan (Con): This is very much how I read the clauses, but if noble Lords generally feel that I have got the wrong bit of the Bill, then I shall subside at that point.

Lord Naseby (Con): My Lords, the news that my noble friend from the Front Bench gave us this afternoon is encouraging. Clearly, discussions have been taking place and issues have evolved from them. I do not think that any of us in your Lordships' House expected every single one of the agreements necessarily to be in a state to be written in and accepted in toto. To hear that 30 agreements have been agreed in broad principle is very encouraging news.

As someone who had a commercial life before coming into the political world, I wonder sometimes whether all your Lordships really understand. A chief executive—such as I was for a division of Reckitt and Colman Group—needs to know, as a certainty, what is happening. They cannot call in the company lawyer and say, "Well, it's no good, George, you telling me on the one hand this and on the other hand that." They have spent 15 months producing a new product—or whatever it may be. I sat as MP for an industrial town, Northampton, and I know the industrialists there. I spoke to them on Zoom only yesterday morning, and they are deeply concerned. I then read that the reason why the Commons have disagreed with our Amendments 1, 19 and 34 is

> "Because they will create legal uncertainty, which will be disruptive to business."

I also reflect that I had the privilege—as some of my noble friends in the Chamber did—of being in the other place. They are elected by the people. They have close contact with industry and commerce. When I am told, in writing, that it will be disruptive to business and that is why these Motions A and A1 are before us, I accept it. We have done our part. We are a Chamber that asks people to reflect. We have done that bit and we have done it well. The time comes, at a certain point, when you have to decide one way or the other. In my judgment, Her Majesty's Government have got it right at this point.

The Deputy Speaker (Lord Russell of Liverpool) (CB): Two other Members in the Chamber have indicated that they wish to speak—the noble Lords, Lord Adonis and Lord Foulkes, and I will call them in that order. I call the noble Lord, Lord Adonis.

Lord Adonis (Lab): My Lords, in respect of the point made by the noble Lord, Lord Naseby, that because the Commons has given a view we should therefore immediately defer, the proposition is shown to be totally absurd by what is happening with amendments we will consider later. Between the Commons itself expressing a view on Monday and your Lordships meeting today, the Government have changed their mind. We have the unprecedented situation where a Minister of the Crown will move from the Dispatch Box in this House—maybe it will be the noble Lord, Lord True; I cannot wait to watch this performance take place—that this House do insist on its amendments when, 48 hours ago, a Minister of the Crown in the other House moved that the Commons should disagree with the House of Lords. If the noble Lord, Lord Naseby, is concerned that we should respect the will of the House of Commons, since its will appears to change every day at the moment—in response to the invitation of Her Majesty's Government to take stock of negotiations in Brussels—I think our duty to the Government is to send back everything at the moment. This will give them maximum flexibility to disagree with themselves over the remaining four days of this week. Then let us see how the cards fall next Monday.

These are not trivial matters; they go to the fundamental integrity of the United Kingdom and our relationship with the European Union. I strongly urge your Lordships, in respect of all these amendments, that we obey the precautionary principle. If we are not sure whether there is an impediment to the proper conduct of negotiations or the flexibility that we wish to give the Minister and his colleagues in these negotiations with the President of the European Commission, we should send everything back so that the Government

have the maximum opportunity to disagree with themselves over the next week. Let us see where we are thereafter.

The House holds the noble and learned Lord, Lord Hope, in extremely high regard—there is nobody who has a greater grasp of the technicalities of the issues we are addressing. We pay huge tribute to him and his colleagues, and the assiduous attention that they have given to the Bill's passage in this House. He made a very good technical response to the Minister. In his Amendment 1B, the words at the end of his proposed new subsection (1),

"and states that its purpose is to give effect to that agreement"

make it absolutely clear that any divergence will be within the framework of the common frameworks process. Therefore, it cannot be outside it under the terms of the noble Lord's own amendments. The only issue—which I think the Minister raised; we are all very fair-minded on this side of the House and give full credit to the noble Lord where he makes persuasive arguments—is what happens if the discussions, during the conduct of which it is not possible to make regulations under the terms of the amendment from the noble and learned Lord, Lord Hope, do not come to a conclusion. The noble and learned Lord's proposed new subsection (2) says that:

"No regulations may be made by a Minister of the Crown with regard to a matter that is under consideration".

I hope that the noble and learned Lord can respond to that point when he replies. As a non-lawyer—I fear to tread in this territory—my reading of this is that all parties to these discussions would have to behave reasonably. It would not be open to a devolved Government to keep these discussions going interminably purely for the purposes of avoiding a Minister of the Crown making a regulation. I say that with some trepidation, because I am surrounded by former Supreme Court judges and Lord Chief Justices who will no doubt correct me on that, but if that is the case, then I think that would give a response to the Minister.

I make no apology for speaking on this as a non-lawyer, because behind all this is a very important political point, which comes shining through the words of the Minister. The basic, fundamental political point is whether devolution is a reality or a sham. If it is a reality, then it is absolutely right that the devolved Governments exercising powers conferred by Parliament—these are no small matters—should have the right to engage in discussions about a proper level of divergence that meets the market access principles and common frameworks process. Indeed, I am amazed at how restrained these amendments are because, under their terms, it is not the case that devolved Governments can simply diverge, even if their opinion of the law is that they have the power to diverge. They can only do so with the consent of the United Kingdom Government, because there has to be consensus between them. The amendment from the noble and learned, Lord Hope, in fact gives a very narrow scope—but proper scope, it seems to me—for the devolved Governments to engage in discussion with the United Kingdom Government to meet the United Kingdom market access principle on a level of divergence that would meet their judgment of what is appropriate for their own territories. The noble and learned Lord gave the example of higher food standards. This seems be the absolute minimum, consistent with the proper operation of devolution.

The big underlying point, which we might as well flush out, because it is right to be frank about this, is that the Prime Minister believes—he has told us this—that devolution was Blair's biggest mistake. He does not believe in these devolved institutions at all; we know that because he has told us. It is always a good idea when people tell you what they think that you take them at their word. He has said that setting up the Scottish Parliament and Welsh Assembly was Blair's biggest mistake. If we take the view that the establishment of the institutions was itself a fundamental mistake, then of course we would not want to give them any power—even to discuss divergence—because we would think it was a mistake. If on the other hand we take the view that devolution is a beneficial part of the arrangements for the governance of the United Kingdom—which I take to be the official policy of the Government as opposed to the unofficial view of the Prime Minister—without which that governance might well collapse, then it seems to me that the provision that noble and learned Lord, Lord Hope, sets out, for a proper level of divergence to reflect the judgment of devolved governments on what is appropriate for their territories, is absolutely right. We should therefore insist on these amendments.

2 pm

Lord Foulkes of Cumnock (Lab Co-op): My Lords, I fear I will not match the eloquence of my noble friend Lord Adonis. I want to say a few words in support of the amendments of the noble and learned Lord, Lord Hope, who, like me, is a member of the Common Frameworks Scrutiny Committee. In his introduction, the noble Lord, Lord True, praised my noble friend Lady Andrews and the work she and that committee are doing. If the Minister thinks that method is so good, why does he not accept these amendments, since that is exactly what we are suggesting—that it should be done through the kind of procedure that the Common Frameworks Scrutiny Committee is operating? He argued that case, perhaps without realising it, from the Dispatch Box.

Yesterday, I heard a very interesting debate. On one side of the argument was the importance of a level playing field for an internal market—I thought the United Kingdom Government were arguing that case in relation to what we are discussing—and on the other was sovereignty. I thought it might have been the Scottish or Welsh Governments arguing that case. Ironically, it was not. It was the European Union arguing the case for a level playing field for a common internal market and the United Kingdom Government arguing the case in relation to sovereignty. The tables were turned; the UK Government were arguing entirely the opposite case in relation to Europe that they argue in their dealings with the devolved authorities. It is about time they got their arguments right on this and accepted these amendments.

Lord Fox (LD): My Lords, throughout the many stages of this debate the common frameworks have been given a great airing, and many of your Lordships

[LORD FOX]
have had a chance to vent their respective spleens on the subject. The Minister may be assured that my spleen will remain in its correct place, because enough has been said on this issue. Indeed, he observed that noble Lords have made their position on common frameworks very clear.

However, the Government have shown great and steadfast reticence on writing the common frameworks into this Bill. The Minister set out two reasons for this: first, in stressing the word "voluntary" on several occasions, and, secondly, in pointing out the joint ownership of the common frameworks between the devolved authorities and the UK Government. On that second point, have any of the devolved authorities objected to the idea that common frameworks might be a central part of this Bill? I have seen no such objections; on the contrary, I have seen enthusiasm from devolved authorities that this might happen.

The noble and learned Lord, Lord Hope, has drafted elegant solutions in his amendments, which I hope will help the Minister to get to the point of developing the market access principles and legal certainties—the Minister is right to say that we need them—but, at the same time, respecting the devolution settlement. A key part of the noble and learned Lord's speech was about the respect that this Bill needs to show the devolved authorities and the settlement that has developed so well there.

I was impressed by the tone of conciliation and consultation in the Minister's speech, which came through in his "willingness to continue to engage in discussion", "discussions have not been exhausted" and "open to discussions." The door is clearly open. With respect to the noble Lord, Lord Naseby, there is time; I have also worked in commercial life and while the idea of "give me certainty" works within a correct framework, if it is "give me certainty" in a terrible framework then I would rather wait a little and get it right. We can spend a few days more getting this right. A vote for the amendments set out by the noble and learned Lord, Lord Hope, would help keep the door open for those discussions with the Minister. That is why we on these Benches will vote in favour of them.

Baroness Hayter of Kentish Town (Lab): My Lords, the noble Lord, Lord Callanan, who is not in his place, will recall how the notion of common frameworks evolved. When we were doing the first EU withdrawal Bill, it became clear that some of the powers returning from Brussels clearly fell within devolved competences. It was therefore widely understood that, to facilitate trade throughout the UK—as otherwise the rules affecting trade could vary across internal borders—a coming together of the four authorities would be needed to balance the desire for, and attraction of, diversity on some issues with a UK-wide approach to help consumers buy and manufacturers trade throughout the UK.

From the start, it was agreed that such frameworks would be established where needed—this is from the communiqué of October 2017—to

"enable the functioning of the UK internal market, while acknowledging policy divergence"

and that they would

"respect the devolution settlements … based on established conventions … including that the competence of the devolved institutions will not normally be adjusted without their consent".

That was how they started. At that point, a list of 24 such topics was identified and, with a lot of good faith and hard work—as the Minister has acknowledged—the initial three Governments, along with Northern Ireland officials, set to work developing frameworks to enable that UK-wide market to flourish while recognising where devolved authorities might want variations for whatever reason. The basis was, to quote again from that document signed by the Government, to

"maintain, as a minimum, equivalent flexibility for tailoring policies to the specific needs of each territory".

Until this Bill arrived, everyone thought the system was working well and would accomplish the aims set for it. This should have been something for the Government to celebrate, as they have today, and build on. In fact, it has never been necessary for the Government to use their powers to freeze any devolved authority's power—a provision set into the EU withdrawal Act, as the Minister has acknowledged.

While this Bill was anticipated, the expectation was that it would help build a new, in some ways unique, internal market across our four nations, which have different cultural, linguistic, agricultural, geographical and industrial histories and realities. Above all, our nations have different democratic governance structures from when we ceded rule-making to the EU in 1973. We thought the Bill would respect the devolution realities while helping to ensure the UK market could prosper for the sake of business, consumers, workers, our agriculture and the environment. As we now know, in addition to throwing the quite unnecessary Part 5 grenade into the Bill, the Government pulled the pin on another grenade by writing into the Bill market access rules which trumped, rather than solidified, the common frameworks programme, which is an approach built on consensus rather than top-down diktat.

The noble and learned Lord, Lord Hope, is not a revolutionary. He is not trying to rewrite the Bill. He is seeking—rather like the Minister himself through the Government's welcome amendments on regulation-making, for which we will give thanks when we come to them later—to start the process on the basis of consent across the four devolved authorities, and, where that is not possible, leaving it to the UK Parliament, rightly, to legislate. We support a union, and therefore we support Parliament's right at that point to have its proper role. But we start with consent, and then move to Parliament. What we do not support is starting here in Parliament and government, rather than with the four-party common frameworks. So, we welcome the noble and learned Lord's upending of the procedure, starting with common frameworks and, where or if those do not work, using the market access approach of the Bill in areas obviously otherwise within devolved competencies.

I think we would all warn the Government to be very careful about clawing back decisions from our now quite long-established devolved settlements. I find today's vote in the Senedd, by 36 to 15, to deny legislative consent to this Bill extraordinarily regrettable. It is an important Bill; it is not a small one. That was denied because of the message sent to Wales and the other devolveds by the rejection in the Commons last

night of this approach. So we need a backstop for any failure to agree, but we fail to understand that what should be a backstop has become the starting gun.

The amendments in the name of the noble and learned Lord, Lord Hope, build on the devolution settlements and would support and strengthen the union, as well as creating what we all want: a successful, growing internal market, which is in the interest of all our citizens. We are right, as my noble friend Lord Adonis said, to ask the Government very genuinely to think again about the mechanisms—because that is what we are discussing—to achieve what I think we all want.

The noble and learned Lord, Lord Hope, said that if there was a will on the Government's part to make the common frameworks system work, a solution could be found. Along with the noble Lord, Lord Fox, we concur with that view, and we welcome the Minister's saying that "discussions are not exhausted"—I think I have his words right. Whether we do that by recognising the framework system in some way, extending the freeze provisions when they expire or pausing market access for a period of time while the four Governments talk—as mentioned by my noble friend Lord Adonis—there is surely a way forward. But I believe we need this amendment to get the Government to continue to discuss, so that we can get that way forward. That is why we will support the noble and learned Lord, Lord Hope, when he calls for a vote shortly.

Lord True (Con): My Lords, I am grateful to all those who have contributed to this short debate and for the general tone of the interventions made. I was of course intrigued by the noble Lord, Lord Adonis, who emerged as a tribune of the people in this august senatorial assembly with his powerful oratory—a latter-day Gaius Gracchus, who said that your Lordships should reject everything sent to us by another place as a constructive contribution to law-making. I would respectfully give to the noble Lord, and indeed to any others who may share his views, the advice I would give to an overweight gentleman like myself: rejecting some of what is set before you, whether it is legislation or food, may well be desirable from time to time, but to reject everything is not conducive to the health of the legislature or of an individual. I hope that rather "Radical Jack" approach will not carry too much weight on the Opposition Benches.

I preferred the broader tone of the debate, which, as I heard it, actually reflected this Government's resolve and the resolve of the parties represented in this place, at least—I cannot speak for down the Corridor: that all of us are committed to the security and future of this great union, to the common frameworks process and, as part of that, to hopefully developing further the next stage of inter-governmental relations, as I have explained to the House during the course of this Bill.

This Bill, however, works in tandem with the common frameworks programme by providing a broad safety net and additional protections to maintain the status quo of seamless intra-UK trade across all sectors of the economy, and there ought to be agreement on that in your Lordships' House. It will ensure maximum certainty for businesses and investors, both domestic and overseas. I agree with what my noble friend Lord Naseby said from his perspective and experience in business. I am sure all noble Lords at heart support that objective and understand the need for a coherent internal market.

2.15 pm

However, the broad approach of using common frameworks to disapply elements of the Bill, put forward by the noble and learned Lord, Lord Hope of Craighead, goes too far in our judgment and could lead to legal and regulatory uncertainty. Of course, as I said in my opening remarks—and as was picked up during the debate—the Government will continue to reflect further on these matters, not only within this Bill but more widely.

But the certainty provided by this Bill, which has been sent to us by the other place, is what businesses and citizens across the United Kingdom need. I hope your Lordships' House will come to agree that this is something we must provide.

Lord Hope of Craighead (CB) [V]: My Lords, I am grateful to all noble Lords who have contributed to this debate. I must say that I entirely agree with the noble Lord, Lord True, that we need to create and indeed preserve a coherent internal market. I do not think anything I said in my presentation, or anything in the aims I am seeking to achieve through my amendments, is in any way in conflict with that overriding aim. It is all a matter of finding a solution that is consistent with that and with the devolution system to which the noble Baroness, Lady Hayter, spoke so movingly this afternoon.

I think the noble Lord, Lord True, will agree that the noble Lord, Lord Adonis, did raise an interesting point about subsections (2) of my Amendments 1B and 1C. All I can say to the noble Lord is that I would rather not go into the details at this stage in the debate. It is, among all the things I have raised in my amendments, a subject for further consideration and discussion—if, as I hope, discussions will continue. It was with that aim that my amendment was framed for debate this afternoon.

I think we all know what the issues are; they have been thoroughly debated several times. It is time for a decision. With reference to Amendments 1B, 1C and 1D, I wish to test the opinion of the House.

2.18 pm

Division conducted remotely on Motion A1 (as an amendment to Motion A)

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Motion A1 (as an amendment to Motion A) agreed.

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Walker of Aldringham, L.
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2.30 pm

Motion B

Moved by ***Lord Callanan***

That this House do not insist on its Amendments 8, 9, 10, 11, 12, 13, 15, 16, 17, 18, 30, 31, 32, 33 and 56 to which the Commons have disagreed for their Reasons 8A, 10A and 15A, but do propose the following amendments in lieu—

Commons Reasons

8A: Because the omission of Schedule 1 by Lords Amendment No. 56 in consequence of replacing clause 10 with the new clause proposed by Lords Amendment No. 12 and the omission of powers to amend provisions of Parts 1 and 2 (including Schedules 1 and 2) by Lords Amendments Nos. 8, 9, 12, 17 and 30, would result in the Secretary of State being unable to respond quickly to the changing needs of the UK internal market.

10A: Because a number of the Lords Amendments were inconsistent with each other or with Lords Amendments proposing the deletion of powers to amend provisions of Part 1 or 2 and it is appropriate, following the restoration of those powers, for the Lords to reconsider the Lords Amendments.

15A: Because the consents required by it are inappropriate for guidance relating to matters which are not devolved in Scotland, Wales or Northern Ireland.

Amendments in lieu

8B: Clause 6, page 5, line 28, leave out "consult" and insert "seek the consent of"

8C: Clause 6, page 5, line 29, at end insert—

"(7A) If consent to the making of the regulations is not given by any of those authorities within the period of one month beginning with the day on which it is sought from that authority, the Secretary of State may make the regulations without that consent.

(7B) If regulations are made in reliance on subsection (7A), the Secretary of State must publish a statement explaining why the Secretary of State decided to make the regulations without the consent of the authority or authorities concerned."

8D: Clause 8, page 7, line 4, at end insert—

"(8A) Before making regulations under subsection (7), the Secretary of State must seek the consent of the Scottish Ministers, the Welsh Ministers and the Department for the Economy in Northern Ireland.

(8B) If consent to the making of the regulations is not given by any of those authorities within the period of one month beginning with the day on which it is sought from that authority, the Secretary of State may make the regulations without that consent.

(8C) If regulations are made in reliance on subsection (8A), the Secretary of State must publish a statement explaining why the Secretary of State decided to make the regulations without the consent of the authority or authorities concerned."

8E: Clause 10, page 7, line 25, at end insert—

"(4) Before making regulations under subsection (2), the Secretary of State must seek the consent of the Scottish Ministers, the Welsh Ministers and the Department for the Economy in Northern Ireland.

(5) If consent to the making of the regulations is not given by any of those authorities within the period of one month beginning with the day on which it is sought from that authority, the Secretary of State may make the regulations without that consent.

(6) If regulations are made in reliance on subsection (4), the Secretary of State must publish a statement explaining why the Secretary of State decided to make the regulations without the consent of the authority or authorities concerned."

8F: Clause 12, page 8, line 31, at end insert—

"(4A) Before issuing, revising or withdrawing guidance under subsection (4), the Secretary of State must consult the Scottish Ministers, the Welsh Ministers and the Department for the Economy in Northern Ireland."

8G: After Clause 12, insert the following new Clause—

"Duty to review the use of Part 1 amendment powers

(1) In this section "the Part 1 amendment powers" are the powers conferred by sections 6(5), 8(7) and 10(2) (powers to amend certain provisions of Part 1).

(2) The Secretary of State must, during the permitted period—

(a) carry out a review of any use that has been made of the Part 1 amendment powers,

(b) prepare a report of the review, and

(c) lay a copy of the report before Parliament.

(3) In carrying out the review the Secretary of State must—

(a) consult the Scottish Ministers, the Welsh Ministers and the Department for the Economy in Northern Ireland,

(b) consider any relevant reports made, or advice given, by the Competition and Markets Authority under Part 4, and

(c) assess the impact and effectiveness of any changes made under the Part 1 amendment powers.

(4) The permitted period is the period beginning with the third anniversary of the passing of this Act and ending with the fifth anniversary.

(5) If any Part 1 amendment power has not been used by the time the review is carried out, this section has effect—

(a) as if the report required by subsection (2), so far as relating to that power, is a report containing—

(i) a statement to the effect that the power has not been used since it came into force, and

(ii) such other information relating to that statement as the Secretary of State considers it appropriate to give, and

(b) as if the requirements of subsection (3) did not apply in relation to that power."

8H: Clause 17, page 12, line 43, leave out subsection (4) and insert—

"(4) Before making regulations under subsection (2), the Secretary of State must seek the consent of the Scottish Ministers, the Welsh Ministers and the Department for the Economy in Northern Ireland.

(5) If consent to the making of the regulations is not given by any of those authorities within the period of one month beginning with the day on which it is sought from that authority, the Secretary of State may make the regulations without that consent.

(6) If regulations are made in reliance on subsection (5), the Secretary of State must publish a statement explaining why the Secretary of State decided to make the regulations without the consent of the authority or authorities concerned."

8J: Clause 20, page 14, line 28, at end insert—

"(8A) Before making regulations under subsection (7), the Secretary of State must seek the consent of the Scottish Ministers, the Welsh Ministers and the Department for the Economy in Northern Ireland.

(8B) If consent to the making of the regulations is not given by any of those authorities within the period of one month beginning with the day on which it is sought from that authority, the Secretary of State may make the regulations without that consent.

(8C) If regulations are made in reliance on subsection (8A), the Secretary of State must publish a statement explaining why the Secretary of State decided to make the regulations without the consent of the authority or authorities concerned."

8K: After Clause 20, Insert the following new Clause—

"**Duty to review the use of Part 2 amendment powers**

(1) In this section "the Part 2 amendment powers" are the powers conferred by sections 17(2) and 20(7) (powers to amend certain provisions of Part 2).

(2) The Secretary of State must, during the permitted period—

(a) carry out a review of any use that has been made of the Part 2 amendment powers,

(b) prepare a report of the review, and

(c) lay a copy of the report before Parliament.

(3) In carrying out the review the Secretary of State must—

(a) consult the Scottish Ministers, the Welsh Ministers and the Department for the Economy in Northern Ireland,

(b) consider any relevant reports made, or advice given, by the Competition and Markets Authority under Part 4, and

(c) assess the impact and effectiveness of any changes made under the Part 2 amendment powers.

(4) The permitted period is the period beginning with the third anniversary of the passing of this Act and ending with the fifth anniversary.

(5) If either of the Part 2 amendment powers has not been used by the time the review is carried out, this section has effect—

(a) as if the report required by subsection (2), so far as relating to that power, is a report containing—

(i) a statement to the effect that the power has not been used since it came into force, and

(ii) such other information relating to that statement as the Secretary of State considers it appropriate to give, and

(b) as if the requirements of subsection (3) did not apply in relation to that power."

The Parliamentary Under-Secretary of State, Department for Business, Energy and Industrial Strategy (Lord Callanan) (Con): My Lords, this group covers the exclusions to the market access principles and delegated powers-.

I turn first to Amendment 8L and other consequential amendments relating to the exclusions from the market access principles. These amendments, to which the other place have already disagreed, would replace the current Clause 10 with an expansive list of aims, which could be used to justify creating trade barriers for

goods in the United Kingdom. The exclusions approach, as originally drafted, achieves a careful balance. It sits within the fundamental framework of the market access principles which protect the UK's highly integrated internal market, but allows the Government to remove very targeted and specific policy areas from scope so that they continue to operate for the particular conditions where they are needed under the bespoke constraints relevant to those circumstances. This targeted approach provides certainty to businesses while ensuring that important or high-risk policy areas, such as chemicals, pesticides or sanitary and phytosanitary measures, can operate effectively.

However, the protections and benefits of the internal market proposals would quickly begin to fade with an expansive list of exclusions for part 1. This would allow unnecessary trade barriers and unjustifiable costs to businesses and consumers. The Government's view is that a targeted list of exclusions in the Bill, combined with how the principles of mutual recognition and non-discrimination interact, is the best way in which to allow each part of the United Kingdom to meet its respective goals while avoiding unnecessary damage to the UK's internal market.

The noble Lord's amendment would not achieve that balance. Although the new list of exclusions that he has presented is slightly changed from his earlier amendment, the list remains very wide. It captures almost all kinds of public policy objectives, and only requires a new regulation "to make a contribution" to any of the aims in the list. This means that almost any regulation proposed by the UK Government or the devolved Administrations in future could be excluded from the scope of the market access principles. The Government reject the idea that a large list of exclusions is needed to preserve standards. The UK Government share with the devolved Administrations commitments to maintaining our existing high standards, whether environmental protection, animal welfare or consumer standards. We will continue to work together on these as a united kingdom as we leave the transition period. We should not forget that the Bill's design will continue to allow all Governments to innovate, so that new ideas can emerge—as they did with plastic bag charges, for instance—to build better and higher standards for us all, including in the many social policy areas that the noble Lord clearly is concerned about.

I turn to the amendments relating to delegated powers, which underpin the realisation of these market access principles and make sure that they continue to function as effectively as possible. Noble Lords will be aware that the Government's view remains that these key delegated powers are necessary. My colleague, Minister Scully, successfully argued in the other place that the amendments to remove these powers should be rejected. These powers will ensure that the system continues to evolve, facilitating frictionless trade across the United Kingdom. This will be necessary to react to developments in technology and regulation that cannot be foreseen at present. They also allow the Government to respond rapidly to business and wider stakeholder feedback—for example, to amend the list of exclusions, if implementation shows the need for adjustment.

It is important to note that any of these powers would require an affirmative procedure statutory instrument to be made in Parliament. This will ensure that there is full transparency on any changes and that MPs from all parts of the UK can scrutinise and vote on any changes. Furthermore, these powers are now supplemented by the comprehensive and reasonable package of amendments that we have proposed. This includes new amendments tabled ahead of this debate, giving more certainty on the role of the devolved Administrations in developing changes. I thank the noble Baroness, Lady Hayter, and the noble Lord, Lord Stevenson, for their constructive engagement on this matter.

We have listened to your Lordships' House carefully. Indeed, at Report, we removed the power for the Secretary of State to amend the list of statutory requirements which are in scope of the mutual recognition principle for goods. In this case, having looked again after hearing from your Lordships, we changed our position, having assessed that the removal of the power will not substantially undermine the operation and flexibility of the internal market system.

We have also retabled the Government's amendment from Report, removing the main affirmative power in relation to the exclusions to part 2. When the other place disagreed with this House's amendment, removing the main affirmative power and the draft affirmative power, both parts of that power were restored to the Bill. I am happy to make the change that I proposed in my amendment at Report once again. We have also proposed new amendments that give an enhanced role to devolved Administrations in relation to these powers, building on the model proposed by the noble Baroness, Lady Hayter, at Report and ensuring that agreement across all Administrations to the use of the power is achieved whenever possible. The Secretary of State will be required to seek the consent of the devolved Administrations prior to any use of this power. If consent is not provided within one month, the Secretary of State will be able to proceed without that consent but must publish a statement setting out the reasons for proceeding in this way. As this adapts the model that your Lordships previously supported, I hardly need to stress the merits of this approach, which ensures that the devolved Administrations have a say but not a veto. I am hopeful that this time noble Lords will support it. The noble Baroness, Lady Hayter, is nodding; we are in a good place on this one.

Thanks to government amendments introduced at Report that are retabled today, the impact and effectiveness of any use of these powers will be subject to review within five years. A report setting out the conclusions of that review must then be laid before Parliament. I hope this offers comfort to this House that we are taking seriously the concerns that have been raised, and we are working to address them constructively. The uses of the powers to make delegated legislation contained in parts 1 and 2 of the Bill will be scrutinised, not only when they are being laid before Parliament, but also in a more holistic way, after a suitable period has elapsed. This review will again give an opportunity for the devolved Administrations to provide their views.

I briefly address the power to issue guidance, to which we have deliberately taken a more distinct approach. Clause 12 explains that the Secretary of State may

[Lord Callanan]
issue explanatory guidance on the practical operation of the market access principles for goods. It is not a power to make or amend legislation and, therefore, it differs from other delegated powers in part 1 of the Bill. As part of this process, we will, of course, engage with all the relevant stakeholders, because we are committed to helping regulators and traders to understand the principles and make the best possible use of them. This includes the devolved Administrations, and we are including a legislative commitment to consult them before issuing, amending or withdrawing that guidance. Guidance will not change the rules themselves, so a requirement to seek the consent of devolved Administrations, as proposed for other powers, is not needed.

I urge your Lordships to support all the amendments to these powers, which I hope noble Lords will agree represent a reasonable approach. Crucially, they also enable the internal market system to remain up to date while ensuring the highest degree of scrutiny and accountability. I beg to move.

Motion B1 (as an amendment to Motion B)
Moved by ***Lord Stevenson of Balmacara***

Leave out from "12," to end and insert "15, 16, 17, 18, 30, 31, 32 and 33 to which the Commons have disagreed for their Reasons 8A, 10A and 15A, do propose Amendments 8B to 8D and 8F to 8K in lieu, do propose Amendment 8L in lieu of the words restored to the Bill by the Commons disagreement to Amendment 12 and do insist on its Amendments 13 and 56—

8L: Clause 10, leave out Clause 10 and insert the following new Clause—

"Exclusions from market access principles: public interest derogations

(1) The United Kingdom market access principles do not apply to, and sections 2(3) and 5(3) do not affect the operation of, any requirements which—

(a) pursue a legitimate aim,

(b) are a proportionate means of achieving that aim, and

(c) are not a disguised restriction on trade.

(2) A requirement is considered to pursue a legitimate aim if it makes a contribution to the achievement of—

(a) environmental standards and protection,

(b) animal welfare,

(c) consumer standards, including digital and artificial intelligence privacy rights,

(d) employment rights and protections,

(e) health and life of humans, animals or plants,

(f) protection of public health, or

(g) equality entitlements, rights and protections.

(3) A requirement is considered disproportionate if the legitimate aim being pursued in the destination part of the United Kingdom is already achieved to the same or higher extent by requirements in the originating part of the United Kingdom.""

Lord Stevenson of Balmacara (Lab) [V]: My Lords, I thank the Minister for his opening remarks and have listened carefully to his views. I will reverse the order in which he spoke and hope he will not mind and is able to follow.

I start with the question about powers, on which he ended. I thank him and his colleagues for the considerable time over the last few months—and increasingly the last few days—that they have provided to discuss this Bill and the wider context with which it engages. I confirm that we are happy to continue to talk in the remaining time. We agree with the stated aims of the Bill to ensure that our internal market works well for consumers in all parts of the United Kingdom for workers and businesses trading here and for importers. But we also support the DPRRC in its criticisms of the delegated powers which were initially included in the Bill. The DPRRC argued that they were not appropriate and were in excess of what was needed to ensure the continued operation of the UK internal market, so we are delighted that the Government said in their letter issued this morning that they have:

"listened closely to and acknowledged the strength of Peers' concerns regarding the position of the devolved administrations in relation to the application of … delegated powers".

Your Lordships owe a considerable debt of gratitude of my noble friends Lady Andrews and Lady Hayter for their work on this over the last few weeks. They have been tireless in their pursuit of the issue and it has resulted, as the Minister said, in three major concessions, which we welcome, and some other changes. The concessions require the Secretary of State to seek the consent of the devolved Administrations before exercising the powers, setting a time limit for that and a process if consent is withheld, and introducing a statutory requirement to consult with the devolved Administrations before issuing, revising or withdrawing guidance. We welcome these, and the statutory requirement for a review of these powers in Part 1 and Part 2 of the Bill within five years. Finally, on this issue, it is good to see the change in tone towards the devolved Administrations, which is reflected in these changes, in the speech today, and in the letter to which I have already referred.

I turn to Amendment B1 in my name, and the amendment in lieu, and look forward to the debate. I give notice as requested that I intend to test the opinion of the House at the end of that debate. We agree with the Government that, at the core of any approach to setting the rules for the UK internal market, there should be harmonised rules underpinned by a strong consultative process. We seek a combination of common frameworks on the one hand and market access principles on the other.

In the debate that has just occurred on the amendment in lieu offered by the noble and learned Lord, Lord Hope, the House has confirmed its position on the common frameworks process, which, as my noble friend Lady Hayter said and the Minister agreed, builds on substantial progress made to date. The Government's main objection continues to be that as the common frameworks are, at heart, a voluntary and co-operative system, with all the strengths and benefits that brings to the devolution settlement, it could bring unnecessary uncertainty into the system. We acknowledge that, but we think that there are ways in which that could be tackled, some of which are based on powers that the Government already have in place. We remain willing to explore a possible solution to the Government's concerns over the next few days—perhaps over dinner, if that is how things are done these days.

However, there is also a need for statutory underpinning of the internal market. The purpose of our amendment is to preserve the potential for managed policy divergence

that is central to the devolution settlement. As the noble Lord, Lord Anderson of Ipswich, said on the first day of Report:

"That potential is squeezed out for the future, save in limited and inconsistent respects, by the non-discrimination and mutual recognition principles as they appear in the Bill."—[*Official Report*, 18/11/20; col. 1508.]

My amendment provides the derogations to the market access principles. They are commonly available in devolved, federal and confederal states all over the world. Their purpose is more a safety valve than a threat to market integrity, and their use would remain subject to strict statutory controls. As currently drafted, the structure is unbalanced. The common frameworks incentivise co-operation and consensus, and my amendment would diminish in a strictly controlled fashion the crudely centralising force of the market access principles, provide balance and encourage innovation.

2.45 pm

The noble Lord, Lord Young of Cookham, said about public health in the same debate:

"Currently, the internal market within the UK has the flexibility, through exclusions, to allow different parts of the UK to move at different speeds …. My view is that leaving the EU should not remove the ability we currently have for different parts of the country to move at different paces."—[*Official Report*, 18/11/20; col. 1510.]

I agree. The Government have failed to explain properly why their list of exceptions is so much more restrictive than that of the EU—well, we can probably work that one out—or, indeed, the World Trade Organization, which is their current go-to standard. While the justifications are unclear, the risks are anything but. Unless the Bill is amended, some of the ability to innovate, which is so valuable, would be lost. This would be a step back for the UK, not a maintaining of the status quo. I beg to move.

The Deputy Speaker (Lord Faulkner of Worcester) (Lab): Does any noble Lord in the Chamber wish to speak on this amendment? If not, I call the noble Lord, Lord Fox.

Lord Fox (LD): My Lords, like the noble Lord, Lord Stevenson, I will take the amendments in the opposite order to the Minister, if the House is happy with that.

The delegated powers issue has almost become a ritual in your Lordships' House. A Bill is published and in it are many very draconian powers, which seek to change almost everything the Bill can do at the will of the Minister. There is then a report from the DPRRC which condemns it, and then there is a debate and we start to move towards a more reasonable situation. I hope, perhaps, that we can learn from this and maybe cut out a few of the steps, so that we can get to the reasonable situation. The Government have given considerable ground on this, and for that we should all be accepting and reasonable and, I suppose, grateful, although perhaps gratitude is the wrong word.

With respect to Clause 12, I think we will all be watching quite closely to see how those powers are exercised, because advice can come in many forms and we will be seeking to observe that.

The characterisation that these delegated powers are required in order for the Government to react and act with speed has been absolutely confounded by the way in which the Covid crisis has been addressed by the Government. There has been very rapid legislation and very rapid reaction. Looking forward, we have got to a better place than we were in when we started. I still do not think that we would call it perfect, but we have taken a long time to get there.

My reading of the amendment proposed by the noble Lord, Lord Stevenson, is that it is the return of Amendment 21, or at least most of it. Listening to his very reasonable presentation of the amendment and having listened to the debates on Report, I am somewhat surprised that the Government continue to dig their heels in. I can understand that the list in subsection (2) of the proposed new clause might have raised some concerns, and it can of course be subject to negotiation, but as the list now stands—with environmental standards and protection; animal welfare; consumer standards, including digital; employment rights and protections; the health and life of humans, animals or plants; the protection of public health; or equality entitlements—it seems that the Government could not possibly object to it, so I am surprised. The Minister has set out his concerns about an ordered market, but it is very clear that any market that did not observe these things would not be one that we wanted anyway.

With that response, I suggest that we will be supporting the noble Lord, Lord Stevenson, when this Motion is put to a vote. We hope that the Government will be able to have discussions with the noble Lord and others, so that next time they can come back with something much closer to what we have seen today.

Lord Callanan (Con): I thank both noble Lords for a good, albeit brief, debate. To summarise, earlier I expressed my concerns about Amendment 8L and the expansive list of exclusions from the market access principles that it introduces. The list that we have included has been carefully drafted to strike what is, in our view, a measured balance. It protects the ability of the devolved Administrations and the UK Government to deliver policy, while avoiding harmful or costly barriers to trade within the UK internal market. The Bill does nothing to stop all nations working together to achieve mutual goals and build on our shared high standards.

On the delegated powers in the Bill, it is not proportionate to remove the Government's ability to ensure that the list of exclusions and legitimate aims remains appropriate. The Government have already set out a comprehensive package of changes to the delegated powers in the Bill, including for the removal of certain powers and for reviews and reporting to Parliament, and new amendments on the role of the devolved Administrations. This provides for effective transparency and scrutiny of the remaining powers.

We believe that there is a reasonable middle ground here. Many noble Lords tabled and supported amendments to alter, but not remove, the powers in the Bill. We agree with those colleagues. These powers are necessary, and we believe that the changes we have proposed should address their concerns. I therefore hope that noble Lords will be able to support the Government's approach to reinstating these powers in the Bill.

Lord Stevenson of Balmacara (Lab) [V]: My Lords, I thank both speakers in this short debate. We have not had much buy-in from others, but that just shows that the issues are very clear, and I think that people may well have already made up their minds.

I was interested that the noble Lord did not really come back on the points that I made. His concern seems to be that the list is too expansive, although he does not seem to attack the principle on which it is based. I signal again, and reaffirm, that we would be very happy to discuss how such a list should be configured better to suit his interests and meet his concerns. I hope that I am not misreading the willingness to do that over the next few days—we would certainly be available to talk if he wanted to do so.

I think that we have covered the ground very carefully. We support and welcome the Government's amendments in the area of delegated powers, but I would like to test the opinion of the House on my Motion B1.

2.53 pm

Division conducted remotely on Motion B1 (as an amendment to Motion B)

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Motion B1 (as an amendment to Motion B) agreed.

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3.06 pm

Motion C

Moved by ***Lord True***

That this House do not insist on its Amendments 14 and 52 to 55 to which the Commons have disagreed for their Reason 14A.

14A: Because they were consequential upon Lords Amendments Nos. 42 to 47 and so the changes they made are no longer needed as a result of the Commons disagreement to Lords Amendments Nos. 42 to 47.

Lord True (Con): My Lords, it seems that I am muted again, but I will find my way to the right spot. I turn now to Part 5 of the Bill. These clauses, as your Lordships may be aware, have been the subject of much debate here and in the other place.

Noble Lords will have seen that the Government announced yesterday that they have reached agreement, in principle, on all of the issues in the UK-EU withdrawal agreement Joint Committee. The Government have been clear throughout that they are committed to implementing the withdrawal agreement and the Northern Ireland protocol. We said that when the Bill was introduced to Parliament and have done so at every stage of its passage. We are also clear that, as a responsible Government, we could not allow the economic integrity of the United Kingdom's internal market to be compromised inadvertently by unintended consequences of the protocol. That is why, through clauses in this Bill, we have sought limited and reasonable steps to create a legal safety net by taking powers in reserve whereby Ministers could guarantee the integrity of our United Kingdom and ensure that the Government are always able to deliver on their commitments to the people of Northern Ireland.

We sought these measures to guard against the possibility of not reaching agreement with the EU in the Joint Committee. As we have now reached agreement with the EU, I am pleased to say that the clauses which provided for the safety net are no longer needed and the Government are content for them to be removed from the Bill. I refer to Clauses 44, 45 and 47.

Noble Lords: Hear, hear!

Lord True (Con): However, as I said in Committee, the clauses that provide for the safety net are not the only ones that make up this part of the Bill. It is vital that the other clauses are passed so that we can deliver on our commitments to the people of Northern Ireland. The protocol is clear that Northern Ireland is part of the UK customs territory, while our manifesto is clear that we would maintain and strengthen the integrity and smooth operation of our internal market. Clause 42 delivers on that commitment by ensuring that all authorities must have special regard to the following fundamental matters when exercising functions that relate to the implementation of the protocol on the movement of goods within the United Kingdom.

The first is the need to maintain the integral place of Northern Ireland in the United Kingdom's internal market. The second is the need to respect Northern Ireland's place as a part of the United Kingdom's customs territory, while the third is the need to facilitate the flow of goods between Great Britain and Northern Ireland. The clause is also entirely in line with the protocol. Indeed, Article 4 states

"Northern Ireland is part of the customs territory of the United Kingdom."

Article 6 goes on to state

"Nothing in this Protocol shall prevent the United Kingdom from ensuring unfettered market access for goods moving from Northern Ireland to other parts of the United Kingdom's internal market."

In the recitals it states that the application of the protocol

"should impact as little as possible on the everyday life of communities in both Ireland and Northern Ireland".

This clause delivers on the commitments made in the Government's manifesto, in the Command Paper published by the Government in May on the implementation of the protocol and on the protocol itself. These are not controversial aims, and indeed some were surprised that your Lordships feel differently.

Let me be clear that as there was some confusion about this in Committee, this clause is not dependent on any other in the Bill. There is no infection or so-called contamination here; it is merely about a Government fulfilling their commitment to the people of Northern Ireland. Indeed, the fact that the Government are seeking to ensure that the clause remains in the Bill, while Clauses 44, 45 and 47 are removed, proves the point. This clause does not provide for or allow for a breach in any way of the withdrawal agreement and is entirely in keeping with the protocol.

I turn now to Clause 43. As I have said, and as noble Lords will know, the Government have committed to providing unfettered access for Northern Ireland's businesses on multiple occasions. Clause 43 gives effect to that commitment by prohibiting the introduction of new checks and controls on Northern Ireland goods, with some very limited exceptions. This is in keeping with what the Government have said constantly and with what was promised in our manifesto. That commitment is critically important to the businesses and people of Northern Ireland. By including Clause 43 in the Bill, we will protect the vast majority of the £8.1 billion-worth of goods sales from Northern Ireland to Great Britain, and guarantee Northern Ireland's place in the United Kingdom's internal market. I hope all of us can now agree on the importance of providing unfettered access for Northern Ireland goods to the rest of the United Kingdom. This clause delivers on that.

As with Clause 42, this clause is not dependent on any other in the Bill. I of course recognise that Clause 43(3)(b) refers to Clause 47, but that is only part of spelling out that it in fact allows checks where applicable international obligations require them. That subsection is being removed. This clause does not

provide for or allow for a breach in any way of the withdrawal agreement and it is entirely in keeping with the protocol.

Given the broad support there is for unfettered access, the Government's repeated commitments to legislate for unfettered access—including in the *New Decade, New Approach Deal* to restore the Executive, our May Command Paper on our approach to implementing the protocol and the manifesto that brought this Government to office in the last election—and given how important it is to protect access for Northern Ireland businesses to their most important market, it would be hugely disappointing for them and for business certainty in Northern Ireland if noble Lords were to remove these subsections unduly.

I turn to Clause 46. Under state aid rules, notification is the process through which EU member states inform the Commission about state aid or potential state aid. This process will continue to apply to the United Kingdom from 1 January 2021, but in relation only to the limited circumstances where Article 10 of the Northern Ireland protocol applies. This clause simply establishes a statutory requirement that no one besides the Secretary of State may notify the European Commission of state aid or potential state aid. It codifies existing practice in legislation and would not be considered novel or controversial to the Commission, as it is unlikely to accept notification from anyone other than authorised persons.

Motion C1 (as an amendment to Motion C)

Moved by ***Lord Judge***

Leave out "not".

Lord Judge (CB): My Lords, I am relieved that Clauses 44, 45 and 47 are being removed from the Bill. They were constitutionally improper and a constitutional aberration. They subverted the rule of law. As we have known for centuries, and was summed up by a former Lord Chief Justice in the 17th century, Edward Coke, the rule of law is our "safest shield".

The way in which the debate over the Bill unfolded perhaps reminded us of something else, something which perhaps noble Lords do not need to be reminded of, but needs occasionally to be drawn to the attention of the Executive: we are a Parliament of two Chambers. The Executive has no sovereignty; Parliament has sovereignty. Of course, the Commons is the first, the prime, the pre-eminent, the most significant and the most important part of the two Houses of Parliament, but that does not mean that this House is without some modest power.

3.15 pm

This was summarised in the debate at Second Reading by the noble Lord, Lord McNally, when he drew our attention to the Cunningham committee, which looked at and went past the Salisbury/Addison convention in 2006 and said this about the powers of the House of Lords:

"Nothing in these recommendations would alter",

I emphasise, the

"right of the House of Lords, in exceptional circumstances, to vote against the Second Reading or passing of any Bill".

These are exceptional circumstances. Of course, they involve huge caution and responsible respect for the function of the other place, but this power, justifiably, can and should be exercised when proposed legislation, as we had in Clauses 44, 45 and 47, is constitutionally aberrant.

I still like to think—although the Minister has not said so, and we have had a letter about it today, 9 December—that the Government have recognised the strength of feeling throughout this House, across all parties and none, not least some giants of their own party, that those clauses simply would not do. I also hope that the Government wisely discerned a settled determination that the House would never agree to them and would be prepared to exercise its right under the government Bill convention. I hope so, but whether I hope so or not does not matter. What matters is that I welcome the Government's decision to abide by the decisions of this House on Clauses 44, 45 and 47.

When the time comes, we will have another look at Clause 45 and the amendments that are put before the Commons. We wait for them in the confident expectation that they will not be offensive to the rule of law because, if they are, I have no doubt that we will take the same line as we have with Clause 45, as it now stands.

I agree with the Minister on Clauses 42, 43 and 46. We proceeded in earlier stages in the House based on their being tainted by the unconstitutional clauses—as I describe them. Now that those clauses are being removed, these are no longer tainted and, therefore, do not need to be exorcised in deference to constitutional principle.

The Deputy Speaker (Baroness Garden of Frognal) (LD): The following Members in the Chamber have indicated that they wish to speak: the noble Lord, Lord Howard of Lympne, the noble Baroness, Lady Hoey, the noble Lords, Lord Naseby, Lord Cormack and Lord Dodds, the noble Baroness, Lady Fox of Buckley, and the noble Lord, Lord Adonis. I therefore call the noble Lord, Lord Howard.

Lord Howard of Lympne (Con): I will be brief. I agree with everything that has been said by the noble and learned Lord, Lord Judge. I welcome how the Government have seen fit to remove these clauses, which, for the reasons given by the noble and learned Lord, should never have found their way into draft legislation. The Government should never have asked Parliament to agree to the breaking of international law, which these clauses would have provided.

I also welcome how the issues to which this part of the Bill gave rise have been resolved in the way that so many of us asked of the Government: through the procedures for dispute resolution that are set out in the withdrawal agreement. Who knows? Could this conceivably form a precedent for the resolution of other issues yet to be resolved? We must devoutly hope so. For the moment, I rise to welcome the removal of these clauses from the Bill. They should never have been there and it is a great relief that they will not be there any more.

Baroness Hoey (Non-Afl): My Lords, I understand the pleasure that many noble Lords have in the fact that the Government have withdrawn—or want and

[Baroness Hoey]
are likely to withdraw—these clauses. However, it is a pity, in a way, that this House did not have the Statement from the Cabinet Office Secretary, heard already today in the other place, before discussing this. It is very wrong that that Statement will not come to this House before last business tomorrow. If you read it, you will find that much of what has been said is not set in stone. Yes, an agreement in principle was made yesterday—it is important to mention the words "in principle"—by the Secretary of State going over to Brussels. After all this time, he suddenly came back, after a cup of tea or, perhaps, a lunch, with something that was meant to make everything okay. It is important that your Lordships consider today what we are doing about this protocol and are under no illusion about what has now been agreed in principle by the Secretary of State and the European Union, and the co-chairs of the committee.

Noble Lords should look at why these clauses were originally put in. I accept that the noble and learned Lord, Lord Judge, has been very clear about the breaking of international law; he talked about the constitutional improperty. I urge your Lordships to think about the constitutional improperty of what is being done to a part of the United Kingdom. Let us be clear: nearly 45% of Northern Ireland people voted to leave the European Union; they voted to leave as the United Kingdom. We are not now in a position where Northern Ireland is leaving with the rest of the United Kingdom. This is important, because of all the safeguards that were being put in by these clauses. For example, the Commons Reason says:

"Because the regulation-making power conferred by clause 44 provides a necessary safety net to ensure Ministers can secure that qualifying Northern Ireland goods have full, unfettered access to the whole of the UK internal market."

The other clauses were all designed as a safety net. Let us be clear: that safety net has now gone. We are now in a position where Northern Ireland will still be subject to the European Court of Justice, which will still exercise control there. Northern Ireland will be subject to any new European rules to do with trade. Much of the agreement announced by the Secretary of State is only for six months. What happens after six months when we have seen it on the ground? The proof of all this will be in the implementation. For example, we have already seen the very welcome announcement that, now we have left the EU, the Government can ban the export of live animals. That will not apply to Northern Ireland. There are even discussions that, if you move your dog from Great Britain to Northern Ireland, you will need a special permit. So let us not kid ourselves—to use words that are not very House of Lords—that we are not starting down the road of setting up Northern Ireland to be different and a place apart. We were promised that we would leave as a United Kingdom. Northern Ireland is not leaving the European Union in the same way as the rest of the United Kingdom. In future, noble Lords will look back on this as a very sad day for the unity of our United Kingdom.

Lord Naseby (Con): My Lords, I think I am brave enough to suggest to the noble and learned Lord, Lord Judge, that his ruling or reading that Part 5 was illegal is not shared by those I have consulted since. David Wolfson QC said:

"The mere act of laying a bill before parliament which, if it were passed into statute, would breach a treaty obligation (and would amend domestic legislation bringing that treaty obligation into effect in domestic law) is not itself a breach of the treaty or of international law. Nor would merely laying such a bill be itself a breach of the rule of law".

The noble Baroness who has just spoken is absolutely right. I had the privilege of being a very junior Minister in Northern Ireland. The safeguards of Part 5 of the Bill were there for a purpose, for a very difficult area of the United Kingdom. We all know that it needs sensitivity, understanding and, as anyone who has served in Northern Ireland will know, patience. Things do not happen quickly there—and against that particularly the Belfast/Good Friday agreement.

I welcome the joint statement received from the co-chairs of the EU-UK Joint Committee that:

"Following intensive and constructive work over the past weeks by the EU and the UK, the two co-chairs can now announce their agreement in principle on all issues, in particular with regard to the Protocol on Ireland and Northern Ireland."

In my judgment, as a practical man, the original procedure has worked, not the threats from a certain section of the upper House. I therefore thank my noble friend on the Front Bench, who I imagine has been in detailed discussion with those who have come to this decision.

As an aside, I am someone who looks at votes and the results of Divisions. Noble Lords may have noticed that, in the first Division this afternoon, the votes of those voting for the Motion and, therefore, against the Government, appear to have dropped by about 100 from last time. On the second Division it dropped to 45. I venture to suggest that the Government have taken action, worked hard and made progress. It would be good if this House now got on and accepted some of the proposals from Her Majesty's Government.

Lord Cormack (Con): I do not think this is the occasion for a heated and contentious debate, although I say to my friend, the noble Baroness, Lady Hoey, that 56% of the people of Northern Ireland did vote to remain in the European Union. To assert superiority from a position of inferiority does not really do justice to the noble Baroness, whom I have known for many years, who served on my Northern Ireland Affairs Select Committee, and whom I admire.

I believe very strongly that the noble and learned Lord, Lord Judge, did this House, and this country, a service when he introduced his Motion at the end of Committee, which deleted the whole of Part 5. I was proud to support him, as I know my noble friend Lord Howard of Lympne was. We were devastated at the thought of a British Government—particularly, for the two of us, a Conservative one—putting themselves in a position where they were not destroying but tarnishing their reputation in the wider world.

However, we are we where we are, and I am extremely grateful to my noble friend for what he said this afternoon. Inspired by sitting on the same Bench as a Bishop, I say that there is more joy in heaven—as she well knows—over one sinner that repenteth; and

there is more joy in the House of Lords over one Government who see the light than over many that are benighted.

3.30 pm

Although I know and love Northern Ireland very deeply, I never thought that the road to Damascus passed through the glens of Antrim, the lakes of Fermanagh and the Giant's Causeway. For whatever reason, the Government have taken a prudent and sensible decision. The noble Baroness was right to refer to the words in principle, and we want to see the process complete—all of us want to see that. This Parliament was being led in the wrong direction. We have now had a gracious acceptance that it is right to delete this damaging part of the Bill. I am profoundly thankful to all those who played a part in coming to that decision, and I congratulate my noble friend Lord True.

Lord Dodds of Duncairn (DUP): My Lords, I will speak briefly. I listened carefully to the eloquent contributions of the noble and learned Lord, Lord Judge, and others on these issues of international law, although I am struck that, over the years, there have been examples of Governments backing away from commitments in international treaties. It happened under a Labour Government and during the coalition Government, so it was nothing particularly new. What was new was the stark way in which the Minister outlined it at the Dispatch Box. I only wish that Ministers in the Lib Dem/Conservative coalition and past Labour Governments had been equally free and open and admitted honestly that they had done it.

What was behind the Government's efforts in the United Kingdom Internal Market Bill? It was to deal with the state-aid point, as we heard, but also to guarantee unfettered access for Northern Ireland goods to the rest of the United Kingdom. That is hardly, in itself, terribly contentious, since it is to the benefit of everyone in Northern Ireland that business should flow free and unfettered. It is to the economic benefit of business, all communities, employment and the creation of jobs, all of which add to the stability and prosperity of Northern Ireland going forward. It was agreed by the EU itself in the joint report of December 2017, and by the parties in Northern Ireland that signed up to the *New Decade, New Approach* document. All the parties agreed: nobody reneged from it. It was in the Conservative Party manifesto, as the Minister has mentioned. So, there should not be anything contentious about that principle, which was well outlined, clear and supported—indeed, in amendments put down in the other place—by parties other than unionist parties as well.

Section 38 of the European Union (Withdrawal Agreement) Act 2020, passed by more than 120 votes in the other place, allows for "notwithstanding" arrangements. Article 16 of the Northern Ireland Protocol itself makes it clear that where the protocol would do serious economic, societal or environmental damage to Northern Ireland, the Government have the right to act unilaterally. I can think of nothing more designed to cause serious economic damage than putting extra, multiple costs, restrictions and administrative burdens on businesses in Northern Ireland, the vast bulk of which do their trade with the rest of the United Kingdom, thereby causing economic damage, job losses and the rest of it.

I appeal to noble Lords as they consider these matters to think of the practical consequences of some of the arguments being put forward. Think of the effect on people's businesses in Northern Ireland, most of which are small or medium-sized. Think of the people working there, who will lose their jobs if unfettered access is not guaranteed or if some of the other restrictions, from Great Britain to Northern Ireland, are not dealt with. The protocol, as noble Lords know and as the Government know all too well, was opposed by these Benches and by many in Northern Ireland for the reasons set out, passionately and rightly, by the noble Baroness, Lady Hoey. It creates differences within the internal market of the United Kingdom, with economic and constitutional implications.

People have pointed to the Belfast agreement, but I hear very little reference among noble Lords and commentators to the St Andrews agreement, the Stormont House agreement and so on. I urge people to refresh their memories of all those agreements which, taken in the round, are about a consensus in Northern Ireland of unionists and nationalists. If border restrictions, a presence and north-south tariffs on the island of Ireland are utterly unacceptable because they might breach the Belfast agreement, then likewise, it is unacceptable for many people in Northern Ireland that such restrictions—tariffs et cetera—should be imposed between Northern Ireland and the rest of the United Kingdom. That is a simple principle that should not be contentious. We hear people saying that Part 5 of the Bill drives a coach and horses through not just international law but the Belfast agreement, but they have no regard, it seems, to the serious concerns that many people have voiced, including many who were instrumental in drawing up the Belfast agreement.

This does serious damage to the agreement in Northern Ireland and importantly, it destabilises the Executive. I am a believer in devolution and I want to see it succeed, but it will not succeed if we have a one-sided approach to the Belfast agreement. It has to be a rounded approach. The Government have said that they are withdrawing certain clauses in the Bill and standing by others. I welcome the clauses they are putting in and those they are standing by; they are important statements of principle. But we will now have to wait and see how the Statement made in the other place today is actually implemented.

The noble Lord, Lord Howard, talked about matters being resolved. Some have been, perhaps, but others have deliberately been put on hold and are not resolved. It will therefore be important to see how this works out in practice, but the Government must keep under review how these measures, taken under the provision I mentioned at the start of my speech, help to preserve stable government and economic prosperity and uphold the agreements made in Northern Ireland by both unionists and nationalists, and those of neither persuasion.

Baroness Fox of Buckley (Non-Afl): I would like to remind noble Lords, especially on the Government side, that the clauses being removed were themselves argued for as a necessary legal shield for the internal

[Baroness Fox of Buckley]
integrity of the United Kingdom and its sovereignty. I am told now that the Government are content with assurances. I am not sure that many leave voters are content simply to be assured. Goodness knows, he might be surprised when I say this, but the noble Lord, Lord Adonis, made a very important point when he said that at the beginning of the week, he did not anticipate this debate. Many in the House did not expect these clauses to be removed, and now we are told to be assured; yet they were crucial clauses only last week. I therefore at least want to raise the question of trust and whether we should be expected simply to trust. It sometimes feels as though some of us have been marched up a hill and marched down it again.

Noble Lords: By whom?

Baroness Fox of Buckley (Non-Afl): We know by whom. As an aside, I rather like a heckling atmosphere, but I would prefer it if it happened not just when I am speaking.

With absolute due respect to the noble and learned Lord, Lord Judge, who speaks so eloquently about constitutional and unconstitutional principles—I have listened very carefully to him for many years, not simply in recent weeks—I would be rather disappointed, and I think it would tarnish those principles, if it was thought that the decision was made because of the strength of feeling in this House. I would rather think that it was because the Government were satisfied by the debates, not that this House, rather unconstitutionally, might have got in the way of parliamentary sovereignty. There is a danger that some of the comments being made are self-aggrandising and self-congratulatory.

However, the main point for me—made clearly by the noble Baroness, Lady Hoey, and emphasised by the noble Lord, Lord Dodds—is that Northern Ireland is being treated separately, as a different entity. I am afraid that some seem to relish this: in many debates that I have sat through in this House, I have felt as though the 2016 referendum of the whole United Kingdom was being used as an excuse to interpret devolution as some kind of federalisation of the United Kingdom. Interestingly, even today, one noble Lord noted that 56% of Northern Ireland voted to remain in the European Union—that is of no matter, indeed no interest, if you believe in the United Kingdom.

Noble Lords: Oh!

Baroness Fox of Buckley (Non-Afl): Here we go. There will be those who would say that the debate about the unity of the United Kingdom and the status of Northern Ireland might be contentious. That is a different debate; a different referendum would need to be called. In 2016, the United Kingdom was asked whether it wanted to leave the EU; all of it voted to do so, and yet one part of it is now to be held in thrall, to a certain extent, to the EU—a body that I do not entirely trust to respect the integrity of the sovereign rights of the United Kingdom, I am afraid. Therefore, I am not content.

Lord Adonis (Lab): I am not sure how far I should follow the noble Baroness except by making a few obvious points. First, the Good Friday agreement and the Northern Ireland protocol were warmly welcomed in Northern Ireland; this is not being done to Northern Ireland against its will. These provisions are very warmly welcomed because the people of Northern Ireland see them as a guarantor of peace and stability there; this requires an open border with the Republic of Ireland, so I do not follow the noble Baroness on that point.

I also did not follow the noble Baroness when she said that the House of Lords was standing "in the way" of parliamentary sovereignty. We are part of Parliament and performing our functions as a part of it. In that respect, I pay great tribute to the noble and learned Lord, Lord Judge, and—I never thought I would hear myself saying this—the noble Lord, Lord Howard, who have played an absolutely central part in the ability of this House to perform its proper constitutional role to see that the House of Commons is invited to reflect further on provisions that it believes are injurious to the public interest.

We have reached this point in a very convoluted way, because the Government changed their mind mid-way through the parliamentary process. However, the noble Lord, Lord Cormack, likened the noble Lord, Lord True, to the prodigal son, and we welcome all those who have seen the error of their ways and repented. The process by which they do so is not significant; what is significant is the opportunity that this House gives to Parliament at large—including the Government, which operate as a part of Parliament—to consider its view on these big and important matters that are of concern to us. We have reached the right decision on this matter.

The only point I want to make is about the consequences because, as we now move forward, they are significant. To understand them, we need to understand why the Government did what they did. It was never my view that they intended these provisions to become law; they knew that the noble Lord, Lord Howard, the noble and learned Lord, Lord Judge, and a whole galaxy of the most heavyweight Members of your Lordships' House would object to them—they knew that.

3.45 pm

They knew that there was virtually no prospect of these provisions becoming law because so serious are the points at issue, with the breaches of international law, that we would insist, and we would be completely and constitutionally entitled to insist, under the Salisbury/Addison convention, on removing these provisions from the Bill. Not only were they not in the Conservative Party manifesto last year, but that manifesto promised the opposite: that the deal that the Prime Minister had done with the European Union would be the one he would implement. Therefore, they knew that these provisions would not become law.

In my view, the Prime Minister was seeking to give himself a stronger negotiating hand in the negotiations taking place in Brussels at the moment—this was always a tactical ploy that he sought to exercise. There is an important gloss on this: those of us who have observed the Prime Minister closely over many years know that he has pretty much straightforward contempt for rules of any kind. He does not regard himself as

bound by rules, and he certainly does not think that the Government should be bound by rules. When faced with rules, even those that he has himself negotiated, as in the case of the Northern Ireland protocol, he does not believe that he should be bound by them.

He was seeking to up the ante in respect of the European Union in the hope that this would provoke more concessions. I have to say that I was surprised that the European Union agreed to negotiate with him after he announced the decision to withdraw from international law. If it had been the noble Lord, Lord Howard, on the other side, I imagine he would have upped sticks and stopped the negotiations immediately if the other side had announced that it were going to break the very agreement that it had last made; I can imagine the hard line that would have followed from that.

However, the European Union has the patience of Job; it is a consensual-minded institution that very badly, and rightly, wants to have good relations with the United Kingdom hereafter. In particular, I applaud Chancellor Merkel, who understands that the long-term interests of Germany and this country are, and should be, aligned and that, though we are temporarily under very bad leadership here in Britain, they will become aligned in due course. She has a duty to see that she achieves, so far as she can, that alignment, and I pay tribute to that.

Our problem, which is really serious for us as a country is that we now have a reputation with international partners, including the European Union, as being a country that does not observe the rule of law and will play fast and loose with agreements that it has reached. In particular—I will be blunt about this—under the leadership of the present Prime Minister, you simply cannot trust a word he says because he has gone back on his word only months after he solemnly gave it in a treaty that he signed as the head of the Government. Part of the reason why we are clearly in such a difficult situation in Brussels at the moment regarding the arrangements for arbitration on issues to do with state aid and subsidies is precisely that the European Union is not prepared to accept normal, conventional ways of behaving because it is not dealing with a normal, conventional Government or politician; it is dealing with a semi-revolutionary Government and leader here in Britain.

I latch on very much to the final words of the noble Lord, Lord Howard, who is very wise in matters concerning reconciling differences: the machinery that was put in place by the withdrawal agreement for resolving difficulties between the European Union and the United Kingdom hereafter could play a part. The problem we have—we need to be frank about it—is that the European Union clearly does not trust that machinery because it does not trust Her Majesty's Government to act in good faith.

We welcome the prodigal son and the fact that these clauses have been removed, but they have left a deep and damaging legacy for this country in its conduct of international relations and our future relations with the European Union. We have to do the best that we possibly can to undo the damage for the good of our long-term relations with our European partners.

The Deputy Speaker (Baroness Garden of Frognal) (LD): Does anyone else in the Chamber wish to speak? No one does, so I shall go to the listed speakers. I call the noble Lord, Lord Newby.

Lord Newby (LD): My Lords, it is a great pleasure to be able to support the noble and learned Lord, Lord Judge, again in his amendments before your Lordships' House. These amendments will remove the stain of illegality from the Bill, and we should be grateful that that is what we are going to achieve this afternoon—but in doing so, they also let the Government off the hook. Were it not for the ability of this House to ask the Commons to think again, and to give a pause, the Government would now still be wriggling on the hook, because this would not be a Bill any more, but an Act, and we would be stuck with those illegal clauses, which would have caused longer-lasting damage to the reputation of this Government, and of this country, than will, I hope, now be the case.

I am amazed by the coincidence that just by chance, yesterday, after months of toil, Minister Michael Gove reached an agreement. It seems like an extraordinary coincidence, but when we read what he says about it, we see that there is no coincidence at all. This so-called agreement, in which everything is allegedly resolved, is simply a point in the negotiations at which it was appropriate for the UK Government to announce some progress. Although a number of principles have been agreed, the letter that we received from the noble Lord, Lord True, says that

"The parties have also reached an agreement"

on the issues on which decisions have still to be taken

"before 1 January."

That is the agreement in principle, on some quite significant things, including

"the practical arrangements regarding the EU's limited and light touch presence in Northern Ireland when UK authorities implement checks and controls under the Protocol, determining criteria for goods to be considered "not at risk" of entering the EU when moving from Great Britain to Northern Ireland, thereby ensuring that the overwhelming majority of goods will not attract tariffs".

So there is quite a bit of substance there.

Among the substance is, first, that there will be EU officials based in Northern Ireland, at the ports, checking that our customs officers are doing their jobs—something that, I believe, the Government said at an earlier stage they would never countenance. There will also be—because the letter says so—checks and controls on goods moving from Northern Ireland to the rest of the UK. Indeed, one of the principles that has been agreed is the detail of the export declarations.

There is also the possibility—although obviously, this will apply only if there is no deal—of tariffs being applied to some goods moving from Great Britain to Northern Ireland and vice versa. If the noble Lord, Lord Dodds, thinks he has unfettered access, he needs to read what the Government are doing. Every declaration takes time. Every declaration costs money. Every declaration fetters trade.

The dilemma that a number of noble Lords have referred to, which this agreement merely seeks to amplify, is where we have the border. There has to be a border; it could be on the island of Ireland or in the Irish Sea. We as a country have decided, in the agreements that

[Lord Newby]
we have made, that it will be a border in the Irish Sea. There should be no question but that that border exists or that there are checks across any customs border—and they cost, which means that trade is fettered.

We will no doubt spend many happy hours discussing these detailed issues in future, but for today we should simply be grateful that the stain on our legislation, at least, if not the entire stain on our reputation, has been removed by the amendments tabled by the noble and learned Lord, Lord Judge, and accepted by the Government.

Lord Falconer of Thoroton (Lab): We are in a much better place now, thanks to the Statement made by the Chancellor of the Duchy of Lancaster yesterday, and the statement made by the noble Lord, Lord True, to us today. The effect of what the noble Lord is proposing is that all the unlawfulness is stripped out of Part 5. He proposes that parts of Part 5 remain in the Bill, but none of those parts can legally overtop the withdrawal agreement entered into in 2020, as the Government of the United Kingdom agreed at the time to legislate so that the withdrawal agreement, including the Northern Ireland protocol, could trump everything except primary legislation that purported to overrule it.

Now, as a result of what the noble Lord, Lord True, has said, the Government accept that there shall be no provisions in the Bill that can overtop the withdrawal agreement, which they agreed to give direct effect to. They have gone back to the position they committed themselves to with the European Union.

I completely respect what the noble Lord, Lord Dodds, and the noble Baroness, Lady Hoey, have said. They have issues with the Northern Ireland protocol. They are both right when they say that Northern Ireland is being treated differently, for reasons that have been widely debated. But that is not what these issues, in this Bill, are about. For better or worse, this Parliament, earlier, had agreed to the Northern Ireland protocol and the withdrawal agreement.

Why did we see the Government try to escape from the provisions of the Northern Ireland protocol? I cannot remember whether it was the noble Baroness, Lady Hoey, or the noble Baroness, Lady Fox, who said that it meant that their troops were marched up to the top of the hill and then marched down again. The reason given was that the Government feared what the European Commission might do in the negotiations.

Let me tell the House how the Chancellor of the Duchy of Lancaster described the attitude of the European Commission in these negotiations. He described Maroš Šefčovič, the vice-president of the Commission, and his team as displaying

"their pragmatism, their collaborative spirit—and their determination to get a deal done that would work for both sides."

If that was the attitude of the Commission, it is difficult to see why we needed those provisions.

I agree with everything that the noble Lord, Lord Newby, said about this being an agreement in principle, not a locked-down agreement, as is much more candidly accepted in the letter sent by the noble Lords, Lord True and Lord Callanan, to Members of this House this morning, than it was by the Chancellor of the Duchy of Lancaster.

Later, in the Statement that he made earlier today, the Chancellor of the Duchy of Lancaster said:

"the agreement we have reached also enables the Government to withdraw clauses 44, 45 and 47 of the United Kingdom Internal Market Bill … Having put beyond doubt the primacy of the sovereignty of this place … we rest safe in the knowledge that such provisions are no longer required."

I understand him to be saying that putting in these provisions and then running scared from them when it looked as if they might stand in the way of a trade deal constitutes putting beyond doubt the primacy of the sovereignty of this place. That is absolute nonsense.

I agree with what my noble friend Lord Adonis said, and I am glad that the Government have retreated. However, what they did has damaged the position of this country, and shows a terrible misjudgement. I am glad that the noble Lord, Lord True, has been so gracious in his withdrawal, and we are all grateful for it—but it would have been so much better if the Government had been straightforward about why they did this. They did it because they know they cannot get a trade deal without withdrawing those clauses. I do not know whether they will get a deal, but they hope for one and they cannot get one without withdrawing them. That is why it has been done—and it was done today because this House is debating this today.

Although I apologise to the noble Baroness, Lady Fox, for the fact that some attention has been paid to the Lords, I am glad that she is here to help the Lords influence the Government, which is what it does. It is because the Lords stood firm that constitutional crisis is averted. A good message is sent by the work of the noble and learned Lord, Lord Judge, and I single out the noble Lord, Lord Howard, for his stalwartness in standing up for the principle. If we had not, goodness knows what a mess this Government would have got this country into. We send a message that there are certain principles we will stand up for and will not be moved from.

4 pm

Lord True (Con): My Lords, I am not a lawyer, as I am frequently reminded in your Lordships' House, but I am a historian by vocation and occasional practice, and I know that history is the study of cause and effect. I have heard one version of a proto-history just put to us by the noble and learned Lord, Lord Falconer; there are many other versions which no doubt could and will be put—indeed, some have been put in this debate. The thing to do now is to move forward. Once all the documents are revealed, no doubt people will be able to say what had an effect on what. We are here today to make a judgment on carrying draft legislation, a Bill, forward.

I, too, welcome prodigal sons, and indeed prodigal daughters, if I may say so. The noble and learned Lord was kind enough to say that the Government had graciously changed their position. I heard less comment in the debate—although the noble Lord, Lord Dodds, and the noble Baroness, Lady Hoey, referred to it—about the change of mind, if I may use the phrase, by your Lordships. I hope it is forthcoming on Clauses 42, 43 and 46. I welcome that change of mind. I do not believe that unfettered access should have been called into doubt in your Lordships' House, and I heard no one

speak against that principle, although the noble Lord, Lord Newby, appeared at one moment to exult in the idea that it might not exist. I welcome and am grateful for what I hope will be the change of mind on those other clauses, and I hope that the noble and learned Lord, Lord Judge, will be able to confirm that.

I thank all those who have contributed to the debate. I must say to the noble Lord, Lord Adonis, although I do not want to pick him out particularly, that I do not think that, whoever he or she may be, personal vilification of the Prime Minister is a conducive or beneficial way to broaden consensus in debate in your Lordships' House. I counsel the noble Lord that vilification of the current Prime Minister will not particularly persuade me to listen to his arguments.

As I said in my opening speech—I thank noble Lords for their comments on the facts of it, not the speech —the Government will not be opposing the removal of Clauses 44, 45 and 47. I can confirm to the noble and learned Lord that new Clause 45 is in accordance with the rule of law. However, as I have argued, the remaining clauses in the Bill are vital to the Government delivering on their commitments to the people of Northern Ireland.

I must say to the noble Baroness, Lady Hoey, that I will be repeating a Statement tomorrow, and I will obviously answer questions on that matter. I am sorry, but I do not make the rules and customs of the usual channels in this place, but I understand her feeling, and no doubt she will examine that Statement tomorrow. I do not think I am telling anybody anything that they do not know when I say that, unfortunately, that Statement will be repeated relatively late tomorrow.

The clauses which I hope your Lordships will allow to return seek to protect Northern Ireland's place in the UK's customs territory and internal market, and that is something, as the noble Lord, Lord Dodds, recited, that not only this Government and the Northern Ireland Executive but the EU absolutely committed to—unfettered access, so please let us see that back in the Bill.

Whatever the rights and wrongs of the history, I hope that the reality of the day is that people in different parts of this House will be able to have some satisfaction in where we have reached at this point. I always agree that, in life, negotiation is desirable. As I said in my opening remarks, Clauses 42, 43 and 46 have now been sent to us twice by the democratically elected House, and on those I urge your Lordships, if the Question is put, not to vote them out again. I beg to move.

Lord Judge (CB): I do not think there is anything I could usefully add; I think we should get on.

Motion C1 (as an amendment to Motion C) agreed.

Motion D

Moved by ***Lord True***

That this House do not insist on its Amendment 42 to which the Commons have disagreed for their Reason 42A.

42A: Because clause 42 protects Northern Ireland's place in the United Kingdom's customs territory, as provided for under the Northern Ireland Protocol.

Motion D1 (as an amendment to Motion D) not moved.

Motion D agreed.

Motion E

Moved by ***Lord True***

That this House do not insist on its Amendment 43 to which the Commons have disagreed and do agree with the Commons in their Amendments 43A and 43B.

43A: Clause 43, page 34, line 42, at end insert ", or

(i) is necessary for the purpose of dealing with a threat to food or feed safety in Great Britain."

43B: Clause 43, page 35, line 29, at end insert—

"(6A) For the purposes of this section the exercise of a function "is necessary for the purpose of dealing with a threat to food or feed safety in Great Britain" if the exercise of the function consists of—

(a) the making, or operation, of legislation which satisfies the conditions set out in paragraph 2 of Schedule 1, or

(b) any other activity which satisfies the conditions set out in paragraph 2(2), (3), (4) and (6) of Schedule 1 (reading any reference in those conditions to "legislation" as a reference to the activity in question)."

Motion E1 (as an amendment to Motion E) not moved.

Motion E agreed.

Motion F

Moved by ***Lord True***

That this House do insist on its Amendment 44 to which the Commons have disagreed for their Reason 44A.

44A: Because the regulation-making power conferred by clause 44 provides a necessary safety net to ensure Ministers can secure that qualifying Northern Ireland goods have full, unfettered access to the whole of the UK internal market.

Motion F agreed.

Motion G

Moved by ***Lord True***

That this House do insist on its Amendment 45 to which the Commons have disagreed for their Reason 45A.

45A: Because it is necessary for the Secretary of State to have the power to ensure there is no confusion or ambiguity in UK law about the interpretation of Article 10 of the Northern Ireland Protocol.

Motion agreed.

Motion H

Moved by ***Lord True***

That this House do not insist on its Amendment 46 to which the Commons have disagreed for their Reason 46A.

46A: Because it is necessary to codify in legislation the existing practice, whereby aid is notified to the European Commission by the Foreign Secretary through the United Kingdom Mission in Brussels.

Motion H1 (as an amendment to Motion H) not moved.

Motion H agreed.

Motion J

Moved by ***Lord True***

That this House do insist on its Amendment 47 to which the Commons have disagreed for their Reason 47A.

47A: *Because the Commons consider it necessary, in order to avoid confusion in domestic law about clauses 44 and 45 and regulations made under them and provide clarity for courts, businesses, and public bodies, for those clauses and regulations to have effect notwithstanding possible inconsistency or incompatibility with any relevant national or international law.*

Motion J agreed.

Motion K

Moved by ***Baroness Penn***

That this House do not insist on its Amendments 48 and 49 to which the Commons have disagreed for their Reason 48A.

48A: Because they would alter financial arrangements made by the Commons, and the Commons do not offer any further Reason, trusting that this Reason may be deemed sufficient.

Baroness Penn (Con): My Lords, the Government have reinserted into the Bill the power to provide financial assistance. This was removed by your Lordships' House through Amendments 48 and 49. There is a point of parliamentary principle at play here, which is that the other place wishes to assert financial privilege and preserve that House's right to decide on public spending arrangements. Indeed, that is the reason for disagreement that has been sent from the other place, and we must respect its financial primacy. It would be contrary to normal practice for noble Lords to insist on any amendment disagreed for a privilege reason. Indeed, it is the only reason given by the Commons, as it alone should be deemed sufficient.

However, we have also heard clearly from the other place that this is a power they wish to remain in the Bill for other reasons, when asked to think again by your Lordships' House. These clauses form the financial assistance power, which enables the UK Government to deliver strategic investment in all four corners of the United Kingdom. This is all the more important as businesses and communities throughout our countries recover from the Covid crisis. The past few months have demonstrated clearly how important the responsiveness and scale of UK Government support can be to protecting lives and livelihoods.

This power will cover infrastructure, economic development, culture and sport, and will support educational and training activities and exchanges both within the UK and internationally. These are policy areas in which funding was previously provided by EU programmes under terms and conditions set by the EU. It is right that, as we leave the transition period, the UK Government have the right tools to make sure the whole country can benefit from investment which strengthens the communities, economies and connectivity within and between all parts of the UK.

I emphasise again that this power is in addition to the devolved Administrations' existing powers. It does not take away responsibilities from the devolved Administrations; rather, the power will enable the UK Government to deliver investment more dynamically and in collaboration with the devolved Administrations and other partners. The Government will work with the devolved Administrations to make sure that we can complement their existing and continuing powers, used to support citizens in Scotland, Wales and Northern Ireland. We will also work collaboratively with other crucial partners, including local authorities and wider public and private sector organisations.

We have taken this collaborative approach to investment with devolved Administrations already: for example, through our successful city deals programme. The UK Government intend to continue to work in this spirit of partnership with stakeholders as we deploy support with this power. Practically, the power means that the UK Government can make good on our commitment to the UK shared prosperity fund. We have published our heads of terms for the fund online. The UKSPF will help to level up and create opportunity across the UK in those places most in need—such as ex-industrial areas, deprived towns, and rural and coastal communities—and for people who face labour market barriers. These places will then develop investment proposals, with input from a range of local partners, to be approved by the Government. We will set out further details on the objectives and administration of the UKSPF in a UK-wide investment framework published in the spring. We will continue to engage the devolved Administrations as we develop the investment framework and in advance of its publication.

The noble and learned Lord, Lord Thomas, has put forward Amendments 48B and 48C. Let me be clear that the UK Government intend to work with both the devolved Administrations and local communities to ensure that this power is used to best effect and that the UK shared prosperity fund supports citizens across the UK. Indeed, the devolved Administrations will be represented in UKSPF governance structures. Our intention is to work with the devolved Administrations and respect the devolution settlements, and I hope that noble Lords will take this as a demonstration of that commitment. I can assure the House that officials in the Ministry of Housing, Communities and Local Government will continue their ongoing conversations with their counterparts in the devolved Administrations, and will discuss the detail in due course. This provides one example of what we seek to deliver with this power, but I hope it makes plain our intended approach for working collaboratively, while taking a UK-wide view of investment opportunities, to support all parts of the country. As such, I hope that this will encourage the noble and learned Lord not to test the opinion of the House on his Motion.

Motion K1 (as an amendment to Motion K)

Moved by ***Lord Thomas of Cwmgiedd***

At end insert "and do propose Amendments 48B, and 48C to the words restored to the Bill by the Commons disagreement to Amendment 48—

48B: Clause 48, after subsection (1) insert—

"(1A) The powers in subsection (1) may only be exercised—

(a) after consultation with the relevant authority on the principles under which financial assistance may be provided by a Minister of the Crown;

(b) after publication of such principles; and

(c) with the consent of the relevant authority where the financial assistance is assistance that could be given by a relevant authority."

48C: Clause 48, in subsection (2), after the definition of "providing" insert—

""relevant authority" means the Welsh Ministers in respect of Wales, the Scottish Ministers in respect of Scotland, and the Northern Ireland Executive in respect of Northern Ireland.""

Lord Thomas of Cwmgiedd (CB) [V]: I thank the Minister for the opportunity to discuss this matter with her. In light of what she said about wishing to set up a governance structure, I am sure that progress could be made. However, there are five short reasons why I hope the House will accept the compromise I have offered in Motion K1, which I now seek to move. First, the Commons reasons were, as has been stated by the Minister, to do with financial primacy. With the utmost respect, they are not correct. Powers to spend in devolved matters are powers of the devolved Governments, not the UK Government. Most of what is covered in this clause are matters that are devolved. Secondly, the clause therefore seeks to change the devolution settlements to enable the UK Government to override the devolution settlements. The clause is therefore a constitutional and not a financial issue.

My second reason is that, at present, funds provided by the EU for regional aid for matters within devolved powers are provided to the devolved Governments, who have to agree how the funds are to be spent. The amended clause would continue this architecture for the shared prosperity fund, the successor fund to that. Under the amendment, the UK Government would agree with the devolved Governments the way in which the funds would be spent where the funds were for matters within the devolved competences—roads, health, education and the like. This would combine the benefit of an overall strategy for the UK with the benefit of devolved Governments agreeing how funds were to be expended in the areas for which they and they alone were responsible.

4.15 pm

Thirdly, it would put expending the fund on a principled basis. Principles are not set out in the only description so far—that set out in box 3.1 in the Blue Book published at the time of the Autumn Statement on expenditure. The amendment would ensure a principled basis for spending on devolved areas that the UK Government and the devolved Governments could agree would be democratic and effective.

Fourthly, the effect of the clause without the amendment can be summarised as follows. It would take us back to the days of "Westminster knows best". It would effectively be saying, "We do not trust the people of Northern Ireland, Scotland and Wales to elect Governments to spend wisely in the devolved fields". It would take powers back to London in these areas. Secondly, it would be undemocratic, because the democratic mandate to spend in devolved fields is that of the devolved Governments and Parliaments. Thirdly, it would be inefficient, as there would be no co-ordination of spending and the real risk of inconsistent spending. In short, the clause without my amendments would enable the UK Government to spend in devolved fields and bypass the devolved Governments and Parliaments in Scotland, Wales and Northern Ireland who have been elected to be responsible for those fields. It would, in effect, hollow out the devolution settlements.

In contrast, the amendment would, above all, strengthen the union. Not only would it stop the hollowing out of the devolution settlement, it would show that the UK Government and the devolved Governments were acting together in a union that was working for each of the four nations and for the four nations together—the UK as a whole. For those reasons, I beg to move.

The Deputy Speaker (Lord Russell of Liverpool) (CB): One Member in the Chamber has indicated he wishes to speak. I call the noble Lord, Lord Adonis.

Lord Adonis (Lab): My Lords, I do not wish to cover the ground that the noble and learned Lord, Lord Thomas, has just covered so compellingly. He has made absolutely compelling arguments for why we should send this matter back to the Commons again. As he says, it goes to the heart of the devolution settlement: you just need to read the wording of his amendment to Clause 48 to see why it is so compelling.

What the Government are proposing is a provision that says they should make financial arrangements in respect of spending in the devolved territories of the United Kingdom without consultation with the relevant authorities, whereas the noble and learned Lord's amendment says that it should take place only with consultation with the relevant authorities. So the noble Baroness would need to explain to us why it is appropriate that these arrangements should be entered into with no consultation with the devolved authorities to which they apply. That is an absolutely fundamental point about whether devolution is for real.

The point I want to add, which is so important and why it is a vital that we send this back to the other House, is that what is essentially going on here is an attempt by the Prime Minister to undermine and make as weak as possible the existing devolution settlement. He said, and we should take him at his word, that devolution was the worst mistake of the Blair Government; he does not agree with the setting up of the Scottish Parliament; he does not agree with the Welsh Assembly; he has played very fast and loose with the role of the Northern Ireland Assembly in the way he has conducted policy in respect of Ireland over the last year.

We have a constitutional duty to see that that the devolution settlement, as constructed by Parliament in successive Acts, all of which have represented consensus settlements between the territories concerned and the United Kingdom Parliament, is safeguarded. This Bill is deliberately intended to cut across and undermine the devolution settlements because the Prime Minister does not agree with them, and it is therefore vital that we send this matter back to the House of Commons again.

The Deputy Speaker (Lord Russell of Liverpool) (CB): Does any Member in the Chamber wish to speak? No? Then I call the noble Lord, Lord Fox.

Lord Fox (LD): My Lords, this has been, again, a short but important debate. I thank the previous speakers and I thank the noble and learned Lord, Lord Thomas of Cwmgiedd, for his detailed proposal.

First, I will address the comprehensive and well-laid out response by the Minister on why your Lordships' amendment has been knocked back. I will not come between the noble and learned Lord and the Minister when it comes to deciding whether it is a financial issue; I shall leave those two to have that argument. However, I will pick up on the second issue. The Minister painted a genuinely exciting picture of all this wonderful investment that will happen across the country—I am not being ironic—and I agree that there needs to be a response to what we have seen this year, and it needs to be comprehensive, co-ordinated and well organised. This cuts to the point made by the noble and learned Lord, Lord Thomas, and the noble Lord, Lord Adonis: without working with the devolved authorities, the efficiency and the effectiveness of any investment are massively undermined. Leaving aside the devolution issue for now, the efficiency issue raised by the noble and learned Lord, Lord Thomas, is absolutely called into question here. The measures from the noble and learned Lord in Motion K1 bring the devolved authorities back into this process. It recognises the importance of the devolved settlement, as set out by the noble Lord, Lord Adonis, and makes sure that this investment, which will be so important to the future prosperity of this country—if indeed there is enough of it and it is delivered properly—can be made efficiently and in keeping with the needs of the people of that particular country.

As someone who comes from Herefordshire, which is a far-flung part of England, I wish that we had similar regional structures in England, whereby the same level of consultation that should be coming through this amendment could also be offered to the regions of England. While some parts of England have unitary mayors and some parts have negotiations directly with Government, places such as Herefordshire that are in as much need as some of the worst-affected places across the United Kingdom, do not have the benefit of that access. This is not the place, but going forward, I ask that when these proposals are brought, an approach towards the English regions that the Government have towards the devolved authorities would be appreciated.

With that, we look forward to supporting the noble and learned Lord, Lord Thomas, when he presses this.

Lord Stevenson of Balmacara (Lab) [V]: My Lords, I thank the Minister for her clear and concise introduction to this topic. Although she said she was relying primarily on the Commons argument that this issue engages financial privilege, she recognised there were other issues going on, and it was good of her to take the argument a bit further. We are, as the noble Lord, Lord Fox, has also said, completely cognisant of the restrictions placed on the House due to financial privilege being engaged. The noble and learned Lord, Lord Thomas, made a compelling case about the wider issues, and it is important to have those on the record. I will add to the list of points he made.

The Government clearly assert—and we believe them—that these will be additional to existing powers, and we should not be concerned, as we have been, that the devolved Administrations will have their responsibilities and authority challenged in this way. The Minister said that the driving force behind the shared prosperity fund is to add and complement existing arrangements. If she wishes to repeat it when she winds up, that would be helpful. In that sense, there should be no need for the concern that is currently in the devolved Administrations about that particular aspect of it. We do not have the detail, and I think she said the likely outcome for their consultation would not be before spring 2021, which seems a long way away in terms of what we are doing. We accept that existing programmes are currently running out—but they are running out; they are not being continued at the same level and, therefore, there will be a shortfall unless the Government are prepared to move a bit faster than the current timescale suggests.

The Minister also confirmed—and this is good news—that there will be engagement with the devolved Administrations. When she responds, perhaps she could explain a bit more about what that means. We have already heard from the Government today about programmes of engagement that have involved substantial change in previous views; it would be good to hear that language repeated when she talks about how the devolved Administrations might be engaged with this process.

The Minister has confirmed there will be some form of shared prosperity fund board, which is interesting. She may recall that at the previous stage of this Bill, we proposed a shared prosperity commissioner. I said at the time, and I still think, that that was code for a board, because we were trying not to engage financial privilege. We have clearly failed in that. Can she confirm the board will be independent and say more about the powers that might be invested in that board? Can she also talk a bit more about whether the programme itself, when it is brought forward, will be subject to guidelines? Will those be published and discussed before they are invented? Will there be themes to it, as there have been in previous rounds of the regional structural funds? Will the funds be competitive and open to all countries to bid for? Can she confirm, most importantly, that the plan will be for the funds under the shared prosperity fund to be separate from any Barnett formula calculations? That is not in the sense of making people not eligible for funding—that is not what we are about here—but a needs-based or different set of indicators to set out the ideas under which the shared prosperity fund will operate. I look forward to hearing her response.

Baroness Penn (Con): My Lords, I thank noble Lords for this short but very useful debate. I think it might be useful to take the points of the noble and learned Lord, Lord Thomas, in turn. On the first point on financial privilege, I think the noble Lord, Lord Fox, was wise to stay out of that one. All I can say to this House is that the decision on financial privilege is made by the Speaker on advice from the clerks. It is

the only reason, when invoked, that can be given. Though I have spoken to others, that is the process in the other place.

On the second point on the consultation of, and consent from, the devolved Administrations on spending on these matters, I have said before, and will again, since the noble Lord, Lord Stevenson, asked me to reiterate, that this is about an additional programme of spending to support the work of the devolved Administrations but also about taking a strategic look across the whole of the UK. It is important to remember that the main fund we are talking about, when it comes to the use of this power and the shared prosperity fund, replaces EU structural funds that were determined at an EU level for the needs of many different nation states. They were determined at an EU level and, while they may have been managed and delivered at a local level, the structure, framework and principles that people had to deliver were decided at an EU level.

The third point was about a principled basis for the funding. The Government set out, at the spending review, the heads of terms for the shared prosperity fund. Those have begun to outline how the shared prosperity fund will work. A portion of the SPF will target the places most in need across the country, such as ex-industrial areas, deprived towns and rural and coastal communities.

4.30 pm

The fund will develop a UK-wide framework for investment in places receiving funding. It will prioritise investment in people and skills tailored to local needs, such as work-based training and supplementing and tailoring national programmes; and investment in communities and place, including cultural and sporting facilities, civic, green and rural infrastructure, community-owned assets, neighbourhood and housing improvements, town centre and transport improvements and digital connectivity. There will also be investment in local business, including support for innovation and green and tech adoption, tailored to local needs once again. In terms of how this will work, places receiving funding will be asked to agree specific outcomes to determine within the UK-wide framework. We have also said that investments should be aligned with the Government's clean growth and net-zero objectives.

That is the start of the principles on which this funding will be allocated but, as I have said, further details will be set out in an investment framework to be published in the spring. I have also said that we will continue to engage with the devolved Administrations on the development of that framework in advance of its publication. I reassure the noble Lord, Lord Stevenson, who asked about the timings of that framework and the multiyear shared prosperity fund that will come in from 2022 onwards, that the existing EU structural funds are still in place; they begin to tail off, but in 2021-22 at least the same amount of money will remain available to those areas under the existing funds. That gives us time to consult properly all those who may be involved on the framework, and for people to see how it will operate when it comes into place. In addition, next year £220 million will be made available to areas to pilot different approaches and begin to test out how this principle should work.

I hope some of those points also address the noble and learned Lord's fourth point, on "Westminster knows best", meaning that we do not trust Governments to spend in this area. I reiterate that this is a different approach to the devolved nations; we are talking about replacing EU funds with a UK-wide strategic fund. It is not about replacing the responsibilities of devolved Administrations but supplementing them with a strategic approach at the UK level. These powers do not amend any of the devolution Acts. On the final point about strengthening the union, that is one of the purposes of putting in this UK-wide power. It is to complement and strengthen it on areas where action may need to be taken across nations and regions.

The noble Lord, Lord Fox, asked about consultation with areas that are not devolved Administrations or mayoral combined authorities. I reassure him that we will do our best to consult local authorities and all parts of England, as well as the devolved nations. I believe the Government are bringing forward further plans on devolution that will give areas those strengthened local voices at some future point.

I have addressed the point of the noble Lord, Lord Stevenson, about the potential shortfall in the funds. I have reassured him on that, and that this power is intended to be additional to those powers of the devolved Administrations. I also reassure him that the powers and the shared prosperity fund will be different from Barnett; they will be based on a different understanding of needs and therefore separate from that formula. I can also reassure him that the fund will be open to the whole country, which was a theme of his. On the governance of the fund, I am not sure whether we have been so specific as to say that there will be a board; as I have said, there will be governance structures and the devolved Administrations will have a place within them. That is part of the further work we need to do, in consultation with the devolved Administrations and others, as we work to set out the framework that we will publish in the spring.

The Deputy Speaker (Lord Russell of Liverpool) (CB): I have received a request to ask a short question of elucidation from the noble Lord, Lord Fox.

Lord Fox (LD): The Minister will be aware that the current structural fund does not reach many regions across the United Kingdom, compared, I think, to the planned extent of the new shared prosperity fund. Can the Minister confirm whether that is true? If it is, and the money put into the shared prosperity fund is only—I use the word advisedly—as much as that put into the structural fund, it will be spread more widely. There will be losers among those who have been able to take advantage of the structural fund, because the money they would bid for will be spread to other regions and countries. Will the Minister acknowledge that? Is that perhaps one reason that the Government are rather reluctant to allow the devolved authorities any more involvement in this, because they know there will be issues around losing out on money that would have come through the structural fund but is now to be spread more widely across the United Kingdom?

Baroness Penn (Con): My Lords, the Government made a number of commitments on the shared prosperity fund in the manifesto, both about the overall quantum of the fund and the funding that different parts of the UK can expect to receive. We set out in the spending review that that would ramp up to £1.5 billion per year as the structural funds tail off. Our approach will be guided by that but, as I say, more detail will be set out in advance of the operation of the fund in spring next year, with the multiyear settlement coming in the following year.

Lord Thomas of Cwmgiedd (CB) [V]: I thank all noble Lords who have spoken in this short but interesting debate. I will deal with the Minister's points in turn.

First, it seems clear that these powers—the Minister actually said this in Committee—were being taken to give the UK Government power to spend across the United Kingdom. These powers would plainly not be needed unless they were encroaching on devolved powers. City deals can be done without them; the Government can spend without them. I say respectfully to the Minister and to those who say this is a financial matter that it is not. When powers are devolved, the spending power goes with them. The reason of financial privilege is not correct.

Secondly, on how the funding works, I find it difficult to understand why, in light of what the Minister has said, she cannot agree to the very short amendment I have put forward. It spells out the principles, deals with consultation and ensures that, within the areas of devolved spending only—the amendment is clear on this—there should be agreement so that funds are spent together. With respect, the importance of this amendment is to show that, as we go forward, we do so as a United Kingdom with the central UK Government and the devolved Governments working closely together. Putting this provision in the Bill, particularly the structure under which this is to be done in this area, would be an enormous reassurance. It would strengthen the union, not imperil it, by enabling inconsistent spending to occur in devolved areas. Having listened to the debate and heard what all noble Lords have said, I seek to take the opinion of the House on this issue.

4.39 pm

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Motion K1 (as an amendment to Motion K) agreed.

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4.52 pm

Motion L

Moved by ***Lord Callanan***

That this House do not insist on its Amendments 50, 57 and 61 to which the Commons have disagreed for their Reasons 50A and 57A, but do propose Amendment 50B in lieu—

Commons Reasons

50A: Because it would involve a charge on the public funds and the Commons do not offer any further Reason, trusting that this Reason may be deemed sufficient.

57A: Because the existing functions of the Competition and Markets Authority and the functions under Part 4 need to be kept separate and it is inappropriate for the devolved authorities to appoint members of the Board of that Authority.

Amendment in lieu

50B: After Clause 40, insert the following new Clause—

"**40A Duty to review arrangements for carrying out Part 4 functions**

(1) The Secretary of State must, within the permitted period—

(a) carry out a review of the appropriateness, for the purpose of securing the most effective and efficient performance of the Part 4 functions, of—

(i) the provision made by section 30(1) and the amendments made by Schedule 3, and

(ii) any arrangements made under or in connection with that provision and those amendments;

(b) prepare a report of the review (see subsection (4) for specific requirements relating to the report), and

(c) lay a copy of the report before Parliament, the Scottish Parliament, Senedd Cymru and the Northern Ireland Assembly.

(2) The review must, among other things, assess—

(a) the way in which Part 4 functions have been carried out by the CMA through Office for the Internal Market task groups authorised under section 30(1), and

(b) any advantages or disadvantages of continuing with—

(i) the provision made by section 30 and the amendments made by Schedule 3, and

(ii) the arrangements made under or in connection with that provision or those amendments,

as compared with other possible ways of providing for the Part 4 functions to be carried out (including possible arrangements not involving the CMA).

(3) In carrying out the review the Secretary of State must consult the other relevant national authorities.

(4) Before finalising the report required by subsection (1)(b) the Secretary of State must—

(a) send a draft of the proposed report to each of the other relevant national authorities, inviting the authority to make representations as to the content of the proposed report within a period specified by the Secretary of State, and

(b) consider any representations duly made in response to that invitation and determine whether to alter the report in the light of that consideration.

(5) The Secretary of State need not consult the devolved authorities further if the draft is altered as mentioned in subsection (4)(b) (but is free to do so if the Secretary of State thinks fit).

(6) The permitted period for the review is the period beginning with the third anniversary of the day on which section 30 comes into force (or first comes into force to any extent) and ending with the fifth anniversary.

(7) In this section "Part 4 functions" means functions of the CMA under this Part."

Lord Callanan (Con): My Lords, I now turn to the amendments on the office for the internal market and the subsidy control grouping.

First, I want to emphasise that Part 4 establishes the office for the internal market within the Competition and Markets Authority, which is, in our view, a natural home for the OIM, given its existing technical expertise that is highly relevant to the operation of the UK internal market. But, as I have set out, the office for the internal market will be independently governed within the CMA, and Schedule 3 sets out a carefully balanced set of governance arrangements which guarantee that independence and ensure a meaningful role for the devolved Administrations through the appointments process to the OIM panel. This gives the devolved Administrations a proper voice, while guaranteeing that the OIM can operate without delay or obstruction if four-nation consensus cannot be reached on appointments.

The Government have listened carefully to the discussions in this House and have acted, tabling a number of pragmatic and constructive amendments throughout Part 4. These make it clear that the OIM will work in the interests of consumers and ensure that it will operate in the interests of all parts of the United Kingdom and on an equal basis towards the four UK Administrations. This is further to the significant change put forward previously, requiring the Secretary of State to seek consent from all Administrations within a one-month timeframe, based on proposals developed originally by the Welsh Government. This change provides yet another enhancement for the devolved Administrations in the appointment process, which, as I have explained, fully reflects the even-handed approach to governance that runs throughout Schedule 3.

I hope your Lordships can appreciate that the Government have listened and moved accordingly. However, I cannot support your Lordships'

Amendments 57 and 61, which go further than this, requiring direct devolved Administration appointments to the CMA board. As already set out here and in the other place, it is the OIM panel that will undertake the work of the OIM. The CMA board is responsible for the operations of the organisation as a whole, which otherwise fall wholly within reserved competence. It is therefore not appropriate for the devolved Administrations to make appointments to the CMA board, as those board members would, in consequence, be involved in a range of reserved matters with no relation to the OIM functions set out in Part 4.

With regard to Amendment 50, your Lordships will be aware that this has invoked a financial privilege claim and has not been agreed to by the other place. Although this of course is sufficient in itself, I will remind your Lordships' House that there is a consultation forthcoming on this matter of subsidy control. It would be premature and unjustified to agree to confer specific regulatory functions on the OIM in respect of subsidies before the wider details of any legislative UK domestic subsidy control regime—including the appropriate mechanism for oversight and enforcement—have even been developed and brought before Parliament, let alone agreed.

However, I have listened to concerns regarding the decision to have the CMA perform these duties, and I am pleased to announce that the Government have tabled Amendment 50B, which will require the Secretary of State to review, after between three and five years and in close consultation with the devolved Administrations, the appropriateness of, effectiveness of and potential alternatives to the CMA carrying out its Part 4 functions. This will allow Ministers from all Administrations to closely consider the CMA's performance and the pros and cons of continuing with the CMA as the delivery vehicle for the Part 4 functions. This proposal makes it clear that the Government are committed to ensuring due diligence on the CMA's new functions and facilitating further scrutiny by all Administrations.

This amendment requires the devolved Administrations to be consulted as the review is carried out—but it goes further, giving the Administrations the right to consider and make representations on the draft report itself, and requiring the Government to fully consider those views. Subsection (5) rules out an unlimited obligation to consider repeated rounds of representations that could block the review, but I want to be clear that the Government will consider all views offered in good faith. I note for the benefit of noble Lords that this final point applies equally to Clause 50—to which I will now turn—which reserves to the UK Parliament the exclusive ability to legislate for a UK-wide subsidy control regime in future.

I was pleased to note in the debate on Report that many noble Lords did in fact recognise the importance of maintaining a consistent approach in what is a nationally significant area of economic policy. In addition, I welcome the devolved Administrations' support for the principle of a unified approach to subsidy control throughout the United Kingdom. For these reasons, the Government believe it is right that we retain the provisions for the reservation of subsidy control in the Bill.

Now we have left the EU, it is important that we continue to take a coherent approach to the system that governs how public authorities subsidise business across the UK. I reiterate that this reservation is not about sources of funding or who makes decisions on individual subsidies across the UK. This reservation will ensure that any future system we put in place to regulate against the distortive or harmful effects of spending on subsidies then applies to the whole of the UK.

A unified approach to that overall framework will reduce uncertainty for UK businesses and prevent additional costs to supply chains and consumers. As such, continuing our UK-wide approach to subsidy control and confirming it in law remains the best way to ensure that we continue to take a consistent approach to regulating the harmful effects of subsidies across the United Kingdom.

To be clear, all UK public authorities are and will remain responsible for their own spending decisions on subsidies—how much, to whom and for what—within any overall subsidy control regime. This reservation is not seeking to change public authorities' responsibilities for spending decisions. However, the wider rules which they operate should continue to be consistent across the United Kingdom.

I acknowledge the concerns that some of your Lordships have raised in previous debates regarding the principle of reserving a policy area in advance of the forthcoming consultation the Government have committed to publish. However, this reservation is a necessary step to ensure that, if a legislative regime were introduced, it would apply then to the whole of the UK. Given that this is a national issue, the future subsidy control mechanism should be the responsibility of the UK Parliament to determine.

5 pm

On the recent proposition from the Welsh Government suggesting that potential divergences could be managed through common frameworks, to be clear, the common frameworks programme was designed to operate in policy areas where regulatory powers previously held at EU level intersect with devolved competence. State aid has never been devolved and as such, has never been included in the common frameworks programme. Therefore, the approach suggested by the Welsh Government and set out in the amendment tabled by the noble and learned Lord, Lord Thomas, would not be appropriate.

I reiterate that this reservation will not change the devolved Administrations' position in practice. It is important to remember that the devolved Administrations have never previously been able to set their own subsidy control rules, as this was covered by the EU's state aid framework. We will continue to work closely with the devolved Administrations on the shape of a future domestic subsidy control regime in advance of any proposals being brought before the UK Parliament for consideration. The forthcoming consultation will provide an opportunity for us to work together on an approach to subsidy control which works for all four nations. We recognise the importance of maintaining a constructive and collaborate relationship with the devolved Administrations, as it is in all our interests to ensure that a new regime works for the whole UK. However,

[Lord Callanan]

I have listened to concerns regarding the role of the devolved Administrations in the development of proposals for a new subsidy control regime. To directly address these concerns, the Government have tabled an amendment setting out our commitment to engage with the devolved authorities on the Government's response to the UK subsidy control consultation.

This amendment ensures that before publishing any relevant report relating to the outcomes of the UK subsidy control consultation, the Secretary of State will provide a draft of the proposed response to the devolved authority, inviting it to make representations. The Secretary of State will then consider any representations and determine whether to alter the report in the light of that consideration. This proposal makes it clear that the UK Government are committed to involving the devolved Administrations in the forthcoming development of proposals for a UK-wide subsidy control regime.

I hope that your Lordships agree that the reservation of subsidy control is the best way to support the running of the UK's internal market. For the reasons I have set out, I hope that noble Lords will accept the Motion to reinsert Clause 50 into the Bill and accept Amendment 51B. I cannot accept Amendments 50C, 51, 57 and 61, and urge your Lordships to disagree to them. I hope that this House can accept the Government's amendments on the OIM and subsidy control respectively.

I beg to move.

Motion L1 (as an amendment to Motion L)
Moved by ***Baroness Finlay of Llandaff***

Leave out from "House" to end and insert "do not insist on its Amendment 50 to which the Commons have disagreed for their Reason 50A but do propose Amendment 50B in lieu, and do insist on its Amendments 57 and 61 to which the Commons have disagreed for their Reason 57A"

Baroness Finlay of Llandaff (CB) [V]: My Lords, I will speak to Motion L1 as an amendment to the Motion L. We now come to the vexed issue of oversight through the Office for the Internal Market. I preface my remarks by making it clear that these amendments relate to the risk as to whether the union is strengthened or weakened. They are concerned with the fundamental constitutional question of parity of esteem across, and long-term future of, the United Kingdom.

I recognise that the Government have thought and listened, and I appreciate that there is now a consultation and that they have modified their views. At the helpful Cabinet meeting today, hosted by the noble Lord, Lord True, the Government discussed the JMCEN, stressing the importance of an independent secretariat to the IGR to avoid disputes and ensure transparency. The importance of a strong, prosperous and thriving union was stressed, with emphasis on the importance of getting right the structures and the cultures within them. To lock in those cultures, the devolved Administrations wish to have a seat at the Competition and Markets Authority board. At Report, the Minister asserted that "OIM appointees should reflect a range of expertise from all parts of the United Kingdom."—[*Official Report*, 23/11/20; col. 102.] The amendment that we inserted in the Bill and which I seek to reinstate would ensure that the CMA's annual plans, proposals and performance reports are laid before the devolved legislatures, as well as Parliament, ensuring equal scrutiny and oversight of these developments. This would allow them to be discussed between Ministers from all Administrations.

It is the desire of the devolved Administrations to have their voice heard. Perhaps I may quote the noble Lord, Lord Cormack, in his belief, which I echo, that the union is in peril. He urged Ministers to take that reality into account. Without representation, it reads as if the Government want to have a monopoly of power and control in the country.

In rejecting Amendment 50, which we passed after our debates, the Government have tabled their own amendment. Amendment 50B from the Government appears to recognise that the CMA may not be the appropriate place for the effective and efficient performance of the OIM and that they have agreed that it needs its Part 4 function subject to review. Their amendment requires a formal review of between three and five years and they will consult with the devolved Administrations over conducting the review—so far, so good. But then the sting: the amendment from the Government allows the devolved Administrations to see the draft and comment on it, but only once. There is no need whatever for the Government to pay any attention to what they say. To quote from the amendment:

"The Secretary State need not consult the devolved authorities further if the draft is altered as mentioned in subsection (4)(b) (but is free to do so if the Secretary of State thinks fit).

That makes a mockery of seeking views. The Secretary of State can put the views of the devolved Administrations into the shredder. In disbelief, I called the Bill team to check whether I had understood correctly.

If the Government want this House to accept that Amendments 57 and 61 are not reinstated in the Bill, and to accept the Government's proposal, we must hear from the them today a clearer commitment that the devolved Administrations will be respected as equals; that their views, at review, will be taken into account; and that they, the Government, will ensure that the finalised report represents all views, which may include a minority view within such a report.

I will repeat the words we heard from the noble Lord, Lord True, in the meeting today, because they are so important. He said that the Government were committed to a strong and thriving union. If that is the Government's view, they must prove it by clear words today that determine future actions.

The Senedd does not believe that. Members voted today by 36 votes to 15 to deny legislative consent to the Bill, given the reversal of the Lords amendments in the Commons. While accepting that Amendment 50B replaces the deleted Amendment 50, and not wishing to reinstate the deleted amendment, I reserve the right to seek the opinion of the House on Motion L1, reinstating Amendments 57 and 61, if I do not have further adequate assurances from the Government. I beg to move.

The Deputy Speaker (Lord Faulkner of Worcester) (Lab): I now call the noble Lord, Lord Thomas of Cwmgiedd, to speak to, but not at this point move, Motion L2.

Lord Thomas of Cwmgiedd (CB) [V]: I am grateful to the Minister for the opportunity to discuss this clause with him. I hope that there is a basis on which we can move forward to agree this. I will explain the purpose of the amendment in five short reasons. First, it has always been the position that there must be a competition regime that must apply to the whole of the UK. The issue is how we get there in a way that preserves and strengthens the union.

The position at the moment is that there is no agreed new competition policy. We will be operating, subject to anything that may be agreed with the EU, under the WTO regime, which devolved Governments are bound to apply under the existing devolution settlements. There is therefore time to set about this constructively. It is clear that, in devising a competition regime for the control of subsidies, a lot of things need to be ironed out. What is the role of the CMA to be? Is it to be an independent adjudicator or merely advisory? If so, whom does it advise? What does control over subsidies mean? These issues need to be examined carefully.

There are two ways forward. Way one—what I would call the UK Government's way—is, first, to change the devolution settlements. This is a change to the devolution settlements because they operate on the basis that, if a power is not reserved, it is devolved—and there is no reservation in respect of this matter. It is therefore plainly devolved, and the purpose of this amendment is to change the devolution settlement. Having changed the settlement for a policy that they have not yet devised, the Government then wish simply to consult—and I am grateful for the clauses that affirm that they will at least do that—and then announce their decision. That is what I would call "way one"—the UK Government way.

But there is a better way, which is to do it by agreement but with a backstop. I think that there are good prospects of agreement. The Welsh Government offered unequivocally, in a letter sent on 24 November—the day before the Report stage of the Bill—to try to agree a common framework, but what I do not think many have appreciated the significance of is that the Scottish Government committed themselves to joining in that. I am not sure the extent to which that might have been appreciated at the highest levels of government, but if we simply reject this offer by the Scottish Government, that will, in my view, have very serious consequences.

Therefore, the amendment seeks to build on the progress that we have been able to make and to provide that an attempt should be made to agree a common framework—which is a regime that can govern the control of subsidies. However, if one is not agreed in the specified period of time—I have suggested three years—this clause would then take effect. If there is a view that that period is too long, obviously that is a matter that can be discussed.

The vital question is that the amendment, I respectfully urge, would allow for a further strengthening of the union, with an agreed way forward and the UK Government and the devolved Governments working together to achieve a regime applicable across the UK under the mechanism of consensus through a common framework. This would achieve what the Government want by consensus, not simply consultation. To reject the amendment and restore Clause 50 would be to impose unilaterally a change in the devolution settlement by reserving a power that is not reserved. This would be a gratuitous present to those who say that the union does not work.

There is an offer to work together from the Scottish and Welsh Governments. This House should not allow the Government simply to reject a consensual solution, as there is a time limit for that consensual process. In due course, I will move my Motion and seek t test the opinion of the House.

The Deputy Speaker (Lord Faulkner of Worcester) (Lab): My Lords, the following noble Lords have indicated that they wish to speak: the noble Baronesses, Lady Bowles of Berkhamsted and Lady Neville-Rolfe, and the noble Lord, Lord Liddle. I call the noble Baroness, Lady Bowles.

Baroness Bowles of Berkhamsted (LD) [V]: My Lords, I speak in favour of Motion L2 in the context of having been the mover of the original Amendment 50, which was rejected as involving a charge on public funds, despite my budget reference endeavours.

I broadly welcome the Government's Amendment 50B in lieu. It picks up the final point of my Amendment 50 regarding a review. The review also specifically includes the concern underlying the first part of Amendment 50 around the location of the OIM by requiring an assessment of the advantages and disadvantages of continuing with the provision of Part 4 functions via the CMA, compared with alternatives, including possible arrangements not involving the CMA.

I also welcome the fact that the relevant national authorities are to be specified as consultees at the stage of both review and draft report, but I hope that it will also be fulsome at the finalising stage as well as the draft stage.

Both in Committee and on Report, concerns about the CMA culture and the enforcement provisions were brought forward by myself and other noble Lords. It would be good for the OIM and the CMA to know that they will be watched and that these issues will be among those which are checked when it comes to the review and the report. I thank the Minister for the various amendments and assurances about the OIM, and in particular I note and thank him for the reassurances made regarding the penalties relating to information gathering, including proportionality, consultation with the devolved Administrations, and that

"these penalty powers in Part 4 will not be commenced unless there is a clear and credible need for them"—[*Official Report*, 25/11/20; col. 259.]

or unless

"there is evidence that they are called for, and even then they will not be used except as a last resort,."—[*Official Report*, 25/11/20; col. 270.]

There are further quotations like these.

A review clause is often seen as a weak compromise, but here it serves an important function in the context of new regulatory powers and as a vehicle for monitoring and checking the concerns raised in Parliament and the assurances given.

5.15 pm

Baroness Neville-Rolfe (Con): My Lords, I share the feeling of the noble Baroness, Lady Finlay of Llandaff, and the noble and learned Lord, Lord Thomas of Cwmgiedd, that the Government have come a long way on this Bill, and I thank my noble friend the Minister for that. Noble Lords will recall that I had reservations about locating the Office for the Internal Market within the Competition and Markets Authority. I believe that it is the wrong place with the wrong culture, a point just echoed by noble Baroness, Lady Bowles. There is a practice of aggressive enforcement that is hardly suitable to some of the sensitive issues that it will be asked to investigate. I am concerned in particular that small businesses in those sectors that are not lucky enough to be excluded will be fearful and suffer relative to the way they are being treated at present in the EU single market. A formal discrimination is now being introduced between services that are in and those which are not included within Schedule 2. I therefore very much welcome the review being proposed in the government amendment. It is an idea that featured in an earlier amendment to which I added my name.

However, I have a question on the wording. Could that review look not only at the track record of the OIM panel and its task groups, which are mentioned in Clause 30, and its constitution as set out in Schedule 3, but also at the location of the OIM itself and whether it should be within the CMA or somewhere else? I ask this obviously without commitment, but it would certainly be helpful to know that the review would be suitably wide-ranging.

I rise also to express doubts about Motions L1 and L2. Many of us have been clear in the endless debates on this Bill that we should avoid a situation where a particular nation can veto important new measures that are in the national interest. The Government have, of course, wisely conceded that the devolved Administrations should be included as a statutory consultee and, of course, the views of all the four nations will be properly taken into account in that process. But I agree with my noble friend the Minister that we should not accept Amendment 50C. It risks a delay of up to three years in implementing a UK subsidy control regime because of the need for agreement with the devolved Administrations. The existing arrangements for spending decisions on subsidies under the devolved settlements will continue, so I strongly support the Government on this matter.

Lord Liddle (Lab): My Lords, I make a brief intervention in the hope that the Government will listen to the wise words of the noble Baroness, Lady Finlay of Llandaff, and the particularly wise words of the noble and learned Lord, Lord Thomas of Cwmgiedd. We are at a delicate moment in our constitutional history. The future of the United Kingdom, with Brexit, is now in doubt. This will be the great issue of the next two years: can we keep the United Kingdom together? In that context, these are detailed matters, but the UK Government should go out of their way to ensure that those who want to break up the United Kingdom are not given just cause. I think that elements of the Bill and the Government's position on it will be used in this way.

First, in the argumentation, I recognise that the Government have tried to strengthen consultation with the devolved Administrations in the amendments that they have put forward. So well done to the noble Lord, Lord Callanan, on that—we are to be thankful for that. But the line that state aid is a reserved UK matter and the devolved Administrations have never had any power over it will not go down well in Scotland, Wales and Northern Ireland. Wales and Scotland have had their development agencies. To tell the Welsh and Scottish people that these bodies have had no rights or independence to make decisions that promote economic development in their nations is very odd. To them, it looks as though the Government are taking away powers that they presently have. That is how it looks. The noble Lord shakes his head but, honestly, it is how it looks. Therefore, I think the Government should be bending over backwards to carry the nations of our United Kingdom with them.

I cannot understand the reasoning behind rejecting the proposal that has come from both Cardiff and Edinburgh to see if we can sort out, by consensus, a regime of state aid through a common framework. I do not understand how the Government can arrogantly say that this is something that we must control ourselves. It seems that the consensus for the future of the United Kingdom is much the best way forward.

The same applies to the argument about appointments to the body that is going to administer the new regime. The devolved nations should be treated as equals in this process. They should be able to nominate their own people to this body, not just be consulted. That is on the principle of equality between the nations and not appropriating to the UK Government, who, in my part of England, northern England, are seen as a London Government. That is how people look at it; it is not seen as a United Kingdom Government. I am sure that in Edinburgh and Cardiff it is not seen as a UK Government, particularly because of the Prime Minister we have. We have to bend over backwards to bring the nation together. Here is an opportunity, and I am very sorry that the Government appear to be wasting it.

The Deputy Speaker (Lord Faulkner of Worcester) (Lab): Does any other noble Lord in the Chamber wish to speak? No noble Lord does, so I call the noble Lord, Lord Fox.

Lord Fox (LD): My Lords, as the Minister set out, this group relates to state aid, the Competition and Markets Authority and the office for the internal market. At Report, your Lordships removed a clause that changed the devolution statutes to specify that state aid powers are a matter exclusively for the UK Government. This was overturned in the Commons. Notwithstanding that, the Government have come back with the proposals set out by the Minister, which are welcome. My noble friend Lady Bowles set out where they have come from and should be congratulated for her work on this Bill.

Notwithstanding that, the noble Baroness, Lady Finlay, has tabled Motion L1, which would enable the devolved Administrations to appoint people to the CMA board. The Minister has stressed that the OIM, while being within the CMA, will be independently governed.

One of the reasons for not allowing previous amendments was a financial rule. This indicates clearly that the CMA will be holding the OIM's purse strings. In that respect, culture is one thing, but budget is something completely different. We have heard from the noble Baroness, Lady Neville-Rolfe, and from my noble friend Lady Bowles, and as I have said, we remain extremely concerned about the culture and role of the OIM. The Minister again stressed the technical expertise in the CMA, but the OIM is being asked to do something that is essentially different from the CMA. Frankly, this technical expertise, if deployed in the way the Minister hopes, is the problem we are warning the Government about. That accepted, one of the small ways of dealing with this issue is to support the amendment from the noble Baroness, Lady Finlay, and to make sure that there is at least some board-level representation from the devolved authorities.

Motion L2, from the noble and learned Lord, Lord Thomas, would insert a new provision relating to Clause 50, on state aid. As the Minister has acknowledged, it would create a common framework process whereby state aid is managed.

The noble Lord, Lord Liddle, and others have talked about the message all this sends to the devolved authorities, at a time of great fragility and change. To set this up in this way sends a bad and dangerous message to the devolved authorities. The noble and learned Lord, Lord Thomas, set out a reasonable response—a reasonable way of involving the devolved authorities centrally in the process of delivering the structures and frameworks for, and areas of, state aid. To simply consult with the devolved authorities on draft and not go back on the final decision is a little derisory, to say the least. The Government need to understand the message they are sending—a message clearly articulated in the Senedd vote today.

We are pleased that the noble and learned Lord, Lord Thomas, is going to test the mood of the House regarding his Motion, and we will support it when he does.

Lord Stevenson of Balmacara (Lab) [V]: My Lords, this has been an interesting debate, covering a wide range of issues previously discussed in Committee and on Report. I will not go through them in detail but I will say three important things. First, I welcome the Government's movement on the matters raised in the Minister's opening address on the OIM: its membership, the review within three to five years of the potential location of the OIM, and the firm commitment to ensuring that the DAs are consulted and their views fed in to this report. That was not as much as we wanted, but it is certainly a positive step forward that we welcome at this stage.

5.30 pm

The noble Baroness, Lady Finlay, and the noble and learned Lord, Lord Thomas, raised wider questions on devolution, but the noble and learned Lord made a more narrowly focused suggestion that I would like to press the Government on. The broader context raised by other speakers, in particular my noble friend Lord Liddle, gives a sense of the alarm bells that might be ringing on a number of issues raised by the Bill as a whole, but which come through narrowly in the debate on this group of amendments. I hope that the Minister was listening hard to the powerful speeches he has heard this afternoon, that he will look carefully at the points made by the noble Baroness, Lady Finlay, and the noble and learned Lord, Lord Thomas, and that he will respond appropriately when he can.

The noble and learned Lord, Lord Thomas, thinks there is a way forward and was persuasive in that regard. The two sides are not very far apart, but we may be a little further apart on approaches to the execution of state aid. I do not think there is any debate about the need for the UK Government to set the overall framework within which state aid is operated. That has to be right, but the particularity of the current use of state aid—the way it is deployed and so on—has to be handled very sensitively.

A very good way of showing the Government's commitment would be, as the noble and learned Lord, Lord Thomas, said, to accept his amendment on asking the common frameworks group to come forward with a proposal for state aid. As he pointed out, there is time. It is not a pressing issue, because we know now that we are operating on the basis of the WTO rules in the interim. If that works, why should we not take the time to go forward with this? Let us test the commitment, resolve and enthusiasm for the common frameworks through this good process of operating a common framework for state aid in short time, and to completion. If that can be done, and if the offer made by both the Scottish and Welsh Governments to hold back on any measures that might interfere with it in the intervening period is attractive, the Government have a win-win situation and I recommend it.

Lord Callanan (Con): My Lords, I thank all noble Lords who have contributed to what was another short but powerful debate. I have listened carefully to the points that have been made. I will set out in my closing remarks why I cannot support Amendments 51, 57 and 61 in the name of the noble Baroness, Lady Finlay. Turning first to the OIM, I emphasise that the Government have listened and responded directly to points made in this House. This is reflected in the meaningful changes made throughout Part 4. They include putting beyond doubt that the OIM will work in the interests of consumers, and making it clear that its functions will be available to the benefit of all parts of the UK, and for all Administrations, on an equal basis.

The Government have recognised the need for the devolved Administrations to be closely involved in OIM panel appointments. That is why the proposal for a one-month consent requirement on OIM panel appointments with the devolved Administrations is being introduced, providing them with an enhanced role in the process. This amendment originated with the Welsh Government.

Finally, the Government have tabled an amendment that will require a review and a report between three and five years after the CMA takes on the Part 4 functions. This will examine the way in which the CMA has carried out these functions, and the devolved Administrations will be closely involved throughout. The review and the report will provide the necessary assurances that the operation of the OIM within the

[Lord Callanan]
CMA will be closely scrutinised, providing enhanced transparency and accountability to all four UK Administrations.

I will reply to the point made by the noble Baroness, Lady Finlay: in seeking to go further than a normal requirement to consult the devolved Administrations on the review of the OIM, the Government have included an additional and explicit requirement to share and allow for representations on the resulting draft report. As I have said, providing that the Government are not required to follow this operation an unlimited number of times is simply intended to prevent a procedural impossibility if no consensus is reached. I am happy to say again that all views offered in good faith will be considered by the Government in preparing their report, as required in the proposed clause. The amendment makes clear that the Government have the option of sharing as many drafts and considering as many rounds of representations as are appropriate and feasible in the circumstances.

I am happy to assure my noble friend Lady Neville-Rolfe that these proposed reviews would assess the pros and cons of the CMA as the delivery vehicle of the OIM, including whether possible arrangements not involving the CMA could carry out the Part 4 functions in the future.

I turn to the knotty issue of subsidy control. The purpose of this reservation is to provide stability and continuity as we move forward in forging a new UK-wide subsidy control regime. This Bill continues the UK-wide approach to subsidy control and confirms this in law. State aid has never been a devolved issue, as I have said on a number of occasions, and this reservation will ensure that we can continue to take a uniform approach to subsidy control across the UK. I reiterate that, in practice, nothing will change for the devolved Administrations. All UK public bodies, including the devolved Administrations and in the areas that the noble Lord, Lord Liddle, highlighted, will still have responsibility for spending decisions on subsidies and should make these in a way that is consistent with the overall approach taken across the United Kingdom.

In the coming months, we intend to publish a consultation on whether we should go further than our World Trade Organization and international commitments, including whether further legislation is necessary. We will take the necessary time to listen closely to the devolved Administrations and design a system that promotes a competitive and dynamic economy throughout the whole of the United Kingdom.

The proposed amendment makes clear that the UK Government are committed to involving the devolved Administrations in the forthcoming development of proposals for a UK-wide subsidy control regime. We recognise the importance of working constructively and co-operatively in this policy area, and it is in all our interests that a new regime works to the benefit of the whole country. That is why the Government cannot agree with Amendments 50C, 51, 57 and 61, so I urge noble Lords to accept Amendments 50B and 51B put forward in my name and reject the others.

Baroness Finlay of Llandaff (CB) [V]: My Lords, I am most grateful to the Minister for providing me with the additional reassurance that I was seeking, that they will share and allow representation and that the hold-up would only be to prevent procedural deadlock in the review of the OIM panel within the CMA. In light of those assurances and the tone of wanting to work with the devolved Administrations in relation to the issue of the CMA, I will withdraw my amendment.

Motion L1 withdrawn.

Motion L2 (as an amendment to Motion L)
Moved by ***Lord Thomas of Cwmgiedd***

Leave out "Amendment 50B" and insert "Amendments 50B and 50C—

50C: Clause 50, before subsection (1) insert—

"(A1) Subsections (1), (2) and (3) shall take effect when the Welsh Ministers, the Scottish Ministers and the Northern Ireland Executive have agreed with the Secretary of State a common framework applicable to the United Kingdom to regulate the provision of subsidies by a public authority to persons supplying goods or services in the course of a business or, if agreement cannot be reached, three years after the passing of this Act.""

Lord Thomas of Cwmgiedd (CB) [V]: My Lords, I am very grateful to all who have taken part in this very interesting and difficult debate. The points may seem obtuse, in that they concern state subsidies, but there are very real issues of principle involved. In the first place, it is quite clear, as the noble and learned Lord, Lord Hope of Craighead, pointed out earlier in this debate, that the state subsidies are devolved. For example, Schedule 5, Part III, paragraph 4(1) of the Scotland Act says:

"This Schedule does not reserve giving financial assistance to commercial activities for the purpose of promoting or sustaining economic development or employment."

When one then looks at the amendment that is brought in by Clause 50, it speaks of:

"Regulation of the provision of subsidies which are or may be distortive or harmful … to persons supplying goods or services."

There can obviously therefore be an argument, as any subsidy may be distortive, that the whole of the power is subsumed in what the Government are seeking to do through their Amendment 50.

Where we have got to is an almost Alice in Wonderland situation: they want to change the devolution settlement first, in this way, which cuts right across agreed provisions, quite apart from the general reservation, and then work out the policy second. Surely, the better way to do this is to work out the policy first, and to do it in consultation with the devolved Governments. The amendment I have put forward gives a way of doing that and, most importantly of all, apart from these technical issues, to take away power—express power in the devolution agreements—because all these powers are not reserved. The Government would not need this change. Not having a clear idea that you can explain and work out how this works with the devolution settlement in my view is a gift to those who say, "The union will not work. We offered to co-operate and they won't". I therefore want to test the opinion of the House on this amendment, which is a compromise to try to secure the future of our union, in which so many of us have such faith.

5.42 pm

Division conducted remotely on Motion L2 (as an amendment to Motion L)

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Motion L2 (as an amendment to Motion L) agreed.

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O'Shaughnessy, L.
Parkinson of Whitley Bay , L.
Patel, L.
Penn, B.
Pickles, L.
Pidding, B.
Polak, L.
Popat, L.
Powell of Bayswater, L.
Rana, L.
Randall of Uxbridge, L.
Ranger, L.
Rawlings, B.
Reay, L.
Redfern, B.
Renfrew of Kaimsthorn, L.
Ribeiro, L.
Risby, L.
Robathan, L.
Rock, B.
Rose of Monewden, L.
Rotherwick, L.
Sanderson of Welton, B.
Sarfraz, L.
Sater, B.
Scott of Bybrook, B.
Seccombe, B.
Selkirk of Douglas, L.
Shackleton of Belgravia, B.
Sharpe of Epsom, L.
Sheikh, L.
Shephard of Northwold, B.
Sherbourne of Didsbury, L.
Shields, B.
Shinkwin, L.
Shrewsbury, E.
Smith of Hindhead, L.
Stedman-Scott, B.
Sterling of Plaistow, L.
Strathclyde, L.
Stuart of Edgbaston, B.
Sugg, B.
Suri, L.
Taylor of Holbeach, L.
Taylor of Warwick, L.
Tebbit, L.
Trefgarne, L.
Trenchard, V.
True, L.
Tugendhat, L.
Ullswater, V.
Vaizey of Didcot, L.
Vere of Norbiton, B.
Verma, B.
Wakeham, L.
Waldegrave of North Hill, L.
Warsi, B.
Wasserman, L.
Waverley, V.
Wei, L.
Wharton of Yarm, L.
Whitby, L.
Willetts, L.
Williams of Trafford, B.
Willoughby de Broke, L.
Wilson of Tillyorn, L.
Wyld, B.
Young of Cookham, L.
Younger of Leckie, V.

5.55 pm

Motion M

Moved by ***Lord Callanan***

That this House do not insist on its Amendment 51 to which the Commons have disagreed for their Reason 51A, but do propose the following amendment in lieu—

Commons Reason

51A: Because it is necessary to reserve to the United Kingdom Parliament the right to legislate for a system to regulate the provision by public bodies of subsidies which are or may be distortive or harmful and to avoid the risk of inconsistent regulation of such subsidies in the different parts of the United Kingdom.

Amendment in lieu

51B: After Clause 50, insert the following new Clause—

"**50A UK subsidy control consultation: engagement with the devolved authorities on the Government response**

(1) For the purposes of this section—

(a) "the UK subsidy control consultation" is the consultation announced by the Secretary of State for Business, Energy and Industrial Strategy in a written Ministerial statement made in the House of Commons on 9 September 2020 (consultation on whether the United Kingdom should go further than its existing international commitments in relation to subsidy control, including whether legislation is necessary);

(b) a "relevant report" is a report containing the whole or part of the Government's response to that consultation (and for this purpose "response" includes any conclusions and proposals, resulting from that consultation, as to arrangements in the United Kingdom for controlling the provision by public authorities of subsidies which are or may be distortive or harmful);

(c) subsidies are "distortive or harmful" if they distort competition between, or otherwise cause harm or injury to, persons supplying goods or services in the course of a business, whether or not established in the United Kingdom;

(d) the "devolved authorities" are the Scottish Ministers, the Welsh Ministers and the Department for the Economy in Northern Ireland.

(2) The Secretary of State must, before publishing any relevant report relating to the UK subsidy control consultation—

(a) provide a draft of the proposed Government response to each devolved authority, inviting it to make representations about the proposed response within a period specified by the Secretary of State, and

(b) consider any representations duly made by any of the devolved authorities in response to that invitation and determine whether to alter the report in the light of that consideration.

(3) The Secretary of State need not consult the devolved authorities further if the draft is altered as mentioned in subsection (2)(b) (but is free to do so if the Secretary of State thinks fit).

(4) The consultation required by subsection (2) is in addition to any engagement with the devolved authorities in the course of the UK subsidy control consultation."

Motion M agreed.

Bill returned to the Commons with amendments.

House adjourned at 5.56 pm.

Grand Committee

Wednesday 9 December 2020

Arrangement of Business

Announcement

2.38 pm

The Deputy Chairman of Committees (Baroness Watkins of Tavistock) (CB): My Lords, the hybrid Grand Committee will now begin. Some Members are here in person respecting social distancing while 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. Your microphone will no longer be turned on at all times, 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 so, wait for the green flashing light to turn red before you begin speaking. The process for unmuting and muting for remote participants remains the same.

The time limit for the following debate is one hour.

Ozone-Depleting Substances and Fluorinated Greenhouse Gases (Amendment etc.) (EU Exit) Regulations 2020

Considered in Grand Committee

2.39 pm

Moved by ***Lord Goldsmith of Richmond Park***

That the Grand Committee do consider the Ozone-Depleting Substances and Fluorinated Greenhouse Gases (Amendment etc.) (EU Exit) Regulations 2020.

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

The Minister of State, Department for the Environment, Food and Rural Affairs and Foreign, Commonwealth and Development Office (Lord Goldsmith of Richmond Park) (Con): My Lords, there are three instruments in this group before the Committee today. Two are concerned with the regulation of chemicals and chemical products, and the third concerns the regulation of fluorinated gases and ozone-depleting substances. A common thread is that each one contains provisions necessary to implement the protocol on Ireland and Northern Ireland.

We have worked with the devolved Administrations on all three instruments and they have given consent. I confirm that all three instruments will be able to function with or without a deal with the European Union. I also confirm that all three instruments have been considered by the JCSI and that no issues have been drawn to the attention of the House.

The first instrument that I will cover is the Ozone-Depleting Substances and Fluorinated Greenhouse Gases (Amendment etc.) (EU Exit) Regulations 2020. The EU's ODS regulation and F-gas regulation implement the Montreal protocol by controlling and reducing the use of ODS and HFCs, which are the main types of F-gas. Registration, licensing of production, imports and exports and quota limits underpin these controls.

The instrument will enable the UK to meet the requirements of the Northern Ireland protocol regarding restricting the use of ozone-depleting substances and fluorinated greenhouse gases, which I will refer to as ODS and F-gases from hereon. This will be done by making changes to existing EU exit legislation. The instrument also amends dates to prevent errors of law.

The Northern Ireland protocol requires that the EU F-gas and ODS regulations remain applicable to and in Northern Ireland. Northern Ireland will remain part of the EU's systems. This means establishing quota systems for Great Britain that are separate from the EU systems. Producers or importers will require GB quota to place on the GB market, with businesses selling into Northern Ireland needing EU quota.

This instrument also introduces provisions to control the movement of F-gases and ODS between Great Britain and Northern Ireland. This movement will be deemed as imports or exports. Controlling such movement is vital to maintain the integrity of the GB F-gas and ODS systems, meet the Northern Ireland protocol requirements, and ensure UK compliance with its Montreal protocol obligations.

The instrument meets two key principles: first, to continue our contribution to UK climate ambition through complying with our Montreal protocol obligations; and, secondly, to impose the most light-touch measures that we can on the movement of goods between Northern Ireland and Great Britain while adhering to the Northern Ireland protocol and meeting our international obligations.

The previous SI, the Ozone-Depleting Substances and Fluorinated Greenhouse Gases (Amendment etc.) (EU Exit) Regulations 2019, as amended by this instrument, will transfer powers and functions previously held by European institutions to appropriate bodies in England, Scotland and Wales. The Scottish and Welsh devolved Administrations will have the competence to establish their own ODS and F-gas systems if they choose to do so in the future. They have also agreed in principle to the operation of GB-wide ODS and F-gas systems. The Secondary Legislation Scrutiny Committee highlighted this instrument given its impact on movement of goods between Northern Ireland and Great Britain.

I now move on to the Control of Mercury (Amendment) (EU Exit) Regulations 2020. This instrument makes amendments to the retained EU law to ensure that legislation which manages the control of mercury is operable at the end of the transition period. In addition, it reflects the requirements of the Northern Ireland protocol. This instrument revokes and replaces the Control of Mercury (Amendment) (EU Exit)

[Lord Goldsmith of Richmond Park]
Regulations 2019, as well as Regulation 8 of the Environment and Wildlife (Legislative Functions) (EU Exit) Regulations 2019. These provisions are now included in this instrument. Revoking the two SIs made in 2019 and remaking the provisions contained in those SIs in this instrument ensures that we do not have more than one set of amending legislation.

This instrument also amends the Control of Mercury (Enforcement) Regulations 2017. In addition, we will be introducing new procedural requirements for the transport of elemental mercury between GB and Northern Ireland and introducing a prohibition on the transport of specified products containing mercury between GB and Northern Ireland. There are currently no controls on the movement of these specified products containing mercury or elemental mercury between EU member states. These new requirements should prevent the uncontrolled flow of elemental mercury and the specified products containing mercury from the EU into Great Britain via Northern Ireland.

This instrument provides for the exercise, by the appropriate GB Minister, of a number of legislative functions currently carried out by the European Commission. These legislative functions were previously included in Regulation 8 of the Environment and Wildlife (Legislative Functions) (EU Exit) Regulations 2019. That instrument was debated in the House of Lords and House of Commons on 12 and 14 February 2019 respectively and agreed by both Committees.

Following the UK's withdrawal from the EU, the retained EU legislation, as amended by this instrument, will continue to implement the UK's obligations as a party to the Minamata convention and provide a regulatory framework for the management of mercury. Northern Ireland will continue to apply EU regulation 2017/852 to manage mercury in the environment.

This SI meets the Government's commitment to the Northern Ireland protocol and ensures continued levels of protection for human health and the environment, as well as providing stability and continuity for business.

I turn to the third and final instrument, the Detergents (Amendment) (EU Exit) Regulations 2020, whose primary aim is to ensure that the UK meets its obligations under the Northern Ireland protocol in respect of Regulation (EC) No. 648/2004 on detergents—the EU detergents regulation. This has been done by amending the existing EU exit regulations on detergents, which are already in place.

I will highlight the key amendments that this instrument makes to the existing EU exit regulations. Noble Lords will not be surprised to learn that they are merely technical in nature. This instrument makes special provision for detergents in Northern Ireland in respect of qualifying Northern Ireland goods, creating a category of protected imports from Northern Ireland and enabling them unfettered access to the Great Britain market, while maintaining standards of protection for the environment and human health. The technical changes made by this instrument will give effect to the Northern Ireland protocol by ensuring that the EU detergents regulation, as it has effect in EU law, continues to apply in Northern Ireland, and that the amendments to the retained version of the EU detergents regulation extend to Great Britain only.

Trade from Northern Ireland to the rest of the UK should continue to take place as it does now—that is, there will be unfettered access, as provided for by the protocol. Therefore, at the end of the transition period, businesses in Northern Ireland may continue to place their goods in any part of the UK internal market without new restrictions.

In addition to these changes made to the existing EU exit regulations on detergents, this instrument amends the Detergents Regulations 2010—the domestic enforcement regulations on detergents—ensuring that the Northern Ireland enforcement authorities can continue to enforce the EU detergents regulation as it has effect in EU law, while the retained version of the EU detergents regulation can continue to be enforced in Great Britain. The changes made to the 2010 regulations will also have the effect of ensuring that the competent authority functions, currently exercised by the Secretary of State under the EU detergents regulation, will be exercised by the Department of Agriculture, Environment and Rural Affairs in Northern Ireland.

The Secondary Legislation Scrutiny Committee has considered and cleared this SI from scrutiny without comment. I assure Members of the Committee that the overarching aim of this instrument is to provide continuity for detergent businesses, to ensure that, following the end of the transition period, the high standards of human health and environmental safety will continue across the UK, and to reflect the obligations under the Northern Ireland protocol. I beg to move.

2.48 pm

Baroness Jones of Moulsecoomb (GP) [V]: My Lords, I will focus on mercury today, not because ozone-depleting substances, fluorinated greenhouse gases and indeed detergents are not extremely important but because mercury is so toxic and is in use for quite a number of developmental practices. I am quite concerned that it should be taken very seriously.

Exposure to mercury is a huge problem. There is a sort of global pool that moves around between air, water, sediment, soil and, of course, organisms, including ourselves. It is a highly toxic metal which causes significant harm to human health and to ecosystems. Of particular concern are the levels of mercury in seas and oceans, where mercury accumulates up the food chain and reaches humans in concentrated mass through the consumption of seafood—it has certainly put me off seafood. The most damaging human health impact is exposure of pregnant women and unborn children, with permanent impacts on brain function, so we absolutely have to take it seriously and make sure that we are doing as much as we can to render it safe.

The EU has taken the problem of mercury very seriously. It has implemented the legislation that we are discussing today and set Europe the goal of becoming mercury-free, which is quite an ambition. Is it the Government's intention to continue to reduce our use of mercury to zero? When will the UK eliminate mercury usage entirely? Also, will the Government do something about it internationally? We have all read newspaper stories about children looking for gold and using mercury to separate the gold out, which is absolutely horrific. Perhaps it is done already—I do not know—but there is an argument for labelling all

gold from that sort of production process "mercury gold" and explaining to people why perhaps they should not buy it. It is part of our role as an engaged nation to deal with this problem internationally. It is not something that we can turn our back on. Also, mercury-polluted sites can wash out into watercourses, where mercury is released into the air. What are the Government going to do to decontaminate mercury from the environment and remediate damaged ecosystems?

I hope that the Minister can answer my questions. If not, perhaps he will write to me.

2.51 pm

Lord Oates (LD): My Lords, I thank the Minister for the clarity of his introduction of these three sets of regulations and for outlining their intent. I also thank the noble Baroness, Lady Jones, for asking a number of important questions about the mercury regulations.

In many ways, these are technical amendments to ensure that our law continues to comply with the international obligations that we have signed up to, particularly the Ireland-Northern Ireland protocol, the Montreal Protocol on Substances that Deplete the Ozone Layer and the Minamata Convention on Mercury. I hope that we can all agree on the importance of upholding our international obligations now that the Government have stepped back from the idea of breaking international law in the internal market Bill. I hope that this episode proves a one-off aberration rather than a pattern of behaviour—although I should note that it has already caused us huge damage around the world and fundamentally undermined our ability to hold others to their international obligations. Nevertheless, at least we have stepped back from the brink.

Whether or not we disagree on that point, I think that we can certainly agree on the need to control the substances under discussion today. To that extent, I have no argument with the technical provisions included in the three sets of regulations, which are clearly necessary. However, the regulations give rise to questions about restrictions on the movement of goods within the United Kingdom, and fundamental questions about the application of the law of a foreign entity to the citizens of a part of the United Kingdom. The regulations confirm that Northern Ireland will remain within the EU market for fluorinated gases and ozone-depleting substances. Defra has confirmed that the controls would apply to the movement of all ODS gas, goods and trade between Northern Ireland and GB, including household fridges, air-conditioning products and aerosol sprays. This means that there would be checks at the GB/NI boundary—

2.53 pm

Sitting suspended for a Division in the House.

2.59 pm

Lord Oates (LD): My Lords, the regulations confirm that Northern Ireland will remain within the EU market for fluorinated gases and ozone-depleting substances. Defra has confirmed that controls will apply to the movement of all ODS and F-gas goods and trade between Northern Ireland and Great Britain, including household fridges, air-conditioning products and aerosol sprays, and that this will mean checks at what it describes as the GB/Northern Ireland boundary. Can the Minister expand on the nature of the checks that will be required at the GB/NI boundary and say whether these will apply to both NI to GB and GB to NI movement, and whether export declarations will be required?

The Explanatory Memorandum also states that the regulations will provide for

"unfettered access of detergents and surfactants … from Northern Ireland into Great Britain."

Can the Minister tell us whether there will be unfettered access of detergents from Great Britain to Northern Ireland? Will there be checks required, or any other limitations on the free movement of detergents within the customs territory of the United Kingdom?

The regulations also underline the fact that EU law will continue to apply in Northern Ireland in respect of the control of ozone-depleting substances and fluorinated gases and of detergents. Can the Minister tell us what role Parliament, and the Northern Ireland Assembly in particular, will have in scrutinising the EU law that will apply to our citizens? Should EU law change in these areas, is it the intention of Her Majesty's Government to follow such changes in GB law, or will we diverge from the law in Northern Ireland? Given the Minister's commitment to Brexit, I am sure that he will have considered the ramifications of the law of a foreign entity being applied to the citizens of a part of our country and will have given appropriate thought to how effective scrutiny of such law can be applied.

The Minister may be aware that this issue has been a cause of serious concern to Members of the House of Lords European Union Select Committee since the withdrawal agreement was signed. As recently as Friday 4 December, the chairman of that committee, the noble Earl, Lord Kinnoull, raised this issue once again in a letter to the Chancellor of the Duchy of Lancaster. In this letter he said:

"I want to stress that, with now less than a month to go until the protocol on Ireland/Northern Ireland becomes operational, the urgency of agreeing mechanisms for the scrutiny of the EU laws that will apply to Northern Ireland under the protocol is acute."

Finally, I would be grateful if the Minister could cast some light on when the Government intend to address these issues and why the people of Northern Ireland are being treated so disrespectfully by them leaving it so late to put in place the necessary mechanisms to do so.

3.02 pm

Baroness Hayman of Ullock (Lab): My Lords, I thank the Minister for introducing these SIs this afternoon and for the helpful discussion that we were able to have beforehand.

I will look first at the ozone-depleting substances and fluorinated greenhouse gases regulations. The Minister has explained that their purpose is to implement the Northern Ireland protocol, specifically in relation to restrictions on the use of ozone-depleting substances and fluorinated greenhouse gases. As a result of the changes proposed by this instrument, as we have heard, two separate systems will operate in Northern Ireland and Great Britain after the end of the transition period, with controls on the movement of relevant

[Baroness Hayman of Ullock]
gases, substances and equipment requiring checks between Northern Ireland and Great Britain. The noble Lord, Lord Oates, asked a number of questions in this area, and I am interested to hear the Minister's response.

The department says that this approach is necessary to implement the protocol and to ensure that the UK remains compliant with its international obligations and can deliver its wider climate change commitments. What work has been carried out by the department on the potential practical impacts on trade between Northern Ireland and Great Britain?

This instrument amends a previous EU exit SI, rather than revoking and replacing it. There is an inconsistency in Defra's approach to this legislation. Some instruments have provided an element of consolidation, but others have slightly muddied the waters. Look at the SIs in front of us today. Paragraph 3.1 in the EM for the new regulations for the control of mercury states that it is completely replacing the previous SI, whereas others are just adding to them. It would be interesting to get some clarification of the department's thinking on the latest instruments we have been looking at.

Looking in more detail at the ozone-depleting substances regulations, we see that paragraph 2.8 of the EM notes that current Commission competences will be transferred to England, Scotland and Wales. Can the Minister confirm whether this will be a complete and like-for-like transfer of powers, or whether there are some areas which have been deemed surplus to requirements?

Paragraph 2.10 notes that the devolved Administrations can establish and operate their own systems if they want to, and the Minister referred to this in his introduction. What consultation was carried out with them and has the Minister had any indication of whether this is the direction they would like to take? If so, what kind of timescales are we looking at?

Paragraphs 10.1 and 11.1 mention the detailed technical guidance on how the ODS and F-gas systems will operate in GB after the end of the implementation period. Paragraph 11.1 explicitly states that this was due to be published in October. Can the Minister confirm whether this has actually happened, and, if so, when it was published? Has the promised engagement with industry now also been undertaken?

Finally on this SI, paragraph 14.1 confirms that the EU requirement for a review of the regulation by 2022 will be retained, with the Secretary of State and devolved Administrations to carry out this task, either together or separately. Does the Minister have any idea how long this process is expected to take and when it is likely to commence?

I turn to the control of mercury regulations. We have recently considered a number of SIs to implement the Northern Ireland protocol which have not raised any concerns in relation to trade between Northern Ireland and Great Britain. However, the noble Baroness, Lady Jones, drew attention to the extreme toxicity of mercury. Paragraph 2.7 of the EM outlines the new procedural requirements for products containing mercury to move between the two, including a prohibition on the movement of mercury-added products in both directions. I draw attention to this because it is a major departure from the current system, where products can move freely between EU members. Can the Minister give further detail about the department's thinking in drawing up this new system?

Paragraph 10.2 states that the market for such goods is

"small and decreasing in size"

and that data indicates it will affect only a

"small number of imports per year."

The Minister referenced in his introduction paragraph 10.3, which states that industry engagement suggests

"there is very little movement of any elemental mercury or mercury added products"

between Northern Ireland and Great Britain or between Great Britain and the EU. Does the Minister have an estimate of how many movements we are looking at? Does he see any practical problems that could arise from the approach being taken?

Finally, I turn to the detergents amendment. The Minister has already explained that, among other things, this instrument will allow the continued movement of detergents and surfactants from Northern Ireland to Great Britain after the end of the transition period. Paragraph 7.4 of the Explanatory Memorandum notes that while movement will be maintained, so will safeguard measures within Great Britain to protect human health and the environment. The SI also amends a couple of EU-derived regulations, as well as making minor amendments to previous exit SIs to ensure compatibility with the Northern Ireland protocol. We have no real concerns on this SI and are pleased to note that the devolved Administrations were given the opportunity to comment during the drafting of the proposals.

I look forward to the Minister's response to my earlier questions.

3.09 pm

Lord Goldsmith of Richmond Park (Con): My Lords, as I said at the start of the debate, these instruments are necessary to make sure that the Northern Ireland protocol is implemented properly. They correct operability deficiencies necessary for the implementation of the protocol. They also respond to the Government's commitment to unfettered access for Northern Ireland goods and help to make sure that we are fully prepared for the end of the transition period on 31 December. These instruments will also ensure that the UK continues to meet its international obligations for mercury as a party to the Minamata convention, and for fluorinated gases and ozone-depleting substances under the Montreal protocol. They will also ensure that we continue to maintain the high standards of biodegradability for detergents and surfactants. The contents of all three are low key and technical, but they are all essential to fulfil our obligations under the Northern Ireland protocol and they all contribute in their own way to the effective functioning of the internal UK market, and to the Government's continued commitment to environmental protection.

I thank noble Lords for their contributions and questions. I will endeavour to answer as many of them as I can, starting with the noble Lord, Lord Oates. With his permission, I will not engage on the issue of the UK internal market Bill, as it is slightly off-topic, but I heard his comments and very much note them.

The noble Lord made a number of interesting and useful points. Broadly, on our intentions in relation to the Government's application and maintenance of high standards in future, we have been clear that we will maintain the existing regulation of mercury and will continue to fulfil the UK's commitments under the Minamata convention. This is an answer to a number of contributions: we will not look to diverge for the sake of it. In relation to detergents, the decisions we make will reflect what is best for the UK and the environment. In future, there may be some divergence over time between the GB and EU regimes, but that will be based on what is in our interest and on independent decision-making, and in the context of wanting to maintain the highest possible standards. Having the freedom to make our own decisions based on the science that we have and tailored to the needs of our businesses categorically does not mean reducing standards in any meaningful sense at all, as we have made clear.

In relation to our global obligations, the UK in its entirety is obliged to comply with the obligations set out under the UN Montreal protocol. Those obligations relate primarily to consumption controls. From 1 January, compliance will be achieved by controlling consumption within Great Britain through licensing and quotas, and by maintaining oversight of consumption in Northern Ireland, which will be controlled through the EU F-gas and ODS regulation. The UK will report to the UN Ozone Secretariat on UK annual consumption.

The noble Lord asked about the border and how movements and transactions will be monitored and how enforcement will take place. As he would expect, there will be close co-operation between the UK, Scottish and Welsh Governments in the operation of the GB system, and continuous dialogue of course with Northern Ireland. Officials of the Administrations, including Northern Ireland for UK-level matters, are working on the UK common framework for F-gas and ODS, which will set out the arrangements for co-operation, including the governance arrangements, decision-making and dispute resolution procedures.

In no particular order, because I have managed to write the questions down in no particular order, I will address some of the important points raised by the noble Baroness, Lady Jones. She raises the issue of the toxicity of mercury, and mentioned a story that I do not think I have read about children in Ghana. There are many such examples, and the problem is not limited to Ghana. Illegal mining takes place throughout parts of the Amazon, particularly Colombia, where the effects on the water systems and the health of people, including young children, are abhorrent. It is a really toxic, destructive and dangerous substance. She rightly said that the EU had taken the issue of mercury seriously, and the UK has absolutely been part of that; indeed, the UK has been a leading voice in maintaining standards at the appropriate level. We will remain strongly committed to the effective and safe management of chemicals to protect both the environment and the public, and that will not change after the transition period. We will continue to implement decisions made internationally under the Minamata convention, on which this legislation is based.

The noble Baroness asked when the UK will eliminate mercury usage entirely. Use of mercury in dental amalgam is an issue that often comes up; that will continue to be the main use of mercury in the UK. I am told that the UK Chief Dental Officers are considering how to reduce the use of dental amalgam, as laid out in the national plan to phase down the use of dental amalgam, published in June last year. I admit that this is not an area that I have followed closely in terms of their plans for the future but, like her, I hope that they take a very enthusiastic and bullish approach to minimising, and eventually eliminating, exposure to mercury.

The noble Baroness asked what the Government are doing internationally to end the use of mercury. The UK is a party in its own right to the Minamata convention and will continue to uphold and fulfil our obligations under it, which includes reducing man-made emissions to the environment. Existing legislation has driven down the use of mercury significantly. We have seen emissions of mercury to air decline by 90% in the last 30 years. A commitment to further reduce land-based emissions of mercury to air and water by 50% by 2030 is set out in the Government's 25-year environment plan, to which we are very much committed.

The last point the noble Baroness raised was on mercury-polluted sites and what we can do to clear them up. I point out that, technically, it is the responsibility of the local authorities to identify and prioritise contaminated land remediation where there is an unacceptable risk to health and the environment as under Part 2 of the Environmental Protection Act, but Part 2 also outlines the "polluter pays" principle regarding contaminated land remediation. This is very much a central theme in the Environment Bill, which will shortly come to the House. Applied rigorously and properly, and robustly enforced, the "polluter pays" principle would create a strong lever to prevent those responsible for mercury releases from doing so. The only way to ensure that in future we will see less of this kind of pollution will be through turning that pollution into a very serious financial liability. That is what the "polluter pays" principle does, and for as long as I am Minister, I want to enforce and press it very firmly.

I turn to the points raised by the noble Baroness, Lady Hayman. I thank her for her time earlier, when we chatted through some of these issues and she raised some of her concerns. I will have to whizz through this, but I will try to get through it.

This SI amends the previous EU SI, but the noble Baroness asked whether there are any surplus elements—is it amended, revoked or revised? The previous exit SI will remain in place, but it is amended by this SI to implement the protocol on Northern Ireland/Ireland. The SI also amends dates in the previous EU SI that fell before the end of the implementation period to prevent errors of law. The noble Baroness asked whether the transferral was like for like or whether there are any changes in relation to paragraph 2.8. The transfer of functions is, as she asks, like for like, or at least it is as like for like as is feasibly possible. There will be some changes to account for differences in the UK and EU processes—for example, EU references to "implementing acts" have been replaced with references to "regulations"—but it is effectively like for like.

[Lord Goldsmith of Richmond Park]

The noble Baroness asked whether the devolved Administrations are likely to set up their own systems. The Scottish and Welsh Governments have agreed in principle to GB-wide systems administered by the Environment Agency. This will involve devolved Ministers consenting to various functions being administered on their behalf by the Secretary of State and directing the Environment Agency to administer certain regulatory functions. At this stage, the DAs have not expressed any plans to establish and operate their own systems, but they will have the power to do so, if they so choose.

The noble Baroness referenced paragraphs 10.1 and 11.1 on technical guidance and asked when it will be published, or indeed if it has. It was published on 15 October and was shared with stakeholders, and it can be found on the government website.

In reference to paragraph 14.1, the noble Baroness asked how long the process will take and when it is likely to start. We plan to formally launch the review process early in 2021 and we envisage that it could take between 12 and 18 months. However, in any case, we have to publish a report following the review no later than by the end of 2022.

I am out of time—my apologies. I will write to the noble Baroness with answers to the remaining questions.

Motion agreed.

Control of Mercury (Amendment) (EU Exit) Regulations 2020

Considered in Grand Committee

3.19 pm

Moved by ***Lord Goldsmith of Richmond Park***

That the Grand Committee do consider the Control of Mercury (Amendment) (EU Exit) Regulations 2020.

Motion agreed.

Detergents (Amendment) (EU Exit) Regulations 2020

Considered in Grand Committee

3.19 pm

Moved by ***Lord Goldsmith of Richmond Park***

That the Grand Committee do consider the Detergents (Amendment) (EU Exit) Regulations 2020.

Motion agreed.

The Deputy Chairman of Committees (Baroness Watkins of Tavistock) (CB): The Grand Committee stands adjourned until 3.45 pm. I remind Members to sanitise their desks and chairs before leaving the Room.

3.20 pm

Sitting suspended.

Arrangement of Business

Announcement

3.46 pm

The Deputy Chairman of Committees (Baroness McIntosh of Hudnall) (Lab): My Lords, the hybrid Grand Committee will now resume. Some Members are here in person, respecting social distancing, and 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. Your 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 red before you begin speaking. The process for unmuting and muting for remote participants remains the same.

Hazardous Substances and Packaging (Legislative Functions and Amendment) (EU Exit) Regulations 2020

Considered in Grand Committee

3.47 pm

Moved by ***Lord Goldsmith of Richmond Park***

That the Grand Committee do consider the Hazardous Substances and Packaging (Legislative Functions and Amendment) (EU Exit) Regulations 2020.

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

The Minister of State, Department for the Environment, Food and Rural Affairs and Foreign, Commonwealth and Development Office (Lord Goldsmith of Richmond Park) (Con): My Lords, the Hazardous Substances and Packaging (Legislative Functions and Amendment) (EU Exit) Regulations 2020 and the Waste and Environmental Permitting etc. (Legislative Functions and Amendment etc.) (EU Exit) Regulations 2020 make small but important changes to ensure that our existing domestic legislation reflects that the UK is no longer part of the EU. Both instruments take power back from the European Commission, which will allow the UK to maintain its high environmental standards. The instruments require the Government to carry out a public consultation before using these powers.

I will take each instrument in turn. The Hazardous Substances and Packaging (Legislative Functions and Amendment) (EU Exit) Regulations 2020 cover two different subject areas: first, regulation of hazardous substances in electrical and electronic equipment, or EEE; and, secondly, regulation of essential requirements for packaging—that is, the requirements producers need to fulfil if they place packaging on the market, such as manufacturing and composition requirements.

Hazardous substances in EEE are regulated by the Restriction of the Use of Certain Hazardous Substances in Electrical and Electronic Equipment Regulations 2012—the so-called RoHS regulations, which implement an EU directive, the RoHS directive. This instrument transfers to the Secretary of State powers currently held by the European Commission under the RoHS directive. After the end of the transition period, these powers will allow the Secretary of State to grant, renew or revoke exemptions to the restriction of hazardous substances in electrical and electronic equipment as specified in the RoHS regulations. Exemptions allow the use of restricted hazardous substances above threshold limits for specific uses, such as solders in medical equipment. The Secretary of State will also be allowed to amend the list of restricted substances and maximum concentration values, and to prescribe detailed rules for complying with maximum concentration values.

These powers will apply in England, Wales and Scotland, but not in Northern Ireland. This is because the RoHS directive will continue to apply in Northern Ireland after the end of the transition period due to the Northern Ireland protocol. These changes are vital, as the instrument will allow the Secretary of State to make important decisions on RoHS.

The instrument also amends the RoHS regulations and the Packaging (Essential Requirements) Regulations 2015. It amends both those regulations separately for Great Britain and for Northern Ireland.

The amendments to the RoHS regulations for Great Britain introduce key measures to ensure a smooth end to the transition period for businesses placing manufactured goods on the GB market. These include transitional provisions for importer labelling to provide a 24-month period in which importer details can be provided on accompanying documentation, and a similar transitional provision for the application of the new UK marking, which will replace the European Union's CE marking. This will provide businesses with more time before undertaking relabelling.

The instrument also ensures that, except for qualifying Northern Ireland goods, the automatic recognition in Great Britain of EEE meeting EU requirements will expire 12 months after the end of the transition period. It amends both the RoHS regulations and the Packaging (Essential Requirements) Regulations to make provision for access for "qualifying Northern Ireland goods" to the GB market.

Finally, the instrument amends the RoHS regulations and the Packaging (Essential Requirements) Regulations separately for Northern Ireland. The amendments applying in Northern Ireland are more limited. They are to reflect that the RoHS directive and the packaging directive will continue to apply in Northern Ireland, though not the rest of the United Kingdom, by virtue of the Northern Ireland protocol. They will allow the UK to meet its obligations under the Northern Ireland protocol relating to packaging and RoHS.

We have ensured that the changes for Northern Ireland are as minimal as possible, while also allowing the UK to fulfil its obligations under the Northern Ireland protocol. However, there are some unavoidable costs for businesses as a result of the amendments to the RoHS regulations, including familiarisation and new labelling costs.

No impact assessment was prepared for the instrument as any costs to, or benefits for, businesses, charities and voluntary bodies were predicted to fall below £5 million in one year.

This instrument is reserved as it covers specific technical standards and requirements on all businesses in relation to products, which is a reserved matter under all three devolution settlements.

I turn to the second instrument, the Waste and Environmental Permitting etc. (Legislative Functions and Amendment etc.) (EU Exit) Regulations 2020. This instrument includes a mixture of devolved and reserved content. We have worked with the devolved Administrations on this instrument and it has received consent from Scottish and Welsh Ministers, but DAERA Ministers have decided not to provide consent on this SI. However, given that time to make this SI is now short and the overriding need to provide certainty for businesses at the end of the transition period and to discharge our protocol obligations, we are proceeding with debating this SI without consent. We will continue to work closely with the Northern Ireland Executive in the coming days to resolve outstanding concerns in advance of making this SI.

This is a technical instrument that makes small but important changes to existing legislation so that it refers to the latest versions of the EU directives and domestic regulations as amended by the EU circular economy package. These are small changes but they will ensure that legislation relating to waste and environmental permitting can be properly enforced by the Environment Agency and its devolved counterparts.

The instrument also makes some small technical amendments to provisions of earlier EU exit SIs that amend domestic legislation relating to batteries, and it changes the extent of amendments in an earlier EU exit SI to the restriction of the use of certain hazardous substances regulations and the Packaging (Essential Requirements) Regulations so that they do not extend to Northern Ireland. These changes are needed to reflect that the directives that those regulations implement will continue to apply in Northern Ireland but not in Great Britain, as a virtue of the Northern Ireland protocol.

In practice, we have kept the GB and NI requirements exactly the same for batteries on the ground that there will be no changes to how batteries are collected, treated and recycled. The requirements for batteries reaching market in the first place will also remain exactly the same. This instrument simply ensures that the correct references are in place depending on whether the legislation applies in GB or Northern Ireland.

The SI also transfers the European Commission's powers related to Article 7(1) of the waste framework directive. This power is being transferred to the Secretary of State and the devolved Administrations. This power will allow the Secretary of State and the devolved Administrations to establish their own lists of waste or to amend the existing list of waste as it becomes part of retained EU law after the end of the transition period. The list of waste gives identifying codes to

[Lord Goldsmith of Richmond Park]
different categories of waste, which are used by waste management businesses, and specifies which categories of waste are to be treated as hazardous waste. The Secretary of State will need the consent of the devolved Administrations to make amendments to the list of waste on their behalf.

The schedule to this instrument revokes some recent EU decisions or regulations. These revocations are either to tidy up our statute book or because we should no longer be bound to those decisions after the transition period ends—for example, because they specify formats for reporting data to the European Commission, which the United Kingdom will cease to do at the end of the transition period. I beg to move.

3.55 pm

Baroness Bennett of Manor Castle (GP) [V]: My Lords, I thank the Minister for his very clear explanation. I will focus primarily on the first of these two instruments, although I express concern that, as he has just told us, there is not full devolved consent to the second one. I hope that can be resolved very quickly.

I begin with the department's response to the submission from ClientEarth to the Secondary Legislation Scrutiny Committee, specifically on the point about the transferring of the competent national authority position in England. The departmental response says that the Environment Agency will continue to act as the competent authority.

I note that in October this year, just a couple of months ago, the chair of the Environment Agency called for greater funding from the Government to help the enforcement body to better prevent pollution—the issue that this SI addresses. In response to an article published in the *Times* on 24 October which reported that there had been a sharp rise in serious breaches of pollution rules designed to protect people and wildlife, the chair of the Environment Agency said in a Defra blog:

"We constantly innovate to do more with less. But ultimately we will get the environment we pay for. A core part of that is funding the Environment Agency properly. The government has an opportunity to do that in this year's spending review. We hope it will."

I have checked the spending review documents and, so far as I can see, there is none of the extra funding that has been asked for—you might say begged for—but I would be delighted if the Minister could tell me I had missed something. It would have to be a very big offering in the spending review, given that in March a report on Greenpeace's Unearthed blog revealed that a surge in pollution incidents driven by climate change was "overwhelming" the staff. That came on top of data showing that teams tasked with responding to pollution incidents have seen their numbers decline by 15% since 2015.

All the SIs that we are debating now seem to create extra responsibilities and extra work, so the question is where the resources are going to come from, given that we have a huge regulatory gap already. I note the invaluable report in 2019 by the Institute for Environmental Management and Assessment, in coalition with 19 other organisations. It revealed that funding for 10 environmental and social regulators fell by 50% on average between 2009 and 2017 in real terms, with the Environment Agency budget down by 62%. The total number of full-time staff working at these regulators was down by 30% over the period, with spending by local authorities and fire authorities down by 35%. Before these regulations and before the end of the transition period, we had, however limited it may have been, oversight through the EU and, as ClientEarth has successfully used, the legal mechanisms through that.

The departmental response said that once the office for environmental protection is established and functioning, it will take over these roles. That is a debate for another day, but it highlights the importance of the independence and funding of that body, as a crucial body in maintaining our environmental health in the UK. In the meantime, as ClientEarth put it, we will have the Government regulating themselves. We have a period of uncertainty—a hiatus, rather like we have in your Lordships' House's *Forthcoming Business* at the moment.

Since we have just had a report from the Environmental Audit Committee, I want to turn to the broader issue of electronic waste in general. In this very Committee last week I referred to a need for a right to repair, as the committee in the other place has done. The report notes that the UK creates the second highest level of electronic waste in the world after Norway—we are almost world-leading, but not, I hope, in a way that the Government would intend. A lot of the electronic waste that these regulations refer to currently goes to landfill or incineration, and some 40% of it is dumped overseas. The MPs on the committee noted that the Environment Agency was again not doing nearly enough to monitor where that waste was going and how often it was going abroad illegally.

The committee also noted the fact that we have online retailers making massive profits but not taking responsibility for the products they get those profits from. I have so many things to mention that I am going to run out of time.

Finally, if we are to be practical, let us bring this down to earth. Here in Sheffield, where I am talking to noble Lords from, there are no bins in local areas for electronic waste. There are no bins that you can walk to and put electronic waste in. There is no range of bins in supermarkets and hardware stores, as there is in many parts of the continent, where electronic waste, such as light bulbs, can be deposited. Here, we are dealing with the detail, but I ask the Minister to make sure that the Government consider the huge and wide-ranging problem—the tsunami, as the Commons committee described it—of electronic waste, which we must deal with and get a grip on very soon.

4 pm

Baroness McIntosh of Pickering (Con) [V]: My Lords, I am delighted to follow the noble Baroness, Lady Bennett. I agree with much of what she said. My understanding is that the changes introduced by my noble friend in these two welcome SIs are part of the circular economy; obviously, that rationalises waste disposal, so it would be a good thing.

I want to make a general comment to my noble friend in thanking him for introducing these regulations. We are coming to the end of multiple statutory instruments over a period of two or three months. His department has borne the brunt of them, so I thank him and our

noble friends Lord Gardiner and Lady Bloomfield for all their work. I also thank the team of officials at Defra for preparing for these measures and bringing us to this place.

I have a couple of questions. One is a general question relating to both sets of regulations. My noble friend said that a period of consultation would be held before the powers laid out in the regulations came into effect. Can he explain what form that consultation will take? Will it be a proper consultation period of at least two months? Also, will he undertake to publish all responses to the consultation in full so that those of us with an interest can see whether there are any issues pertaining to it?

In paragraph 62 of its 32nd report, the Secondary Legislation Scrutiny Committee mentioned that it

"received a submission from ClientEarth which raises concerns about a potential lessening of consultation requirements and a weakening of the objective to protect human health and the environment."

Against that background, in what circumstances would the protections be changed? Can my noble friend give the Committee an undertaking that the objective would not in any way seek to compromise the protection of human health and the environment? I know how much he cares passionately for the environment so I am sure that he will confirm that that is not the case, but ClientEarth raised this issue during the committee's scrutiny so it is worthy of a response.

On the waste and environmental permitting regulations, my noble friend said that DAERA had not given its consent. He went on to say that, when the amendments are brought forward under the powers set out in these regulations, the department would need the consent of the devolved Administrations to bring these powers into effect. If DAERA continued to withhold its consent, what would happen? Could it simply not bring these regulations into effect in Northern Ireland? Finally, can he share with us the reason why DAERA has been unable to give its consent to date?

4.04 pm

Lord Mann (Non-Afl): My Lords, I shall restrict my comments to the changes in the waste and environmental permitting regulations. I have questions for the Minister relating to assurances—even guarantees—on crossover and legacy issues.

I have spent a disproportionate amount of my life over the past five years dealing with orphan waste sites and the inability of the British state at every level to get on top of the problem. It is a nationwide problem. It manifests in public when orphan waste sites are set alight, with spectacular fires and consequential dangerous pollution leading to the evacuation of commercial and domestic premises for rational safety purposes. I have looked at this issue in detail; there is nobody at any level in the Environment Agency whom I have not had visit at least one orphan waste site, including one that I am very familiar with and live not too far from.

I note that, in most parts of the country, five authorities are responsible: district councils, county councils, the Environment Agency, HMRC—because of the landfill tax—and the Crown Estate, which, if a site is orphaned, then owns it. That is five arms of governance dealing with one problem.

The problem is not straightforward to deal with but straightforward to understand. Hazardous waste is moved around sites, usually at night. The sites are permitted but no one is sure what exactly is on them. When the authorities catch up with it, the hazardous waste moves to another site; or, when it reaches the culmination of the cycle of illegal movement, the owners of the site—the permit holders—disappear. They vanish. The site becomes orphaned and, by law, ends up in the ownership of the Crown Estate, which sees it not as an asset but as a liability and waits on others to find a way to sort out its liability.

The waste therefore remains with no one agency able to have total power of responsibility for removing it; it is a shared responsibility. If two-tier authorities, with district councils and county councils plus the Environment Agency, manage to negotiate with HMRC an important agreement that landfill tax could be removed—that is 85% of the cost of the removal of hazardous waste—that itself does not bring a site back into productive use for waste or other purposes.

At some stage, the Minister needs to crack this problem. Perhaps he could crack a few heads together and simplify the system, for better or for worse, and ensure a clear designation of ownership of the problem. There will never be a resolution with it split between five arms of the state. The roundabout will carry on going on.

Specifically and importantly on the regulations before us, and this is a key reason for my speaking, I have noted how the law has been carefully manipulated over the past few years in many parts of the country to avoid problems and to allow re-permitting. Are there any legacy or crossover issues in relation to this change that would allow an operator to have ongoing investigations ignored when it comes to application of the new legislation, which itself might be a rationale given to allow re-permitting, and therefore the continuation of the cycle, even of the same operators whose practices have appeared incredibly dubious in the past but were not criminally prosecuted? How will those legacy crossover issues be dealt with? Are they an issue? If they are not, that would be reassuring to know, because many investigations go back many years—I could cite some that go back more than two decades in terms of the evidence base required. Is there any risk therefore in this change of unforeseen circumstances that could give the illegal or inappropriate operator powers that the Government would not wish them to have?

4.10 pm

Lord Bhatia (Non-Afl) [V]: My Lords, this SI has been prepared by the Department for Environment, Food and Rural Affairs. It transfers legislative functions currently conferred on the European Commission by directive 2011/65/EU of the European Parliament and the Council on the restriction of the use of certain hazardous substances in electrical and electronic equipment to be exercisable instead by the Secretary of State in relation to England, Wales and Scotland after the end of the EU exit transition period. The directive requires member states to ensure that electrical and electronic equipment placed on the market does not contain certain hazardous substances.

[Lord Bhatia]

The legislative powers conferred on the Commission by the RoHS directive are transferred into domestic law so that the list of restricted substances in EEE may be amended following reviews, and exemptions may be granted, renewed or revoked by secondary legislation. The SI transfers powers under the RoHS directive currently held by the European Commission to the Secretary of State in relation to England, Wales and Scotland. There is bound to be an impact on businesses. Can the Minister explain whether those who breach the guidelines will be fined and, if so, up to what level?

4.12 pm

Baroness Bakewell of Hardington Mandeville (LD): I thank the Minister for his introduction in setting out these two statutory instruments. As he said, they make minor adjustments to enable the Secretary of State to carry out functions relating to packaging and restriction of certain hazardous substances in electrical and electronic equipment.

The Explanatory Memorandum to the Hazardous Substances and Packaging (Legislative Functions and Amendment) (EU Exit) Regulations is bland and reassuring. However, the instrument is full of detail and percentages relating to some very hazardous substances such as cadmium, mercury and lead, and the uses to which they are put. While this is alarming, there is no change to the use to which the substances are put; it is only to who will be responsible for licensing.

Paragraph 12.3 of the Explanatory Memorandum states that minimal costs are involved in changing labelling and packaging for business, charities and voluntary bodies—these are stated to be below £5 million, which I am sure is the case. However, given the severe impact of the Covid epidemic, particularly on charities and voluntary bodies, I wonder whether this might be the last straw for some that have suffered severe loss of income during the past year. Taking this into account, will the Government consider covering the cost of repackaging and relabelling to comply with the law for those who are not businesses but who would find the cost unsustainable?

The Waste and Environmental Permitting etc. (Legislative Functions and Amendment etc.) (EU Exit) Regulations 2020 also deal with classification of what is deemed hazardous waste material. It will be important for the Secretary of State and the devolved Administrations to be able to make legislation that is appropriate for each authority once power has passed from the EU to the United Kingdom. Consultation between the devolved Administrations and the Secretary of State on any proposed modifications to the directives will be essential, otherwise confusion will ensue.

Paragraph 6.3 of the Explanatory Memorandum refers to the list of EU directives on waste management in Statutory Instrument 2019/188. Having looked this up, it all came flooding back to me, as we debated this last year. I remember particularly the issue of end-of-life vehicles.

As we begin the transfer to wholly electric vehicles, a significant number of petrol and diesel-driven vehicles will need to be disposed of. All will have components classed as waste, including batteries, which are classed as hazardous waste. The volume of these vehicles is such that scrap yards are likely to be extremely busy. Much of their business is around reclaiming parts that are then sold on to owners looking to repair their vehicles. As the number of petrol and diesel vehicles diminishes, this trade in spare parts is also likely to diminish. The noble Baroness, Lady Bennett, referred to the volume of electronic device waste. It would be somewhat unfair of me to ask the Minister whether the Government have made any plans to deal with the sheer volume of vehicles needing to be scrapped as we move to electric, but perhaps he could write to me with an answer.

Apart from that, I am content with this statutory instrument, which merely replicates current EU legislation and makes only minor amendments, such as replacing "exit day" with "IP completion day". I look forward to the Minister's response to this short debate.

4.17 pm

Baroness Hayman of Ullock (Lab): My Lords, I thank the Minister for introducing these SIs this afternoon and for our helpful conversations this morning. I shall speak first to the hazardous substances and packaging regulations 2020. As we have heard, these draft regulations propose to transfer the legislative functions from the European Commission to the Secretary of State in relation to England, Scotland and Wales after the end of the transition period. The instrument also proposes changes to help ensure that the UK meets its obligations under the Northern Ireland protocol.

The Minister referred to paragraph 12.3 of the EM, which states:

> "An Impact Assessment has not been prepared for this instrument because no significant impact on business, charities or voluntary bodies is foreseen".

But this is an important transfer of powers. Paragraph 12.1 of the EM states:

> "There will be an impact on business."

So there is an impact on business, but there is no impact assessment because no impact is foreseen. It would be helpful if the Minister could clarify what assessment has been done of an impact and how severe it is.

Paragraph 2.4 of the EM states that allowing future changes to the list of restricted substances, exemptions and so on by secondary legislation is appropriate because it will enable changes,

> "of a technical nature, to be made in a timely and proportionate manner."

While it may be appropriate for most technical changes to be made in this way, will the Minister commit to ensure that there is appropriate scrutiny of any future SI that may make more substantive changes?

Paragraphs 10.1 and 10.2 of the EM mention "regular discussions" between the relevant departments and agencies. How regular have such discussions been? Is there a need for ongoing discussions beyond the end of the transition period and, if so, would they take place regularly or just on an ad hoc basis where necessary?

The department has also stated that it is "the Government's intention" to carry out public consultation. The noble Baronesses, Lady Bennett and Lady McIntosh, both mentioned ClientEarth's concerns about a

potential lessening of consultation requirements and a weakening of the objective to protect human health and the environment. Can the Minister confirm that a public consultation—including seeking the views of environmental groups—will be carried out when the list of substances is amended? Can he provide any information as to when this may start and the length of consultation we are looking at? As others have asked, can he also confirm that the power to amend the list of substances will not be used to weaken environmental protection?

The EM also outlines the cost implications of these changes, which the Minister and others have mentioned, particularly of new labelling requirements. What kind of window will there be for adjustment to the new requirements? In the case of GIs on food products, an earlier SI said that the UK label and logo would not become fully operational for three years. The noble Baroness, Lady Bakewell, mentioned the fact that the Covid-19 pandemic has caused many businesses financial difficulties. Could the Minister see whether the Government can provide support to businesses during this transition period to the new system?

The second instrument, the waste and environmental permitting regulations, is much lengthier and amends a variety of existing EU exit SIs, both to correct deficiencies and to bring legislation up to date following recent developments in EU law, and again to implement the Northern Ireland protocol. The Schedule is a lengthy list of revocations—14 in total. These are briefly referenced in the Explanatory Memorandum, but there is no justification or explanation for them. I know that the Minister gave some clarification of the reasons behind these revocations during his introduction, but it would be useful to have more detail in the document as to the reasons. Is it because the measures being revoked are unnecessary in the context of us having left the EU, or, if they are necessary, are provisions being found elsewhere? That is just so we have a proper understanding of the reasoning behind this.

As a final piece of clarification, the third bullet point in paragraph 7.1 of the EM notes that some legislation that provides for EU directives has been superseded by the circular economy package, meaning that

"The opportunity has also been taken, in a few places, to simplify provisions".

Can the Minister confirm what practical changes, if any, will come through from those changes?

4.22 pm

Lord Goldsmith of Richmond Park (Con): I thank noble Lords who have contributed to the debate. As we look forward to the transition period ending, it is essential that our legislation reflects this new future. I will do my best in the time allowed to address the questions put to me. I will do so in no particular order.

The noble Lord, Lord Mann, raised the important issue of legacy or cross-over issues. He wanted reassurance that no issues can arise where prosecutions have been ongoing regarding orphan sites. I reassure him that nothing in the SI will lead to investigations or prosecutions related to orphaned waste sites, or any other type of waste crime, being paused, discontinued or otherwise disrupted. I hope that answers his question. I am happy to continue that discussion afterwards if it does not.

The noble Baroness, Lady Bakewell, raised a number of issues relating to the influx of old cars that will need to be dealt with following the new rules coming into play in 2030. On end-of-life vehicles, regulations already exist that place the financial cost of proper disposal in the hands of manufacturers. Currently, more than 90% of an average vehicle by weight is recovered or recycled. However, we plan to review the existing requirements, and in doing so will take into account the impact of the move to electric vehicles.

The noble Baroness also talked about the Waste Electrical and Electronic Equipment Regulations. We are reviewing those regulations with a view to driving up reuse and recycling, and to encourage better ecodesign to ensure that manufacturers and retailers, including online marketplaces and distance sellers, take full responsibility for the waste that they generate. That is a theme that runs through the Environment Bill: putting the onus, wherever possible, on producers not consumers.

I will briefly address some issues raised by the noble Baroness, Lady Bennett of Manor Castle. She referenced in particular the concerns raised by ClientEarth. I will say absolutely confidently and clearly on the record that the Government will not seek to lessen or weaken the protection of the environment through any future amendments to the RoHS regulations. Incidentally, if there were any changes, they would be subject to public consultation. When exercising powers under Regulation 5 of the Hazardous Substances and Packaging (Legislative Functions and Amendment) (EU Exit) Regulations 2020, the Secretary of State is bound by Regulation 8(1) to undertake a consultation before making regulations.

The noble Baroness mentioned the importance of the new OEP, which will come to life following the successful passage, one hopes, of the Environment Bill. She is absolutely right that the OEP has an extraordinarily important job to do. It needs to retain its independence, to be free from ministerial interference and to be sufficiently resourced. That is very much my view and that of the Government.

I scribbled down "producer responsibility", but I think that I have already covered that. I will make the general point that that is probably the single most effective way we have to minimise waste generally, both in electrical goods and outside of them.

The noble Baroness also asked about maintaining current standards to protect consumer health, but also to protect the environment. The Government remain completely committed to ensuring that the level of protection afforded to consumers against unsafe or non-compliant goods is not in any way diminished now that the UK has left the European Union. Through our own regulatory regime, we will continue to seek to ensure that products are safe for consumers, compliant with Great Britain and Northern Ireland rules, and environmentally sustainable, with the smallest possible impact.

The noble Baroness, Lady Hayman, raised a number of issues, and I thank her for calling me earlier to discuss some of them. Incidentally, I am grateful to her for her support. She cited paragraph 12.1 of the Explanatory Memorandum, where, she says, she has spotted a contradiction as to whether this will have an

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impact on business. To be clear, the withdrawal agreement Bill set out an impact assessment on the provisions governing the UK's exit from the EU, including the terms of the Northern Ireland protocol. This SI is the detailed implementation of that policy, which has already been assessed by that impact assessment. Therefore, no new burdens need to be assessed in that regard.

The noble Baroness asked how the SI will be enforced for restricted substances and how we are making sure that any changes to the list of restricted substances are properly scrutinised. The SI will be enforced by the Office for Product Safety and Standards on behalf of the Secretary of State. Any changes to the list of restrictions will be subject to a public consultation. The noble Baroness asked whether I will commit, on behalf of the Secretary of State, to a public consultation before making any changes to the list of restricted substances. The Government will not seek to lessen or weaken the protection of the environment through any future amendments to the RoHS regulations. However, any changes would absolutely be subject to consultation —that would happen.

The noble Baroness asked about a number of other issues. She asked what transitional measures we are putting in place. New regulatory regimes will be ready to come into force immediately after the end of the transition period. However, under exceptional circumstances as a result of the Covid-19 pandemic, we are now giving businesses more time to get ready to operate new UK rules, including a 24-month transition period for the application of the new UK marking, which will replace the European Union's CE marking. During this period, importer details can be provided on accompanying documentation.

A number of noble Lords have raised the issue of supporting business through this process. As well as providing certainty for businesses about requirements, this SI provides transitional measures to help minimise the costs arising from uncertainty and to give businesses additional time, as I mentioned earlier. Additionally, this SI will ensure unfettered access for Northern Ireland to the rest of the UK, which means no new regulatory checks, customs checks or additional approvals for Northern Ireland businesses to place qualifying goods on the GB market.

The noble Baroness asked me to clarify—I hope I am getting the right Peer—how the EU circular economy package is relevant to this SI and what practical changes it involves and so on. We have had to amend our previous EU exit SIs from 2019 as the underlying EU and domestic legislation to which they related has since been amended by the EU circular economy package. In order to become up to date, we have had to revisit some of those SIs. That means that the technical references in the previous SIs are no longer relevant and no longer work. This SI rectifies that problem, as other SIs have, and ensures that our legislation will be fully operable at the end of the transition period. I was going to give examples of that, but in the interests of time, I shall move on.

The noble Lord, Lord Bhatia, talked about the importance of safeguarding environmental and health standards and the importance of minimising waste generally. I think I have covered most of those issues in previous answers, and I hope he is satisfied by that. If not, again, I am very happy to continue that discussion after this debate.

My noble friend Lady McIntosh asked a number of questions about the consultation. She asked whether any consultation would be published in full. She mentioned the EAC inquiry, and I can tell her that we will be responding in full to the EAC. I am afraid that I do not have a date, but I am assured that it will be early next year. She also spoke of the concerns raised by ClientEarth. Just to reiterate, Regulation 8(1) requires the Secretary of State to carry out consultation before making the kinds of changes that have been cited by ClientEarth as areas of concern. I hope that reassures my noble friend.

My noble friend also asked what kind of consultation had been carried out and with whom. Industry and local authorities were not consulted during the development of both SIs because of sensitivities surrounding the protocol. However, discussions were held with the Department of Agriculture, Environment and Rural Affairs, the Northern Ireland Environment Agency, the Scottish Government, the Scottish Environment Protection Agency, the Welsh Government, Natural Resources Wales, the Environment Agency and the Office for Product Safety and Standards. Those discussions led to the approach implemented in this SI. The changes to the RoHS regulations implemented by these SIs are consistent with the Government's approach to implementing the Northern Ireland protocol.

I am seconds away from being out of time and I am pretty sure that I have not answered all questions. My noble friend asked in what circumstances would objectives be changed—the implication being, in what circumstances would we be willing to lower environmental health standards? The answer is that we are not willing to compromise on environmental health. That is a rule and a principle to which we are absolutely committed.

I hope that I have covered most of the questions. To conclude, I trust that noble Lords understand and accept the need for these instruments—I think that is the message that we have received. They make small but important changes to existing legislation and make amendments to the legislation relating to RoHS, packaging and batteries so that the UK complies with the Northern Ireland protocol. We have tried to minimise the impact of this on business where possible. Once again, I thank noble Lords for their contributions and support today.

Motion agreed.

Waste and Environmental Permitting etc. (Legislative Functions and Amendment etc.) (EU Exit) Regulations 2020

Considered in Grand Committee

4.33 pm

Moved by ***Lord Goldsmith of Richmond Park***

That the Grand Committee do consider the Waste and Environmental Permitting etc. (Legislative Functions and Amendment etc.) (EU Exit) Regulations 2020.

Motion agreed.

The Deputy Chairman of Committees (Baroness McIntosh of Hudnall) (Lab): The Grand Committee now stands adjourned until 5 pm. I remind Members to sanitise their desk before they leave.

4.34 pm

Sitting suspended.

Arrangement of Business

Announcement

5 pm

The Deputy Chairman of Committees (Baroness McIntosh of Hudnall) (Lab): My Lords, the hybrid Grand Committee will now resume. Some Members are here in person respecting social distancing while 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. Your microphone will no longer be turned on at all times, 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 so, wait for the green flashing light to turn red before you begin speaking. The process for unmuting and muting for remote participants remains the same.

The time limit for the following debate is one hour.

Chemicals (Health and Safety) and Genetically Modified Organisms (Contained Use) (Amendment etc.) (EU Exit) Regulations 2020

Considered in Grand Committee

5.01 pm

Moved by ***Baroness Stedman-Scott***

That the Grand Committee do consider the Chemicals (Health and Safety) and Genetically Modified Organisms (Contained Use) (Amendment etc.) (EU Exit) Regulations 2020.

The Parliamentary Under-Secretary of State, Department for Work and Pensions (Baroness Stedman-Scott) (Con): My Lords, this draft statutory instrument was laid before Parliament on 15 October. Through this instrument, we are making the necessary arrangements to implement the terms of the withdrawal agreement and the Northern Ireland protocol in law for chemicals regulations. This will ensure that these regulations function effectively from the end of the transition period and that the existing high standard of protection for human health and the environment will be maintained.

In preparation for our exit from the European Union, a statutory instrument was made last year to ensure that the regulatory framework for chemicals remained functional after exit and to provide certainty for businesses and the public. It achieved that by making technical amendments to the retained EU law, such as changing EU-specific references and transferring functions and powers currently held by the European Commission to the appropriate authorities in each of the UK's constituent nations.

Since the 2019 regulations were made, the withdrawal agreement, including the Northern Ireland protocol, has been agreed. The protocol requires that EU legislation will continue to apply in Northern Ireland after the end of the transition period. The existing EU exit legislation therefore needs to be amended to reflect the fact that retained EU law will be substantively applicable in Great Britain only.

If approved, these draft regulations will make the necessary amendments to three retained EU regulations as well as to EU-derived domestic legislation. I appreciate that the technical and composite nature of the regulations makes this particularly complex; the decision to present these proposals as a single instrument was for the benefit of the House, to reduce pressure on parliamentary time and to ensure that we are able to deliver an orderly transition. As this is such a technical instrument, I shall provide a concise summary of the regulations and the changes that we are making for noble Lords.

Of the three retained EU regulations to be amended, the first is the biocidal products regulation. This governs the placing on the market and use of products that contain chemicals which protect humans, animals, materials or articles from harmful organisms like pests or bacteria. This market covers a wide range of products such as wood preservatives, insecticides such as wasp spray, or anti-fouling paint to remove barnacles from boats.

Secondly, the classification, labelling and packaging of substances and mixtures regulation ensures that the hazardous intrinsic properties of chemicals are properly identified and effectively communicated to those throughout the supply chain, including to the point of use. The current classification laws are sophisticated and incorporate a detailed technical system of classification criteria. This classification is partly done through standardised hazard pictograms and symbols and warning phrases associated with specific hazards, such as explosivity, acute toxicity, or carcinogenicity.

Lastly, the export and import of hazardous chemicals regulations require the export of listed chemicals to be notified to the importing country and, for some chemicals, the consent of the importing country must be obtained before export can proceed.

This instrument makes three main changes, which I shall summarise. First, we are updating some transitional provisions in the 2019 regulations so that they apply from the end of the transition period, when the retained law comes into force, rather than from exit day. It should be noted that while this instrument's title references genetically modified organisms, the only amendments to the relevant legislation are to update two references to "exit day".

Secondly, it removes Northern Ireland from the scope of the 2019 regulations by omitting references to Northern Ireland and changing UK-specific references to read "Great Britain". The instrument also revokes changes made to domestic legislation in Northern Ireland in the 2019 regulations, which are no longer required due to the protocol. Lastly, this instrument

[Baroness Stedman-Scott]
legislates for the Government's commitment on unfettered access for these chemical regulations as well as the need to ensure that UK authorities have the appropriate information and regulatory safeguards in respect of chemicals placed on the market in Great Britain.

The Health and Safety Executive currently acts as a UK competent authority within the EU regimes for chemicals regulation. Under this instrument, it will become the GB regulatory authority. The Health and Safety Executive for Northern Ireland will be the regulatory authority with responsibility for Northern Ireland, and we are working closely with Northern Irish colleagues to prepare for the end of the transition period and support them afterwards. Both organisations have demonstrated their resilience through the pandemic, and I am confident that they have the capacity to undertake any new responsibilities brought about by EU exit.

This instrument was not subject to consultation as it does not alter existing policy. Published guidance has been followed and, in line with it, a full impact assessment has not been conducted as the instrument does not meet the de minimis threshold. However, I assure noble Lords that the changes brought about by it have been communicated through a series of stakeholder events throughout autumn and guidance published on the HSE website in October.

The devolved Administrations have also been fully engaged in the development of this instrument and have provided consent for the elements that relate to them. We are also in the process of agreeing a provisional common framework for chemicals that aims to maintain existing standards and promote common approaches to chemicals policy in the future.

In conclusion, this instrument will provide important continuity and clarity to the chemicals industry, ensuring that the legal requirements that apply to chemicals regulation are clear following the end of the transition period. I hope that colleagues of all parties will join me in supporting the draft regulations, and I commend them to the Committee. I beg to move.

5.08 pm

Baroness Altmann (Con): My Lords, I thank the Minister for her excellent explanation of the statutory instrument before us. As she mentioned, there are three issues in one. They have some complexities attached, but in my view the aim of the statutory instrument is important and welcome. I hope all noble Lords will be content with it.

All three issues, although separate, are important from the point of view of public health and safety. When we are dealing with biocidal products or the classification and labelling of potentially hazardous products, as well as imports and exports of hazardous chemicals and pesticides, it is only right that the Government make sure that they address the various issues that will need to be taken care of as we leave the EU.

I welcome the Northern Ireland protocol and recognise the need to separate GB from Northern Ireland, which is entailed in these instruments. I also welcome the fact that small businesses are not exempt because, when we are dealing with products and issues of this nature, it is really important that we and the public can be confident that all kinds of hazards are being considered.

I want to ask my noble friend the Minister about a particular issue. I also, by the way, put on record my thanks to her for arranging for interested Peers a very helpful briefing, attended by her and ministerial and official colleagues; it was very much appreciated. The issue concerns the resourcing of our hugely well respected HSE. The Health and Safety Executive will need to assess these various issues. I welcome the fact that the Government are introducing time limits; Article 37(5) of the CLP regulation, for example, currently states "without undue delay". Providing a timeframe for approval is most helpful. How confident are the Government that the HSE is equipped to do this in the timescale required and with the resourcing implications of these timescales?

I also understand that the GB MCL list must be updated. I would like some clarification on the readiness of that list and the capacity both to identify the various potential problems and to notify those who will be affected.

I do not have much else to add on this matter. I welcome the instruments and thank my noble friend for her explanation of them.

5.12 pm

Baroness Bennett of Manor Castle (GP) [V]: My Lords, it is a pleasure to follow the noble Baroness, Lady Altmann. I share her concerns about the Health and Safety Executive's resourcing—something that there has been considerable public concern about in the context of Covid-19 and the many other threats that we see, particularly to workplace and public safety.

I feel that I should warn the noble Baroness, Lady McIntosh of Pickering, who will follow me in this debate—as she did in the debate on the previous statutory instrument, where she made a particularly excellent contribution—that I plan to be brief. I have two brief sets of questions.

My first question relates to the Explanatory Memorandum to the statutory instrument that this statutory instrument amends. It states:

> "Each Administration of GB will continue to be able to make its own decisions about the release of GMOs in its territory. The existing processes for each Administration reaching its own decisions at national level will continue as now."

I am aware that, as we speak, the internal market Bill is still the subject of debate and negotiation, we might say, in the Chamber, but I wonder whether the Minister can tell me how the rights to control the release of genetically modified organisms and the sale of products containing genetically modified organisms will relate to that Bill and the rules being made around it. Also, of course, there is the inevitable complication of how this will affect products going between Northern Ireland and Great Britain.

Also, that Explanatory Memorandum talks about the release of genetically modified organisms. Of course, no one can control the spread of genetically modified organisms and the genes that they contain; it is worth highlighting that point given that we share extensive borders. No Administration on these islands can control the spread of those genes or, potentially, those organisms.

Briefly, my second point addresses the biocidal products side of this statutory instrument. I note in particular research published last month in the peer-reviewed *Science of the Total Environment* journal that refers to the insecticides part of this statutory instrument. This research showed that two products—fipronil and imidacloprid—widely used in flea treatments for domestic animals, particularly dogs and cats, were showing up in very high levels in our rivers. Fipronil showed up in 99% of samples in 20 rivers, and in one case it was measured at 38 times the safe level. Are the Government looking at this issue, and indeed many other broader issues, as a matter of urgency?

One issue that is increasingly being thrown up by the science is what is known as the cocktail effect: the potential impact that the mixing of different chemicals, and interactions between antimicrobial resistance and different chemicals, might have on antimicrobial resistance, on human bodies and on the environment in general. It is very much rising up the agenda.

5.16 pm

Baroness McIntosh of Pickering (Con) [V]: My Lords, I too welcome the regulations before us and thank my noble friend for moving them so eloquently. If she would permit me, I will put a couple of questions to her.

My noble friend explained the role of the Health and Safety Executive in becoming the regulatory authority for Great Britain under these regulations. We heard this week from my noble friend Lord Goldsmith, in connection with the REACH regulations that we considered in a similar statutory instrument Committee, that the department has recruited only 30 of the 300 staff needed to act to bring in GB REACH under this new regime, albeit that is a separate statutory instrument. Given the enhanced role that the HSE will play in setting up GB REACH, will my noble friend confirm that there will be sufficient staff in the Health and Safety Executive and that it will have sufficient resources to take on this additional role? Presumably it will already have been involved in liaising with ECHA or whichever EU body is concerned with this, but I have grave concerns that we will overtask the Health and Safety Executive with new responsibilities and find that it is understaffed and underresourced. I would be very grateful to have an assurance in that regard.

My next concern relates to paragraph 2.2 of the Explanatory Memorandum, which refers specifically to the fact that the biocidal products regulation

"sets timelines for Member State evaluations, opinion-forming and decision-making."

It goes on to say that it

"promotes the reduction of animal testing by establishing mandatory data sharing obligations and encouraging the use of alternative testing methods."

I am fully signed up to and very much support the mandatory data-sharing obligations and the use of alternative testing methods. What checks does my noble friend envisage there will be on these mandatory data-sharing obligations? I presume she will reassure me that we have come a long way from certain shops, which I will not name, that claimed that none of their products were tested on animals, only for us to find out after we had all bought them that in fact they had been. How do we know this data is tested and accurate?

Secondly, I am fully signed up to and would encourage the use of alternative testing methods, but can my noble friend explain what these alternative testing methods are and what regime is in place, and how these are monitored to ensure that they are fit for purpose? Again, this is an area that captures the public mood. The public want to buy products—cosmetics or whatever—that have not been tested on animals. This is something that captures the public imagination, so what alternative testing regime is in place?

Finally, paragraph 2.5 on page 2 of the Explanatory Memorandum to these regulations, to which my noble friend referred in her introduction, talks of

"measures for the contained use of genetically modified micro-organisms with a view to protecting human health and the environment."

I feel that we still need to know a lot more about, and understand better, the use of GMOs. My question to my noble friend is a simple one. We were covered by the EU regime in this regard, and are now transitioning out and will, after 31 December, have left the European protections that we have previously enjoyed. Will my noble friend give a commitment today that any future use beyond the contained use which we currently understand will be brought forward by legislation—most likely, I presume, secondary legislation? Will she give a commitment that there will be no change to the current contained use, as set out today, without a further chance to have scrutiny of the necessary regulations ?

Having put forward my concerns, I hope that my noble friend will be able to give me the reassurance I am seeking.

5.21 pm

Baroness Parminter (LD) [V]: Like my colleagues, I thank the Minister and the civil servants for organising the briefing meeting and for so patiently taking those of us who were there through this complex statutory instrument.

I certainly do not oppose the statutory instrument. I accept that there are no policy changes and that it is about operationalising existing legislation and implementing the Northern Ireland protocol. However, it is another SI that brings home the reality of Brexit and the loss of co-operation with the European Chemicals Agency, which, over decades, has built up its reputation as a centre of knowledge on the safe management of chemicals for the benefit of both humans and the environment.

We all share, I am sure, the hope that there is still a possibility of co-operation between the UK and the ECHA if there were to be a deal between the UK and the EU. Irrespective of that, the UK is now creating its own regulatory process, which will be a major headache for our businesses, with two time-consuming, separate processes if they want to sell products in both the UK and the EU, obstacles around data sharing and data rights, and indeed more expense.

As the noble Baroness, Lady Altmann, rightly highlighted, there is the risk of divergence, as the rules can be interpreted in different ways, with two different legal regimes. Clearly, that will mean divergence not just between the EU and the UK but, as this SI makes clear, between Northern Ireland and the rest of the UK.

[Baroness Parminter]

One issue that I would like to touch on that other colleagues have not—I do not wish to repeat the excellent points that they have already made—is the fact that this SI specifies, for the first time, timeframes for the decision-making by the HSE and UK Ministers to approve substances after 31 December. Currently, the legislation states "without undue delay". I contend that it could be seen as pre-emptive to batten down the hatches so firmly in this legislation by setting timeframes for those decisions.

Why? As the Minister made clear in her opening remarks, there has been no consultation on this statutory instrument. While of course businesses will always say that they want more certainty, we do not know that that is something that the business community really felt was an imperative. Secondly, as the noble Baroness, Lady McIntosh of Pickering, and others have made clear, the HSE has yet to have the capacity, and indeed the certainty of resources, to be able to deliver all those duties. So there is a real question mark about whether sufficient time is being given to undertake all the necessary tests, and to consult appropriately with affected stakeholders, so that the HSE and Ministers can form a judgment.

It is disappointing that in the Explanatory Memorandum there is no mention of undertaking environmental assessments, whereas it does mention working with economists to produce a proportionate impact estimate. That is particularly worrying, given that once the Environment Bill comes on to the statute book, all departments and agencies, including the HSE, will be obliged to apply the Government's policy statement on environmental principles, including interpreting the precautionary principle. Therefore, like other colleagues, I hope the Minister can reassure us that there will be sufficient time and resources to undertake all the necessary tests so that business and the British public have continued confidence in the safety of the chemicals that will be used in our country.

5.26 pm

Baroness Sherlock (Lab) [V]: My Lords, I thank the Minister for her explanation of these regulations and all noble Lords who have spoken for their contributions. I too am grateful for the briefing that we received from the officials, which transformed these rather complicated regulations into something that I could at least wrestle with in a fairly basic manner.

If I have understood them correctly, I think the Government's intention is that, from the end of the transition period, the existing EU regimes at that point in time will be saved into national law through the provisions of the withdrawal Act, and that the primary point of these regulations is to correct deficiencies arising from Brexit beyond what was provided for in the 2019 regulations. Then, of course, there is the issue of Northern Ireland, where the protocol means that some areas of law in Northern Ireland will remain aligned with the EU.

I have questions about two areas on which I would like to get more information. First, on the question of Northern Ireland, the Minister mentioned unfettered access. Paragraph 17(1) of the Command Paper *The UK's Approach to the Northern Ireland Protocol* says, about trade going from Northern Ireland to the rest of the UK, that

> "this should take place as it does now. There should be no additional process or paperwork and there will be no restrictions on Northern Ireland goods arriving in the rest of the UK—that is, there will be unfettered access, as provided for by the Protocol."

The thing is that, on the face of it, these regulations stop totally unfettered access for some goods, or at least they place a barrier to be overcome before a product can be marketed from Northern Ireland into GB. I am not saying that is a bad thing, just that it is different.

For instance, the regulations provide that for the BPR, where a Northern Ireland-based business has obtained an authorisation or permit for a biocidal product and wants to market that product in GB, the HSE will treat the product as authorised in the whole of the UK but only as long as certain conditions are met, including that the active substance is on the GB approved list and that the business notifies the HSE by submitting the same information that was submitted in support of the original authorisation. Once that authorisation has been submitted, the product can be sold in GB after 90 days, provided that the HSE does not raise any objections. If the HSE has any concerns about its safety or efficacy, it can request further information—another 90-day delay.

The HSE also has a safety valve. A product can be prohibited, or its sale or use restricted, if that can be justified on certain grounds, including environmental, the protection of health or life, the protection of vulnerable groups or animals or plants, and various other things, including artistic, historic or archaeological values.

I want to understand what is happening here. Is the HSE conducting an independent assessment of the safety and efficacy of a product, or is it simply checking that the product has met the regulatory requirements of the EU and then noting the information? If it is the former, then it is obviously possible that the HSE will reach a different view from that of the EU regulators. Indeed, because there is no dynamic alignment with EU standards after transition, it is entirely possible that our regimes will diverge over time. If so, how does that sit with the statement in the Command Paper that there will be no restrictions on Northern Ireland goods being marketed into the rest of the UK?

The second area I want to explore, as did most other noble Lords, is the role of the HSE in relation to these provisions and indeed Brexit. That was raised by the noble Baronesses, Lady Altmann and Lady Bennett, and other noble Lords. Essentially, the organisation is having to establish a new, independent regulatory regime for GB and have a regime aligned with the EU for Northern Ireland, all the while dealing with the huge challenge of helping to make workplaces Covid-secure during the pandemic, and in the context of having had its budget pretty much halved over the last decade.

I will ask the Minister some questions. First, on staffing, the noble Baroness, Lady McIntosh of Pickering, mentioned a commitment to recruit 300 staff, I think to cover the REACH business, of which only 50 had been hired. We were told in briefing that the HSE had plans to recruit 100 more staff by the end of January

and up to 130 by the end of the financial year. Can the Minister clarify whether these are two separate figures? Is the figure I mentioned of 100 and 130 just for the DWP-funded activity? If so, can she tell us how many of those staff have been recruited?

Secondly, how much additional money has the HSE been given specifically to cope with its new role in a post-Brexit world, separate from extra Covid funding, and what is that as a percentage of its budget? It is quite clear that the Committee wants to hear a categorical assurance from the Minister that Ministers have satisfied themselves that the resources available to the HSE are adequate to enable it to deal not just with Covid, but with its new regulatory and inspection regime. On a related point to that made by the noble Baroness, Lady Altmann, I would like to know specifically on the BPR authorisations what assessment has been made as to the capacity of the HSE to make all the necessary evaluations within 90 days of receiving the submissions specified in the regulations.

I have asked enough questions and other noble Lords have asked good ones too. I look forward to the Minister's reply.

5.31 pm

Baroness Stedman-Scott (Con): My Lords, I thank all noble Lords who have contributed to this debate. I too add my thanks to the officials, who have helped us understand the detail of this SI and whose support has proved invaluable.

In winding up, I will address some of the important points raised during the discussions. First, my noble friend Lady Altmann mentioned the CLP and the MCL list. This will copy all existing harmonised EU classifications on 1 January, and HSE will be able to carry out its responsibilities to update.

The noble Baroness, Lady Bennett, talked about the chemical cocktail effect. I will ensure that the Health and Safety Executive writes directly to her and that a record is sent to all Members in the Committee and placed in the Library. The noble Baroness also talked about REACH. The REACH regulation is not included in this SI. Defra has the policy responsibility for the REACH regulation and has brought forward separate legislation on it, which I understand was debated yesterday.

The noble Baroness, Lady Bennett, and my noble friend Lady McIntosh talked about GMOs. The responsibility for aspects of GMO policy is spread throughout government. However, regarding contained usage, there will be no reduction in standards, and existing protections covering human health and the environment are maintained and will continue to work in the same way post EU exit.

The noble Baroness, Lady Sherlock, and my noble friend Lady McIntosh talked about resourcing and recruitment. The Health and Safety Executive has identified a total of 147 posts to be filled by the end of the financial year. We have made good progress and at present we have filled 108 of the 147 posts—73%—and are confident that this means we will be ready for the end of the transition period. Of the 73% of posts we have filled to date, we expect the vast majority to start in January, with the remainder taking up post before April. Several campaigns are still ongoing and due for completion in January 2021. We will continue to seek recruitment into our outstanding posts as a priority until the end of March. In total, we are recruiting an additional 117 brand new posts into the Chemicals Regulation Division relating specifically to EU exit. This represents a 45% increase in our baseline staffing number—260—from January 2020, and demonstrates our significant commitment to take on the new functions required.

My noble friend Lady McIntosh raised the issue of animal testing and asked whether, if we cannot access animal testing data, that would require applicants to do more tests. The Health and Safety Executive will apply the principle in the biocidal products regulation that vertebrate tests "shall not be repeated" and may be undertaken

"only as a last resort."

Therefore, if the data owner has not submitted the study to the HSE, we would expect the applicant to make every effort to obtain access to it. Should the applicant not be able to reach agreement on data access with the data owner, decisions would need to be made on a case-by-case basis and we would need to discuss options with the applicant. We would accept a vertebrate study only if all options had been exhausted; I understand that this is the "last resort" principle.

My noble friend also talked about GMOs and contained use. We will not reduce standards and changes to legislation will follow the usual scrutiny and consultation.

The noble Baroness, Lady Parminter, talked about timescale changes and Article 37 of the CLP. This instrument amends the timescales put in place by the SI made in 2019 due to operational concerns raised since then. These amendments will ensure that the HSE has sufficient time to carry out its operational responsibilities. In addition, the current wording of the EU regulation states that decisions are taken "without undue delay". However, those affected by regulatory decisions should be clear about when those decisions will take place. Therefore, our amendments specify that a decision is required within three months of a recommendation being made to Ministers and that, within one month of the decision, the HSE must update the GB MCL list.

The noble Baroness also asked about certainty for business. The decision to amend the timescales so that they are operationally deliverable was made under the advice of and after consultation with the specialist regulatory scientists in the HSE and the devolved Administrations. The system mirrors the EU system as much as possible so that the industry will be familiar with the assessment process.

The noble Baroness, Lady Parminter, also mentioned environmental assessment as part of the process. As part of the technical assessment, the HSE must look at the impact that a substance's intrinsic hazards may have on environmental end-points. The HSE is supported by the Environment Agency in undertaking this work.

The noble Baroness, Lady Sherlock, and my noble friend Lady Altmann referred to unfettered access. The Government's approach to unfettered access and the Northern Ireland protocol was set out in the main Command Paper and subsequent business guidance. This outlines that there will be some specific requirements

[Baroness Stedman-Scott]
for movements from Northern Ireland to GB for items categorised as highly regulated goods. Chemicals are highly regulated goods because they can pose a significant risk to human health and the environment.

The noble Baroness, Lady Sherlock, asked whether the Health and Safety Executive undertakes assessments for biocidal products during the 90-day period. All chemicals are highly regulated goods because they can pose a significant risk to human health and the environment. There is a transparency requirement for a Northern Ireland business to notify the Health and Safety Executive with information that it would submit to the EU before the biocidal product is placed on the market.

On the noble Baroness's question about finances, I can confirm that, for the 2020-21 financial year, an additional £6.1 million was made available, with £1.6 million for the DWP and £4.5 million to help Defra to prepare for delivering the new chemicals framework. This represents a 60% increase on the 2019-20 financial year.

As many noble Lords will attest to, our chemicals sector is world-leading and vital for other key industries, such as the pharmaceutical, automotive and aerospace industries. We want to make sure that this continues. We also need to provide certainty for businesses in Northern Ireland to ensure both that the statute book is fully functional for the end of the year and that those businesses have unfettered access to the market in Great Britain. This instrument seeks to do that and meet our obligations under the protocol.

I am sure that noble Lords are all with me on the fact that we need to provide continuity and clarity to the chemicals industry following the end of the transition period. I want to ensure that legal requirements that apply in relation to chemicals regulations are clear and provide certainty to all. We must maintain our high level of protection in the workplace and for others, which this instrument will do.

I hope that I have covered all the points that were made. I will look at *Hansard* and, if there any points that I have not covered, I will make sure that noble Lords are written to.

Motion agreed.

The Deputy Chairman of Committees (Baroness Pitkeathley) (Lab): My Lords, 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 5.40 pm.

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