Vol. 834
No. 15

Monday
4 December 2023

PARLIAMENTARY DEBATES

(HANSARD)

HOUSE OF LORDS

OFFICIAL REPORT

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The following abbreviations are used to show a Member's party affiliation:

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

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House of Lords

Monday 4 December 2023

2.30 pm

Prayers—read by the Lord Bishop of Chichester.

Introduction: Lord Carter of Haslemere

2.38 pm

Harold Mark Carter, CB, having been created Baron Carter of Haslemere, of Haslemere in the County of Surrey, was introduced and took the oath, supported by Lord Parkinson of Whitley Bay and Baroness Sanderson of Welton, and signed an undertaking to abide by the Code of Conduct.

Deaths of Former Members

Announcement

2.43 pm

The Lord Speaker (Lord McFall of Alcluith): My Lords, I regret to inform the House of the death of the noble Lord, Lord Darling of Roulanish, on 30 November 2023. On behalf of the House, I extend our condolences to the noble Lord's family and friends.

I also regret to inform the House of the death of the noble Baroness, Lady Kinnock of Holyhead, on 3 December 2023. On behalf of the House, I extend condolences to the noble Lord, Lord Kinnock, and all the noble Baroness's family and friends.

Disabled Air Passengers

Question

2.44 pm

Asked by ***Baroness Brinton***

To ask His Majesty's Government what steps they are taking to ensure disabled air passengers are able to travel safely and with their equipment, including wheelchairs.

The Parliamentary Under-Secretary of State, Department for Transport (Lord Davies of Gower) (Con): My Lords, the Government are clear that everyone should be able to travel by air safely and with dignity, and they are committed to working with industry and the Civil Aviation Authority to achieve this. The department is committed to reforms that will help protect all passengers, including disabled passengers, and has ongoing engagement with industry and consumer stakeholders to identify ways to continue to improve aviation accessibility.

Baroness Brinton (LD) [V]: I thank the Minister for his reply, but, as the noble Baroness, Lady Grey-Thompson, and I pointed out in a debate in Grand Committee last month, many disabled air travellers face repeated problems whenever they fly, including airline ground managers and pilots at airports making personal decisions about equipment, including wheelchairs, and refusing access to a plane, even if their decision does not follow IATA guidance. Will the Minister agree to a meeting with me, the noble Baroness, Lady Grey-Thompson, the Civil Aviation Authority and IATA to discuss how this can be remedied?

Lord Davies of Gower (Con): I am grateful to the noble Baroness for her Question and congratulate her on the debate that we had last week. I know that my predecessor hosted a round table on aviation accessibility on 28 June this year. The round table was well attended by disability experts and people with lived experiences, and of course staff training was one of the issues that came up. There was a clear indication of issues with the quality of disability awareness training for staff. So, yes, I would be very happy to meet the noble Baroness.

Lord Tunnicliffe (Lab): My Lords, the Government have previously referred to a range of legislative reforms when parliamentary time allows to support disabled air passengers. Will these be introduced before the next general election? If the Minister cannot give that assurance, does that represent the priority that the Government give to this issue?

Lord Davies of Gower (Con): I thank the noble Lord for his question, but I am afraid that I cannot give an answer to that as I stand here. It is above my pay grade to decide what the legislative business will be for the rest of this year.

Baroness Randerson (LD): My Lords, some airports have a much worse record than others. Unfortunately, Heathrow Airport has a poor record, going back over a long period. That is a matter of particular concern because it is our largest airport and it is likely to give the UK a poor reputation abroad. What are the Government doing to ensure that all UK airports come up to a much better standard? Some of them are already delivering—but far from all of them.

Lord Davies of Gower (Con): The Department for Transport has released a new training module on handling powered wheelchairs, for example; it forms part of the department's training programme. The CAA is responsible for enforcing UK legislation on aviation accessibility and takes action where needed—but I take the noble Baroness's point about Heathrow in particular.

Lord Sterling of Plaistow (Con): My Lords, over many years I have been very involved with the disabled and cruise liners. Following on from what the noble Baroness just said, some airports are better than others. However, in practice, the real problem is people working together. The cruise operators with which I am involved have a special unit that works together with airports in every conceivable way to help passengers, including those who may board their ships as well. The key part is what the noble Baroness mentioned just now: somebody in the airport must have the final authority—that is, not needing to seek authority—on how to bring together the various items that people need. I do not think that that necessarily means government support but, in practice, I suggest that we are on the way there now.

Lord Davies of Gower (Con): At the round table hosted by my noble friend Lady Vere, there was a clear indication that there were issues with the quality of disability awareness training for staff. Anecdotal evidence suggested that staff were not aware of how to provide

[LORD DAVIES OF GOWER]
appropriate assistance to people with different needs, including non-visible disabilities. So there is much to do; I fully appreciate that.

Lord Griffiths of Burry Port (Lab): My Lords, in view of the answer we just heard to my noble friend Lord Tunnicliffe, will the Minister, recognising that an answer to that question might be above his grade, give an undertaking to my noble friend to at least accommodate the question and go back to the person at whose grade it is, in order to see whether some kind of meeting with the noble Lord, Lord Tunnicliffe, could take place?

Lord Davies of Gower (Con): I am afraid that business in the House is not within my capability.

Lord Wigley (PC): My Lords, does the Minister accept that, 42 years ago, when I introduced what became the Disabled Persons Act 1981, this issue arose and we were assured that there were other ways of sorting it out and that it did not need legislation? What is the problem that has taken 40 years and more to resolve? Surely successive Governments must take this issue more seriously and get it done.

Lord Davies of Gower (Con): With great respect to the noble Lord, I think this Government do take it seriously. The department certainly takes it seriously; I take it seriously. Within my ministerial role, I have responsibility for disabilities within the maritime sector, and I take that very seriously—and I know that my colleagues in the Department for Transport do.

Baroness Finlay of Llandaff (CB): My Lords, I am grateful to the Minister for pointing out that not all disabilities are visible. The use of the sunflower lanyard can be useful, but some people feel that it is stigmatising to wear such a lanyard. Is there a date fixed for a follow-up to that round table discussion? Has there been a request to airport authorities to report, at such a meeting, an audit they have undertaken of the different aspects of disability, which might also include access to toileting for people in some of the larger airports?

Lord Davies of Gower (Con): I thank the noble Baroness for that question. I am not aware of a date as I stand here, but I will inquire into it and write to the noble Baroness.

Lord Kamall (Con): My Lords, in answer to previous questions, my noble friend the Minister referred to a meeting that our noble friend Lady Vere had with the industry and others. Can he tell us whether concrete steps were agreed at that meeting, and what they were? If he does not have the answer now, maybe he could write to me.

Lord Davies of Gower (Con): I can tell my noble friend that the discussions highlighted inconsistencies in the way passengers can provide the information to the industry that is needed to get appropriate assistance. It was also noted that the information the passenger has provided is not always accurately recorded and might not be shared with all operators—for example, the airlines, the airport and the assistance provider. Of course, this results in passengers having to provide the information several times during the journey, which can be intimidating or cause anxiety. I know that this, in particular, was an issue that was raised at that time.

Lord Addington (LD): My Lords, I have been following this subject for almost as long as the noble Lord, Lord Wigley. All Governments have failed to bring the people responsible together, so that a person in a wheelchair cannot rely on a coherent transition through the process. Surely it is time that this House, and possibly the rest of Parliament, got together, banged together the heads of those running airports and airlines and told them that it is unacceptable?

Lord Davies of Gower (Con): I absolutely agree with the noble Lord and suggest that that is under way as a result of the round table of the noble Baroness, Lady Vere.

Lord Haselhurst (Con): My Lords, might it not be particularly helpful to draw the airframe manufacturers into this discussion as soon as possible? They surely could set a standard that should then be led by all their customers.

Lord Davies of Gower (Con): My noble friend makes a very good point. I know that that is under way with some aircraft manufacturers, particularly in terms of toilets on board aircraft and the ability of people in wheelchairs to access those toilets.

Artificial Intelligence: Regulation

Question

2.54 pm

Asked by ***Lord Browne of Ladyton***

To ask His Majesty's Government, further to the Bletchley Declaration, what timescale they believe is appropriate for the introduction of further UK legislation to regulate artificial intelligence.

The Parliamentary Under-Secretary of State, Department for Science, Innovation and Technology (Viscount Camrose) (Con): Regulators have existing powers that enable them to regulate AI within their remits and are already actively doing so. For example, the CMA has now published its initial review of foundation models. The AI regulation White Paper set out our adaptive, evidence-based regulatory framework, which allows government to respond to new risks as AI develops. We will be setting out an update on our regulatory approach through the White Paper consultation response shortly.

Lord Browne of Ladyton (Lab): My Lords, two weeks ago, France, Germany and Italy published a joint paper on AI regulation, executive orders have already committed the US to specific regulatory guardrails, and the debate about the EU's AI Act is ongoing. By contrast, we appear to have adopted a policy that may generously be described as masterly inactivity. Apart from waiting for Professor Bengio's report, what steps are the Government taking to give the AI sector and the wider public some idea of the approach the UK

will take to mitigate and regulate risk in AI? I hope the Minister can answer this: in the meantime, what is the legal basis for the use of AI in sensitive areas of the public sector?

Viscount Camrose (Con): I think I would regret a characterisation of AI regulation in this country as non-existent. All regulators and their sponsoring government departments are empowered to act on AI and are actively doing so. They are supported and co-ordinated in this activity by new and existing central AI functions: the central AI risk function, the CDEI, the AI standards hub and others. That is ongoing. It is an adaptive model which puts us not behind anyone in regulating AI that I am aware of. It is an adaptive model, and as evidence emerges we will adapt it further, which will allow us to maintain the balance of AI safety and innovation. With respect to the noble Lord's second question, I will happily write to him.

Lord Clement-Jones (LD): My Lords, the Government have just conducted a whole summit about the risks of AI, so why in the new data protection Bill are they weakening the already limited legal safeguards that currently exist to protect individuals from AI systems making automated decisions about them in ways that could lead to discrimination or disadvantage? Is this not perverse even by this Government's standards?

Viscount Camrose (Con): I do not think "perverse" is justified. GDPR Article 22 addresses automated individual decision-making, but, as I am sure the noble Lord knows, the DPDI Bill recasts Article 22 as the right to specific safeguards rather than a general prohibition on automated decision-making, so that subjects have to be informed about it and can seek a human review of decisions. It also defines meaningful human involvement.

Viscount Colville of Culross (CB): When I asked the Minister in October why deepfakes could not be banned, he replied that he could not see a pathway to do so, as they were developed anywhere in the world. In the Online Safety Act, tech companies all over the world are now required not to disseminate harms to children. Why can the harms of deepfakes not be similarly proscribed?

Viscount Camrose (Con): I remember the question. It is indeed very important. There are two pieces to preventing deepfakes being presented to British users: one is where they are created and the second is how they are presented to those users. They are created to a great extent overseas, and we can do very little about that. As the noble Viscount said, the Online Safety Act creates a great many barriers to the dissemination and presentation of deepfakes to a British audience.

Baroness Goldie (Con): My Lords, the MoD published its AI strategy in June 2022. Among other priorities, the MoD aspired to be, on AI, the world's most effective defence organisation for its size, through the delivery of battle-winning capability and supporting functions and our ability to collaborate and partner with UK allies and AI ecosystems. Can my noble friend the Minister confirm to me that nothing in current discussions will compromise the commendable and critical delivery of that objective?

Viscount Camrose (Con): I thank my noble friend for that question on the important area of AI usage in defence. As she will recall, AI in defence is principally conducted within the remit of the Ministry of Defence itself. My role has very little oversight of that, but I will take steps with government colleagues to confirm an answer for my noble friend.

Lord Bassam of Brighton (Lab): My Lords, the Minister referred earlier to new risks. Sadly, the rapid development of AI has given rise to deepfake video and audio of political leaders, most recently the London Mayor, Sadiq Khan. We debated such issues during the passage of the Online Safety Act, but many were left feeling that the challenges that AI poses to our democratic processes were not sufficiently addressed. With a general election on the horizon who knows when, what steps are the Minister and his ministerial colleagues taking to protect our proud democratic traditions from bad actors and their exploitation of these new technologies? This is urgent.

Viscount Camrose (Con): I thank the noble Lord for raising this; it is extremely urgent. In my view, few things could be more catastrophic than the loss of faith in our electoral process. In addition to the protections that will be in place through the Online Safety Act, the Government have set up the Defending Democracy Taskforce under the chairmanship of the Minister for Security, with a range of ministerial and official activities around it. That task force will engage closely, both nationally, with Parliament and other groups and stakeholders, and internationally, to learn from allies who are also facing elections over the same period.

Baroness Stuart of Edgbaston (CB): My Lords, I declare an interest as the First Civil Service Commissioner. If we want to regulate and to introduce legislation, the Government themselves will require a set of skills that they currently may not have. Can the Minister assure the House that we will have within government the skills to regulate artificial intelligence?

Viscount Camrose (Con): When the then frontier model task force was set up, we had in senior officialdom a total of three years of PhD-level experience in AI safety. I am pleased to say that that number is now 150. We have probably the greatest concentration of AI safety researchers and scientists of any nation working currently for the United Kingdom Government on this crucial issue of AI safety.

Lord Vaizey of Didcot (Con): My Lords, I congratulate my noble friend the Minister on the recent AI safety summit. It is interesting that the EU is currently debating an AI regulation and tying itself up in knots about whether to regulate large language models or the application of AI. Can the Minister give an indication, first, of which direction the Government are heading, and, secondly, what discussions he has had with our colleagues in Brussels on the future of AI regulation?

Viscount Camrose (Con): I thank my noble friend for his congratulations with respect to the AI safety summit. We continue to engage internationally, not just with the larger international AI fora but very regularly with our colleagues in the US and the EU, both at ministerial and official level. The eventual landing zone of international interoperable AI regulations needs to be very harmonious between nations; we are pursuing that goal avidly. I may say that we are at this point more closely aligned to the US approach, which closely mirrors our own.

Viscount Stansgate (Lab): My Lords, in answer to my noble friend Lord Bassam on the Front Bench a moment ago, the Minister referred to the Defending Democracy Taskforce. When you consider that the National Cyber Security Centre, which is part of GCHQ, has recently publicly warned that in the next general election we will be subjected to a great many deepfakes along the lines indicated—we have seen them in action already—will the Minister agree to bring to the House, at an early stage, evidence of what the Defending Democracy Taskforce is doing? There is a sense of urgency here. As everyone knows, there will probably be a general election next year. On behalf of the electorate, we want to know that they will be able to understand what is real and what is not.

Viscount Camrose (Con): Indeed. I should point out that the NCSC and other cyber actors are also involved in the Defending Democracy Taskforce. I will liaise with the task force to understand what exactly the communications and engagement arrangements are with Parliament and elsewhere. I will take steps to make that happen.

Asylum Seekers: Deportation from France

Question

3.04 pm

Asked by ***Lord Lilley***

To ask His Majesty's Government what representations they have received about the remarks by Gérald Darmanin, the French interior minister, that his government is prepared to deport asylum seekers deemed dangerous, in breach of rulings of the European Court of Human Rights.

The Parliamentary Under-Secretary of State, Home Office (Lord Sharpe of Epsom) (Con): My Lords, French policy on asylum is a matter for the French Government. His Majesty's Government continue to co-operate closely with France to tackle illegal migration and to keep our borders and citizens safe.

Lord Lilley (Con): I thank my noble friend for his Answer. Does he recall warnings from human rights lawyers and Foreign Office mandarins that if we were to set aside a ruling of the European Court of Human Rights we would become pariahs, along with Russia and Belarus? Is it not passing strange that, when France announced its intention to do so, there was no outcry? Since 14 November, when it refouled an Uzbek refugee to his homeland despite the court ruling it illegal, risking torture and death, the whole liberal establishment, from the BBC to the UN High Commissioner for Refugees—

Noble Lords: Oh!

Lord Lilley (Con): —and the SDP—has been as silent as mice. Is there one rule for our friends in Europe and another for Britain?

Lord Sharpe of Epsom (Con): My Lords, I think it would be wise for me to restate what the Prime Minister has said, which is that he is taking

"the extraordinary step of introducing emergency legislation".

He made that point on 15 November. He went on to say that he does not believe that

"anyone thinks the founding aim of the European Convention on Human Rights was to stop a sovereign Parliament removing illegal migrants to a country deemed to be safe in Parliamentary statute and binding international law. I do not believe we are alone in that interpretation".

So I say to my noble friend that I look forward to informed discussion on the recent French decision.

Lord Ponsonby of Shulbrede (Lab): My Lords, I have a simple question for the Minister: have either the new Home Secretary or the new Foreign Secretary met the French Interior Minister?

Lord Sharpe of Epsom (Con): My Lords, I am afraid I do not know.

Lord Collins of Highbury (Lab): You should.

Lord Sharpe of Epsom (Con): Really? I will find out and come back to the noble Lord.

Viscount Hailsham (Con): My Lords, in the event that the Government decide to derogate from any part of the convention, would Ministers agree to publish in advance, before doing so, a paper identifying which of our international obligations might be impacted by such a decision?

Lord Sharpe of Epsom (Con): My Lords, I cannot anticipate what may or may not be in the Bill. Obviously, the Bill will be presented to Parliament in the usual way.

Lord German (LD): My Lords, what consideration has the Minister given to the views of the same Interior Minister from France that consideration will be given to giving legal status to undocumented people working in sectors with labour shortages? If the Minister were to give consideration effectively to that matter, surely that would help our relationships with the French Government and everything in the immigration system beyond.

Lord Sharpe of Epsom (Con): I refer the noble Lord to my earlier Answer. I am not going to speculate on or discuss what the French legal system and the French Interior Minister decide about their own domestic policy.

Lord Singh of Wimbledon (CB): My Lords, deciding whether an asylum seeker is dangerous is subjective. Does the Minister agree that our system is less discriminatory in treating all asylum seekers as a lesser form of life?

Lord Sharpe of Epsom (Con): I am afraid not.

Baroness Meacher (CB): My Lords, can the Minister give the House an absolute assurance that the Government will never consider making a decision that would be in breach of a ruling of the European Court of Human Rights?

Lord Sharpe of Epsom (Con): As I said earlier, I am not going to speculate as to what will be in future legislation. That will be presented to Parliament in the fullness of time.

Lord Wallace of Saltaire (LD): My Lords, does the Minister agree with the noble Lord, Lord Lilley, that we on this side are the establishment while the anti-establishment are the poor people who are stuck in government with only the *Daily Mail*, the *Telegraph*, GB News and a few others to help them, battling against a profoundly demoralising liberal consensus that somehow they do not seem able to break?

Lord Sharpe of Epsom (Con): I rather agree with Michel Barnier, with whom I imagine the noble Lord sympathises quite a lot, who said:

> "You can find nothing in the French constitution about migration, and there is almost nothing in the European treaties. For 30 or 40 years, there's a kind of interpretation that is always in favour of the migrants … We have to rewrite something in the … treaties or in"

the European Convention on Human Rights. Is he wrong?

Lord Forsyth of Drumlean (Con): My Lords, has my noble friend seen the reports in the newspapers that civil servants in the Home Office are deciding that they cannot comply with Ministers' policy declarations because they are in breach of the Civil Service Code? Is this not a rather alarming development, if true, and can my noble friend tell us exactly what is going on in the Home Office?

Lord Sharpe of Epsom (Con): I have seen those reports, and I certainly have seen nothing of the sort from any civil servants.

Baroness Chakrabarti (Lab): My Lords, does the Minister agree that the recent decision of the Supreme Court is a decision of a domestic court, not a foreign one? Does he also agree that its rationale was predominantly based on not the European convention but the refugee convention and various domestic statutes?

Lord Sharpe of Epsom (Con): Yes, I agree with both those comments.

Lord Cormack (Con): My Lords, would it not make much more sense if we talked to the French a little more about processing applicants in France, rather than all this rubbish talk about Rwanda?

Lord Sharpe of Epsom (Con): My noble friend raises this subject fairly frequently. In March, the Prime Minister and President Macron agreed the largest-ever deal with France to tackle small boat crossings, building on our existing co-operation. As a result of this deal, we have seen a significant uplift of personnel deployed to tackle small boats across northern France and the procurement of new, cutting-edge surveillance technologies and equipment to detect and respond to crossing attempts. So far, over the last calendar year, those efforts—as I have said many times from the Dispatch Box—have stopped, I think, 22,000 attempted crossings. It is probably more by now.

Lord Hannay of Chiswick (CB): My Lords, the Minister perhaps used the wrong word when he told the House that Monsieur Darmanin had made a decision. He expressed a view; there is in fact a Bill going through the French Parliament at the moment on immigration, and presumably a great deal will depend on what that says.

Lord Sharpe of Epsom (Con): My Lords, the information I have, which comes from a newspaper report in *Le Monde*, is that on 14 November the French deported a 39 year-old Uzbek international, even though the ECHR had ruled against it. They did so without waiting for the administrative courts to rule on the case.

Lord Harris of Haringey (Lab): My Lords, can the Minister assist me? I heard on the "Today" programme this morning that one thing being considered by government—I am not asking him to guess what might be in forthcoming legislation—is that the UK would send to Rwanda people to process the applications and consider their legality, and that if the decision was not to grant asylum, the individuals concerned would be returned to the UK. Why would we waste all that money on airfares if we are simply saying that we will process people but in another country?

Lord Sharpe of Epsom (Con): The noble Lord said that he is not asking me to guess what is in the legislation, but he just has.

Violence Against Women and Girls

Question

3.13 pm

Asked by ***Baroness Chakrabarti***

> To ask His Majesty's Government how they propose to prioritise reducing violence against women and girls both domestically and internationally.

The Parliamentary Under-Secretary of State, Home Office (Lord Sharpe of Epsom) (Con): My Lords, we are absolutely committed to tackling violence against women and girls at home and abroad. We passed our landmark Domestic Abuse Act and are delivering the *Tackling Violence against Women & Girls* strategy and the *Tackling Domestic Abuse Plan* to help keep women and girls safe. Internationally, we are making progress through our flagship "What works to prevent violence" programme and pioneering work to end child marriage and female genital mutilation.

Baroness Chakrabarti (Lab): I am grateful to the Minister. He will recognise that this Question was tabled in recognition of White Ribbon Day, which was

[Baroness Chakrabarti]
just over a week ago. What additional resources have the Government deployed since last year's White Ribbon Day to give greater support to victims of sexualised violence in our domestic criminal justice and asylum systems? What support have they given to international mechanisms charged with investigating and prosecuting sexualised violence as a weapon of war?

Lord Sharpe of Epsom (Con): On noble Baroness's second question, the Preventing Sexual Violence in Conflict initiative is a key focus for the UK. We are a global leader on this. We have committed £60 million since the launch of this programme in 2012. In November 2022, the UK hosted an international PSVI conference with over 1,000 attendees. A political declaration came out of that, which was endorsed by 53 countries. It sends a clear message that these types of crimes must end and sets out steps on how to achieve that. We have also launched the PSVI strategy, which sets out how the UK will work to drive global action to prevent and respond to CRSV—conflict-related sexual violence—and that includes sanctions. I refer noble Lords to my noble friend Lord Ahmad's comments on that in June. Regarding the domestic picture, significant amounts of money and resource have been committed. I am sure I will be answering more questions on that shortly.

Lord Pannick (CB): My Lords, does the Minister share the widespread outrage at the use of rape and other forms of sexual violence by Hamas in Israel on 7 October? Does he also share the widespread outrage that so many individuals and groups who do such excellent work in combating sexual violence have remained silent until now—almost two months since those outrages? Can he think of any reason why in this respect Jewish women do not matter?

Lord Sharpe of Epsom (Con): My Lords, this is a very sensitive subject. I found Christina Lamb's article in the *Sunday Times* very distressing and upsetting, but very powerful. Why did it take the UN so long to condemn those actions? The words of Professor Ruth Halperin-Kaddari, who was quoted in the article, deserve mentioning:

> "It's mindblowing. We were there for our sisters when terrible things happened across the ocean, when they took away abortion rights in US, the killing of women in Iran, the abduction of Yazidis … but with us they looked away and I can't think of a reasonable answer".

Unfortunately, I can think of an unreasonable answer, and it disgusts me. From a personal point of view, I hope the perpetrators get what is coming to them—and believe me, I do not mean sanctions.

Baroness Uddin (Non-Afl): My Lords, I say to the Minister and all noble Lords who have raised concerns that I can never look away from rape as a weapon of war, whoever commits that violence. It is really important that we stand together with those who were victims of rape on 7 October, just as I do with all those still being raped all over the world in the name of war and conflicts. I am deeply unhappy about what is happening to women seeking services in this country. Also, we cannot look away from such detrimental violence perpetrated on the children, girls and women of Palestine, from which they may never recover.

Lord Sharpe of Epsom (Con): My Lords, I do not think that was a question.

Lord Laming (CB): My Lords, the Minister will have seen the reports of unaccompanied migrant children being placed in hotels. Many of them have disappeared and the fear is that they are being sexually exploited. Why does the Children Act 1989 not apply to these children once they are in this country?

Lord Sharpe of Epsom (Con): My Lords, this is an entirely separate subject, as noble Lords know. I accept the premise of the question, but I am going to come back to the noble Lord. There is another Question on this tomorrow where we can go into much more detail.

Baroness Burt of Solihull (LD): I want to say how powerful I thought the Minister's reply a couple of questions ago was and commend the noble Baroness, Lady Chakrabarti, on pointing out the role that men can play in raising the issue of domestic violence against women and girls by calling it out. We know that the root cause of violence against women and girls all over the world is inequality, which is getting worse, with previous strides forward being reversed while our budget—particularly for overseas aid—is diminished. What thinking outside the box have the Government done to reduce inequalities and do more with less?

Lord Sharpe of Epsom (Con): My Lords, it is about how you do things. I have already referred to a few of the things the Government have done, and a significant amount of money is being invested into this area to improve outcomes for victims. Since 2010, we have criminalised forced marriage; criminalised revenge porn; criminalised failing to protect a girl from FGM; introduced Clare's law, which is a domestic violence disclosure scheme; introduced two new stalking offences; introduced the offence of controlling or coercive behaviour; introduced legislation that recognises as victims children who see, hear or experience the effects of domestic abuse and are related to the perpetrator or victim; and criminalised virginity testing and hymenoplasty. There is so much more that the Government have done; it is not all about money.

Baroness Thornton (Lab): The Minister mounted a stout defence about the issues of 7 October, which he was right to do. I was proud to be at the conference organised by the noble Lord, Lord Hague, on sexual violence in conflict. It was an important moment for the UK. I am proud of our leadership in tackling violence against women and girls across the world. How will the Minister and his colleagues ensure that the perpetrators are held to account by putting pressure on the United Nations? How could the UK support the victims of these appalling crimes?

Lord Sharpe of Epsom (Con): The noble Baroness raises two interesting points. I hope that we will support the victims by providing forensic expertise and other skills, as we have in other conflicts around the world. Obviously, the perpetrators have to be caught, and I believe that extensive efforts are under way to catch them. On the longer-term approach, I do not know, but if she would like to chat about it I will happily take her suggestions back to the department.

Baroness Hodgson of Abinger (Con): What are His Majesty's Government doing to ensure that girls are not taken out of the country to undergo FGM? Is preventing FGM still a priority in our international development policy?

Lord Sharpe of Epsom (Con): My Lords, I am happy to tell my noble friend that, yes, it is. Child abuse is a crime, and we will not tolerate this practice, which causes extreme and lifelong physical and psychological suffering to women and girls. Our focus remains on preventing these crimes from happening, supporting and protecting survivors and those at risk, and bringing perpetrators to justice. As my noble friend will be aware, in 2015 we strengthened the law on FGM, which is now an offence. We also extended the reach of extraterritorial offences, introduced lifelong anonymity for victims, introduced civil FGM protection orders and introduced a mandatory reporting duty for known cases. I am pleased to say that there have been two prosecutions for this, one as recently as October, and I believe that sentencing is still awaited—a lot is being done.

Baroness Foster of Aghadrumsee (Non-Afl): My Lords, I commend my noble friend Lord Pannick on his question, and I commend the Minister's answer. I will bring us back to the domestic: Christmas is a time when many of us look forward to being with our families, but unfortunately that is not the case for those who suffer from domestic abuse and violence. Given that, will the Minister acknowledge the operation, and the work behind it, by the Police Service of Northern Ireland, Translink and Retail NI, coming up to Christmas, so that they recognise violence against women and girls in a proactive way?

Lord Sharpe of Epsom (Con): My Lords, I am happy to do that and to announce that the pilot sites for domestic abuse protection notices and prevention orders have been chosen. This will extend the police's operations across the country when they commence in the spring of 2024. There is a lot more to anticipate on this subject—I hope that we will see things progress in the right direction.

Wheelchair Access Bill [HL]
First Reading

3.23 pm

A Bill to ensure that people in wheelchairs are able to access all public buildings via ramps or other measures; and for connected purposes.

Lord Blencathra (Con): My Lords, I declare a personal non-financial interest: I would be a beneficiary if the Bill were to be passed.

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

Genocide Determination Bill [HL]
First Reading

3.24 pm

A Bill to provide for the High Court in England, Wales and Northern Ireland and the Court of Session in Scotland to make preliminary determinations concerning the undertakings made by the United Kingdom as a Contracting Party to the Convention on the Prevention and Punishment of the Crime of Genocide ("Genocide Convention") under international law; for the referral of such determinations to relevant international courts or organisations; for response to reports on genocide; and for connected purposes.

Baroness Finlay of Llandaff (CB): My Lords, I draw attention to the registered relevant interests of my noble friend Lord Alton, whose Bill this is, and introduce it on his behalf.

The Bill was introduced by Baroness Finlay of Llandaff (on behalf of Lord Alton of Liverpool), read a first time and ordered to be printed.

National Insurance Contributions (Reduction in Rates) Bill
First Reading

3.25 pm

The Bill was brought from the Commons, read a first time and ordered to be printed.

Liaison Committee
Motion to Agree

3.26 pm

Moved by ***The Senior Deputy Speaker***

That the Report from the Select Committee *A committee on financial services regulation* (6th Report, Session 2022-23, HL Paper 267) be agreed to.

The Senior Deputy Speaker (Lord Gardiner of Kimble): My Lords, in speaking to the Motion on the sixth report, I shall speak also to the other Motion in my name on the Order Paper today, that the first report of this Session be agreed to.

On the first Motion, as noble Lords know, the Financial Services and Markets Act 2023 repealed retained EU law for financial services and established a new framework for the regulation of financial services in the United Kingdom. The debates in this House during the passage of the Bill attracted the attention of many of your Lordships who have valuable expertise in this field, either directly through involvement in the financial services sector or indirectly through involvement in the scrutiny of financial services on one of your Lordships' committees, such as the former EU Select Committee or, more recently, the Industry and Regulators Committee. The value of parliamentary scrutiny in this field is entirely proven.

The Act provides for Select Committees in each House, or a Joint Committee, to scrutinise consultations issued by regulators of financial services, as is set out in detail in the sixth report. The possibility of a Joint Committee was considered by exchange of letters with my counterpart in the House of Commons, Sir Bernard Jenkin. The House of Commons did not wish to advance that option. This exchange is a matter of record, as is the desire of all parties to ensure that the work of the two Houses in this area is complementary rather than duplicative. That is the position in respect

[Lord Gardiner of Kimble]
of all our committees, and will continue to be the position with regard to a new committee on financial services regulation.

As noted by the noble Baroness, Lady Penn, the Minister during the passage of the Bill,

"there will be more than sufficient work to go round different committees, and they have already proven themselves able to co-ordinate their work so that it is not duplicative".—[*Official Report*, 8/6/23; col. 1639.]

This is an important area of work, and ensuring complementarity between this and other committees contributes to the effective scrutiny of the sector. There are several means of ensuring complementarity, not least of which is good and regular dialogue between respective chairs and staff of the committees. More details are set out in paragraph 15 of the report on this matter. This will be an influential committee, with a role set out in legislation. We undoubtedly have the expertise to make a profound contribution to the consideration of a sector that is of such significant interest and importance to our country's economy. Therefore, I hope that noble Lords will support the first Motion standing in my name.

I turn to the second Motion in my name on the Order Paper. At the start of this year the House appointed four special inquiry committees: on the integration of primary and community care; education for 11 to 16 year-olds; the horticultural sector; and artificial intelligence in weapons systems. Two of those committees have now published their reports; the remaining two will be published very shortly. I take this opportunity to thank all Members who contributed to those inquiries and indeed to all our committee work during the year. I also place on record my thanks to the staff who have supported the work of your Lordships' Select Committees this year.

On the proposed special inquiry committees for next year, the Liaison Committee received 39 high-quality suggestions from noble Lords, almost double the number received last year, illustrating well the range of interest and expertise across the House. All those proposals have been published on the committee's website. As ever, the Liaison Committee faced a difficult task. We assessed the proposals against our published criteria, which are that a committee should make best use of the knowledge and experience of members; complement the work of existing Select Committees, including Commons departmental Select Committees; address areas of policy that cross departmental boundaries; and be capable of being completed within 10 months.

We also took into account wider factors, such as the overall balance of topics selected and work being undertaken by other Lords committees and within government. As our report sets out, we decided to propose four special inquiry committees on: food, diet and obesity; the Modern Slavery Act 2015; preterm birth; and statutory inquiries. I hope that noble Lords agree that the committee's recommendations cover a wide range of subjects, will make excellent use of Members' backgrounds and will contribute to debates and policy-making in a range of topical and crosscutting areas.

I highlight post-legislative scrutiny. I am reminded that, last year, we received no proposals from your Lordships for post-legislative scrutiny committees—indeed, this drew comment from Members of the House. I am therefore very pleased to report that, this year, we received seven post-legislative scrutiny proposals and that the Liaison Committee is recommending two: on the Modern Slavery Act 2015 and on statutory inquiries. I am also reminded of exchanges in this Chamber about the importance of Select Committees engaging with all parts of the United Kingdom, particularly given that many policy areas are now devolved. I therefore emphasise the importance of dialogue with all parts of the United Kingdom, ensuring that our reports will be of value to all parts of the United Kingdom in turn. With that said, I am pleased to recommend these four special inquiry committees to the House. I beg to move the first Motion standing in my name.

Motion agreed.

Liaison Committee

Motion to Agree

3.33 pm

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

That the Report from the Select Committee *New committee activity in 2024* (1st Report, HL Paper 12) be agreed to.

Motion agreed.

Arbitration Bill [HL]

Motion to Refer to Second Reading Committee

3.33 pm

Moved by ***Lord Bellamy***

That the Bill be referred to a Second Reading Committee.

Lord Hacking (Lab): My Lords, long ago, I brought the Bill that became the Arbitration Act 1979 to the House and I then played a very active part in the 1996 Act. It is an area in which I have specialised. I would be very grateful if the Minister could give some guidance as to what exactly he means by his Motion to refer the Bill to a Second Reading Committee. I am mystified.

The Parliamentary Under-Secretary of State, Ministry of Justice (Lord Bellamy) (Con): My Lords, as I understand it, this Bill will follow Law Commission Bill procedure, which is a special procedure whereby, in essence, we simply adopt a recommendation by the Law Commission. The next stage is to refer the Bill to a Second Reading Committee, which will take place in due course in the Moses Room; I think it is due on 19 December. Once there has been a Second Reading of the Bill, a specialist Committee will examine it. I am sure that the noble Lord's membership of that Committee would be something we would all look forward to.

Lord Hacking (Lab): I am very grateful to the Minister.

Motion agreed.

Counter-Terrorism and Border Security Act 2019 (Port Examination Code of Practice) Regulations 2023

Motion to Approve

3.35 pm

Moved by ***Lord Sharpe of Epsom***

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

The Parliamentary Under-Secretary of State, Home Office (Lord Sharpe of Epsom) (Con): My Lords, in moving that the House approves this statutory instrument, I will also speak to the National Security Act 2023 (Video Recording with Sound of Interviews and Associated Code of Practice) Regulations 2023 and the National Security Act 2023 (Consequential Amendments of Primary Legislation) Regulations 2023. All three of these instruments, which were laid on 16 October and debated in the other place on 29 November, relate to measures in the National Security Act.

The National Security Act, which received Royal Assent this July, is the most significant piece of legislation to tackle the increase of state-based threats to our nation in a century. It brings together vital new measures to protect the British public, modernise counterespionage laws and address the evolving threat to our national security. In essence, it provides our world-class law enforcement and intelligence agencies with new and updated tools to do their critical work. We should bring the powers in the Act into force as soon as possible to protect this country. These instruments are an important part of making that happen. Once they are approved and come into force, we can also bring into force Parts 1 to 3 of the Act.

To be clear, these regulations do not create new powers or make changes to primary legislation which has already been approved by Parliament. They are merely supportive of the powers in primary legislation and ensure that the legislation can be implemented effectively and proportionately.

The National Security Act 2023 (Video Recording with Sound of Interviews and Associated Code of Practice) Regulations 2023 create a new code of practice to govern the videorecording of individuals arrested under the Act. Schedule 6 to the Act requires that any interview by a constable of a person detained using the arrest powers in Section 27 must be videorecorded with sound and that the videorecording must be carried out in accordance with the code of practice. This mirrors the requirement for anyone interviewed following an arrest under equivalent terrorism legislation. The code of practice has been based closely on the terrorism equivalent and provides guidance on how interviews should be conducted—for example, with guidance on sealing the recordings of videos, taking breaks during interviews and conducting interviews with deaf people or those who do not understand English.

The Counter-Terrorism and Border Security Act 2019 (Port Examination Code of Practice) Regulations 2023 make an update to the existing code of practice governing the exercise of the port examination power in Schedule 3 to that Act. This power allows accredited counterterrorism police officers to stop and examine individuals to determine whether a person at a port or border area is or has been involved in malign activity on behalf of a state. The amendment to the code of practice simply reflects a change made by the National Security Act. It requires a counterterrorism police officer of at least the rank of superintendent to authorise the retention of copies of confidential business material instead of the Investigatory Powers Commissioner. This change brings the process into line with the equivalent power in terrorism legislation, where it has proven effective and avoided undue burdens on the system.

It is worth noting that the Government carried out a statutory public consultation on the changes to this code and the creation of the videorecording code from 20 July to 31 August. Consultees generally acknowledged that these codes were key to ensuring that police officers have clear guidance on the powers and that the powers are used fairly and proportionately. However, where appropriate, we made further minor changes to meet the concerns of some consultees. For example, following feedback from Scottish policing on the videorecording code, we made minor amendments to ensure that it is consistent with Scottish policing practice and procedure. The full response to this consultation can be found on GOV.UK.

The final instrument in the package is the National Security Act 2023 (Consequential Amendments of Primary Legislation) Regulations 2023. This makes consequential amendments to primary legislation using the power in Section 95 of the National Security Act. Although some consequential amendments are made in Schedule 18 to the Act, the power in Section 95 allows any further amendments to be made as a consequence of the provisions in the National Security Act.

Consequential amendments are a standard part of new legislation. They are required to ensure existing legislation is up to date to reflect changes brought about by the National Security Act. They are not substantive amendments but simply consequential on the creation of the National Security Act.

Several of the amendments concern the Official Secrets Acts 1911, 1920 and 1939, which the National Security Act replaces and repeals. References to those Acts in other legislation are updated to reference the relevant provisions in the National Security Act or, where appropriate, repealed entirely. This includes references to the prohibited places regime in the Official Secrets Act 1911 or the preparatory conduct offence under Section 7 of the Official Secrets Act 1920, both of which have been updated and replaced in the National Security Act.

Other amendments made through this instrument account for other powers and offences created in the National Security Act. For example, amendments to the Criminal Justice and Police Act 2001 account for search and seizure powers created by Schedule 2 to the National Security Act.

To sum up, these instruments simply support primary legislation which has already been agreed by Parliament. Passing them is an important step to bringing this primary legislation into force. I commend them to the House. I beg to move.

Baroness Suttie (LD): My Lords, I thank the Minister for his explanation of these regulations. As he explained, they are consequential on the National Security Act and do not create new powers or make substantial changes to the primary legislation.

Clearly, there is cross-party consensus on the need to protect the public and to ensure national security, including border security. As a general comment, however, a balance should always be struck to ensure that measures are proportionate and that civil liberties are respected.

I will concentrate my very brief remarks on the draft Counter-Terrorism and Border Security Act 2019 (Port Examination Code of Practice) Regulations, which, through requiring a counterterrorism police officer of at least the rank of superintendent to authorise the retention of confidential business material, bring the process in line with existing terrorism legislation. In his concluding remarks, can the Minister expand on how the Government intend to ensure this will not add undue burdens to the system?

I thank the Minister for the letter he sent to noble Lords last week outlining the consultation that took place on these regulations. It is to be welcomed that the Government took on board the comments from Police Scotland on the videorecording code. However, regarding Northern Ireland and the very particular set of circumstances and international commitments regarding the border there, can the Minister confirm that, in the continued absence of a Northern Ireland Executive, consultations took place with the PSNI?

I was struck by the fairly small number of responses received to the consultation. I believe only five responses were received; perhaps the Minister could confirm that. I note that the consultation period was during the peak summer holiday period from 20 July to 31 August, which is perhaps, in part, an explanation for this. Can the Minister say if there was any particular reason why the consultation period was so relatively short?

Lord Coaker (Lab): My Lords, I thank the Minister for outlining the SIs and for the statement he made. As he said, we have three statutory instruments before us: two relate to the National Security Act 2023, and one relates to the Counter-Terrorism and Border Security Act 2019. We fully support these instruments and the consequences they will have on the threats posed by hostile activities and for the national security of our country. I join the Minister in thanking our intelligence services and those who work so hard to keep us safe.

3.45 pm

As always, there are many questions that can be asked of the detail. Oversight of the new legislation is vital to ensure the various safeguards and protections outlined in the code are fully respected. Of course, this requires a careful balance, with the need for those using these powers to properly protect us from potential and real threats. To that end, can the Minister update us on the appointment of the independent reviewer of state threats legislation, as laid out in Paragraph 14.1 of the Explanatory Memorandum to the Counter-Terrorism and Border Security Act 2019 (Port Examination Code of Practice) Regulations 2023? I can find the advert for that post, but I cannot find whether there has been any appointment. Can he update us on where that has got to? I note that the job advert came to an end a few weeks ago, if I have read it correctly. Can he outline the interaction between the new reviewer, as proposed by the National Security Act and outlined in these regulations, and the Independent Reviewer of Terrorism Legislation? Indeed, as the memorandum lays out, there is a close connection between those two, and it would be helpful if the Minister has anything to say about the interaction between them.

If someone is to be examined under Schedule 3, there is, first of all, as I understand it, a maximum detention of one hour, which can be extended to six hours. Can the Minister explain when the hour actually starts? Does it start from the moment that an examining officer stops someone, or is there a process at which this hour starts? You can see the point I am making, because if it does not start until a couple of hours after they have stopped someone, that is three hours. The further period can be up to six hours. Is this another six, is it five plus one to make six, or is it six plus one to make seven? Again, these are the sorts of things that are quite important for us to know. That detail is important.

An examining officer does not need suspicion to select someone for questioning. Just so I am clear, I support and understand that. Again, as explained in the Explanatory Memorandum, will the Minister agree with me that training therefore becomes vital in ensuring that protected characteristics are not inappropriately used to influence the choice that is made? That is a point that is made in the detail that has come with the Bill, but it is a really important one for the Minister to put on the record. Can he assure us that proper account will be taken of the needs of children, whether as persons being questioned or being connected to someone who is being questioned? Again, this is a question of detail which is quite important.

An examining officer questioning someone is not required to be in uniform to conduct these processes, even in the situation of a search where reasonable force can be used. How do we ensure that a non-uniformed officer can be identified, should an individual wish to do so, for example, if a complaint were to be made? There is reference in there to the requirement for the ID number to be given if an examining officer is not in uniform, but how is that actually going to be made known to somebody who is being examined, and how will we ensure that this process is properly undertaken? Will the Minister also say something about the need, as you can imagine, for people with language skills to be available to explain these various rights and the importance of that?

The Minister will know that what I have just said about identification of officers is extremely important, because the code of conduct allows strip-searching, including the strip-searching of children. Again, one understands the need for these requirements, but the oversight of them becomes particularly important.

There are many other pieces of clarity needed, but the final piece of clarity in reading this was to do with legal representation and the ability to inform others of

what is happening. I appreciate the difficulty of this in a practical environment, but fair process is crucial, even as we seek to ensure national security.

We agree with the video recording of interviews undertaken under Schedule 3 and about the voice being recorded. The video recording of those interviews will help the examining officer and the person being examined. The various protections, however important, have been carefully written but will require proper monitoring, so the appointment of the new state threats legislation reviewer is extremely important, as paragraph 14.3 of the Explanatory Memorandum to the National Security Act 2023 (Video Recording with Sound of Interviews and Associated Code of Practice) Regulations 2023 makes clear. I will quote from that, as it is extremely important:

"Part 3 of the NS Act creates the role of the Independent Reviewer of State Threats Legislation (IRSTL). The IRSTL will assess the operation of UK state threats legislation including its fairness, effectiveness and proportionality. As part of this, the IRSTL will consider the exercise of powers including the arrest and detention powers within the NS Act and the related guidance. The reviewer will report their findings and recommendations to Parliament in order to inform parliamentary and public debate on state threats law and civil liberties".

The Minister will understand why the appointment of that reviewer becomes particularly important, to enable Parliament to have oversight of the operation of this legislation.

We support these SIs, but some clarity would be helpful, if the Minister can respond to those questions as fully as he can.

Lord Sharpe of Epsom (Con): My Lords, I thank both noble Lords for their contributions. I will do my best to answer the detailed questions and, if inadvertently I miss any, I will definitely write. This subject matter is technical, but the debate, as ever, has been interesting.

The powers under Schedule 3 to the Counter-Terrorism and Border Security Act 2019 help to protect the public, as I have explained. They allow an officer to stop, question and, when necessary, detain and search individuals and goods travelling through UK ports and the border area, for the purpose of determining whether the person appears to be somebody who is or has been engaged in malign activity on behalf of a state. As has been noted, only officers who have been accredited as having successfully completed relevant training can use these Schedule 3 powers. The changes to authorisation for copies of confidential business material come into force at midnight on 20 December this year. After that point, examining officers will seek authorisation from an officer of at least the rank of superintendent to copy and retain business material of this type. In answer to the noble Baroness, Lady Suttie, the Investigatory Powers Commissioner and the police have been consulted on the date and they are very well prepared for the changes.

I have outlined the timeframe, scope and response of the public consultation on these codes in my opening remarks. The full details of the consultation and the Government's response can be found on GOV.UK. The Government's approach to consultation was in accordance with the requirements of the primary legislation. We considered that the six-week consultation was appropriate, given the changes to Schedule 3 on the port stop code were relatively minor and followed changes to primary legislation and the National Security Act video recording code closely followed existing precedent.

The noble Lord, Lord Coaker, asked when the hour started. As far as I am aware—and I will correct this if I am wrong—it starts from the moment of examination, but no one can be detained for more than six hours anyway. On the question about recruitment, that is still under way, as far as I know, but announcements will be forthcoming as soon as possible. Counterterrorism officers are carefully trained in the use of their powers. There are safeguards in place relating to children which are set out in the code. Careful safeguards are also in place for strip-searches in the code. Individuals can also have an interpreter as necessary.

I think that I have answered the questions so, in closing, I reiterate that these instruments provide essential supporting materials and updates to allow the National Security Act to come into force. They do not provide substantive changes to the primary legislation that has already been agreed in Parliament. They will help the police to use the powers in a proportionate and consistent manner in accordance with the primary legislation. These consequential amendments will ensure that existing primary legislation continues to function properly after the commencement of the National Security Act. I commend these regulations to the House.

Motion agreed.

National Security Act 2023 (Consequential Amendments of Primary Legislation) Regulations 2023

Motion to Approve

3.54 pm

Moved by ***Lord Sharpe of Epsom***

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

Motion agreed.

National Security Act 2023 (Video Recording with Sound of Interviews and Associated Code of Practice) Regulations 2023

Motion to Approve

3.54 pm

Moved by ***Lord Sharpe of Epsom***

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

Motion agreed.

Immigration and Nationality (Fees) (Amendment) (No. 2) Regulations 2023

Motion to Regret

3.55 pm

Moved by ***Baroness Lister of Burtersett***

That this House regrets that the Immigration and Nationality (Fees) (Amendment) (No. 2) Regulations 2023, which increase fees by above

inflation for a range of immigration and nationality applications, will (1) increase financial barriers to children securing their rights to British citizenship, (2) cause other individuals to fall out of lawful immigration status and face significant debt and precarity, (3) increase the operational burden on the Home Office, and (4) damage the United Kingdom's economy; and calls on His Majesty's Government to consider and develop policies to support individuals, families, and businesses adversely affected by these changes.

Relevant document: 55th Report from the Secondary Legislation Scrutiny Committee, Session 2022-23.

Baroness Lister of Burtersett (Lab): My Lords, this is only the third regret Motion I have brought in my 12 years in your Lordships' House, and, like the other two, it concerns the crippling level of fees. I declare my position as a RAMP associate.

I will focus mainly on the 20% increase in the route to settlement, entry clearance and indefinite leave to remain fees for those on a five or 10-year route to settlement, and on the same increase in children's citizenship fees, which is the subject of the previous regret Motions and a matter of great concern to a group of us who have come to be known as "the terriers", as we never give up. Unfortunately, however, a number of the terriers who wanted to support the Motion could not be here today.

I will start with some general points. The first raises the procedural criticism voiced by the Secondary Legislation Scrutiny Committee:

"Regrettably, this is the third instrument from the Home Office in just over a month that has breached the convention that at least 21 days should be allowed between laying an instrument and bringing it into effect. In none of the cases has it been clear that urgent action is essential, and in this case the breach seems clear-cut as it resulted from the Home Office's failure to organise its paperwork in time".

The committee has written to the Minister concerned to seek assurances that there will be no further unjustified breaches that restrict parliamentary scrutiny in this way, and I hope the Minister can give us that assurance today.

The committee was critical of the failure to publish the impact assessment and equalities impact assessment until after the regulations were laid. Praxis, in its briefing on behalf of a group of 15 organisations working on migration issues—I am grateful to Praxis for its help—argues that the EIA fails to consider properly the impact the fee increases will have on those with protected characteristics, especially where there is no fee waiver. It states:

"Given what we know of the different impact of these fees particularly on women"

and "racialised communities", and their likely "detrimental and discriminatory impact", the EIA merely "pays lip service" to the assessment of this impact.

The Home Office has dismissed claims that the visa fees increase will harm business competitiveness, even though the Explanatory Memorandum acknowledges that the impact on business, charities and voluntary bodies is likely to be "significant". Indeed, the *FT* ran a story in the summer on how business groups are urging a rethink on the grounds that the increase will damage the UK's competitiveness. However, it quoted an "ally" of the Chancellor as saying:

"We need this to fund the public sector pay awards",

which was a reason given for the increase when it was announced.

This brings me to the justification made for these big increases in fees. As funding public sector pay awards is not a permitted reason for raising them, the rationale offered in the Explanatory Memorandum is

"to significantly increase the income generated through … fees for the purpose of meeting costs within the wider migration and borders system … This will in turn allow taxpayer funding that would have otherwise been required to meet those costs, to instead be prioritised elsewhere".

Later, there is an oblique reference to public sector pay. I am certainly in favour of decent public sector pay awards, but I fail to see why they should be financed by above-inflation increases in the fees charged to groups who are often in vulnerable circumstances, given that the existing fees were already well above the costs of their processing—a point I will return to.

Furthermore, the justification of helping to meet the costs of the migration and border system is totally inappropriate in the case of children's citizenship fees—a point that the terriers have made over and again. As the Project for the Registration of Children as British Citizens, of which I am patron, points out in its briefing with Amnesty and other organisations, for which I am grateful,

"rights to British citizenship by registration are plainly not concerned with migration. Rather these rights are concerned with ensuring that all people whom Parliament identified as having particular connection to the UK when it passed the British Nationality Act 1981 can be fully and equally recognised as citizens of this country."

Given this, can the Minister please explain the rationale for raising the registration fees of those whom our nationality laws identify as British?

4 pm

In the Explanatory Memorandum, the Home Office describes the increases in the various fees as "proportionate", given that most of them have not been subject to significant increases since 2018. This argument might carry more weight were the fees not already so high—according to one of the submissions to the SLSC, seven to 10 times the cost of processing them. The House of Commons Library points to how, over the last couple of decades, fees have increased significantly and, while the comparisons are not exact, suggests that overall,

"UK immigration costs are much higher than those in many other countries."

As for child citizenship fees, a former Conservative Home Secretary described them as

"a huge amount of money".

At £1,214, they are now just over £700 more than it costs to process them. For adults, the excess is now almost £850. How can such sums possibly be justified?

The SLSC did not feel able to adjudicate on the question of fee levels and acknowledged the Home Office's point that the increases since 2018 have been limited. "Nevertheless", it stated,

"we understand the potential impact of these large increases in fees on those required to pay them",

and I will turn to this vital point.

But first, for those on the leave to remain five or 10-year routes, it has to be remembered that in addition to the fee increases in these regulations, already in operation, they face other costs: the immigration health surcharge and repeated extension applications, the costs of both of which are also due to increase. When all these fees are raised, as anticipated, someone on the 10-year route could be paying as much as nearly £19,000 in total for just one adult, never mind children, and excluding the cost of registering biometrics, which must be done at every application. Can the Minister tell us when the repeated extension application fees will be raised; or, better still, can he reassure us that they will not be, given the extra burden they will create?

According to the Joseph Rowntree Foundation, people on the 10-year route to settlement are disproportionately likely to be on a low income, and its recent destitution study found migrants to be overrepresented. Not surprisingly, even prior to the fees increase, recent research by the Institute for Public Policy Research and the Greater Manchester Immigration Aid Unit found that visa applications are forcing many of them into debts of tens of thousands of pounds. This has left many migrants unable to cover their most basic needs, and vulnerable to exploitation and trafficking. For those who cannot pay, the result can be a loss of lawful immigration status and, with it, the right to work, rent a home or access healthcare safely. Research by the Joint Council for the Welfare of Immigrants has shown that the inability to meet the cost of these is already a key factor in the loss of legal immigration status. Other research with young migrants has documented the profound impact on mental health and well-being.

For the children required to pay the citizenship registration fee, the consequences of not being able to do so can be profound. The High Court found, on the basis of a mass of evidence, that children so excluded were made to feel alienated. It can affect their right to enter higher education and, in adulthood, makes them vulnerable to the hostile/compliant environment policy, with echoes of the Windrush scandal. In the words of the PRCBC, they enter adulthood "facing significant disadvantages", even when they were born in the UK. This has particular implications for those in poverty or living with disabilities.

One example is Harriet, who was born in and has always lived in the UK. She has always lived with significant disabilities. Her lone mother could not afford the fee when she was a child, when there was no waiver. Now that she is an adult, without the possibility of a waiver, she is unlikely ever to be able to afford the increased fee and to secure the citizenship to which she has been entitled since the age of 10. Can the Minister tell us what steps were taken to assess whether the children's fee increase was in the best interests of the child, as is required by law? On the face of it, it is difficult to see how a 20% increase in a fee that had already been described as "huge" by a former Home Secretary could be in a child's best interests.

The Home Office's answer to many of the concerns raised is that fee waivers are available in specific circumstances. However, as the SLSC noted, many people are unaware of them or of their potential eligibility. The committee therefore encouraged the Home Office to consider whether they were publicised well enough. Can the Minister tell us what steps the Home Office has taken in response and whether it plans to improve the publicity of such waivers for potential applicants?

Other concerns relate to the narrow scope of fee waivers and the difficulties associated with claiming. Praxis points out that migrant fee waivers are available only to the minority making specified human rights applications for a waiver and cannot be claimed by many of those applying for indefinite leave to remain, leaving them in a prolonged state of precarity and vulnerability to loss of status if they cannot afford the fees. As evidence from the Work and Pensions Committee's inquiry noted, those who are able to claim face a complex process that is difficult to navigate without expert legal advice, yet, in most cases, such an application will be out of scope of legal aid in England and Wales. That submission also suggested that an historically high refusal rate can itself act as a deterrent to applying.

Just how restrictive the criteria can be is illustrated by the example of someone whose fee waiver request was turned down because he was sleeping on a friend's sofa. This was deemed to constitute a source of support that meant he supposedly was not destitute. Praxis concludes that

"for all practical purposes, fee waivers are out of reach even for those who are eligible".

In the face of a big increase in fees, will the Government now review the scope and accessibility of waivers?

Fee waivers were introduced only for children's citizenship fees, not adults', last year in response to litigation, together with the welcome automatic exemption of children looked after by a local authority. Although the introduction of a waiver was a positive step, the PRCBC warns that

"the waiver process has itself introduced considerable complexity, bureaucracy, and evidential demands to satisfy the Home Office that the fee is unaffordable and so to be waived. Many British children, therefore, remain excluded. This is because although they cannot afford the fee, they and/or their parents are either defeated by the waiver process"

or are not poor enough to qualify for a waiver even though they are too poor to pay the fee and are, in many cases, poor enough to qualify for means-tested benefits. Would it not make sense at least to waive the fee for those in receipt of means-tested benefits?

This takes us back to a debate that we had last year, when there was considerable criticism of the guidance for the administration of these waivers. The noble Baroness, Lady Williams of Trafford, who was the Minister at the time, told noble Lords that the Home Office was "open to feedback" on the guidance and assured us:

"Where it is clear that applicants face issues of affordability—for example, where the individual might face destitution … there will not be an onerous focus on the evidence required".—[*Official Report*, 6/7/22; col. 1068.]

[Baroness Lister of Burtersett]
Can the Minister tell us—either now or, if necessary, in writing—what changes have been made to the guidance in response to the feedback provided during the debate and any other feedback received?

In response to questioning, she confirmed that there would be ongoing monitoring of the take-up of the waiver. Can the Minister therefore tell us what the current fee waiver grant rate is? The impact assessment assumed 63%. Although there were

"no specific plans to report to Parliament"

on the monitoring, she said that

"we are open to providing further updates and will consider the best mechanism for doing this".—[*Official Report*, 6/7/22; col. 1068.]

That was well over a year ago, so I would be grateful if the Minister could tell us what the mechanism is, as the terriers certainly have not been updated.

More generally, given their "controversial nature", the SLSC encourages the Home Office

"to review the effects of the changes following their implementation".

Again, will the Minister give us an assurance that this will happen, that the results will be reported to Parliament and that, if the effects are as feared, the Government will act to mitigate them?

The fee and visa increases implemented as a result of these regulations have caused considerable concern. Do we really want to push people who are trying to make a life for themselves in our country into undocumented penury and ill health, and make it even harder for children to make good their citizenship rights? I beg to move.

Baroness D'Souza (CB): I will briefly underline some of the concerns expressed by the noble Baroness, Lady Lister, and also, once again, point to the technical anomalies in the laying of this instrument, which we should not ride roughshod over. These unprecedented increases in fees introduced on 4 October put, for example, fees for a skilled worker's three-year permit 540% above other leading science nations. This has enormous economic implications for any would-be immigrant skilled worker, as well as for employers. It seems to me that at the very least the Home Office must introduce policies to minimise the regulatory and economic burdens on businesses, especially SMEs. We all recognise that this is a difficult area, but, if we are to increase UK productivity, we need more skilled workers, who are currently threatened with impoverishment or indeed so demotivated that they do not attempt to come to this country at all.

As, again, the noble Baroness has said, the real hardship and heartache disproportionately affect children. Quite simply, the new fees now demanded for children to have indefinite leave to remain have become extortionate. The fee waivers scheme for parents is so impenetrable and expensive that we risk exposing a whole generation of entirely blameless and extremely vulnerable children to an insecure and uncertain future. Is this really what the Government want to do?

Lord Moylan (Con): My Lords, I rise briefly to speak in support of at least one of the points made by the noble Baroness, Lady Lister of Burtersett. It is a point I have made before.

Nobody is entitled under any form of international law to succeed in an application for naturalisation as a British subject. In fact, we as a country are not obliged to grant naturalisation, but Parliament chooses that we should do so. In doing so, it understandably sets conditions; these conditions might relate to good character, how long one has lived here and things like that. Of course, part of those conditions will include the setting of the fee that needs to be paid. There are other immigration processes that people who are not British subjects may wish to apply for, which again may rightly and properly involve a fee. Nobody disputes that; the noble Baroness does not dispute that as a matter of principle at all. There are practical considerations, some of which the noble Baroness has explored in quite considerable detail in her remarks, about what the effects of those fees might be, and the noble Baroness, Lady D'Souza, raised the question of the effects, particularly in relation to people coming here with scientific qualifications and in the scope of education. All of those are matters which are very properly the subject of public policy.

4.15 pm

I tend to think that it is true that the Home Office is playing sleight of hand here to some extent, raising the fees higher than they need to be raised, or at least higher than can be justified by the work involved, as a means of trying to extract money from people who need to go through those processes, but it is ultimately a matter of policy. However, there is a bigger sleight of hand going on, which is the point that concerns me. It is the obfuscation we constantly see from the Home Office about the distinction between applications for naturalisation or other immigration processes, to which I have been referring so far, and applications for registration as a British national.

The application for registration is not an application made by a foreign person for the right to be naturalised as British; the application for registration is an application by somebody who is already British to be recognised as such by the Government and the state. That status of being qualified for registration arose—I think it was legislated for at the end of the Second World War—because of the messiness and complexity of nationality and different national statuses that were left behind as empire began to dissolve. It was recognised by government and Parliament that you could not possibly make a list of all the different categories that might arise—you would miss people—and so there would be this safeguard for people who were entitled to be recognised as, at the time, British subjects, who would apply and demonstrate it on the evidence. That does not seem to me the same thing at all; that seems to me the recognition of a right that already exists.

We who do not have to demonstrate that right, or who can demonstrate it routinely, are perfectly willing to accept that some fee might be involved in that. We all pay a fee when we apply for a passport. We begrudge paying fees, but we do not think it is a wicked thing to do, so some fee might well be involved in registration. However, a fee that is so high that it prevents people exercising what are in fact their natural rights—rights that have recognised by Parliament—seems wholly odious. The constant obfuscation of the Home Office

in trying to merge these two and pretend that they are really the same is almost bordering on insulting to a Parliament that created that distinction in the first place.

I see some modestly approving nods on the Labour Front Bench. However, it is the case that, in the past, I have noticed that although the Labour Party might have some sympathy for this argument, it never actually swings in behind it with the undoubted weight that it can bring if things were forced to the Lobbies. I think that is a pity, because I believe that this category was introduced in the immediate post-war era by none other than the Attlee Government. It is a Labour invention, so I would have thought that the Labour Party would be willing on some occasion, if not today, to put itself on the front line on that. We will find out.

In the meantime, I urge my noble friend on the Front Bench to be honest and clear about these two wholly different categories, and recognise that, even though fees are appropriate for both, they are absolutely distinct and the Home Office should stop trying to muddle us about them.

Baroness Blower (Lab): My Lords, it is, for the most part, a pleasure to follow the noble Lord, Lord Moylan, in what he had to say. We can understand why some people might find this rather difficult to follow. It was beautifully explained by the noble Lord but, none the less, has a measure of complexity.

I have little to add to the extremely competent, wide-ranging and interesting speech made by my noble friend Lady Lister. However, by way of support and amplification, I add that, when I was working with the National Union of Teachers, I came across cases—I would not say many but certainly more than several—of young people who genuinely believed themselves to be British and were astounded to find that their way to higher education was barred by the fact that their parents had not taken steps to secure their position. Frankly, it was devastating for these young people, as it was for their teachers and for those of us who attempted to work with them. In the briefings—for which I am extremely grateful—there is the case of one such young person, Arthur, whose parents equally had made no steps in the direction of securing his position. He then became an adult and simply does not have the resources to be able to secure his own position.

I conclude by saying that the 20% increase, so far above the cost of processing, looks a lot like what we might in other circumstances call profiteering. Last week, we all heard with horror—certainly, I did—that the increases in retail prices of baby formula, way above the costs incurred, were genuinely felt to be completely unacceptable. This seems to be a somewhat parallel case. As my noble friend said, making the poor poorer in respect of things to which they are entitled, possibly sending them into destitution, seems a wholly unacceptable thing for the Government of this country to do. Is it possible to reconsider this position so that the proposed changes are instead limited to only the actual processing costs? Will the Home Office consider developing policies to minimise the regulatory and economic burden of fees on businesses, as explained by my noble friend Lady Lister?

The Lord Bishop of Chichester: My Lords, I am enormously grateful to the noble Baroness, Lady Lister, for bringing this debate to us. I underline my great support for everything that she said, as well as what has been said in other contributions.

I want to point to just one area: where do we see most obviously the impact on children of the slide into child poverty—the misery, fear and confusion—in part as a result of these fees? The answer, of course, is in our schools. Looking at the waiver application process, I doubt there will be much movement in extending it widely, but would it not be possible for the Government to simplify it? Could they liaise with schools, which are often at the sharp end of trying to meet the needs of those who find themselves most vulnerable? I know from my own experience in our church schools across the coastal towns of Sussex that this is where child poverty and its multiple causes are most keenly felt. Alongside working with schools, it would be helpful to work with organisations in the voluntary sector, which again are often responsible for picking up the consequences of families sliding into child poverty. Some attention on ensuring that waiver application processes are well-known and publicised in those two areas—education and the voluntary sector—could be of some practical help.

Baroness Primarolo (Lab): My Lords, I congratulate the noble Baroness, Lady Lister, on her comprehensive introduction to these regulations. I will make a short contribution to this debate, specifically on the question of citizenship and the charges that are being imposed. The Government's impact assessment and their justification for these huge increases in immigration fees are based on their broader immigration policies and associated with managing the migration process.

Paragraph 1 of the impact assessment sets out three specific strategic objectives. The first is to ensure

"the legitimate movement of people and goods to support economic prosperity",

but the noble Baroness, Lady D'Souza, dealt clearly with the point about how these regulations could be counter to that objective. The second objective is

"the sustainable funding of the borders and migration system",

while the third is

"reducing reliance on the UK taxpayer"

to fund migration processes.

However, as a number of noble Lords have pointed out in this debate, citizenship rights, particularly for those born in the UK, are distinct and separate from immigration. Those citizenship rights are determined by Parliament and clearly given in the British Nationality Act 1981. Citizenship is not a service or a privilege that can be equated with immigration-related procedures. Citizenship—at least in my view, though perhaps not the Government's—is a fundamental right, particularly for those born in the UK. It represents a legal status intrinsic to their identity.

Unlike immigration services, which may involve immigration processes related to border control and residency, citizenship is about affirming an individual's connection to the UK. The noble Lord, Lord Moylan, referred to it as a registration of their Britishness—their entitlement to be British. They were born here, grew up here and contribute to our society. Rightly, they see

[Baroness Primarolo]
themselves as British citizens, just like we do, so why do they have to face these exorbitant, extortionate fees in order to claim their right?

The Government need to clearly explain today why they continue to fail to distinguish between migration-related processes and citizens' rights, and what that means for questions about the equitable treatment of our own citizens now. In justifying the regulations, the Minister has to give this House a clear explanation of why the Government do not feel they have to make that distinction.

I would be grateful if the Minister explained why the Government believe that British citizens should face these huge fees, where there is not an administrative cost associated with them, to affirm something that is already their right. That has implications for justice, equality and respect for the rule of law. This Government are running counter—maybe not deliberately; I will be generous on this occasion—to the principle of what it means to be a British citizen.

The Government need to explain why they are not prepared to acknowledge the uniqueness of citizenship as a right. If the Government accepted that uniqueness and addressed it today, they could demonstrate clearly the principles of upholding fairness and justice, and ensuring that financial barriers do not impede individuals from registering their right.

4.30 pm

I have confined my remarks to this small area because the contributions on this Motion have been extensive, but I want to return finally to the point that a number of noble Lords have made on the question of the waiver scheme. The Government introduced, perhaps kicking and screaming after some challenges in law, a waiver scheme for children. As the noble Baroness, Lady Lister, said, this House is entitled now to receive the information—and was given undertakings on this—about how this scheme is operating, to summarise its accessibility, its success and how it is ensuring that children and young people are supported in registering their rights as British citizens.

This is an incredibly complicated debate, but to alienate young British citizens by telling them that they are not really British, despite being born and having grown up here—despite having lived all their lives here and trying to make a contribution to our society—and that they are not the same as you or me, simply because they cannot afford a huge fee, cannot be right. The Government need now to give an undertaking to this House to revisit the question of citizens' rights—I hope that the Minister will feel able to do that—and whether they can separate that registration of a right from their general immigration policies. I might have views on those policies, but I will not touch on that today because I want to concentrate only on how importantly I value my citizenship. I think it means that people identify and contribute. At our peril, we tell people who are really British that they are not. That is what these regulations are in danger of doing.

Baroness Altmann (Con): My Lords, I too congratulate the noble Baroness, Lady Lister, on her persistence, her perseverance and her dedication to this issue. She has raised it time and again, and I hope that my noble friend on the Front Bench will listen carefully, particularly to the contributions that we have just heard from my noble friend Lord Moylan and the noble Baroness, Lady Primarolo, on the specific matter of citizenship and charging citizens a fee at such a high level for a right that they already have.

But I agree that being British is a hugely valuable commodity, and the Government are right to say that those who can afford to pay for that privilege should be asked to do so. Of course, one would ideally like to cover only the cost and not to have some excess revenue from this source. But if there is an opportunity for some people who can afford it to be asked to pay, and contribute to the general well-being of the Exchequer, in such circumstances where they will receive this valuable right, I believe that is okay.

I am also delighted that there is a fee waiver scheme. I congratulate the Government; I think they recognised the need for this. The problem, as we have heard, is that many people either are unaware of their entitlement or find the process extremely complex. It is also somewhat narrow in scope. The right reverend Prelate the Bishop of Chichester and the noble Baroness, Lady D'Souza, pointed out the ways in which we might identify children who will be severely disadvantaged by the extraordinary level of fees that someone who cannot afford this kind of money is expected to pay.

The problem is that there is such a huge disparity between the cost of the current proposals and the fee waiver scheme, which potentially has zero cost. Covering the cost is important. Could my noble friend tell me if the Government would consider some kind of in-between category at a reduced fee rate, which covers the cost without the excess, in certain circumstances? It would not be the full fee or full waiver for certain groups, especially for some of the children who might manage a lower amount.

I would be grateful if my noble friend could give us updated estimates of the excess revenue the Government expect to bring in, in excess of the cost of administration, from this scheme. What is the Government's latest estimate of the potential damage to business from the current proposed level of fees? I agree that we need to make reasonable charges for applications to grant citizenship and migration and nationality rights, but I hope my noble friend takes on board the strength of feeling expressed around the House about the possibility of some off-setting or mitigating measures.

Lord German (LD): My Lords, these Benches are grateful to the noble Baroness, Lady Lister, for bringing these issues to us and discussing them. Particularly important is the impact on younger people and those who have no way of making that payment, and the poverty into which some of these people will fall.

I will give noble Lords some indication of the size of this SI and what its impact will be. The Government have been very honest about it; it is in paragraph 12.2 of the Explanatory Memorandum. I quote:

"The impact on the public sector is also likely to be significant—a net benefit to the public sector in the order of hundreds of millions of pounds per year, predominantly due to increased revenue being generated".

We are talking about a huge amount of money, which is being generated not just to fulfil the costs of the scheme, but to add to the Exchequer and the volume of money coming in.

One of the people who objected to this and who wrote to the SLSC posited that these fees were some of the highest in the world. In reply, the Government said that it is very difficult to make judgments but

"we believe that UK visa fees are broadly competitive when compared with comparable countries globally".

That is an assertion, as was the statement by the other group in the other direction. However, for the Government to say this, they must have some working out. When you do a maths sum of that sort, there must be some working out. Will the Minister provide for the House some of the indications that give the Home Office the right to believe that the fees are broadly competitive so that we can understand them? There are two factors here: a huge increase, worth hundreds of millions of pounds to the public sector, and an assertion that they are high compared with everywhere else.

I reiterate and amplify the points about this House's 21-day rule made by the noble Baroness, Lady Lister, at the beginning. It is a discourtesy to this House that the rules we apply to the Government have not been followed—not just once or twice but three times in the last month. It strikes me that the SLSC's polite language is really saying that the Home Office's procedures are rubbish, because it is discounting this Parliament's view in observing and looking over the legislation before us. That stands in direct opposition to the Minister's Statement to this House two weeks ago, on the treaty that the Government were negotiating with Rwanda, which said that the full details of the treaty and the full time that this House requires to examine it would be allowed and provided for. I am grateful for that assertion, because that means that the rules will be followed, but I think that we in this House would like to know whether the Home Office will in future follow all the rules that this House lays upon it.

On the waiver scheme, I note the points raised by the noble Lord, Lord Moylan, and the noble Baroness, Lady Primarolo. I will look particularly at fee waivers for applications for limited leave to remain. There may be questions about their effectiveness, but I raise with the Minister the fact that fee waivers for applications for indefinite leave to remain for young people on the five-year route to settlement are not satisfactory. This is a cohort of people who either are under the age of 18 and have lived in the United Kingdom for at least seven years or are aged between 18 and 24 years old and have spent half of their lives in the United Kingdom.

The Government have already recognised their specific position and offered them a more affordable five-year route to settlement, but this offer cannot be accessed by many—I note the age of this cohort—as they are unable to afford the indefinite leave to remain application fee. These are not incoming migrants; they have been accepted as having a right to settlement, and we need to give young people every opportunity to be and feel part of our communities, rather than putting barriers in their way. With the 20% increase in the indefinite leave to remain application fees, will the department give this matter further consideration?

Of course, if more people are unable to afford the indefinite leave to remain application, people will attempt to put in a waiver. Waiver schemes are available, but some people posit that, because they are so complicated, it is necessary to employ a lawyer to work your way through them. Of course, people cannot afford a lawyer, so they do not apply for a scheme and do not apply at all.

The Minister projects—and we heard the figures—that more people will be acceptable for waiver applications, so what is the projected cost of that additional workload for the Home Office from those who have waivers? We need to measure that against the hundreds of millions of pounds a year being sought and brought about by extra revenue.

On the cost to business in this country, the Government have again been honest, saying that, for the changes to the fees mentioned,

"the impact on business, charities or voluntary bodies is likely to be significant—we believe there will be a cost to business in the order of tens of millions of pounds per year".

That is tens of millions of pounds that business will be asked to find. I thought that this Government were not in favour of increasing the taxes on business but, clearly, I have got it wrong. Could the Minister tell me whether that fact that they have placed in their document—that there will be tens of billions of pounds extra that businesses will have to pay the Government—is essentially another tax? The rate that they are asking is far beyond the increase we would expect to see with simply just the cost of living added to it. Any increase in costs, especially at a time when recruitment in specialised roles is already so difficult for many, will have the inevitable outcome, maybe, of driving companies as far as falling out of business. How will the Treasury reconcile lost revenue from small and medium-sized enterprises that are no longer able to afford the fees and recompense them so that they are able to sustain their business?

These are very complex regulations. We are grateful for the opportunity to have this debate, but we are in a position where significant amounts of money are being made from people who can ill afford it and businesses are being asked to fund part of this scheme in a way that will certainly not help the development of our economy.

4.45 pm

Lord Coaker (Lab): My Lords, I thank my noble friend Lady Lister for her regret Motion, the moving and articulate way in which she put her case and the very serious questions that she raised and points that she made. We owe her a debt of gratitude for bringing it forward.

As many noble Lords have pointed out, we have before us a very important SI of many pages, which raises many significant issues for us to think about and discuss. It is only with a regret Motion that this Chamber gets this opportunity to do that—and there is a wider question for us about how secondary legislation has huge impacts on our country and the people in it.

Many noble Lords have made significant and important points. The noble Lord, Lord Moylan, logically and methodically pointed out the distinction between the

[LORD COAKER]
naturalisation process and the process of citizenship. I know that the Labour Government to whom he referred tried to address that in the British Nationality Act 1948, which became law in 1949. It was in reference to that that I was nodding. He made the important point that the Minister will have to look at how the Government are distinguishing between those two things—or are they just ignoring it?

My noble friend Lady Primarolo logically and movingly put the case for what citizenship means, the rights of someone born here, and how that generates citizenship rights that we should respect. She talked about the difference between that and somebody going through the other process, which the noble Lord, Lord Moylan, mentioned. That is a very important matter, which we look forward to the Minister explaining to us. I congratulate my noble friend on that—and, to be fair, the noble Lord, Lord Moylan, who brought it up as well.

As has been pointed out, this policy of immigration fees has been used for many years, but that does not mean that the proportionality and fairness of, or the rationale for, these significant rises in fees payable for most immigration services cannot be questioned or debated. The fee increases that we are looking at have been very significant, with a 15% or 20% increase for most fees and many facing a much bigger increase. For example, there is a 35% increase for student visa fees, for applications made outside the UK. There are also arrangements for a new electronic travel authorisation for all non-British or Irish passengers visiting or transiting through the UK who do not need a visa, who have to obtain permission first and pay a fee of £10. It is important for the Government to say whether they will assess the impact of that new ETA arrangement. Although the immigration health charge increase of 66% is not included in this instrument, can the Minister update us on any progress with it?

The Home Office tells us that the rationale for changes is to

"significantly increase the income generated through immigration and nationality fees for the purpose of meeting costs within the wider migration and borders system".

Can the Minister explain that in more detail? Can he also say why the overall increase is well above the rate of inflation? The Home Office justification is to say "Well, we haven't raised them significantly since 2018". Why have a policy of small increases for a number of years followed by a huge increase in another year? Why not increase them proportionately, rather than have the massive increase that we see this year?

What assessment have the Government made of the various groups affected by these changes? A number of noble Lords made that point. In other words, what is the human cost of the changes that the Government are bringing forward? Can the Minister clarify, for the avoidance of doubt, another question that has been asked: how much do fees currently raise? What is the unit cost for the processing of an individual application compared with the fee charged? How much additional income will the rise in fees actually raise? What is the total cost of the system this year and the predicted cost next year? It is very difficult to find, in any of the information I have looked at, the exact figures the Government are using to justify the fees and the overall cost of the system.

Given the impact of fees on various migrants, how many applicants are currently covered by the fee waiver scheme and what numbers are predicted in future? This was another point made by a number of noble Lords.

As the noble Lord, Lord German, and others pointed out, the Secondary Legislation Scrutiny Committee makes considerable criticism of the Home Office for breaking the 21-day rule by bringing the SI into force on 4 October—19 days after the laying of the instrument rather than 21 days. I think your Lordships can understand why a proper process is so important, given the interest in this debate. I point out to the Minister that 21 days is not a maximum but a minimum, so that noble Lords can discuss this. Can he explain why this happened, given that it is, I think, the third time it has happened? Which Minister signed it off, and have they been told that it is unacceptable? The Minister will get up and say, "We're very sorry and we need to do something about it", but it is a process that seems to be happening time and again. It is simply not good enough.

Alongside that, can the Minister explain why the Explanatory Memorandum and the equalities impact assessment were not published in time to go alongside this SI? They have now been published but they were not published at the appropriate times. These failings of process are happening time and again. I think the Minister will agree, because I know he understands the importance of process and frankly, to be fair to him, does his best to ensure that the proper process is followed, that this is extremely important given the various points made in this debate.

As we discuss this important SI, there has been yet another statement on migration. Are the Government sure that their assessment of the impacts on vulnerable migrants is accurate? Are they sure that these fee changes will not have an adverse impact on skills shortages for UK businesses, including in the NHS and in care sectors, for example? As I said, fees have long played a part in the overall immigration systems, but they need to do so in a fair, principled and proportionate way, which means that many of today's questions need full and frank answers from the Government.

The Parliamentary Under-Secretary of State, Home Office (Lord Sharpe of Epsom) (Con): My Lords, I thank all noble Lords who have spoken, particularly the noble Baroness, Lady Lister of Burtersett, who tabled this debate and has given us the opportunity to discuss these important issues. Before I address the points raised, I will summarise how fees are set and the role of Parliament in setting fees for immigration and nationality applications.

It is important to emphasise that the Home Office cannot set or amend fee levels without obtaining the approval of Parliament. This ensures that there are checks and balances in place and full parliamentary oversight of the fees regime. Immigration and nationality fees can be set only within the limits specified by the Immigration and Nationality (Fees) Order, which include the maximum fee levels that can be charged on each application type or service. This is laid in Parliament and subject to the affirmative resolution procedure.

Individual fee levels are calculated in line with *Managing Public Money* principles and the powers provided by the Immigration Act 2014. Specific fees are set out in regulations, which are then presented to Parliament and subject to the negative procedure. The regulations laid by the Government in September increased fees across a number of immigration and nationality routes, including those for people seeking to visit the UK as a visitor and the majority of fees for entry clearance and for certain applications for leave to remain in the UK, including those for work and study.

Noble Lords are aware of the Government's intention that those who use and benefit from the migration and borders system should contribute to its funding. In that, I agree with my noble friend Lady Altmann. The burden of operating the system should not unduly fall on the UK taxpayer. To answer directly the noble Baroness, Lady Blower, that is not profiteering—it is protecting the interests of the British taxpayer.

The increases that came into effect in October were, in the majority of cases, the first substantial increases made since 2018. They are proportionate when considered against wider price trends in the intervening period, to answer the noble Lord, Lord Coaker. At a time of high inflation and record migration, it is important to ensure that the system is sustainably funded. The recent increases have led to the raising of some concerns in the House around the impact on the UK economy and the potential for people to be deterred from visiting, working in and studying in the UK. As I have already set out, the Government's policy is that the cost of operating the migration and borders system is to be funded by those who use it. This policy is at the heart of the decision to increase fees.

The Government have published an economic impact assessment—I will come back to this—alongside the regulations, setting out their potential impacts. The Government keep fees under review and will continue to monitor the position, but there is limited evidence to date that fee increases have impacted on the number of people coming to visit, work in and study in the UK. In answer to the noble Baroness, Lady Lister, the best interests of the child were considered in the economic impact assessment.

The noble Baroness, Lady Lister, also raised concerns about the potential for people to fall out of lawful immigration status and face significant debt and precarity. Those who are in the UK on family and human rights routes can be assured that these regulations made no changes to the provision of existing waivers and exceptions from the need to pay application fees in a number of specific circumstances. That includes affordability-based waivers for entry clearance and leave to remain on family and human rights grounds, which ensures that families unable to afford the fee are not prevented from making an application to enter or remain in the UK. Additionally, for children seeking to register as a British citizen, an affordability waiver was introduced in 2022 and has improved access to British citizenship for children who may face issues in paying the application fee. I say to my noble friend Lord Moylan that I will come back to this subject in a second.

These provisions ensure that the Home Office's immigration and nationality fee structure complies with international obligations and wider government policy. We believe it represents the right balance between protecting the integrity of the department's funding model and helping to facilitate access to immigration and nationality products and services, including for the most vulnerable. I note the concerns raised about the potential for these fee increases to increase the operational burden on the Home Office. We acknowledge that the recent increase may see more people seeking a fee waiver, but the Home Office has an obligation to ensure that the integrity of the migration and borders system's funding model is maintained. I hope that provides at least some reassurance that those who cannot afford the fee will not be prevented from making an application to enter or remain in the UK on human and family rights grounds.

As I said earlier, in recent years the Government have taken steps to ensure that the fee for children seeking to register as British citizens is not a barrier to them making an application, through the provision of the waiver on the basis of affordability and the fee exception for children who are looked after by local authorities. Adult registration applications do not have a waiver available, but most of the applications for registration are made by children.

On the breach of the 21-day rule, I say to the noble Lord, Lord German, that—in comparing this with discussions about the treaty—there is a significant difference between primary and secondary legislation. On this particular rule, I regret that it was late. The scheduled date of commencement of fee increases was 4 October, in view of a planned laying date of 13 September, with the commencement date used as the basis for wider communications and delivery planning activity. However, late amendment to the regulations meant that this was not possible. Given that delaying the commencement date would have cost the department an estimated loss of additional revenue of about £2 million—a significant amount, which would have impacted priority functions—and that further changes to updated front-end systems would be needed at some additional cost and delay, it was determined that the original commencement date should be maintained.

5 pm

Further consideration has also been given to the prior announcement that was made to Parliament in relation to these increases on 13 July by the Chief Secretary to the Treasury as part of a wider Statement on public sector pay. If the regulations had been laid on the original schedule, the 21 days would have been met. The rule should be broken only when urgent action is necessary but, as noted previously, the department determined that it was necessary to maintain the 4 October commencement date to ensure that the full projected income from the fee increases was realised in 2023-24.

On the Explanatory Memorandum, the impact assessment was prepared for the instrument, but it was published on the website on 18 September 2023—again, it was a little late and I apologise.

The noble Baroness, Lady Lister, asked me directly whether visa fees are paying for public sector pay increases. As well as the cost of processing an application,

[LORD SHARPE OF EPSOM]
the Immigration Act 2014 allows the Home Office to have regard to a number of factors when setting the fees for immigration and nationality functions, including the cost of operating other parts of the system, benefits that are likely to accrue to successful applicants and the cost of processing the application. However, income generated from application fees can be used only to fund the migration and borders system. It is the Government's policy that those who use and benefit most from the immigration system should contribute to the cost of operating the system, reducing the burden on the taxpayer. These increases allow more funding to be prioritised elsewhere in the Home Office, which will include paying for vital services.

On setting higher fees and deterring applications, there is little evidence that fee increases to date have significantly affected demand on work, study or tourism routes. When we make fee changes in legislation we publish impact assessments that evaluate potential behavioural impacts on prospective applicants.

A number of noble Lords, including the noble Baronesses, Lady D'Souza and Lady Lister, and the noble Lord, Lord German, asked how the UK's visa fees compare with those of key competitors. UK visa fees are broadly competitive when compared with the fees charged by comparative countries globally. However, visa products are difficult to compare because visa offers—which include things such as benefits and entitlements gained, duration of stay and so on—vary significantly between countries. We will continue to keep our visa fees under review. As I have said many times, visa fees help fund the broader migration and borders system.

My noble friend Lady Altmann raised some concerns about the impact that increased fees will have on the economy. There is limited evidence suggesting that fee increases to date have affected volumes on those routes. The impact assessment published alongside the regulations suggests that an increase in fee levels is unlikely to have an impact on demand. On the numbers that the noble Lord, Lord German, was talking about, I do not see the fee increases as particularly burdensome on business. I have not read the precise paragraph to which he referred, but I cannot remember seeing a figure of tens of millions.

On indefinite leave to remain, a subject raised by the noble Baroness, Lady Lister, I am aware of concerns about the fee for indefinite leave to remain. The right to stay indefinitely in the UK is one of the most valuable entitlements of any product offered, which is why it is right that the fee for this product has increased in line with the changes being made to wider immigration and nationality fees.

A grant of indefinite leave to remain is not usually necessary to enable people to remain in the UK on the basis of their Article 8 or other ECHR rights, as these can usually be met through a grant of limited leave to remain. The provision of an affordability-based waiver for limited leave on family and private life routes allows an individual or family to remain here lawfully, and to then apply for settlement and pay the fee when the funds become available.

There was some interest in the statistics behind affordability fee waivers, and I am happy to report that I have some. Some 43,947 fee waiver applications were received in 2022. In the first two quarters of 2023, the number was 23,833—a reduction from the number received during the same period in 2022, when it was significantly higher.

We have not increased fees for limited leave to remain due to the need for further technical arrangements to be put in place to ensure that all applicants can pay the correct level of fee. It has not been possible to include this increase in these regulations, but it is the Government's intention to increase the fee for limited leave to remain, including applications on family and human rights routes, at the earliest opportunity. Until then, the fee for limited leave to remain will stay the same.

I have talked a little bit about waivers. The right reverend Prelate the Bishop of Chichester made some very good points about publicising those fees, which I will take back. We have always provided for exceptions to the need to pay application fees in a number of specific circumstances, including affordability-based waivers for entry clearance and leave to remain on family and human rights grounds, and applications for child citizenship registration. These provisions ensure that the Home Office's immigration and nationality fee structure complies with international obligations and wider government policy. We believe this represents the right balance between protecting the integrity of the department's funding model and helping to facilitate access to immigration and nationality products and services, including for the most vulnerable. I also note my noble friend Lady Altmann's points about an "in-between" fee, which I am very happy to take back to the office for further discussions.

The noble Lord, Lord Coaker, asked me about the immigration health surcharge. I hope it is appreciated that this is not the right time to discuss the proposed increase in that. The level of the immigration health surcharge is set in separate legislation, an amendment to which has been laid in Parliament and will be subject to debates here and in the other place. I am not sure when it is scheduled, but I think it is relatively imminent.

The noble Lord, Lord Coaker, asked me how much money was generated from visa and immigration income certificate and passport fees in 2022-23, which is a much broader range. It is about £2.8 billion, not including income from the immigration health surcharge. The full operating expenditure cost of the migration and border system was £7.5 billion in 2022-23, including the Migration and Borders Group customer service covering passports, visas, immigration, borders and enforcement.

I think I have answered as many of the questions as I can. I will write to anybody I have missed, and I apologise if I have. I offer thanks again to the noble Baroness, Lady Lister, for securing the debate and to all who have spoken today. It is an important issue and I hope I have been able to provide a degree of clarity on the rationale and detail of the Government's approach.

Baroness Lister of Burtersett (Lab): I thank the Minister for answering, but quite a lot of questions were not answered. I hope he will circulate answers to everybody who spoke. In the previous regulations, he sounded quite surprised when he said that he thought he had answered all the questions, because he obviously did not expect to—and he certainly has not this time.

I am very grateful to noble Lords from across the House who have spoken, all—more or less—in support of the Motion. I want to pick out a few points, one of which is process. My noble friend Lord Coaker made the point that these are really important issues with great financial implications, as the noble Lord, Lord German, pointed out. We have to think about how we consider these through statutory instruments, because although the Minister said that there is parliamentary oversight, if someone had not brought this regret Motion, we would not have debated these issues—they would have just gone through—so I do not call that oversight. I laid the Motion because an outside organisation asked me to. We should not leave such important issues to the vagaries of whether a regret Motion is brought.

Perhaps not surprisingly, the Minister's answer on the process of missing the 21-day rule is exactly the answer that was given to the Secondary Legislation Scrutiny Committee. The committee did not take that answer very kindly. It was not impressed with it. I suspect that noble Lords were not impressed with it either. I am not sure that we had the assurance that it would not happen again which I asked for.

A number of noble Lords made points about the impact on those affected, be it businesses or individuals. I am not sure that they were really taken on board by the Minister. We are talking about some people in very vulnerable circumstances. There may not have been an increase in the number of requests for waivers yet, but these were introduced only in October and it takes a bit of time to percolate through.

A number of practical points were made about waivers. Certainly, there were questions that I asked following the debate that we had last year, which I look forward to the Minister answering in writing. There were also practical suggestions about how waivers could be improved, perhaps through using schools—the right reverend Prelate made a very valuable suggestion there. My noble friend Lady Blower talked about higher education, which brings us to the question of citizenship. I do not think that the crucial point made by the noble Lord, Lord Moylan, to whom I am very grateful, and my noble friend Lady Primarolo was addressed at all. They asked, as I did in a broader context, about this fundamental distinction between immigration and citizenship—the citizenship of young people, many of whom were born here and have lived here for most of their lives. The noble Lord, Lord Moylan, called "wholly odious" the way that this distinction is completely ignored by the Home Office. I am afraid that we have seen another example of it here this evening.

I notice that some of my terriers have arrived since we started the debate. I press the Minister to take this back, because we will come back to this question of citizenship time and again. I have not heard a convincing explanation for why we are raising the fee on the basic right of citizenship by this huge amount—what was huge already is now even more huge. The Home Office must look at this and come up with an answer; there was no answer today. I am disappointed that the Minister has not grappled with this fundamental question that was put so strongly from across the House.

I will leave it at that. The regret Motion was tabled partly to get answers to questions. We got answers to some of them but not others. I look forward to receiving the letter from the Minister. I hope that this will act as a shot across the Home Office's bow in terms of processes and when it thinks again about raising fees. It is a way of saying that the terriers are still here and that we will still be yapping at the Home Office's heels. However, on this occasion, I will not seek the opinion of the House. I beg leave to withdraw the Motion.

Motion withdrawn.

Windsor Framework (Retail Movement Scheme: Public Health, Marketing and Organic Product Standards and Miscellaneous Provisions) Regulations 2023

Motion to Regret

5.14 pm

Moved by ***Baroness Hoey***

That this House regrets that, while the Windsor Framework (Retail Movement Scheme: Public Health, Marketing and Organic Product Standards and Miscellaneous Provisions) Regulations 2023 give practical effect to provisions in EU Regulation 2023/1231 which lessen the disturbance caused by the Irish Sea border, (1) they do not remove the border or the need for expensive and disruptive customs and sanitary and phytosanitary paperwork, and border control posts, (2) Article 14 of EU Regulation 2023/1231 reserves the right for the European Union to reverse provisions afforded by these Regulations that make the border less burdensome, and (3) on both counts, these Regulations are associated with an initiative that violates the territorial integrity of the United Kingdom.

Relevant document: 51st Report from the Secondary Legislation Scrutiny Committee, Session 2022-23.

Baroness Hoey (Non-Afl): My Lords, I bet that when the people in the Whips' Office saw this regret Motion, they probably said, "Oh not again!", as this comes just a few weeks after we had a similar but slightly different regret Motion from the noble Lord, Lord Dodds of Duncairn. However, I make no apologies for moving it. It is nice to see a different Front Bench; I welcome the noble Lord, Lord Harlech, who will respond. The noble Lord, Lord Benyon, has probably had enough of the Windsor Framework; he has gone to COP 28, which is perhaps a slightly better place for him to be tonight.

As I said, I make no apologies for this. It is an opportunity for those of us who live in Northern Ireland and who live day-to-day with the increasingly ridiculous Windsor Framework to try to ensure that

[BARONESS HOEY]
noble Lords, and particularly those who genuinely care about Northern Ireland and the union, understand more about how it is being implemented and how the continued Irish Sea border affects the everyday lives of many people in Northern Ireland. Noble Lords should realise how profound are the political and constitutional ramifications for the union of statutory instruments such as this.

If you look at the statutory instrument, it is almost like gobbledegook, but of course most statutory instruments are. I am not a lawyer, but I thought it was pretty difficult to understand and seemingly very bureaucratic. Then, when I went to visit a local butcher and heard from him just how difficult it was—he showed me all the paperwork and the forms he had to comply with to bring in what he had always been bringing in: some special cheese from Scotland—it made this statutory instrument seem quite simple.

It is important that we first look at what this SI does. It is important to remember that the provisions listed in column 2 of Schedule 1 are treated as applying to the extent that the corresponding EU instrument in column 1 does not apply by virtue of article 1(2) and chapter 2 of EU regulation 2023/1231—I said this was quite complicated. This results in the disapplication of EU standards in favour of GB standards, where column 1 lists EU legislation and column 2 lists different GB legislation.

On this basis, the most striking thing is that consideration of Schedule 1 conveys that, while there may be some scope for disapplying EU legislation, it remains overwhelmingly in place and binding. In short, this way of presenting the potential suspension of some 60 EU laws is in fact a really good way for the Government to have highlighted the extent to which, even under the so-called green lane, we in Northern Ireland remain subject to EU laws.

The point needs to be seen in the context of the fact that, since January 2021, Northern Ireland has so far been subject to around 700 new regulations and laws that have simply been imposed in a way that would never have been contemplated in any other part of the world, never mind any other part of the United Kingdom. That begs the question: how can our Government have allowed part of our country to be treated so differently and separately, under the separate legislation of the EU?

How did we get here? Of course, we all remember 27 February. When the Prime Minister announced the Windsor Framework, he expressly told the country that he had removed any sense of a border in the Irish Sea. Since then, we have been told again and again that the purpose of the Windsor Framework is to reconnect Northern Ireland into the same internal market as Great Britain, giving effect to a UK single market for goods: unfettered access—those are words that the Government love—for goods across the UK's internal market for goods. Being in a single market for goods mean that goods can move freely within that internal market without encountering any internal border obstacles, but the legislation crafted to give effect to this supposedly great breakthrough of the Windsor Framework, including these regulations, demonstrates that, far from removing any sense of border in the Irish Sea, the Windsor Framework confirms the reality of the border in the Irish Sea.

The legislation means that, rather than laying the foundation for the movement of goods from one part of the UK to another, unfettered by a customs or SPS border, we have the movement of goods, subject to the huge cost of a customs border, SPS border, paperwork and checks. Pretty soon after 27 February, we realised that, notwithstanding the Prime Minister's claim to have removed any sense of border, the border had remained completely in place through the red lane. Anyone moving goods on the red lane has to trade with one part of the United Kingdom as if it was a foreign country. This is crucial, because it means that, even if the green lane created a lane through which some goods could move as freely from Scotland to Northern Ireland as from Scotland to England—that is, within a single internal market for goods—that would still constitute a hugely controversial change to the extent that other goods destined for Northern Ireland would have to go on a red lane, as if travelling to a foreign country.

This statutory instrument demonstrates that the actual deal is far, far worse, because the green lane facilitated in part by these regulations is not green. We live in an age of growing cynicism about politics in which there is voter apathy and disaffection, and that is increasingly a problem. Central to that is a perception that politicians can be less than straight with the public and seek to pull the wool over people's eyes by using language to obscure, rather than shine light, on the presenting situation.

The Windsor Framework, effected by these and other regulations, provides one of the most stark and worrying manifestations of this tendency. The notions of red and green are not empty images; they convey meaning, even when considered apart from borders. Red conveys the fact that you will be stopped; green, the sense that you can move through freely. When we turn our attentions to questions of the border, when there are goods entering the UK single market from beyond the United Kingdom, we are confronted with two lanes, red and green. If you are bringing goods into the European single market, you have to go through the red lane and present customs and SPS paperwork and encounter a border control post and potential checks. By contrast, the green lane is for someone coming into the EU single market without any goods, and they can move freely. In this context, it is completely cynical, first, to claim to have removed any sense of a border in the Irish Sea when it remains very much in place, and then to suggest you are providing a green lane, implying unfettered access, when these regulations make it absolutely clear that that is not the case.

In reality, the regulations in this statutory instrument communicate the fact that if you travel on the so-called green lane, you remain subject to the customs and SPS border and certainly do not enjoy unfettered access within the territory of the United Kingdom. In order to access the green lane, you must obtain authorisation, and to do so you have to provide information for "customs purposes". This is set out very plainly in

Articles 7 and 9(2) of the joint committee decision 1/2023, which gives effect to the Windsor Framework. This embeds, even in the operation of the mythical green lane, an internal UK customs border between GB and Northern Ireland.

It follows, obviously, that there is no route to removing the Irish Sea border by any tinkering. That is of course the Democratic Unionist Party's third test. There is no route which does not involve at least fundamentally altering and thus reopening the Windsor Framework debate and, to restore Article VI of the Acts of Union, disapplying Section 7A of the European Union (Withdrawal) Act 2018, in so far as it creates inconsistency with the Acts of Union, as said by the Supreme Court.

Of course, you might be subject to a few fewer SPS demands if you go in the green lane, but you will still be subject to customs and SPS requirements as if trading with a foreign country—or, per the terminology used by the Government in one of their SIs to describe Northern Ireland, a third country. How insulting that is to the people of the United Kingdom living in Northern Ireland. You will still have to have an export number, as if you are trading with a foreign country. You will still have to encounter the significant costs of needing to have customs and SPS paperwork, because you will be leaving one internal market for goods and entering another. You will still have to be subject to 100% documentary checks, and you will still have to go through a border control post and be subject to between 5% and 10% identity checks, along with some physical checks, because you are leaving one internal market for goods and entering another.

As if that is not enough, you will still have to embrace additional frictions in return for accessing the so-called green lane. You will have to apply successfully to join the trusted traders scheme and maintain your membership of it, and you will have to embrace the cost of producing "not for EU" labels. Is it any wonder that hundreds of businesses in Great Britain are now putting on their website a line that simply says, "We no longer send goods to Northern Ireland"?

In this context, the attempt to describe this arrangement as giving effect to a green lane is deeply, deeply misleading and, I believe, shows modern politics at its absolute worst. The Government should know better than to try cynically to pull the wool over the eyes of the people of the United Kingdom. I call on the Government to level with people, be honest, acknowledge the truth and not try to hide it in words. The truth is that the border remains in the Irish Sea, and that what the Government have managed to secure is two different red lane border experiences. The movement of goods continues to be subject to a border experience, with both bureaucratic requirements and checks as goods leave one internal market for goods and enter another. It just happens in different ways, which can perhaps be described as "the standard red lane experience" and "an alternative red lane experience".

Moreover, the alternative red lane experience which is affected by these regulations is provided only at the pleasure and agreement of the European Union. Article 14 of EU Regulation 2023/1231, to which these regulations relate and without which they would be completely meaningless, reserves to the European Union the right to withdraw the alternative red lane experience. Thus, the effect of these regulations, to which this Parliament has agreed, is entirely dependent on the European Union. Noble Lords could pass regulations and at some point, the European Union could make them effectively null and void using Article 14.

The Government keep saying that the Windsor Framework protects Northern Ireland's place in the UK internal market for goods. An internal market does not happen because different places can trade within it. Different places trade all the time in international trade between different internal markets—for example, a business trading from London with a business in New York. An internal market means that a business in one part of the internal market can trade with another part of the internal market without leaving it and thus without being subject to everything that has already been mentioned: a customs SPS border, paperwork, and border control posts. The regulations do not remove these. Under these regulations, trade between one part of our country still requires an export number, filling in customs and SPS border forms, being subject to 100% documentary checks and being subject to between 5% and 10% identity checks, which require stopping at a border control post, as well as some physical checks.

Similar arguments could be made here, calling on the Government to stop pretending that the regulations protect the place of Northern Ireland in the UK internal market for goods, when they actually demonstrate that the UK internal market for goods no longer exists and has instead been replaced with a GB single market for goods, placing Northern Ireland in a different single market. If only the Government would be honest.

In the previous Windsor Framework statutory instrument regret debate, I asked the Minister to define "unfettered access". He answered that he wanted

"goods … to be traded within the United Kingdom in a similar way to anywhere within GB". [*Official Report*, 18/10/23; col. 270]

I welcomed him saying that, but the logic of that is that the Government need to accept that they will have to go back to the European Union and stand up for their own citizens in the United Kingdom.

I know that many Government Ministers understand that this situation is untenable, and that there are many in the Labour Opposition who know that it is. Let us not forget that the Windsor Framework was put through on a vote to do with the consent principle, and then the whole thing was accepted, rushed through by a Prime Minister who was obviously frightened that, if people really understood it, it might have been voted down or at least have had a bigger vote against it. I know from many noble Lords who have spoken to me that, despite their vote for the Windsor Framework, they now realise it was a rushed attempt to be seen to do something about the protocol which everyone, even those in the Alliance Party who had called for its rigorous implementation, had realised had to go. But the hype and the misinformation—indeed, the lies that were told—about the framework made the old saying "the truth will find you out" so true.

5.30 pm

So many points were not answered fully by the noble Lord, Lord Benyon, despite his obvious sympathy with what we were saying, so I hope the Minister tonight does a little better. Can he confirm that an ordinary consumer in Northern Ireland still cannot get bulbs and seeds sent directly to him unless they are a registered operator—that is, a garden centre? That still has not been altered in any way, so individual gardeners cannot get what they want from Great Britain anymore because of the Windsor Framework. Will he give me a straight answer to the question I have been going on about for a very long time: why, when someone from Belfast goes to any EU country, is duty free not available but it is when you go to a European country from any airport in GB? We know the real reason; it is because we are still in the EU. The Government need to admit that. You can get duty free from Dublin to London but not from Belfast to London. We have been left, as usual, in a limbo and to drift, which is what this Government seem to want to do at the moment with Northern Ireland.

Can the Minister tell us why, since the beginning of October, many parcels coming from one family in Great Britain to relatives in Northern Ireland—from Scotland to Belfast—are being opened before being stuck with yellow ribbons? Does he understand how difficult it is for farmers and the farming community to get farm machinery into Northern Ireland because of the unnecessary bureaucracy of the Windsor Framework, which is really affecting many farmers?

I know many noble Lords who will speak tonight will probably want to raise other issues around divergence, which is crucial. Trade is being diverged. From what the Government have said and what is in the Windsor Framework, Article 16 is supposed to be able to be used if there is divergence of trade. Has that been considered again, given that there now is absolute evidence that there is divergence, with trade going more to the Republic of Ireland?

As I said at the beginning, I make no apology for having this debate. I genuinely wish noble Lords would think a bit more about what this Government have done to the union, the strength of the union and the people of Northern Ireland, most of whom are incredibly loyal to the United Kingdom. It really is time we look at what the Windsor Framework has done and accept that, while perhaps it was done with all of the right reasons, it is not working and will not work. While it is there, there will be no devolution in Northern Ireland. It is time that the Government start to accept that. If they will not be honest about the Windsor Framework, perhaps they might begin to be honest about the kind of governance there is now in Northern Ireland and start to realise that they must take much more responsibility for what is happening there—although that may well be above the Minister's pay grade.

I move this Motion, and I hope it will arouse some Members of the House of Lords to feel they must take a bigger and greater interest in what is happening in part of the United Kingdom.

Lord Morrow (DUP): My Lords, in responding to the regulations before us, it is easy to allow our attention to be drawn to the Irish Sea border and its implications for trade and lose an important aspect of the bigger picture. We must always keep in mind that the reality of the border is a function of a more basic and underlying problem—the fact that, in some 300 areas, Northern Ireland is subject to laws made for us by the European Union. These laws create a different legal regime in Northern Ireland from that which obtains in GB.

The purpose of the border, regulated in part by these new Windsor regulations, is to protect the integrity of that different regime. This was arguably not particularly important to begin with because our laws were the same, but over time they have diverged, and will continue to diverge more and more. Since 1 January 2021, we have been subject to the gross indignity of having more than 700 laws made for and imposed on us by a foreign legislator. This is a problem not just for Northern Ireland but for the rest of the United Kingdom and the international community, for reasons I highlighted during the King's Speech debate.

At the heart of international relations we find the doctrine of recognition and the principle that international relations depend on two states recognising each other. This amounts to each acknowledging and respecting the right of the other to govern itself across the extent of its territory. This is foundational, because it is only when two sovereign states afford each other this mutual respect that international relations can really happen.

To be sure, there are other important doctrines, such as the principle that agreements must be kept, but we cannot collapse international society into that principle, abstracted from the other conventions that make international agreements a possibility, otherwise a treaty to promote slavery or disfranchisement would be sacrosanct because it would rest upon an agreement between states. In reality, the impact and importance of pacta sunt servanda, first mentioned in the House by the noble Lord, Lord Kerr, in treaty-making assumes the basic integrity of the actors—sovereign states—between which those agreements are reached.

If we want to uphold the international society of states that is definitive of world order and upon which international law is based, we have to remember that valid treaties are not just whatever two parties agree. They are agreements made in a context that respects the norms and assumptions on the basis of which the peace and stability of the international arena depends.

For example, the United Nations Declaration on Principles of International Law Concerning Friendly Relations and Cooperation among States in Accordance with the Charter of the United Nations states:

> "Every State has an inalienable right to choose its political, economic, social and cultural systems, without interference in any form by another State".

It also says:

> "Nothing … shall be construed as authorizing or encouraging any action which would dismember or impair, totally or in part, the territorial integrity or political unity of sovereign and independent States"

and that:

> "Every State shall refrain from any action aimed at the partial or total disruption of the national unity and territorial integrity of any other State or country".

As I pointed out on 15 November:

> "Lest there should be any doubt about the importance of these principles, the declaration also affirms:

'The principles of the Charter which are embodied in this Declaration constitute basic principles of international law, and consequently appeals to all States to be guided by these principles in their international conduct and to develop their mutual relations on the basis of the strict observance of these principles'

and:

'Where obligations arising under international agreements are in conflict with the obligations of Members of the United Nations under the Charter of the United Nations, the obligations under the Charter shall prevail'.

One of the most obvious ways in which a state, A, or a group of states, AB, can act in violation of the territorial integrity of another state, C, is to apply pressure for the right to make some of the laws over part of C, and to insist on the imposition of a customs border across C at the point at which their law ceases to have effect and the laws of C alone obtain. This is what the 27 member states of the European Union have decided to do to the United Kingdom, imposing laws made by a legislature in which we are not represented and imposing a border cutting the country in two"

different legal regimes and two different internal markets—

"requiring the construction of border control posts for its enforcement".—[*Official Report*, 15/11/23; col. 524.]

The sense in which the border states of the EU refuse to recognise the territorial integrity of the UK is expressed eloquently through the full title of EU regulation 2023/1231, which is partly given effect by the regulations before us today. The said regulations are defined by the EU as:

"Regulation (EU) 2023/1231 of the European Parliament and of the Council of 14 June 2023 on specific rules relating to the entry into Northern Ireland from other parts of the United Kingdom of certain consignments of retail goods, plants for planting, seed potatoes, machinery and certain vehicles operated for agricultural or forestry purposes, as well as non-commercial movements of certain pet animals into Northern Ireland".

It is quite extraordinary legislation when one thinks about it because, far from being a piece of legislation made by and for the 27 EU member states that also applies to Northern Ireland, this regulation applies only to the governance of one country—the UK, a country that is not in the EU—and the effect of that legislation is to divide that country into two.

In 2017, the United Kingdom Government suffered a catastrophic failure of statecraft of a kind we have not seen certainly since 1688. It has resulted in our country being divided into two different legal regimes and a customs border, with UK citizens on one side of the border disfranchised and no longer able to stand for election to make all the laws to which we are subject. It is quite extraordinary that we should have fallen so low that, rather than being the occasion for the UK to reassert itself, Brexit was the occasion for our complete humiliation. While it will come as no surprise to noble Lords to know that I disagreed profoundly with Mrs Thatcher on the Anglo-Irish agreement, I cannot imagine she would ever have contemplated a Brexit deal that not only failed to secure the departure of the whole United Kingdom from the EU but split the nation territorially in the process.

We are all familiar with the phrase, "When in a hole, stop digging". In 2017, the then Government fell into the hole and since then every Government have kept digging. The time has come for a fundamentally different approach. The imperative for making it is not merely to help UK citizens living in Northern Ireland or restoring the honour of the United Kingdom as a whole in the face of an extraordinary humiliation, but about upholding the fundamental foundational norms and assumptions on which the well-being of the international society of states depends. If one of the permanent members of the UN Security Council is unable to defend its territorial integrity in peace, what hope is there for the world?

There has been an alternative to the protocol since 2019, namely mutual enforcement. The EU decided not to go for this solution, but it is interesting to note that, in the context of expressing real concerns about the reasons for rejecting it, one of its authors, Professor Weiler, acknowledged that the alternative has been

"the introduction, however disguised, of a customs frontier within the UK".

So it is not only unionists who are saying this; others are saying it too. He then poses a profound question. Let me say it again: the result of the EU decision not to run with mutual enforcement was

"the introduction, however disguised, of a customs frontier within the UK. But does anyone believe that this is a stable solution?"

Today's debate has helped expose some of the disguise and has answered the question about whether anyone believes this is a stable, sustainable solution. The answer is an emphatic no. What we need is not a Government who table regulations such as those before us, so obediently and attentively to the EU's bidding, but rather a Government who discharge their basic function in standing up for their people as a people and a Government who restore the dignity and territorial integrity of the United Kingdom. In contemplating this need, I continue to greatly rejoice that no Parliament can bind its successors.

5.45 pm

Lord Butler of Brockwell (CB): I shall ask the noble Lord a question that I would have liked to have asked the noble Baroness, Lady Hoey: would he prefer a customs frontier across the island of Ireland, with all of the implications that would have for the Good Friday agreement?

Lord Morrow (DUP): I think that Northern Ireland, which we are constantly told is an integral part of the United Kingdom, should be treated as such. If you own a farm, it is your responsibility to fence your livestock in; it is not my responsibility as a neighbour to fence your livestock out.

Baroness Butler-Sloss (CB): I wonder if I might ask a question. Will the noble Lord say what ought to be the implications of the land border with the EU?

Lord Morrow (DUP): The land border with the EU could have been very easily resolved, because there were moves and proposals at the time. It could have been a simple, straightforward piece of work, with cameras being put up, but the EU said absolutely not. What did it do? It then split Northern Ireland and insisted on border customs, which are not yet completed but will be by 2025. Now we have Northern Ireland sitting in isolation from the rest of the United Kingdom, and that will never be acceptable.

Lord McCrea of Magherafelt and Cookstown (DUP): I will follow on from my noble friend Lord Morrow, and I am interested in the questions that have been asked. A lot of those questions surely should have been asked at the time of the negotiations between the United Kingdom Government and the European Union. That was the time to ask those questions and answer them, rather than leaving Northern Ireland in the present precarious position that it is, without Stormont being able to function.

The real impact of the regulations before us today, in providing what is actually an alternative border experience rather than a border-free experience of the kind suggested by talk of putting Northern Ireland back in the same internal market for goods as the rest of the United Kingdom so that goods can move unfettered across the United Kingdom, is very far-reaching. Indeed, it is so far-reaching that it requires me to ask the Government to reflect further on their stated position, as set out during the debate on the previous set of Windsor regulations, on 18 October. In responding to that debate, the message from the Government Front Bench was that

"the Windsor Framework restores the smooth flow of trade within the UK internal market by removing the unnecessary burdens that have disrupted east-west trade. We are now able to achieve the long-standing UK government objective of restoring the smooth flow of trade within the UK internal market by pursuing a green lane for the movement of goods from Great Britain to Northern Ireland, supporting Northern Ireland's place in the UK".—[*Official Report*, 18/10/23; col. 269.]

That was the statement that was made.

One of the reasons why the United Kingdom is believed to have been the first country to industrialise is that it was the first country to identify the economic opportunities arising from removing internal barriers to trade, so as to create a coherent internal market for goods, coextensive with the boundaries of the kingdom. The definition of "internal market" was thus the removal of all internal border fettering, so that goods could move completely freely within the United Kingdom. It was the economic opportunities secured by this freedom that other countries identified and sought to exploit over many years.

In the context of the established meaning of "internal market" following these developments, you cannot have an internal market divided by a customs and SPS border. If you have an internal market and divide it with a customs and SPS border, you no longer have one internal market but two internal markets.

The key point here is that an internal market is secured by a right to trade between A and B. German businesses have a right to trade with Japanese businesses and vice versa. Having this right to trade, however, does not have the effect of putting Germany and Japan in the same single market. This means that businesses trading between these two countries have to encounter border formalities. In other words, goods in Germany do not enjoy unfettered access to Japan any more than Japanese goods enjoy unfettered access to Germany. If, however, the border were removed and Germany and Japan were placed in the same internal market, not only would businesses in Germany have a right to trade with Japan and vice versa but their goods would also enjoy unfettered access to Japan, just as Japanese goods would enjoy in relation to Germany, within the newly created internal market.

It simply is not possible to take the regulations before us today or, indeed, other Windsor regulations, and assert, as government Ministers continue to do, that they help to

"restore the smooth flow of trade within the United Kingdom internal market"

or unfettered access. The truth that the regulations before us today confirm is not that Northern Ireland's place in the United Kingdom internal market has been restored, securing unfettered movement within the United Kingdom internal market. Rather, giving effect to EU regulation 2023/1231, they confirm the termination of the UK internal market for goods and its replacement with a GB single market for goods, which no longer embraces Northern Ireland.

It might be correct to argue that the suspending of 60 EU standards by these regulations eases the flow of goods in some senses—although the requirement for "Not for EU" labels off-set this benefit—but it does not ease the flow of goods within the UK internal market; that is not true. Rather, it eases the movement of goods across an international customs and SPS border between the two different internal markets for goods that the UK now covers.

In the same way, it is time for the Government to level with the British people and acknowledge that, rather than giving effect to a green lane, the regulations before us give rise to an alternative red lane. They also need to be honest and acknowledge that, far from reintegrating Northern Ireland within a UK single market for goods, the regulations confirm that the UK single market for goods no longer exists. It has been replaced, for the first time since 31 December 1800, with a Great Britain internal market for goods, and Northern Ireland has been placed in a different internal market for goods governed by a polity of which it is not a part.

In this, I greatly welcome the timely intervention this week in another place by the right honourable Dame Priti Patel, the Member of Parliament for Witham, who was Home Secretary from 2019 to 2022. She reminded us of the 2019 Conservative manifesto which pledged, on page 44, to

"ensure that Northern Ireland's businesses and producers enjoy unfettered access to the rest of the UK and that in the implementation of our Brexit deal, we maintain and strengthen the integrity and smooth operation of our internal market".

She was very clear that Windsor—and thus the regulations before us today, which seek to give effect to it—is not in any way consistent with that pledge. In other words, the Government have broken their election pledge.

Dame Priti Patel wrote:

"For me, as a Conservative and Unionist, maintaining the integrity of the internal market should have been a red line in negotiations with the EU and while the Windsor Framework does improve the situation with some goods facing fewer barriers, the flow of trade between Great Britain and Northern Ireland is still being disrupted. Northern Ireland also faces the ongoing imposition of EU rules affecting certain parts of its economy, which undermines democracy".

She concluded:

"No business should face a barrier or restriction to trade between Great Britain and Northern Ireland and more work is needed to achieve this outcome. Technology, common sense and a dose of good faith should be at the forefront of the solutions needed to remove these barriers and put an end to the tentacles of EU control over Northern Ireland. The Government needs to act and the Conservative Party's manifesto at the next General Election must reaffirm our commitment to Northern Ireland and the importance of securing the integrity of the internal market within the UK".

On her latter point—that they have indeed scrapped their previous promise in the last manifesto—it will take more than words in an election manifesto to prove that they are as good as they say. Some of us are aware that, in the Brexit negotiations, the EU did everything within its power to humiliate the United Kingdom for having the audacity, through the authority of the ballot box, to leave the EU. It has deviously but deliberately sought to undermine the unity of the United Kingdom.

I tell noble Lords, this House and the Government Front Bench: do not treat unionists as fools. We know a good deal when we see it, but we also know a bad deal when we see it. Surely, after all that we have endured over 30 years of IRA terrorism, we have a right to expect that a Government with the title "Conservative and Unionist Party" would tell us the true facts of the protocol and the Windsor Framework. I believe the Windsor Framework is but another part of the gameplay to destroy the union.

There are those who believe they can sleepwalk unionism into a united Ireland by stealth; but unionism is awake and alert, and is aware of the treacherous plan and will not comply. Any action of this Government in response to genuine unionist concerns over the Windsor Framework will be judged in the light of the seven tests already set by the DUP and clearly endorsed by the unionist electorate. Tinkering, sleight of hand or double-talk will not be acceptable. Actions will speak louder than words. I believe that wisdom will demand careful scrutiny of anything that the Government propose.

Lord Jackson of Peterborough (Con): Does the noble Lord concur with me, having been involved intimately in the Brexit negotiations in 2017 and 2018, that proposals had been worked up by Lars Karlsson, a customs expert who worked on the Norway/Sweden border, for technical solutions for a frictionless border that were first presented to the European Parliament in November 2017 and subsequently to this House and the other place, but they were ignored, particularly by the EU and the then May Government? That answers the specific issues raised by the noble Lord and the noble and learned Baroness, Lady Butler-Sloss.

6 pm

Lord McCrea of Magherafelt and Cookstown (DUP): I thank the noble Lord for making that point, with which I wholeheartedly concur. It is a tragedy that whenever those proposals were made—sensible proposals to deal with a very sensitive situation—the EU, at the behest of the Dublin Government, rejected them outright. Sad to say, our Government collapsed rather than take a stand for the unity of the United Kingdom.

Lord Kilclooney (CB): When will the noble Lord recognise that the Conservatives now want Northern Ireland out of the United Kingdom?

Lord McCrea of Magherafelt and Cookstown (DUP): Sad to say, everything they have been doing recently has led to that conclusion. Sad to say also, many other people and parties within this Chamber have a similar leaning. They want to humiliate unionists and they want to destroy the union. They are happy to placate those who for 30 years murdered the people of Northern Ireland. Because we did not buckle, bow or give in but stood tall as proud unionists, there have been those within the high reaches of authority and power who—as they did over the years of terrorism—have appeased republicanism over and over again. Unionism has to decide where it stands.

Baroness Foster of Aghadrumsee (Non-Afl): My Lords, I will speak about the technical aspects of this SI. In particular, I will look at what the Joint Committee had to say in relation to it.

Before I do, I want to respond to the noble Lord, Lord Kilclooney. While some in the Conservative Government may take his view, though not all, the *Irish Times* poll that was published over the weekend shows a clear majority of people in Northern Ireland who want to remain within the United Kingdom. It is important that we reference that. After all, the Belfast agreement is clear that we will remain in the United Kingdom until the time when there is a border poll, and that will be called only if it looks as if there is a possibility of a majority voting in that manner—and there is absolutely no evidence of that. I just want to put that on the record here in the House of Lords, because it is important to say that the people of Northern Ireland remain committed to the United Kingdom.

My noble friend mentioned the Alternative Arrangements Commission, which did an awful lot of work. It put forward a report, which I think moved things on very far, on how the border would be dealt with through technology, intelligence, trusted traders and small business exemptions. But all the very sensible proposals that were put forward were rejected as unicorn solutions. I do not believe that is what they were; they were very fair solutions to what had been brought about. I really regret that the Government went down a different route with the EU. Having said that, it was under a lot of pressure from the Republic of Ireland, which was leading the charge in respect of this with the European Union, and unfortunately the European Union allowed the Republic of Ireland to push it in that direction. Had we gone down the route of the alternative arrangements, we certainly would not have had the difficulties that we have in relation to goods coming from—

Lord Kilclooney (CB): The noble Baroness is quite correct. The overwhelming majority in the public opinion poll reported this weekend in Northern Ireland want to stay in the United Kingdom. I was not disagreeing with that. I was saying that the Conservative Party is letting Northern Ireland down.

Baroness Foster of Aghadrumsee (Non-Afl): I acknowledge what the noble Lord has to say, but he will know that the people of Northern Ireland will decide. That is why it is so important that people recognise that the United Kingdom is good for Northern Ireland and a beneficial place for Northern Ireland to be. I really wanted to reference that today.

I want to refer to the Joint Committee's scrutiny of the SI. I pay tribute to the noble Baroness, Lady Hoey, for tabling this regret Motion; otherwise, the SI would not have been debated. Even the Joint Committee was clear in its assessment that this was a politically sensitive issue, and therefore—it did not say as much as this, but it is what I would argue—it certainly should have been carried through by the affirmative procedure. Even in Northern Ireland, if a Minister takes a decision that is novel and contentious, it has to come to the full Executive for discussion. I posit the view that this setting up of the regulations for the green and red lanes is something that should have come for fuller examination. I look forward to the Minister giving us the reasoning for why this went through on the negative procedure.

It is not just that it went through on the negative procedure; worse than that, it came through in the summer when there was no opportunity for parliamentary scrutiny before the scheme went live. The scheme came into being on 1 October this year but here we are in December, and only because the noble Baroness, Lady Hoey, tabled a regret Motion debating the scheme. The procedure for this SI has been very poor indeed.

The third issue—the first two were that it should have been by the affirmative procedure and that it should not have gone through in the summer months when there no possibility of discussion—is that the Joint Committee refers to the fact that it is concerned about the lack of an impact assessment or even basic impact information. I was listening to the previous debate on the regret Motion tabled by the noble Baroness, Lady Lister, on immigration fees and the reference to there not being parliamentary scrutiny of that issue. Here we have an entirely new scheme being set up for goods moving from Great Britain into Northern Ireland, and we are discussing it two months after it came into operation only because the noble Baroness, Lady Hoey, brought it to the Floor. Surely the Government must recognise that that is not an acceptable way to deal with an SI of this significance. It should have been brought to the Floor at least for debate so that parliamentarians across the two Houses could make their voices heard and ask questions of the relevant Government Ministers. I hope the Minister will be able to give us some indication of why it was felt appropriate to bring in this important SI by negative resolution.

Baroness Butler-Sloss (CB): My Lords, I entirely support what the noble Baroness, Lady Foster, has just said, but the earlier speeches by noble Lords have raised a rather deeper issue. Speaking as an Englishwoman married for 64 years to an Ulsterman from County Down, I would like to stress how much English people care to keep Northern Ireland as part of the United Kingdom. I have never yet met anyone who did not want that to happen. It is important to say that at this moment, because what is being talked about is the importance that Northern Ireland attaches to the United Kingdom—but the United Kingdom should remain with Northern Ireland as an important and very valued member.

I would like to ask the Minister this, as what worries me particularly is not so much the failure to do what should have been done in the past, which I entirely understand from what noble Lords have said, but that we really have to live in the real world, which is today. What are the Government going to do to put it right and create a situation in which Northern Ireland is, in all reality, a total member of the United Kingdom internal market?

Lord Browne of Belmont (DUP): My Lords, in this 25th anniversary of the Belfast/Good Friday agreement, the regulations before us today are profoundly destabilising. The Windsor Framework has subjected itself to the Good Friday agreement by devoting its first and second articles to serving the prior agreement. Article 1 subjects Windsor to the Good Friday agreement consent principle, recognising the territorial integrity of the UK—the thing that the Republic of Ireland refused to do until the Good Friday agreement with the UK—and to protecting the 1998 agreement in all its dimensions, while article 2 explicitly subjects the Windsor protocol to the human rights protection in the Good Friday agreement. This is critical, because Article 30.2 of the Vienna Convention on the Law of Treaties states:

> "When a treaty specifies that it is subject to, or that it is not to be considered as incompatible with, an earlier or later treaty, the provisions of that other treaty prevail".

Thus the Windsor Framework effectively subjects itself to a prior treaty—the Good Friday agreement—and the territorial integrity of the UK this side of a border poll.

To that end, the regulations before us plainly contradict article 1.2 of the Windsor Framework, which creates an imperative for respecting

> "the essential State functions and territorial integrity of the United Kingdom".

Arguably, the most essential state function of all is the provision of security, which finds expression on a number of bases including military security, cybersecurity and biosecurity. Yet the Explanatory Memorandum accompanying these regulations states:

> "The purpose of this instrument is to support trade between Great Britain … and Northern Ireland … whilst protecting the biosecurity of the island of Ireland, following the agreement of the Windsor Framework".

Of course, it is very healthy for a state to have regard to the biosecurity of neighbours, but this must be a secondary obligation to having regard to the biosecurity of its own citizens, who pay taxes and may be asked to make the ultimate sacrifice in time of war. Yet neither the regulations before us nor the Explanatory Memorandum make any reference to the biosecurity of the United Kingdom. Instead, they talk only about having regard for the biosecurity of the island of Ireland as a whole.

Implicit in the deconstruction of the UK, by way of deconstructing its essential state functions, is the reframing of questions of security and risk so that they no longer pertain to the United Kingdom of Great Britain

and Northern Ireland, but rather ask Great Britain to view risk and biosecurity separately, and independently from Northern Ireland, whose biosecurity is now set for some purpose at a Republic of Ireland-EU level. Crucially, this is not simply a process of separation, but a process of separation against each other, such that one does not simply cease viewing Northern Ireland within one's biosecurity; one is asked to assess one's biosecurity against that of Northern Ireland. The disciplines imposed by the protocol on biosecurity risk assessments give rise not just to an othering process, in the context of which Northern Ireland is no longer part of the same political "we", but to the pathologising of Great Britain as an "other" that is also the source of a threat. This is completely destructive to the UK body politic and UK political demos.

6.15 pm

When the Government were challenged on these matters, they responded in terms which were deeply disingenuous, confusing two completely different things. They told the Secondary Legislation Scrutiny Committee, first, that the island of Ireland has been treated as a single epidemiological unit for decades and, secondly, that both GB and Northern Ireland benefit from laws to maintain their respective biosecurity. The problem with this response is that it implies that nothing of any great importance has changed, but the truth is that the implication of treating Great Britain and the island of Ireland as separate epidemiological units, when they are in the same single market and subject to the same legislation, is quite different from treating them as separate epidemiological units when they are in separate internal markets and subject to separate legislative frameworks.

No one is suggesting for a moment that Northern Ireland would be left without legislation aimed at providing biosecurity. The key point is that, over time, this will differ from that pertaining to Great Britain and, to the extent that the UK Government will not be responsible for the legislation pertaining to Northern Ireland, they will not be responsible for its biosecurity. The essential state function of the UK would thus not be respected in terms of UK biosecurity. Indeed, in introducing legislation to give effect to different biosecurity identities in separate single markets, the UK Government are giving effect to the division of the United Kingdom body politic, in that Northern Ireland now becomes a potential biosecurity threat to Great Britain and Great Britain a potential biosecurity threat to Northern Ireland.

While it is possible to recognise the sense in which two parts of the United Kingdom are separated by a body of water, and to insist on separate SPS checks on live animals crossing that body of water, that does not give licence for a state effectively to renounce its key constitutional responsibility as guarantor of the biosecurity of all the people of the United Kingdom. To pretend otherwise is to imply that Defra officials regard the United Kingdom of Great Britain and Northern Ireland as a category error. But, in a context where we live in a society of a political rather than an epidemiological foundation, epidemiological considerations do not afford Defra the right to dismember the United Kingdom. Defra has to discharge its biosecurity responsibility in the context of recognising the actual boundaries of the United Kingdom, rather than any other boundaries it might prefer. In the absence of a vote in which the people of Northern Ireland remove themselves from the United Kingdom body politic, they remain firmly in that body politic, benefiting from the rights of living in a polity whose essential state functions, including in relation to biosecurity, are respected.

This biosecurity difficulty leads directly, as I have mentioned before, to a question about the vires of the regulations before us. There are two bases for arguing that these regulations are ultra vires. They are made on the basis of a regulation-making power set out in sub-paragraphs (a) to (c) of Section 8C(1) of the withdrawal agreement Act 2018. The power is either "to implement the Protocol" in sub-paragraph (a), or the withdrawal agreement in sub-paragraphs (b) and (c), which includes the protocol. In this context, it is not clear how the Government can provide a regulation-making power to do anything that is contrary to any part of the protocol.

If the regulation-making power was defined specifically in relation to certain aspects of the protocol or the withdrawal agreement and not others, such that one could draw a clear line from a coherent sanction in one part of the protocol or the withdrawal agreement to the regulation that is not contradicted by another part of the protocol—because the other part of the protocol is not part of the regulation-making power—the regulations would clearly be intra vires.

However, Parliament has chosen to tie the regulation-making power to the full spectrum of obligations in the protocol. This means the only available sanction pertains to things mandated by some or all parts of the protocol that are not countered by others. In this context, the regulations plainly do not give effect to the protocol as a whole because they do not discharge the rights and responsibilities of Article 1(2). Far from respecting the essential state functions of the UK and its territorial integrity, the regulations seek actively to undermine those essential state functions such that they can only really pertain to Great Britain. I am happy to support the Motion in the name of the noble Baroness, Lady Hoey.

Lord Weir of Ballyholme (DUP): My Lords, I am honoured to speak in today's very important debate. I welcome the Minister, the noble Lord, Lord Harlech, to his place for the first opportunity to answer on the SI. I am sure it is the deepest regret of the noble Lord, Lord Benyon, who moved to a different portfolio—it is probably the one abiding regret he has—that he is no longer in a position to respond to various Windsor Framework debates. It must be a great source of pain to him.

This is a very important debate because, beyond the technical requirements of the SI, it goes very much to the heart of the problems, both in a current and future sense, with the arrangements in connection with the Windsor Framework. I agree very much with the tone of the noble and learned Baroness, Lady Butler-Sloss: what is important is not, arguably, what has gone on in the past, but where we are at present and where we will be in the future.

[LORD WEIR OF BALLYHOLME]

I press a particular emphasis on the future because, if anybody takes the time to talk, for example, to the haulage industry or those dealing with these issues on a day-to-day basis—as opposed to participating simply in a debate—they will tell you that the arrangements being put in place today are a mere shadow of the problems in days to come. In the absence of border control posts, any arrangements at present are of a light-touch nature; the real difficulties we will face throughout the United Kingdom will be in the future, whenever those border controls are fully built and operational. It is not just the question of where we land with this SI at present, but where it will take us in the future.

While there are many aspects of this I have concerns about, which other noble Lords have touched on, there is a microcosm of three issues that lie at the heart of our difficulties. First, when the Government produced the Windsor Framework, they massively overhyped what they had achieved. All of us, particularly those of us from Northern Ireland, value when people are being straightforward and honest with us directly. At the very least, we would have had much more respect for the Government's position had they said, "In our negotiations, there are certain things we have achieved and have made a level of progress on, but there are a range of things that are still difficulties. There are a range of things we wanted to achieve but did not get success on". That is not the position that they took when they reached the Windsor Framework earlier this year.

We were told that this would restore the integrity of the internal market and that it would provide unfettered access. There was some adjustment in the language, but the more watered-down version was that it would remove any sense of the Irish Sea border. I cannot remember whether it was a verbal comment or in the Government's Command Paper, but they gave an assurance that the level of paperwork required to access the green lanes would be akin to moving goods from the mainland of Great Britain to the Isle of Wight.

Looking purely at the green lane and what is being put in place, any single movement requires customs paperwork, an export number, for the business itself to be part of a trusted trader scheme, for the individual consignment to be sealed so it cannot be interfered with in any way and a final address in Northern Ireland for it to be delivered to. There are many things that you can say about that—you may say that it reduces the SPS paperwork compared with what would have been there purely under the protocol—but the one thing you cannot say is that this is unfettered access. I am not aware that any of those regulations would apply, for example, using the Government's example, when moving goods to the Isle of Wight from another part of Great Britain. In the context of the green lane, the comparison of unfettered access is that if somebody is looking to move goods from part of the European Union to anywhere in Northern Ireland, they can do so completely seamlessly—but that is not there under this SI for movements between one part of the United Kingdom and another.

Secondly, this SI represents something that the Government have accepted: a massive level of overreach by the European Union. I entirely understand that, if you are looking at this from an EU perspective, you want to do all you can to protect the European Union and its single market. But the focus of this SI is not on the regulations for the red lane movement; it is on movement entirely within the United Kingdom for goods that must have an end destination within the United Kingdom—it is important that we contextualise that. This is not about goods coming into another part of the United Kingdom that may be at risk of moving to the EU, because those are automatically put under the red lane system already. There is a level of overreach.

We are told that 60 EU rules will be disapplied—it took a lot of work to extract that information. We have been given a form of dispensation, but we get that at the grace and favour of the EU. As shown by EU Regulation 1231, it is a form of dispensation that the UK is being granted; we are still under the overall auspices of the EU. It is a conditional dispensation, because the EU, in Regulation 1231, gives itself that power unilaterally. If, for whatever reason, it feels that things are not working out or it changes its mind, it can withdraw this at any stage, so we are not being given the freedom of opportunity. Regular checks are also being placed on the green lane—whether it will be 10%, 5% or whatever level of variation. These are random checks; they are not done in a situation where there is any particular evidence of fraud or any level of suspicion.

I will give an indication of how much of an overreach that is. Take what should be a far more dangerous situation to the EU: movements of goods between Kaliningrad and Russia. Under the EU sanctions that were applied, the guidance given to EU countries was that they did not have to produce effective controls on movements of goods between Russia and Kaliningrad. That is the bizarre situation that we are in: there is a greater level of regulation of goods moving within the United Kingdom than goods moving between two parts of an aggressive nation that is involved in great war crimes against Ukraine—where the goods are physically passing through the European Union. That is the level of overreach that we are left with.

Thirdly, while the constitutional impropriety of this is clear, it is leading to practical issues and problems in the diversion of trade. The noble Baroness, Lady Hoey, mentioned that, for a lot of companies operating in Great Britain—we have seen examples of this already—if they do not have a large volume of activity within Northern Ireland, they will say, "Why should we bother with all the hassle of sending something to Northern Ireland? We will simply withdraw from that market". That is damaging both to the companies in Great Britain—because it denies them the opportunity for trade—and to Northern Ireland customers, and it gives no alternative but for those goods to be sourced from within the EU rather than another part of the United Kingdom.

6.30 pm

We have seen some practical outworkings of that diversion of trade. For example, it has been announced that Morgan McLernon—the Northern Ireland wing

of Culina, which is the largest haulier dealing with the frozen and chilled foods market—will close for practical reasons because it intends to operate all its haulage through the Republic of Ireland. We have seen situations in which, in internal discussions, slides and presentations to explain the way forward, some supermarkets are already looking to reorient their supply lines through the EU, particularly the Republic of Ireland, because that is the practical point of view. Can you blame a company for choosing a route with a lot less hassle? Another example is one of the Government's own websites, from DAERA, for the haulage industry, which creates somewhere in the region of 15 steps that have to be overcome simply to trade goods through the green lane market.

These examples are symptomatic of the wider problems. They show the scale of the difficulties that we still face and the scale of the action required. My noble friend Lord McCrea is right: this will be resolved not by words but by action by the Government. The Government need to take action to remedy the situation so that we can protect and restore the UK internal market and Article 6 of the Act of Union.

Lord Jackson of Peterborough (Con): My Lords, I had not intended to speak in this debate, but I think it is important to follow the lead of the noble and learned Baroness, Lady Butler-Sloss, and examine the wider context. Incidentally, I strongly support the views of the DUP, which is a credit to the people for whom it speaks. I particularly note the comprehensive and detailed evidence it presented to the Secondary Legislation Scrutiny Committee, which I have read but not necessarily inwardly digested.

Noble Lords might know that I served for a year or so as special adviser to the then Secretary of State for Exiting the EU. I knew more than I could possibly have wanted to know about phytosanitary issues. We have to look at the wider context here: this is about not just the de jure decision of the UK as a whole to leave the EU but the de facto bifurcation of a sovereign country. It is not just about granular and technical issues relating to groceries and agricultural goods; it is about the fundamental right of a group of people to elect and dismiss representatives who are accountable to their electors.

The wider issue is quite obvious to those of us who have followed the European Union's behaviour. Incidentally, the wider context of the Windsor Framework specifically is that the EU was effectively in breach of the TCA because it used the non-agreement of the Windsor Framework as a means to prevent the UK securing a deal on the successor to Horizon Europe. That was blackmail, frankly—but we should not be surprised by that because Martin Selmayr, who was chief of staff to Jean-Claude Juncker, stated way back in 2016 that the strategic geopolitical interests of the European Union were in making Brexit as difficult as possible for the United Kingdom and making sure that the United Kingdom of Great Britain and Northern Ireland did not have a long-term economic advantage over the EU. So it was always the case that it would weaponise Northern Ireland to cause as much difficulty as possible. That is the wider issue. In fairness, I agree that Tony Blair and John Major warned of these potential difficulties—although they were coming at the issue from a different angle, in opposing the Brexit vote.

I am not surprised about the passion of my noble friends in the DUP because this is a fundamental issue about the governance of our country, and we would not nonchalantly seek not to debate a similar proposal if it were about Devon, Surrey, Northumberland or Birmingham. Why should we effectively treat our citizens in Northern Ireland, who have decided to remain part of this sovereign nation, in a different and less advantageous way? For that reason, I welcome the regret Motion from the noble Baroness, Lady Hoey.

It is important to note, as I did earlier, that proposals that would have solved this issue were put forward. If noble Lords remember, there was the Malthouse compromise, a backstop and the Karlsson report on smart borders 2.0 and 2.1, which the noble Baroness, Lady Foster, referenced. There were opportunities to leverage technologies, such as CCTV, warehousing away from the border and trusted trader schemes, in order for there to be a mutually beneficial trading relationship that would not bring a hard border back or threaten the integrity and viability of the Good Friday agreement. But these were dismissed by the EU and, through Messrs Varadkar and Coveney exerting pressure day by day and week by week on a weak Government without a majority—the May Government—their position was allowed to succeed. We missed that opportunity. This gentleman is not some esoteric policy wonk; he was in charge of the customs of Sweden and did work all over the world, including the Middle East. He had great expertise and offered it to the Commission and the British Government. As I mentioned, he produced a comprehensive and practical report to the appropriate committee of the European Union, but it was dismissed.

For those reasons, I believe it is important that we continue to debate the Windsor Framework in the future because this issue is much more fundamental than the minutiae of trade, HGV movements and other issues—though they are important, as noble Lords have said. If this is pressed to a vote, I am afraid that, for the first occasion in this House, I will support the regret Motion from the noble Baroness, Lady Hoey.

Lord Moylan (Con): My Lords, I will be brief. The noble Lord, Lord Morrow, referred to this instrument as a "humiliation". I am not sure whether he meant a humiliation for the country or something else, but we can be in no doubt that it is a humiliation for Parliament that a foreign Parliament should send us an instrument—a law made by it with no reference to us—and invite us to cut and paste it into the form of a statutory instrument that we are required to rubber-stamp.

I cannot think of another democracy, inside or outside Europe, which would be willing to have laws made for the internal trade of part its own country and for part of its own territory by a foreign Parliament on this basis, with no participation or representation, and be expected to accept it and hand it on in this way.

We are told that the justification for accepting this humiliation—although this has not come up in the debate, as such—is that it is the price of maintaining the Good Friday agreement. That would not be an

[LORD MOYLAN]
argument wholly without merit, if it had substance—but it has no substance, because the Good Friday agreement is not being maintained. It is not being maintained in its internal arrangements or on its east-west strands, or north-south. It is largely defunct; the only part of the Good Friday agreement that is still fundamentally alive is the question that Northern Ireland will remain part of the United Kingdom unless and until there is a vote that supports transferring it to the Republic of Ireland. That part of it remains alive; the rest is functionally dead.

So we are not actually achieving our objective in doing this, but meanwhile we accept the humiliation, which no doubt in a moment my noble friend is going to rise at the Dispatch Box and defend. With a name like Harlech, if he were proposing this in relation to Wales, I imagine that he would resile, and resile firmly from doing so, but in the case of Northern Ireland it appears to be acceptable, despite the manifest evidence that the claimed benefit of doing so is not actually arising. I look forward to hearing what my noble friend on the Front Bench is going to say.

But I look forward almost with more interest to what the noble Baroness on the Labour Front Bench is going to say. I have to take cognisance of the fact that I understand, or am told by outside interests, that there is the prospect or possibility of a Labour Government in the next year or so. I do not countenance it myself, but to hear what the Labour Party has to say about what it will do about this in government—and the noble Lord, Lord Weir, is correct that we need to look forward—is absolutely crucial on this matter. In my view, it will find that, if it thinks that this is going to be solved in some way by greater alignment of the whole of the United Kingdom with the European Union, it will quickly run into the fact that there is a price to be paid. The European Union will regard that there is a price to be paid for that alignment, in loss of opportunities elsewhere. Those hard decisions—and of course I am not expecting to hear the answer to those decisions today—will land very firmly at the feet of any incoming Government who might arrive in the next 12 months. The Windsor Framework and the arrangements put in its place are absolutely central to how any incoming Government respond to them. So in some ways, the most interesting speech of the day, I am sure, will come from one of the two noble Baronesses—I am not sure which—sitting opposite, and I look forward to it.

Lord Empey (UUP): I just wanted to remind the noble Lord that the reason we have the arrangements we have is because the Government proposed to the European Union in 2019 that we have a border in the Irish Sea, that those trading with Northern Ireland traders would have to notify the relevant authorities before goods were sent to Northern Ireland, and that we had to comply with EU rules and EU law. That was proposed by the United Kingdom Government to the European Commission in October 2019. So we have shot ourselves in the foot.

Lord Moylan (Con): My Lords, I am delighted to be reminded of that, and I remind the noble Lord that I was not a Member of your Lordships' House when the Northern Ireland protocol came to a vote, and when the Windsor Framework came to a vote I was one of only two Conservative Peers who went through that Lobby to vote against it. So whatever "gotcha" moment arises from that question, it applies to somebody else and not to me. I also refer the noble Lord to the word of wisdom from the noble Lord, Lord Weir, about looking to the future and trying to resolve something: it is not going to benefit us greatly if we look back and point fingers about who messed up in the past. That word of wisdom is one that we should take to heart.

As I say, I look forward to hearing from my noble friend but almost as much to hearing from the Front Bench of the party opposite.

6.45 pm

Lord Bew (CB): My Lords, I rise to speak to the regret Motion of the noble Baroness, Lady Hoey. She and I are very old friends and have agreed and still agree about many things, and I regret not being able to support the regret Motion that she has put before the House tonight, although I agree with much of what she said and much of what has been said from the DUP Benches.

I was particularly encouraged to hear the noble Lord, Lord McCrea, say that the crucial thing was the response to the seven tests. That is a very important matter. I also noticed that the first test makes reference to Article VI of the Act of Union, and the fulfilment of that promise. I regard that as somewhat encouraging. As the noble Lord, Lord McCrea, is a man of great honour, I am certain that he will hold to that position, as it is a matter of some substance. What has happened is that we have moved away from the seven tests, and much of the discussion tonight has moved away from the seven tests.

To go to the heart of the regret Motion of the noble Baroness, Lady Hoey, the Windsor Framework is actually based on technical data-sharing and agreed application and reinforcement. This is a key part of it. In late 2022, I think, in a series of asks, we were able to say to the European Union that we have a new technology that permits us to do things in a new way. The Windsor Framework is not just about that, but it certainly builds on that. Of course, if we refuse to share data, the EU can respond by not accepting the easements that it has put in place and the changes that it has made. But this is a two-way street, and it cannot act arbitrarily—it is as simple as that; it is that sort of agreement. It is important to understand that.

Numerous solutions have been suggested to the 2017 agreement—the UK-EU agreement, which was a major defeat for the United Kingdom. A snap election was called, and the Government were really on their knees. The Irish Government pushed for certain advantages, which it won—and we are still here tonight, six years later, having not escaped from the toils of that Irish negotiation. It is on record that Irish officials were surprised at the ease with which the UK Government conceded. That having been said, it is water under the bridge; we are still here after six years trying to sort it out, but we have an international agreement, and the May withdrawal agreement did not even mention the

Northern Ireland Assembly. It is obvious that we have moved on a considerable degree over seven years, in respect of the Government, with regard to the opinions and views of the people of Northern Ireland, the Stormont brake being an obvious example in the Northern Irish Assembly.

I feel that I should say one thing. The latest polling gives the Windsor Framework 60% support in Northern Ireland. It is correct to refer to the polling at the weekend, as the noble Baroness, Lady Foster, did, which shows strong support for the union. There is very strong support for it still in Northern Ireland—there is a very substantial lead. But it is also true, although support for the union is at 50% in that report, and for a united Ireland 30%, if I remember rightly, that support for the Windsor Framework is running at 60% in the latest academic polling. Sometimes, when one listens to the rhetoric about how terrible it all is, one would think that the people of Northern Ireland must be incredibly stupid if 60% of them think that it is actually working quite well and they are prepared to support it. It is worth bearing that in mind.

The opinions of other people in Northern Ireland do matter. I have stood beside the DUP through many debates in this House and supported its objections, but the opinions of the whole community also matter in the consideration of these outcomes. The 2017 report was unleashed in our lives and pockmarked everything since—for example, the concept of the island economy. This is also related to the so-called mapping exercise, brilliantly intellectually deconstructed in the *Irish Times* by Newton Emerson a couple of years ago. These concepts—duff, essentially—play into British official documents, and the United Kingdom Government say that they will continue to support these things, some of them slightly fantasy elements.

We are nearing the end of the road. The government White Paper that accompanied the Windsor Framework marks a gradual detachment by the UK Government from this level of green fantasy. This is not to say that there is not an island economy in agri-food, by the way, which is one reason why a hard border would have been very difficult, but overall there is not an island economy. The island economy argument has been used by the TUV in particular to say, “We have created an island economy; this will lead to a politically united Ireland”. The difficulty with that is that it is exactly the same argument that Jim Allister put 25 years ago about the Good Friday agreement—which has now been supported, I am glad to see, from the DUP Benches. It is exactly the same argument he put then. Twenty-five years ago, the facts did not bear him out. The island economy was not a growing thing that was going to lead there—two economies on the island of Ireland leading to political unity—but, 25 years later, heigh-ho, we are back with a version of the same argument.

My friend Lord Trimble, in his last public act, introduced a paper for the think tank Policy Exchange by Graham Gudgin. It argued that

“there are two distinct economies on the island of Ireland. The Republic of Ireland is a sovereign state, fully part of the European Union but also one the world’s largest tax havens … With different currencies, different fiscal and monetary arrangements including different interest rates and VAT excise duties, and with separate legal systems, the two areas are distinct … Only 4% of the goods and services produced in Northern Ireland cross the border to the Republic while 16% go to GB; 31% of imports to NI are from GB. Only 2% of the Republic’s exports go to Northern Ireland … Currency, tax rates, excise duties, social security systems, government spending regimes, interest rates, credit and banking rules and business law all differ from those across the border”.

This is really quite important: there are two economies on the island of Ireland, and the Northern Ireland one is locked into the UK in a massive way.

In his realistic worst-case scenario about the future, Dr Gudgin acknowledged that

“the NI economy will be less different from the Republic than would have been the case without the Protocol but little less different than has been the case for decades”.

Baroness Foster of Aghadrumsee (Non-Afl): I entirely agree with what the noble Lord has to say about this construct of an island economy, which came about during the time that the Assembly was not sitting for three years due to the Sinn Féin boycott. It was allowed to gain currency at that time. Does he agree with me, however, that given that the supply chains between Great Britain and Northern Ireland are so intricately connected, trade diversion is the one thing that people are very concerned about? In other words, “It is too difficult to bring from GB into Northern Ireland, so we will look for other supply chains”—that is a real problem.

Lord Bew (CB): I thank the noble Baroness for her intervention; I accept that point. There is a significant argument by an esteemed economist about how serious and significant that really is, because we have no figures for the impact of the Windsor Framework. What figures we have go back over several years, and we cannot work out the impact of the Windsor Framework on this problem, which is important.

The government White Paper notes that the Windsor agreement

“marks a decisive break from … the political concept of an ‘all island economy’”—

something that was prioritised in the 2017 document, with the UK Government’s agreement, over Northern Ireland’s place in the UK economy. We have moved on. The island economy is one area where the British Government have been carrying out a major work of rectification to get away from the humiliation of 2017 and that agreement.

I turn briefly to EU law. Again, it is not mentioned in the seven tests. I have heard regularly over the last few days that EU law is dominant in Northern Ireland. Well, okay. Continued alignment with EU law applies to only about 20% of Northern Ireland’s economy. When I heard about the dominance, I thought: is this the Northern Ireland I live in, with its large state sector—larger than in any other devolved region—funded by the UK taxpayer? Is this the Northern Ireland economy I live in, in which the service sector, totally outside the framework of the EU, is the growing sector? There is a question mark about the price to be paid for access to the EU market, which many of our businesses want, but it is not dominant: we are talking about around 20%.

There is an argument here, I accept, and there are people in this House who will never accept that EU law is worth accepting, no matter the value for individual

[LORD BEW]
businesses and so on. But it is important to say that what we have in Northern Ireland—well, let me put it this way: changes since the transition period have been remarkably small. There has been nothing of impact in three years since the transition period ended. There is a well-developed marketplace in Northern Ireland, completed over 20 years ago. It is not a building site full of rubble waiting for some spectacularly ambitious, slightly crazed architect to come along and construct something new and wild—it is set in a particular mould; that is how it is. It is rather humdrum to say it, and in any case most manufacturers in Great Britain follow EU regulations because they export to the EU or provide goods to other companies that export to the EU.

The issues of EU law and the island economy are two areas that are very important to talk about; they dominate the current debate in Northern Ireland. It is important to say that, as far as EU law is concerned, there is, and always will be, a division of opinion on that point. However, it is also the case that this is not the first time in our history in Northern Ireland that we have been dealt with in an unequal way in a trade agreement between the British Government and the Irish Republic. In 1938, exactly this happened. If we look at the debate in this House on 10 May 1938 on what was a very bad deal, a humiliation for the British Government in the end, there is no question but that Northern Ireland businesses are treated unfairly and without equality. There is no doubt about that at all, and the point is made very eloquently by the unionist MPs.

However, a broader political decision was made within unionism: you can get hung up on things that offend you, that are bad news and that stick in your craw, or you can look at it in terms of the wider interests of Northern Ireland as part of the United Kingdom. On that occasion, they made a deal that involved unemployment insurance payments for thousands of shipyard workers on the dole in Belfast that could not be met out of Northern Ireland resources. They made a deal for those shipyard workers—an economic deal in the interests of Northern Ireland which, when the Attlee Government came in with the welfare state, turned out to be an absolutely wonderful deal. In other words, they looked at the problem in the round, did not obsess about the one area in which nobody will agree or be happy, and acted in terms of what was the lesser of two evils.

Lord Dodds of Duncairn (DUP): My Lords, it is a great pleasure to follow the noble Lord, Lord Bew, who I always listen to with great interest; I certainly follow his arguments very closely. He will not be surprised if on this occasion I am forced to disagree with some of his arguments. I will come on to the seven tests, which he mentioned, shortly, because a lot of people seek to interpret the seven tests for the DUP, but it is the DUP that will interpret those tests. As someone referred to previously in the debate, one of the problems we have in this entire situation is the gross overselling of the Windsor Framework by Rishi Sunak. Of course, he attempted to tell us what was in the seven tests and how they were fulfilled.

It is a great pleasure to support the regret Motion in the name of the noble Baroness, Lady Hoey. As has been said, we would have no debate on this matter were it not for this Motion. This also pertains to previous Windsor Framework statutory instruments. My noble friends and I have put down regret Motions on occasion and will continue to do so to have a debate. While this debate has not focused entirely on the narrow confines of this instrument, it has provided an opportunity for us to explore some of the wider constitutional and economic issues that concern all the people of Northern Ireland.

7 pm

The noble Lord, Lord Bew, and the noble Baroness, Lady Foster, rightly reminded us of the levels of support in Northern Ireland for the union and other issues, but I remind noble Lords that, apart from the constitutional question, there has not been majoritarianism in Northern Ireland for over 50 years. That is not how Northern Ireland is run. Nowadays it is run through the Belfast agreement, which everybody lauds but wants to tinker with and change when it suits them. Even way before that, everybody accepted that you could decide things in Northern Ireland only on the basis of a majority of both unionists and nationalists. While there may be a majority in favour of a proposition, it can work only within the context of the Belfast agreement as amended by St Andrews—that is an important caveat—and with the support of both communities.

The fact that not a single unionist Member of the Northern Ireland Assembly or MP ever supported the Northern Ireland protocol should tell people in this mother of Parliaments and cradle of democracy that it will not work. Likewise, the Windsor Framework does not have the support of the vast majority of unionists, as reflected not only in the speeches and actions of unionist politicians but in opinion polls. That means that there is outstanding work to be done. This is not a question of settling for a bad deal because there have been bad deals in the 1930s or whenever; this means that we have to continue with the task of getting a democratically and constitutionally sound deal that delivers economically for all the people of Northern Ireland.

It surprises me that people seem to have forgotten that, between the start of 2021 and Rishi Sunak's announcement of the Windsor Framework, successive British Governments were arguing many of the points that we on these unionist Benches argued. A member of that Conservative and Unionist Government stood at that Dispatch Box and argued for the protocol Bill. Many of the arguments now being put forward in defence of the Windsor Framework were demolished from the Front Bench by the Conservative Government, not by unionists or the DUP. All we ask is that the Government's volte-face this February to accept the subjugation of democracy and sovereignty in Northern Ireland—that laws should be made by a foreign political body, unelected by anyone in Northern Ireland either here or in the Assembly, in its own interests—should be addressed and sorted out by the Government.

The underlying issues continuing to manifest as a result of the protocol and Windsor Framework are causing big problems in Northern Ireland and need to

be addressed. The tests have been mentioned. Each statement in those tests was originally a promise or pledge made by British Prime Ministers. They are reiterations of what was said by Conservative Prime Ministers after Brexit. We are asking for the fulfilment of those pledges by the Front Bench. The very first test talks about Article VI of the Acts of Union. The Supreme Court and all the other courts ruled that the reason why Northern Ireland's equal part in the United Kingdom—the ability to trade within a free internal market is part of a country's essence, along with a number of other features—has been breached is that EU law now overrides. It is not correct to say that the tests in their substance do not mention EU law, because the first test deals with precisely that issue.

Let us remember what other promises were made to the people of Northern Ireland by successive Conservative Governments in recent years. Test No. 3 is that there will be no Irish Sea border. We have heard today in great detail how this Windsor Framework statutory instrument is exactly a manifestation of the Irish Sea border. Test No. 5 is no checks. Test No. 6 is no new regulatory borders. We have already seen new regulatory borders since the framework and protocol have been introduced and will see more as time progresses, unless something changes. Despite the attempts of others to redefine what was pledged to the people of Northern Ireland through those seven tests, they are clear and speak to the democracy, sovereignty and economic well-being of Northern Ireland. It will not suffice for the UK Government, whoever may be leading them, simply to say: "You will have to wear this going forward". As I said, less than a year ago, this was not something that Conservative Governments were saying.

Despite Northern Ireland businesses being dismissed—I do not want to use the word, but the noble Lord, Lord Bew, provided the context that this was only 20% of the economy of Northern Ireland—the fact is that we are in the single market of the European Union for goods. For a Northern Ireland business, company or producer, the production of its goods is governed by foreign law, whereas for a British business sending goods to Northern Ireland through the so-called green lane it is not. Northern Ireland businesses could well be at a major disadvantage within Northern Ireland. If British businesses can send their goods into Northern Ireland according to British standards and these EU standards are more onerous or difficult, as they often are and no doubt will be in future, that makes Northern Ireland businesses and their workers less competitive. How on earth is that economically sensible? This Conservative and Unionist Government are supposed to be lessening regulation and burdens on business in Northern Ireland.

We must address these matters. There are fundamental constitutional and democratic principles at stake, as outlined in the seven tests. They must be addressed for the well-being of all the people of Northern Ireland. I sincerely hope that in their current discussions the Government are seized of these matters and that, as someone said, they will not tinker or once again attempt to oversell some of the reductions of burdens in the green lane as somehow solving all the problems of the Irish Sea border, because they will not. Fundamentally, we must deal with the root of the matter. We must deal with each of those tests, set not by us but by the Government over many years.

Lord Bew (CB): Before the noble Lord sits down, he has made the point, rightly, that the seven tests are based on statements by Ministers. Can he think of any statement by a UK Minister which promised the people of Northern Ireland an end to and no role for EU law? Was there any such statement? I am open to hearing about it. If that is the case, the seven tests cannot include the importance of EU law, although it is important.

Lord Dodds of Duncairn (DUP): I thank the noble Lord for a chance to clarify that. As Theresa May admitted in the House of Commons, checks on goods coming from Britain into Northern Ireland are the result of Northern Ireland having a different regime. The checks we need to get rid of are only there because we have a different regime and a different set of laws governing the single market in Northern Ireland. I can well remember UK Prime Ministers promising the people of Northern Ireland that there would be no checks. I think one went so far as to say to send them to him; he said, "If you send them to me, I will rip them up and throw them in the bin." These were not pledges made by the DUP to the people that we represent.

The people of Northern Ireland deserve to be treated on the same basis as other equal members of the United Kingdom; we need to be treated with that kind of democratic respect. I say to the noble Lord, yes, Governments have made pledges that clearly demand the removal of EU law in Northern Ireland.

Baroness Suttie (LD): My Lords, it is important to debate these matters, especially as there continues to be no Assembly or functioning Executive in Northern Ireland. It has also provided us with the chance to hear the wise and thought-provoking speech of the noble Lord, Lord Bew. In that respect, I commend the noble Baroness, Lady Hoey, on tabling her regret Motion—although she probably will not be surprised to hear that we will not be supporting it, should she push it to a vote.

While I clearly recognise the heartfelt strength of feeling on the Benches opposite, a move away from exaggerated positions on both sides of the argument on the Windsor Framework has to be in the best interests of the businesses and people of Northern Ireland. For this reason, we on these Benches welcome the creation of the Northern Ireland Retail Movement Scheme as an additional pragmatic step forward in trying to remove additional burdens on retailers, wholesalers, caterers and those providing food to public institutions such as schools and hospitals.

On the regulations before us, paragraph 7.11 of the Explanatory Memorandum states:

> "This instrument also adjusts the GB entry requirements for certain retail agri-food goods, coming from non-EU third countries, to ensure appropriate controls are applied to reflect their risk profile".

Can the Minister say more about how he sees this working in practice? What discussions is he having with EU partners, businesses and representatives in

[Baroness Suttie]
Northern Ireland about the risks to the sector of increased divergence in relation to agri-foods? The Explanatory Memorandum also states that there has been

"no formal consultation on this specific instrument".

While I accept that there may have been exceptional circumstances, I hope the lack of consultation will always be the exception and not the rule.

I agree with the noble Baroness, Lady Foster, who highlighted some of the Secondary Legislation Committee's findings and its criticisms of these instruments. It is not acceptable that they were laid during Summer Recess; it is not acceptable that there is a truncated timetable; and it is not acceptable to not have an adequate impact assessment.

Finally, the Minister is clearly not from the Northern Ireland Office—and the noble Lord, Lord Caine, is no longer in his place—so he has only a limited role in continuing to push for a return to a fully functioning Executive and Assembly in Northern Ireland. I hope, however, that he will continue to push all those concerned to make progress on that front. I know he will agree that these regulations are precisely the kind that would be much better being discussed by those closest to the issues and directly impacted by them in Northern Ireland.

Baroness Taylor of Stevenage (Lab): My Lords, I am grateful for the opportunity to speak on this subject. I am here today because my noble friend was troubled, I am afraid, by the combination of snow in Cumbria and the train strikes.

I thank your Lordships' House for a thorough, considered and at times passionate debate. Given the detail of the previous contributions, and that these issues have been considered in some depth during this debate and during consideration of associated statutory instruments, I will keep my contribution short.

7.15 pm

Today's debate has, not unexpectedly, ranged far more widely than the SI before us. We consider this legislation to be vital to the implementation of the Windsor Framework. As we have consistently stated, we support a negotiated outcome with the EU. While the Labour Party does not believe that the Windsor Framework is perfect, it is a substantial improvement on what came before. Although it may be to the disappointment of some, the core tenets of the Windsor Framework are now in operation.

We understand the reasons why noble Baroness, Lady Hoey, tabled her regret Motion, and she set out some of the ways the complexities impact on the practicalities of trading, and her concerns about Article 14, as did other noble Lords. However, we believe that the careful negotiations around the Windsor Framework have developed workable, if not perfect, solutions, and creating a viable alternative could effectively mean going back to the drawing board.

We have said it before but for the avoidance of doubt, this is not a wholehearted endorsement of what the Government have achieved, because important gaps remain, as we have heard. However, it reflects our belief that a negotiated outcome is preferable to threats or unilateral action and that once a deal is translated into an instrument of international law, it must be respected and upheld.

We absolutely take the point, made by the Secondary Legislation Scrutiny Committee, that this instrument should have been the subject of an impact assessment before it was brought forward—a point it has had to make on many occasions recently and which I hope the Government will reflect on. It also made the point, as did the noble Baroness, Lady Foster, that it came through during the Summer Recess. Like the noble Baroness, Lady Suttie, I agree that that is not acceptable.

Labour has consistently argued for veterinary and other agreements with the EU to reduce the need for physical checks of goods moving between Great Britain and Northern Ireland. We believe that such agreements are achievable, and that they would relieve burdens on businesses on both sides of the Irish Sea and help to further improve Northern Ireland consumers' access to agri-food items. What will the Minister's department do to encourage feedback from those engaged in the trade regulations set out under the Windsor Framework, so that issues causing problems can be identified and dealt with quickly and effectively? A clear view on what unfettered access means, what it might mean in practical terms and whether the Government consider that the Windsor Framework actually achieves these is not an unreasonable request.

We understand the concerns of Northern Ireland parties and those with a close personal connection to Northern Ireland. As the noble and learned Baroness, Lady Butler-Sloss, outlined so clearly, we value Northern Ireland's place in the UK and stand ready to work with all communities to improve the lives of people across the nation. One component of that is restoring the Northern Ireland Assembly and Executive, so that debates and decision-making on this and other issues can take place among the people living in Northern Ireland.

As I have said, the Windsor Framework is not a comprehensive framework and not every issue within the protocol has been fully resolved. There are several important changes to Great Britain-Northern Ireland trade which strengthen the internal market, but there is still work to do.

Lord Harlech (Con): My Lords, I declare my farming and land management interests as set out in the register.

I thank the noble Baroness, Lady Hoey, for introducing this Motion and for raising the key issues for people living in Northern Ireland. I also thank all noble Lords who have contributed to the debate with such passion and energy and who have candidly shared their deep frustrations.

From the outset, as has been raised several times, I would like to confirm my personal commitment, and that of my noble friends on the Front Bench, that we are all dedicated unionists. Although much of what has been said today goes wider than the scope of the retail movement scheme, I want to draw the attention of noble Lords back to what the Government regard as the positive impact this legislation will have on the union of the United Kingdom and on UK businesses and consumers.

The Windsor Framework, which this instrument implements in part, will have multiple and demonstrable benefits. I would like to list a few of those. First, the significant removal of over 60 pieces of EU legislation for everyday retail goods moving from Great Britain to Northern Ireland under the Northern Ireland retail movement scheme will mean consumers in Northern Ireland will have consistent access to the same everyday goods that are available to consumers across the UK.

Secondly, this instrument ensures that certain retail goods moving from the rest of the world via Great Britain to Northern Ireland are eligible to move under the Northern Ireland retail movement scheme. Again, this means that consumers in Northern Ireland will have access to the same retail goods that are available to consumers in Great Britain.

Thirdly, this instrument enables specific commodities, such as plants for planting, seed potatoes and used farming and forestry machinery, to move from Northern Ireland to Great Britain using a Northern Ireland plant health label. This means Northern Ireland businesses will not need to apply for additional labels when moving these goods back to Great Britain, saving both time and money. It is also clear to see the important contribution this instrument makes to safeguarding Northern Ireland's place in the union, which is an imperative to which this Government are firmly committed.

I now turn to the concerns behind the Motion tabled by the noble Baroness, Lady Hoey. First, the arrangements agreed under the Windsor Framework significantly reduce the requirements associated with moving goods from Great Britain to Northern Ireland. Retail goods moved via the new Northern Ireland retail movement scheme move on the basis of a single per consignment certificate, rather than requiring the hundreds of vet-signed certificates for individual products needed under the old Northern Ireland protocol. For plants, the Northern Ireland plant health label regime removes the requirement on plants for planting and used farming or forestry machinery to be accompanied by expensive phytosanitary certificates. Rather, operators can register and become authorised to issue and attach a Northern Ireland plant health label for goods moving from Great Britain to Northern Ireland, in the same way that these goods move within the rest of the UK under the existing UK plant passport regime. Instead of paying £150 per movement into Northern Ireland, growers and businesses can now pay approximately £120 annually to be part of this scheme, which is the same as the cost for the UK plant passport scheme.

Secondly, for all these arrangements, the EU's regulation 2023/1231, which the noble Baroness, Lady Hoey, referred to, puts in place safeguards to deal with any significant issues in their operation. This includes, at Article 14, the potential for suspension of these arrangements should that be required. As would be expected, though, this would be used only where a very high bar of systemic failure is met. Before any potential use of that provision, the regulation sets out requirements for extensive UK-EU engagement. This reflects, in line with the broader Windsor Framework, that any future issues should be resolved through engagement.

Finally, I restate that Northern Ireland is and remains an integral part of the United Kingdom under the Windsor Framework, which safeguards Northern Ireland's place in the union. The framework secures the application of British standards for goods which move to and stay in Northern Ireland, ensuring the same goods are available for consumers in all parts of the UK. It upholds Northern Ireland's access to the rest of the UK internal market, and it also safeguards Northern Ireland's privileged access to the EU single market, which has been a clear demand from businesses to protect livelihoods. Importantly, the framework does so while protecting biosecurity on the island of Ireland, which, as noble Lords know, has been treated as a single epidemiological unit for decades.

I now turn to the points raised in the debate. The noble Baroness, Lady Hoey, asked what financial support is being offered to businesses to help them with labelling requirements. We are providing £50 million in support for businesses which have had to prepare for new labelling rules as part of the Windsor Framework. The transitional labelling finance assistance scheme will offer retrospective grants at a flat rate, adjusted by business size, for businesses which can provide evidence of additional labelling costs related to the new Windsor Framework rules. Redesign, printing and warehouse costs for product, box and shelf labelling will all be in scope.

The noble Baroness also asked about the implications for individual consumers wanting to purchase plants and trees direct from GB and have them delivered. I remember her question from a couple of weeks ago regarding an order she placed from the back of a newspaper. Under the Windsor Framework, professional operators, including growers and garden centres, can move plants, including trees and seeds, between Great Britain and Northern Ireland via the new plant health label scheme. Consumers wishing to source plants and seeds direct from GB will need to meet official controls and regulations requirements. We will continue to work closely with the horticultural industry to ensure that consumers can access plants and trees from a wide variety of sources. Detail on the Northern Ireland plant health label scheme can be found at GOV.UK.

The noble Lord, Lord Morrow, the noble Baronesses, Lady Hoey and Lady Suttie, and other noble Lords, raised the issue of divergence between GB and EU standards and how these will be managed. The Windsor Framework ensures Northern Ireland's businesses have full, unconditional access to their most important market in Great Britain, while maintaining their privileged access to the whole of the EU market. It also contains important new mechanisms that will ensure we can closely monitor and manage divergence as it emerges. For example, under the Windsor Framework, we have established a number of joint UK-EU fora aimed at managing implementation issues, as well as longer-term issues of regulatory divergence. These include five new joint consultative working group structured sub-groups, as well as a new special goods body. These sub-groups will enable us to engage early where any rule changes could inadvertently lead to a new regulatory barrier to find appropriate solutions through the joint committee.

[LORD HARLECH]
It will mean that the regulatory environment in Northern Ireland can be better tailored to suit consumer and business needs.

Noble Lords also raised the issue of duty-free movement. It is critical that goods can continue to move freely on the island of Ireland. There are no controls on the movement of goods within the EU single market, so introducing duty-free shopping between Northern Ireland and the EU would allow untaxed goods to circulate among the EU, Northern Ireland and Great Britain. The alternative would be to introduce allowances and controls between Northern Ireland and the Republic. At the current time, neither of these is deemed acceptable.

The noble Lords, Lord Morrow and Lord Weir, and my noble friends Lord Jackson and Lord Moylan, as well as the noble Lord, Lord Bew, coming at it from a different angle and whose comments I am grateful for, asked why the requirements of the Windsor Framework are set out in EU not UK legislation. The disapplication and derogations from EU law agreed under the Windsor Framework mean that the EU must change its law, which of course it must do under EU regulations. This is none the less implementing the bilateral agreement between the United Kingdom and the EU. The Windsor Framework takes effect through a range of mechanisms, including amendments to the text of the framework formerly known as the Northern Ireland protocol, unilateral and joint declarations, and new UK and EU legislation. The EU has made new legislation to implement its obligations under the bilateral agreement between the UK and the EU.

The noble Lords, Lord McCrea and Lord Browne, and other noble Lords, wanted to press further on the issue of biosecurity. I can only restate that the Windsor Framework recognises the need to protect biosecurity on the island of Ireland, which has long been treated as a single epidemiological unit. Some checks, such as those on live animals, were required from Great Britain to Northern Ireland prior to EU exit and before the old Northern Ireland protocol was implemented to protect the integrity of this single epidemiological unit.

The noble Baronesses, Lady Foster and Lady Taylor of Stevenage, asked about the timing of the SI. I have been told by officials that the SI was laid after the Summer Recess, on 5 September.

7.30 pm

This instrument is subject to the negative procedure because of the rules in the enabling Act under which it was made. It does not contain any affirmative triggers.

A de minimis assessment for this instrument has been completed. The annual costs and benefits to businesses from this instrument are below the de minimis threshold. The instrument is part of a wider package of legislation brought forward by Defra to implement the Northern Ireland retail movement scheme and other arrangements under the Windsor Framework. Defra is considering the best means of setting out what the Northern Ireland retail movement scheme and other arrangements mean as a whole for businesses and the public sector.

The noble Baroness, Lady Suttie, raised the restoration of the Northern Ireland Executive. The Government believe that the Windsor Framework represents a turning point for Northern Ireland by restoring the balance of the Belfast/Good Friday agreement and respecting Northern Ireland's place in the UK. The UK Government want to see the Windsor Framework's benefits realised for the potential of businesses and people in Northern Ireland and across the UK in a manner that meets our international obligations. We continue to take forward work to implement the Windsor Framework and are engaging the Northern Ireland parties as part of those efforts.

This instrument is essential in implementing the benefits of the Windsor Framework, which is already successfully restoring the smooth flow of trade within the UK internal market by removing the burdens that have disrupted east-west trade and safeguarding Northern Ireland's crucial place in the union by addressing the practical problems affecting the availability of goods from Great Britain. I urge all noble Lords to support its implementation.

Baroness Taylor of Stevenage (Lab): On a matter of clarification, the Secondary Legislation Scrutiny Committee quite clearly says that the SI was laid on 8 August. It was Part 2 of the instrument that was laid on 5 September.

Lord Harlech (Con): I thank the noble Baroness for that clarification.

Baroness Hoey (Non-Afl): My Lords, I thank the Minister for his response, particularly for his commitment to unionists and to the union. I appreciate that he has had to stray—or perhaps not—off his brief, which is business to do with Defra. Noble Lords will realise that the problem with a debate such as this is that we do not get many opportunities to discuss anything about the constitutional position of Northern Ireland and the wider aspects that the Windsor Framework has brought about. Tonight, although this statutory instrument has been widened, we have seen some of that debate. The Minister might suggest to his noble friend sitting beside him, the noble Lord, Lord Caine, that we have a proper debate, in government time, on the situation in Northern Ireland and the whole question of the constitutional position so that we do not have to have these statutory instrument debates.

Having said that, I thank everyone who has spoken. It has been a very interesting debate. I really appreciate that some noble Lords spoke who were not from Northern Ireland. I was particularly pleased that the noble Lords, Lord Jackson and Lord Moylan, spoke, as did the noble and learned Baroness, Lady Butler-Sloss, who made a comment which will resonate with many people—that the very quiet majority in Great Britain do support Northern Ireland being part of the union. The Government and His Majesty's Opposition might sometimes bear that in mind.

Tonight we have seen general support for the regret Motion. It is interesting that we do not get many people speaking against it; we never seem to on Northern Ireland issues. It is simply the same numbers of us who come along, so it was particularly good to have those from outside Northern Ireland speak tonight. We also

saw an agreement that there must be a fundamentally different approach from the Government to deal with this. It is not going to go away. It is not going to be accepted by pro-union people in Northern Ireland.

The noble Lord, Lord Dodds, referred to the many questions, debates and discussions that we had on the protocol. When I look back to them, everyone was saying how wonderful it was and how we must accept it. Then, suddenly, it shifted; everyone was saying, "No, no, we've got to change", and that is when we got the Windsor Framework. We are now in that same position. The Windsor Framework is not going to work. It is not sustainable. It is not going to bring about democratic institutions again in Northern Ireland. We really must start thinking about why Northern Ireland was left out so much in the negotiations over the EU settlement. Even at this stage, the Government must rethink. I hope that the Labour Opposition, if they are going to be in government, will realise that this is something that they will have to deal with if the Government do nothing about it in the meantime.

This is a regret Motion. Every time that we have regret Motions we do not vote. People back in Northern Ireland and in other places say to me, "What's the point of a regret Motion if you don't actually show that you have regret?" Therefore, I would like to press this to a vote. I hope that at least some noble Lords will feel that, if they cannot actually oppose their Government on this and support my Motion, they can abstain.

8.37 pm

Division on Baroness Hoey's Motion

Contents 12; Not-Contents 65.

Motion disagreed.

Division No. 1

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Browne of Belmont, L. [Teller]
Campbell-Savours, L.
Dodds of Duncairn, L.
Foster of Aghadrumsee, B.
Hay of Ballyore, L.
Hoey, B.
Jackson of Peterborough, L.
Kilclooney, L.
McCrea of Magherafelt and Cookstown, L.
Morrow, L.
Moylan, L.
Weir of Ballyholme, L. [Teller]

NOT CONTENTS

Alderdice, L.
Anderson of Swansea, L.
Attlee, E.
Beith, L.
Bellingham, L.
Berkeley, L.
Best, L.
Bew, L.
Blake of Leeds, B.
Brinton, B.
Browning, B.
Caine, L.
Cameron of Dillington, L.
Colville of Culross, V.
Courtown, E. [Teller]
Davies of Gower, L.
Effingham, E.
Erroll, E.
Evans of Rainow, L.
Fookes, B.
Gascoigne, L.
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Haselhurst, L.
Hayman of Ullock, B.
Howarth of Newport, L.
Hunt of Wirral, L.
Kirkhope of Harrogate, L.
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Lindsay, E.
Mancroft, L.
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McIntosh of Pickering, B.
McLoughlin, L.
McNicol of West Kilbride, L.
Morris of Bolton, B.
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Randerson, B.
Robathan, L.
Roberts of Belgravia, L.
Roborough, L.
Sandhurst, L.
Seccombe, B.
Sheehan, B.
Snape, L.
Stansgate, V.
Stewart of Dirleton, L.
Stoneham of Droxford, L.
Storey, L.
Strasburger, L.
Suttie, B.
Swinburne, B. [Teller]
Taylor of Goss Moor, L.
Taylor of Stevenage, B.
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Wrottesley, L.
Young of Cookham, L.
Young of Old Scone, B.

The Division result was initially reported as Contents 13; Not-Contents 64.

Plant Protection Products (Miscellaneous Amendments) Regulations 2023

Motion to Approve

7.48 pm

Moved by ***Lord Harlech***

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

Relevant document: 1st Report from the Secondary Legislation Scrutiny Committee

Lord Harlech (Con): My Lords, I declare my farming and land management interests as set out in the register.

Ensuring that our farmers and growers have the right tools to grow crops and raise livestock is essential for food security and the rural economy. This instrument makes amendments to legislation for plant protection products—or pesticides, as they are sometimes known—to extend and reinstate transitional arrangements put in place after EU exit. These measures allow, first, the import of seeds treated with pesticides, authorised in the EU but not here in Great Britain, and secondly, the import of certain pesticides from the EU that are identical to those authorised in Great Britain.

I first turn to treated seeds. Seed treatments protect seeds and young seedlings from a range of threats, and for many farmers are crucial to ensure good crop establishment. The arrangements for treated seed imports will end in December, meaning that if nothing changes, this import route will no longer be available next year or beyond. Right now, many important seed treatments come to Great Britain through this route. For example, 99% of British maize seeds are protected with at least one pesticide available through these arrangements. That is £550 million-worth of crop which, as the main feed crop for cattle and a key biogas fuel, can have important downstream impacts on food and energy costs if there are changes in quality and yield.

Although emergency authorisations have recently been granted for several of these products—recognising the threat to the crop and the lack of other means of control—this is a short-term solution that cannot provide farmers with certainty in coming years. This instrument will extend current arrangements for three and a half years, providing certainty for farmers, alongside time to develop more enduring solutions.

[LORD HARLECH]

With any change to pesticide legislation, it is crucial to ensure that our high standards for public health and environmental protection are maintained. Only seed treatments authorised by at least one EU member state can be imported and used through these arrangements. This means they will have passed through a strict regulatory regime with similar high standards to Great Britain.

I turn to parallel imports. After EU exit, transitional arrangements meant that pesticides that were identical to products authorised in Great Britain could keep being imported for several years. These products tended to be cheaper than those on the British market, allowing farmers to reduce costs. Parallel imports ended in December last year, and farmers have until June 2024 to use the products currently in store. Noble Lords will be aware of the financial burdens farmers and growers currently face. Global events have significantly increased input costs, meaning that access to cost-effective pesticides is more important than ever for farmers already operating close to the margin.

This instrument will allow previous permit holders to re-apply for a parallel trade permit, lasting up to two years. Grace periods may be granted when that permit expires, allowing stocks to be sold for another six months, and stored and used for up to a year after that. This timing has been carefully considered. It will reduce financial burdens on farmers now, while ensuring sufficient regulatory oversight. To ensure compliance with our high standards, parallel products must be identical to their GB-authorised reference products. Through sampling and intelligence-led investigations, our regulator can identify products that are not up to these standards and will remove the permit if this is the case.

Across both parallel trade and treated seed imports, we are making the changes using powers in the retained EU law Act. Implementing these measures underscores our commitment to supporting hard-working farmers and delivering food security.

The measures are temporary, extending or reinstating post-EU exit transitional arrangements. They therefore do not constitute a significant change in policy. Rather, they provide farmers and manufacturers more time to adjust to the changes brought about by EU exit. For manufacturers, that is time to submit full applications for these important products and their alternatives. For farmers, it is time to adapt and integrate new products and methods into their practice. This will include the use of integrated pest management techniques, which we are already supporting through the sustainable farming incentive. The length of the extension has been designed to encourage this adjustment, so that manufacturers and farmers take the crucial steps needed to ensure that a permanent solution is reached, with our support.

I conclude by emphasising the importance of these measures. They will ensure that farmers and growers have the tools to grow healthy crops, feed the nation and produce our energy. The timely implementation of these measures is crucial so that they are in place before current arrangements end. I hope noble Lords will support these measures and their objectives, and I commend these draft regulations to the House.

Baroness McIntosh of Pickering (Con): My Lords, I congratulate my noble friend and thank him for presenting these very welcome measures. As I understand them, they are completing some unfinished business since the UK left the European Union. I have some brief questions for him—one of which I think he may not be able to reply to this evening, so I encourage him to write if possible. The first question relates to the time. I think my noble friend said that these measures would exist for three and a half years. He will be aware that the NFU had hoped that seed permits, in particular, could be reinstated for five years, or be valid for the duration of authorisation of the reference product. Just to help my greater understanding, can my noble friend explain why three and a half years was chosen, as opposed to five years, which would have given greater certainty to those who are using the products in question?

Also, the NFU has asked whether it is possible for Defra to put a commitment in place for longer-term measures. I wonder whether, particularly in relation to both seed treatment technology and a future GB parallel trade scheme, the Government might consider longer-term measures. I will revert to that in a moment.

My noble friend may be aware that FERA, the Food and Environment Research Agency, is based in Sand Hutton, in the constituency I had the honour to represent for five years, very close to York. I applaud the work that it does. It has asked to clarify this if possible. It appears that we are working off the old data requirements under previous regulations, specifically in looking at these products—data requirements for active substances under regulation EC 283/2013 and formulated products under a similar regulation, EC 284/2013. These have been updated, probably since we left the EU, for microbial biopesticides. Is it the case, in my noble friend's experience, that we are working on out-of-date data? That could potentially be seen as an additional barrier to entry for companies seeking to use EU data. Is this something that the Government might keep under review?

Similarly, alarm bells were set ringing, certainly in the UK, when a decision was taken that I think potentially killed off a pesticide reduction regulation in the EU. The European Parliament was responsible for that on 21 or 22 November. This seems to give an advantage to countries such as Brazil, which is looking to produce some of these biopesticides, which would not normally have been something that the UK would look favourably on introducing into this country. Can my noble friend explain what the procedure is within Defra for the control of pesticides now?

I conclude by referring to the conclusion of the Secondary Legislation Scrutiny Committee, in its first report of this Session in November this year. In paragraph 56, Defra is quoted in its reply as saying that

"the Government is committed to Integrated Pest Management … We expect to set out more detail on this in the National Action Plan on Pesticides, which will be published shortly".

I know that that is always a very popular phrase in government and parliamentary circles. I just invite my noble friend, if it is at all possible this evening, to put a timeframe on "shortly". Before Christmas? Before the

end of January? Before the spring—which is another loose parliamentary term? That would go some way to reassuring those involved in seed management and pesticide control as to the Government's thinking. With those few remarks, I welcome the regulations before us this evening.

8 pm

Baroness Walmsley (LD): My Lords, I thank the Minister for introducing these regulations. They seem to me to be another last-minute sticking plaster to protect farmers and our food security from the damage done by the UK's botched exit from the European Union.

As we have heard, the instrument allows seeds treated with plant protection products, which have been authorised in at least one EEA member state before 31 December 2020, to continue to be used in the UK for an additional three and a half years to 1 July 2027; otherwise, the authorisation will end at the end of this month. Can the Minister tell us why these products have not been authorised for use in the UK in the three years since the end of the Brexit implementation period? Why has it taken so long for nothing to be done?

The regulations also allow those who hold a valid parallel trade permit to apply for it to be continued for another two years. As we heard from the noble Baroness, Lady McIntosh of Pickering, the NFU tells us in its briefing that it needs five years rather than two to source equivalent products and that, without that, UK farmers will be at a disadvantage compared to EU farmers and will incur extra cost. Can the Minister say why the Government are allowing only two years? Defra says that the provisions will allow manufacturers sufficient time to apply for parallel product authorisation and PPP users to source alternative pest management solutions. I am still wondering what the hold-up is.

I always look forward to the arrival in my inbox of the Secondary Legislation Scrutiny Committee's regular excellent reports. Its latest report shows that it shares my concerns that even further extensions may be needed on top of the ones we are discussing today if the sector does not get on with applying for authorisations or if the process of authorisation continues to be as tardy as it has been for the past three years. Have the manufacturers not bothered to make applications since 2020 or has the system failed to process them? Which is it?

In reply to the committee, Defra denied that there was a problem with the Health and Safety Executive's capacity to process the documentation. However, it commented that

"the preparation, submission and assessment of new GB applications is a multi-year process".

It went on:

"One application has already reached the assessment stage".

One? After three years? These are important products to farmers. Defra has offered to consider streamlining the guidance to encourage industry applications. Perhaps there we have the answer to the mystery of why it has taken so long. Is this unclear guidance or gold-plating? Or has the whole thing fallen foul of the massive amount of work that the Civil Service and other organisations have had to do as a result of Brexit?

Defra's reply to the committee emphasised the Government's commitment to integrated pest management, which the Minister has repeated today. I applaud that approach, as do farmers who do not want to waste money on excessive spraying. However, I point out that the national action plan on pesticides, mentioned by the noble Baroness, Lady McIntosh of Pickering, was expected in spring 2022. How do I know this? It is on the Defra website; the consultation ended in February 2021. So, finally, can the Minister say when farmers and horticulturalists can expect this delayed national plan, because it will affect their ability to plan their cropping and land use, and the profitability of their businesses? I hope that the Minister can answer my questions.

Baroness Hayman of Ullock (Lab): My Lords, clearly we are all aware that farmers and growers have had to deal with some pretty formidable challenges over recent years, including the rising costs of fertiliser, feed and energy. It is really important that we do everything we can to support farmers going forward.

I absolutely understand the concerns that have been raised about any prospect of further crop loss due to disease or insect infestation, as well as the anxiety around the kinds of tools that farmers can use to protect their crops and to prevent any problems and the financial consequences that come from them.

The noble Baroness, Lady Walmsley, just mentioned the national pesticide action plan, as did the noble Baroness, Lady McIntosh. I note that, when this was debated in the Commons at the end of last month—only last week, in fact—the Minister said that it would come "soon". We have been hearing that for quite some time. If the Minister is unable to give any more detail on that today, it would be good if he could press his department to come up with a more concrete date so that we all know when we are likely to see the plan.

I have a few questions about certain things. First, I am sure that noble Lords who have heard me speak before know that I am particularly interested in consultation. The Explanatory Memorandum says that feedback from informal stakeholder engagement was strongly supportive of the proposed extension. I would like to understand better what is meant by informal stakeholder consultation. Who did the Government consult? How is that managed? I ask out of interest.

I want to make the point that we support the extension. However, it is not clear how the time limit of three and a half years was arrived at for the provisions. Other noble Baronesses have mentioned the fact that the NFU is concerned about that date. Again, more understanding of how the date was arrived at and whether it had anything to do with the informal consultation that took place would be helpful.

Although we support the extension, we believe that it needs to be temporary. During this time, growers, farmers and researchers need to be effectively and productively looking for alternative crop protection solutions. We urge Defra, the Minister and his department to look at how they can encourage the development of alternatives and outline any measures that the Government are taking to facilitate and accelerate the development of alternative systems for crop protection.

[Baroness Hayman of Ullock]

I do not know whether the Minister has seen the very good report that was published in January this year and produced by the Pesticide Collaboration, *Designing Pesticide Reduction Targets for the UK*. It looks at what is happening in other European countries, such as Denmark and Germany, that have set pesticide reduction targets. One thing that the report does, which I draw to the Minister's attention, is to highlight the inadequacies of existing pesticide usage data as a major barrier to both setting and measuring progress towards the UK's pesticide reduction targets. What are the Government doing around this? When we get the national action plan, will it have those reduction targets in place? Will it have a plan for how to get there and how we will invest in new methodologies?

I have a couple of final questions. Looking at how we will move forward, where, if at all, does the gene editing Act fit in with this? In particular, how will that Act fit in with the pesticide national action plan when we see it? While we were debating that Act in this House, all the briefings and a lot of the information that came from the Government and noble Lords at the Dispatch Box related to how researchers and industries were expected to move quickly, for example to reduce reliance purely on chemicals. Answers to those questions would be very helpful.

Finally, I ask about the level of information that the new system will require for any future authorisations to be given. The reason for asking this is because, previously, the Government have admitted that they intend to ask for less safety information for registration of chemicals in the UK. My question is really to find out if this will extend to seed treatments. If so, we could see things authorised in the UK that would not be used in other jurisdictions. Some clarification would be most helpful.

Lord Harlech (Con): I thank all noble Lords for their valuable contributions to this short but important debate.

On the issue of consultation, I believe that stakeholder engagement was conducted with Minister Spencer, listening to farmers, manufacturers and industry bodies. Noble Lords asked why we are looking at these issues now and why this was not introduced sooner. After EU exit, we put arrangements in place until the end of 2023 to continue the import and use of seeds treated in the EU; this gave the GB industry three years to adjust. The Health and Safety Executive has been working with manufacturers and seed users over the past three years to prepare them for these changes, demonstrating the Government's continued commitment to the area. This extension recognises that the process of making an authorisation is multi-year, and longer for any new products. We will support manufacturers to deliver on these requirements.

The arrangements put in place at the point of EU exit aimed to smooth the transition to a GB regime without parallel trade. However, global events have led to price increases across a range of important sectors. This means that the need to access cost-effective plant protection products has become more acute. We recognise this pressure and are taking action to address these issues. The measures are indeed temporary, but we have now set our sights firmly on delivering more enduring solutions. We are committed to working with stakeholders in both farming and industry to ensure that these solutions work on the ground. We are already delivering solutions to increase farmers' toolboxes to counter pests, weeds and diseases with the introduction of new paid integrated pest management actions within the SFI scheme. We are also supporting research into integrated pest management, including £270 million through the farming innovation programme. This will help farmers to access the most effective pest management tools available and ensure that we understand changing trends in pest threats across the UK.

My noble friend Lady McIntosh asked whether two years is too short to be of any use. We believe that the reinstatement of this time length will allow parallel imports to continue, and grace periods may be granted to allow stocks to be used for a further one and a half years after that. This means that pesticide users may have access to these products for three and a half years in total. For many in the sector, the extension will be sufficient, and parallel trade trends tend to be short term and dynamic, as traders respond to different price differentials in the market. The length of extension has been carefully balanced to support farmers now and to maintain regulatory oversight, as a shorter extension minimises the risk of counterfeit and non-compliant products entering our market. However, in the long term we will work with industry to increase the supply of alternative products, and bolster the choice and competitiveness of the market for all pesticide users.

For seed treatment, we are extending by 3.5 years. Again, this is a multi-year process, and this extension allows manufacturers to gather the appropriate data and submit applications for both new and existing products before these measures end, therefore supporting farmers' access to the tools that they need. The length of the extension was considered carefully to allow farmers time to adjust and to increase their use of integrated pest management alongside current products. This will support flexibility and resilience in the face of the pressures they are having to deal with.

8.15 pm

We appreciate that the national action plan for the sustainable use of pesticides has been delayed. We will publish it shortly. We have not waited for the publication of the NAP to move forward with work supporting sustainable pest management. Farmers can now sign up for new paid IPM actions within the SFI, so there are things happening, and people are being paid to make things happen. It is not as if nothing is happening. I have already mentioned the £270 million that we are putting into farming innovation, and we will continue to work with and help farmers to find the most effective pest management tools.

The noble Baroness, Lady Walmsley, asked why there have not been authorisations for seed treatments since EU exit, and asked whether this was a question of HSE capacity or concerns about cost. We have had no indication from the Health and Safety Executive that a shortage of capacity has led to a lack of product authorisations for treated seeds. However, the preparation, submission and assessment of new applications is a multiyear process. One application for maize has already reached the assessment stage and is currently being considered. We will continue to work closely with the HSE.

Baroness Walmsley (LD): As to why it takes so long, is it because the UK is insisting on new field trials and new trials and tests, rather than accepting the ones that were deemed adequate when the products were first authorised?

Lord Harlech (Con): That is a very fair question, and in order to answer the noble Baroness correctly, I think it is better if I go back to the department and write to her and all noble Lords with the reasoning behind this.

I have not been able to say exactly when the NAP is going to be published, but it will set out our ambitions across pesticides policy and regulation, with a key aim to minimise the risks and impacts of pesticides on human health and the environment, while ensuring that farmers, growers and other land managers have the tools they need to grow our food safely. The work is wide-ranging and complex, which is reflected in the number of responses received. I know the noble Baroness is very keen on consultation. We have had more than 38,500 responses, so it is important that all of that is calculated into the plan. It is a UK-wide document. Harking back to the previous debate this evening, I am pleased to say we have worked closely and fruitfully with colleagues in Wales, Scotland and Northern Ireland to ensure that the plan works across all our home nations.

Sustainable farming practices are very important to the Government, and we remain committed to the targets agreed in the Kunming-Montreal global biodiversity framework and the global framework for chemicals. UK diplomatic leadership was critical to agreeing the frameworks, and we will continue to champion their implementation.

My noble friend Lady McIntosh mentioned biopesticides and asked what we will do to increase their availability. It is quite a technical area that I am not fully up to speed on, so, if it is okay with my noble friend, I will commit to write to her and all noble Lords on biopesticides specifically.

I will go back over *Hansard,* and I will write to noble Lords on any questions that I have not covered this evening. We realise that this is an important instrument to facilitate the work that our farmers do to bring food to our tables and, increasingly, energy to our homes. It is important in our role as the Government to make sure that they have the support to do that. This statutory instrument will extend or reinstate EU schemes to ensure that farmers have the tools they need going forward and that the industry has time to adjust. I commend these draft regulations to the House.

Motion agreed.

Merchant Shipping (Counting and Registration of Persons on board Passenger Ships) (Amendment) Regulations 2023

Motion to Regret

8.20 pm

Moved by ***Lord Berkeley***

That this House welcomes the contribution to passenger safety made by the Merchant Shipping (Counting and Registration of Persons on board Passenger Ships) (Amendment) Regulations 2023 but regrets the delay in the introduction of the regulations and that they do not cover passengers travelling on non-passenger ships.

Relevant document: 49th Report from the Secondary Legislation Scrutiny Committee, Session 2022-23.

Lord Berkeley (Lab): My Lords, I am pleased to move this Motion to Regret tonight. Effectively, I am trying to probe some of the issues that are raised in these draft regulations. I must say to start with that I support everything that is in them, because they have very serious and helpful safety implications.

I suppose my first question for the Minister is the usual one with such regulations. Why has it taken 24 years from the original 1999 regulations for this new draft to be brought before your Lordships' House?

I think it is really important that there is a requirement to record the number and details of the passengers on passenger ships, both going around the UK or going to or from the UK, but I have a number of questions on the way these regulations are drafted. It may be because I am too stupid to understand them, but it may be that other people share that concern, and I shall be pleased to hear the Minister's answers.

My first question, which also applies to the regulations of 24 years ago, is why these regulations appear to apply only to passenger ships? Many people go on journeys in freight ships; sometimes they are long, probably going internationally, and sometimes they are around the coast. I rather too regularly use a freight ship that goes from the Isles of Scilly to Penzance, which is beyond 20 miles and so comes within that limit. It is a freight ship, and it is quite good for taking freight. It is not particularly comfortable, but it will take up to 12 passengers—and of course the number 12 is quite critical for many other safety rules. I think it has seats for about six, and it is very nice that, when the crew are having a good fry-up on their four or five-hour journey, they will not make you a cup of tea either.

That is irrelevant, but what appears odd is that there seems to be no requirement of the operator to report who the passengers are. In other words, if something happens to that ship and we all drown, I do not know how the authorities will know who we are. If it had been a passenger ship, the names would have gone to the coastguards or wherever, which would have helped with identifying the bodies and everybody else. I hope none of that happens, but it seems extraordinary to me that, on a freight ship, the operator apparently does not have to do report who is on it and their names and addresses.

I suppose the biggest question I have concerns Regulation 9, on "exemptions". I am not quite sure what "exemptions" means. Again, I may just be being ignorant and stupid, but are they exemptions from actual reporting or exemptions relating to how you report? We are moving into the electronic age, and it is quite right that the quicker the passenger list can be transmitted off the ship, the faster the ship can leave, which is a good thing. But it is a bit odd that, having brought in these regulations, we have so many exemptions, which means that, basically, anybody can be given an exemption.

[LORD BERKELEY]

Regulation 9(2) says that

"the Secretary of State may exempt any passenger ship … if the scheduled voyages of such ship, class of ship or group of ships render it impracticable for that ship, class of ship or group of ships, to comply with those requirements".

I cannot see what circumstances would prevent the master or owner of the ship telling the coastguard who is on the ship and giving their names and addresses; they will have provided them before they get on the ship. Maybe the Minister can help me with that. If these exemptions are important, the whole point of this regulation is almost lost. If there are so many ways that the Minister can wriggle out of it, for good or bad reasons, what is the point of it?

In its 49th report, the Secondary Legislation Scrutiny Committee, in answer to question 4, has a good list of comments. It says that the restrictions came from the original directive, and that:

"The exemption provisions were complex and restricted the scope of the exemption power to just certain vessels on certain types of routes with restrictive conditions".

It goes on to say that, basically, the Secretary of State can decide to change whatever these restrictions are. Question 5 asks:

"What makes it 'impractical for the shipowner to comply?'"

The Minister's answer is:

"This would depend on the circumstances … on a case-by-case basis".

I know a lot of work has gone into this document and I am sure it is very good overall, but whether shipowners and skippers understand what they have to do, and whether it was worth all the effort, I am not sure. Can the Minister perhaps explain to a landlubber like me what it is all about, why it is so important and who can wriggle out of giving him any information? I beg to move.

Lord Greenway (CB): I am grateful to the noble Lord, Lord Berkeley, for allowing us to discuss these regulations. Before I go further, I would like to welcome the Minister to his new maritime role. He has a steep learning curve, and I can only wish him well.

We are moving more and more to computers, left, right and centre; everything is computerised. In a way that is a good thing and I welcome it, but we all know that computers go wrong so I am slightly worried that systems that are meant to work will not always do so. What is the back-up position if that happens?

8.30 pm

The noble Lord, Lord Berkeley, mentioned his regular trips to the Isles of Scilly and, in particular, the small cargo ship called the "Gry Maritha". Before congratulating him, I will say that I remember making a voyage in what was not much more than a square box. It was highly uncomfortable. I think I am right in saying that in days gone by, when we had many regular cargo liners regularly operating to all parts of the world, almost all of them carried 12 passengers. They could not carry more because, if you had more than 12, then you had to carry a doctor on board, which was an extra expense. I wonder whether that would apply to the ship that has been mentioned. Perhaps the Minister could confirm that.

We have debated a number of maritime regulations over the past two or three years, and there has been the rather unfortunate delay in many of them that the noble Lord, Lord Berkeley, mentioned. I only say that in passing because we have got this thing moving forward. The coming into effect of the new digital reporting has been put back by a further two years. I take it that perhaps it has taken longer to set up the system then was at first envisaged.

However, I generally welcome these regulations, complex though they are, and I hope that in the long term they turn out to work very well.

Baroness Randerson (LD): My Lords, I thank the noble Lord, Lord Berkeley, for his assiduous attention to these issues. I need to make it clear to the House that I am a member of the Secondary Legislation Scrutiny Committee, which drew the attention of the House to our concerns at the less than clear responses to our questions on behalf of the Government.

There are two issues that I want to raise. First—and this follows on directly from the comments of the noble Lord, Lord Greenway—these regulations are undoubtedly a casualty of the long-standing backlog that has been built up by the Department for Transport in its international maritime legislation. We in the UK are a maritime nation; we pride ourselves on our maritime traditions and they are an important source of our economic strength. The mess that we have got into in keeping up with the latest legislation on maritime issues, almost all of which is associated with safety, is a source of national embarrassment. The Minister, newly in this role, has my profound sympathies. His predecessor worked to try to deal with this issue, but there is still a long way to go.

In probing behind the official obfuscation of the Government's explanations, the opaque replies to the SLSC basically lead me to the conclusion that the Government's new online system is not ready—that they have fallen behind in the work—so the delay is basically nothing to do with giving the industry more time to adapt and so on but is all to do with just not being ready. I am sure the Minister will come back to me on that if I have concluded inappropriately.

My specific question to the Minister is: can he explain exactly how, in technological terms, the numbers on board and personal details are reported now? Surely in this day and age, it already has to be through some form of electronic communication. In the tragic event of a situation where people have to abandon their vessel, surely the ship's master does not leap over with a paper logbook; it all has to have been done electronically. Are we right to assume that there is an electronic system but that it is not done officially to the right format, in the right scheme of things or on the right computer programme?

The second point I want to make is that this is all about safety, and we must not lose touch with that. This is not about petty bureaucracy but safety, and it is essential that, when an accident occurs—sadly, they do, on a regular basis—rescue services know immediately how many people they are looking for and exactly who those people are. Are there any children, any elderly people or anyone with particular health problems?

I am concerned not only at the delay but—I join the noble Lord, Lord Berkeley, on this—because the Government have introduced new exemptions, where it is impractical for a ship to comply. This apparently includes, potentially, where a voyage involves a deviation from the usual route. Surely this may well involve an unfamiliar route for the crew on board, and it is in just those sorts of circumstances when an accident is more likely to occur. Can the Minister explain why that has been chosen as a potential exemption?

Finally, most international sea voyages from the UK are to, for example, Ireland, France, Spain, the Netherlands and so on. These are EU countries. Can the Minister answer a specific query that I have as to how this will work? Once the vessel enters EU waters, will not the EU countries concerned require full and proper records of who is on board and in the full, proper and up-to-date format? Will not those who are working the vessel have to fulfil that requirement, even though the UK Government do not require them to? I may have got the wrong end of the stick on how this will work, but I cannot see the EU allowing a British ship to adhere to different standards once it is in its own waters.

Lord Tunnicliffe (Lab): My Lords, often described as the lifeboat of the UK economy, the merchant shipping industry plays a pivotal role in ensuring the smooth running of people's day-to-day lives, aiding the transition of goods and ships while supporting over 180,000 jobs in the UK, according to the Centre for Economics and Business Research. On the global scale, the industry facilitates the economy through the wider supply chain, supporting the running of 680,000 jobs.

According to the Office for National Statistics, looking solely at shipping, the sector contributed £6 billion to the economy in 2020, accounting for 19% of the transport industry. I am pleased to share my support for the merchant shipping industry and the introduction of the necessary regulations, which have been long awaited. This instrument will update and modernise the 2021 regulations, implementing corrections in the light of mistakes existing in the earlier legislation. Further, it postpones the deadline for all ships in UK waters to report data on the persons on board by two years.

Subsequently, from 2025, UK-flagged passenger ships, wherever they are located, and passenger ships within UK waters, will have to use an electronic method to report information regarding passengers on board. Search and rescue authorities will then quickly have access to essential information needed in the event of an emergency. This will reduce the loss of, and the risk to, lives at sea.

I therefore empathise with and support my noble friend's Motion. Indeed, these highly significant regulations are welcome and long overdue. Further, I understand his concerns relating to the inadequate protection for passengers travelling on non-passenger ships. I am pleased that the House has the opportunity to discuss these protections today.

I would like the Minister to provide clarity on three central concerns. First, how did the Government learn of the mistakes in the 2021 regulations and what would be the consequences if they were not corrected? Secondly, given the postponement, how have the Government calculated that there will be no safety risk? Is the Minister not concerned that prolonging its implementation will only prolong the safety risk? Finally, given that the Explanatory Memorandum notes that the consultation on these changes received only seven responses, can the Minister explain the consultation process a little more? Is he satisfied that the results are credible, given how few responses were received?

To support the UK's global position as a great trading nation, as well as a healthy and thriving economy, is to support the merchant shipping industry. I am positive that this instrument will play a vital role in the future of the industry by strengthening safety protections, and I therefore welcome its laying before the House.

The Parliamentary Under-Secretary of State, Department for Transport (Lord Davies of Gower) (Con): My Lords, I thank noble Lords for their consideration of these regulations. I will try to respond to the specific points raised. I must confess that I find this quite a technical issue and subject matter. Where I cannot answer questions this evening, I undertake to write on specific points to noble Lords.

The Motion mentions the delay in the introduction of these regulations. They are not part of the maritime backlog and are therefore not late in that context. The regulations were made in 2021 and implemented the latest EU directive on persons data obligations, including a deadline for the electronic reporting of data, and placed additional restrictions on exemption powers. We have progressed the changes requested by the Joint Committee on Statutory Instruments in the 2021 regulations with much urgency. However, for reasons of efficiency, we have used this legislative vehicle to also take forward some post EU exit opportunities, which do not reduce safety standards and go some way to relieving the pressures on operators—namely, a postponement on electronic reporting obligations and the addition of flexibility to the exemption provisions. This allows the Secretary of State, through the Maritime and Coastguard Agency, more discretion to implement the regulations pragmatically.

The noble Lord, Lord Berkeley, raised some interesting issues. He questioned why the person-counting obligations do not also apply to non-passenger vessels. Non-passenger vessels that normally carry only crew are accounted for by their operators, who hold all the necessary detail required for an emergency search-and-rescue operation. The few ships that routinely carry passengers but carry fewer than 13—and therefore are not defined as passenger ships—are generally much smaller, and the application of these obligations would be disproportionate for these small vessels. This approach is the recognised one in the international maritime community.

8.45 pm

The regulations are not part of the UK's international maritime convention backlog, as they are not late in implementing international amendments. They are also not part of the domestic backlog, as there has been no public commitment to bring them into force. These

[LORD DAVIES OF GOWER]
regulations do not impose any additional burdens on industry, and in fact they refine the existing regulations to enable a more pragmatic application of obligations, furthering post-EU exit opportunities. Good progress has been made on the maritime backlog, and the department has been working on 13 international measures, 10 of which have been completed, and the final three are on track to be completed by spring 2024. Additionally, of the seven domestic measures identified, five have been completed and the remaining two should be completed in the autumn of 2024.

The regulations address some points raised by the Joint Committee on Statutory Instruments in relation to the drafting of a set of amending regulations made in 2021, as well as taking advantage of some post-EU exit opportunities. These include delaying the unnecessarily onerous deadline for reporting persons' data electronically through the maritime national single window, and introducing flexibility into the exemption provision, which was made inconveniently narrow under an EU directive, enabling the pragmatic enforcement of legislation.

The Maritime and Coastguard Agency held a four-week public consultation on the draft 2023 amending regulations and the accompanying draft merchant shipping notice amendment. The consultation ran from 28 February to 28 March 2023, and vessel operators affected were consulted and were supportive of these deregulatory measures.

The department has allocated more resources, particularly legal resource, to address international obligations, and it plans to identify forthcoming amendments to conventions. The negotiating stage has also been enhanced. The use of an ambulatory reference to automatically incorporate technical amendments into UK law has been incorporated into merchant shipping legislation over a period of years, to ensure prompt implementation into domestic law.

The regulations have come into force in time to postpone the reporting deadline of 20 December 2023 to 20 December 2025. Postponement of the electronic reporting deadline does not affect safety, as the necessary data is already collected and retained in a way appropriate for its purpose. These regulations are also essential to provide the flexibility required in exemption provisions for situations where particular requirements are disproportionate or impractical—for example, if a ship is in an area where there is no internet connection and cannot report the data through the internet-based maritime national single window.

The noble Baroness, Lady Randerson, raised concerns about safety. These amendments do not reduce safety standards, as the data being collected about persons on board a ship is already being satisfactorily collected by other means. Exemptions will be given only in exceptional circumstances and when it is safe to do so. The move to electronic reporting is being postponed, but the data is still being collected manually, under the 1999 regulations, by a registrar who makes it available to His Majesty's Coastguard in an emergency—so safety is not affected. The exemption provision inherited from EU law is unnecessarily complex and cumbersome, not only to understand but to apply. The EU requirements removed the discretion for the Maritime and Coastguard Agency to use pragmatism in situations that allow it.

I turn to a couple of points that the noble Lord, Lord Berkeley, raised. It has not taken 24 years, as these are revisions to regulations that were previously amended in 2021. The 1999 regulations brought in the original requirements and the 2017 directive updated them and was implemented by the 2021 regulations. The 2023 regulations introduce flexibility.

The noble Lord, Lord Greenway, raised the point about passenger ships, and these regulations apply only to passenger ships—that is, to those carrying more than 12 passengers.

On the point made by the noble Baroness, Lady Randerson, about how data is currently collected and reported, I can say that it varies from ship to ship. The method of collecting and reporting is checked by the Maritime and Coastguard Agency.

I think that it was the noble Lord, Lord Tunnicliffe, who raised this—but there were no mistakes in the 2021 regulations, which implemented EU directive 2017/2109. That directive was unnecessarily onerous in some administrative areas, to which I alluded earlier.

I am conscious that perhaps not all the technical points have been answered. As I said at the outset, I shall respond to them in writing. I hope that noble Lords agree that these regulations are important to ensure a sensible approach that combines safety and pragmatism for UK passenger ship operators. The requirements do not need to apply to non-passenger ships, as operators can make their own appropriate arrangements for the very small numbers of passengers that may be carried on those vessels.

Lord Berkeley (Lab): My Lords, I am grateful to the Minister for his comprehensive reply. He is new to the post, and I think that he has tried very hard and given us some good answers. I am very grateful to other noble Lords who have contributed to this very short debate. I look forward to the Minister's answers in writing in due course.

However, I have one question on the issue of passengers on freight ships. The Minister said that on non-passenger vessels the company—the skipper, presumably—holds all the details of the passengers. Sadly, ships do sink, as the noble Baroness said earlier. The last one that I recall is a car-carrying ship that sank off the Netherlands; it set itself on fire and it sank. I do not think that there were any casualties, but there could have been. There is not much point, if a ship sinks, of all the records going down with it. This is not so much to do with this particular instrument—it is outwith its scope, I think—but the Government might want to look at the fact that it is an international agreement that you do not have to keep the information about people somewhere other than on the ship. Perhaps the Minister could put that in his letter when he replies. On that basis, I beg leave to withdraw the Motion.

Motion withdrawn.

House adjourned at 8.52 pm.