

Hansard

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Invasive Non-native Species (Amendment etc.) (EU Exit) Regulations 2019

Volume 795: debated on Tuesday 22 January 2019

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Motion to Approve

🕒 5.19pm

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Lord Gardiner of Kimble >

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That the draft Regulations laid before the House on 6 December 2018 be approved.

The Parliamentary Under-Secretary of State, Department for Environment, Food and Rural Affairs >

(Lord Gardiner of Kimble) (Con)

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My Lords, this instrument will ensure that legislation preventing and managing the introduction and spread of invasive non-native species will continue to function when the UK has left the EU. The cost of threats from invasive species has been estimated at around £1.8 billion per annum. Since 2008, a GB-wide strategy has been in place to deliver action to address the threats posed by these species.

The instrument is being introduced under the correcting powers set out in Section 8 of the European Union (Withdrawal) Act 2018. Principally, it makes amendments to the directly applicable EU regulation on invasive non-native species to address technical operability issues as a consequence of EU exit. This statutory instrument applies to England, Wales and Northern Ireland. It also extends to Scotland in respect of imports and exports, and to the offshore marine area. Devolved Administrations were closely engaged in developing this statutory instrument.

The instrument maintains existing safeguards. It does not create new or change existing policy. It does not therefore put any new or greater administrative or economic burdens on business or other stakeholders. While there was no statutory requirement to consult publicly on this instrument, officials have held informal discussions with key stakeholders from different sectors in the development of the statutory instrument. Stakeholders had the opportunity to view the instrument before it was laid in Parliament and did not raise any concerns.

Some of the amendments made by this instrument are purely textual: for example, removing references in the EU legislation to the UK as an EU member state. Others make devolved Ministers responsible for a range of measures necessary to operate the existing system, such as the obligations to establish action plans or to undertake official controls.

The instrument also makes a small amendment to Section 11 of the Destructive Imported Animals Act 1932. This amendment ensures we treat EU member states in the same way as other countries with regard to the restrictions on imports of species to which this Act applies. The existing EU list of species which currently prevents and manages the spread and introduction of invasive species will continue to apply across all parts of the UK on exit day. In England, Wales and Northern Ireland, this EU list will become the list of species of special concern.

We will retain the requirement to review this list at least every six years. Any change to the list will be informed by robust scientific advice provided by the UK replacement for the Commission's scientific forum, and the underpinning risk analysis will be based on the same criteria and principles set out in the EU regulation. A decision to amend the list can only be made by the Secretary of State by regulation with the consent of the Ministers in the other parts of the UK.

The instrument also retains the obligation for Ministers to be supported by a committee and to be advised by a scientific forum. We intend to draw on the extensive knowledge and experience of the existing programme board on non-native species to support Ministers and the non-native risk analysis panel to provide scientific advice. These GB bodies will be extended to include Northern Ireland. The UK has significant expertise in invasive non-native species—including in the area of risk analysis, in which we are among the leaders in Europe. The non-native risk analysis panel will continue to draw on the expertise of highly respected scientists from the UK and overseas.

Invasive non-native species are no respecters of boundaries or borders. The UK is committed to ongoing co-operation with the EU member states and other countries after exit. This instrument retains the obligation under the EU regulation for Ministers to make every effort to ensure close co-ordination with other countries including, where appropriate, under regional and international agreements.

With regard to ensuring transparency and accountability of environmental performance, the instrument will require Ministers to report by June 2019, and every six years thereafter, on the implementation of the regulation as well as retain the duty to review and report by June 2021 on how the regulation has operated.

More broadly, of course, just before Christmas the Government published draft clauses on environmental principles and governance, to be included in an ambitious and broader environment Bill that is set for introduction next year. These clauses provide for the office for environmental protection—the OEP—as an independent, statutory environmental body. The OEP will provide independent scrutiny and advice and will hold government to account on the implementation of environmental law once we leave the EU, replacing the current oversight of the European Commission.

The Government were strongly supportive of the strict measures in the EU invasive alien species regulation when it came into force in 2015. These measures remain essential to tackle the significant threats that these species pose to our native plants and animals. This instrument will ensure operability so that the strict protections that are in place for these species are maintained when we leave the European Union. I beg to move.

Lord Adonis >

(Lab)

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My Lords, the House is grateful to the Minister for his introduction. First, since this is his department, I will raise with him an issue I raised earlier about the Order Paper. On the original Order Paper for today's business, published on 16 January, we were told that the Conservation of Habitats and Species (Amendment) (EU Exit) Regulations 2019 and the Conservation (Natural Habitats, etc.) (Amendment) (Northern Ireland) (EU Exit) Regulations 2019 would also be debated today, but then they mysteriously vanished from the Order Paper. I understand that there is some controversy surrounding those two regulations. Can the Minister tell us why they vanished and what has happened to them?

Lord Gardiner of Kimble >

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It is very straightforward to bat that away. They had not come out of the JCSI, and we thought that it was important that we had the benefit of the committee's view. Of course, we will need to bring them forward for your Lordships' scrutiny.

Lord Adonis >

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I see. Is the Minister saying that they had not completed the earlier sifting process?

Lord Gardiner of Kimble >[Share](#)

My understanding is that they had not come out of the JCSI, and I think we would all find it helpful in our deliberations—I certainly have on these two matters—to hear what the scrutiny bodies of the House had come forward with on these instruments. It is therefore constructive that, wherever possible, we bring forward instruments which have gone through the scrutiny that we would all like.

Lord Adonis >[Share](#)

My Lords, the Minister has made a good point, but that raises the issue as to why the regulations were put on the Order Paper at all if they had not gone through those processes. Some noble Lords had gone to the effort of preparing for today's debates, thinking that they were coming forward. There seems to be a certain chaos in the proceedings in respect of these no-deal regulations. Every time we come to discuss them, some come on to the Order Paper at short notice, while others vanish from it. I assume that it was not unknown to the Government that they were going through this scrutiny process. Since we have many hundreds more of these regulations to come, to have some good order in how they are considered may be for the convenience of the House.

My only comment on the consultation—again, the House is concerned about who has been consulted and what advice they have given on the basis of the consultation—is that peculiar language is used in respect of it. We have another regulation today where the language is peculiar. Paragraph 10.1 in the Exploratory Memorandum on this regulation says:

“No formal public consultation has been undertaken”,

in respect of this order. But it continues:

“Policy officials have held limited informal discussions with key stakeholders from different sectors, including the Invasive Non-Native Species Working Group of Wildlife and Countryside Link”,

and then it lists other such organisations. Can the Minister tell the House what constitutes “limited informal discussions”? The words “limited” and “informal” are highly peculiar. Were they limited in the sense that only part of the regulations were disclosed to these august bodies, or limited in the sense that people were limited in what comments they were allowed to express in these consultations? In what respect were they “informal”? Does that mean that they were expected to keep these conversations secret, or that they were held in a pub? What does that word mean in this context?

🕒 5.30pm

The House would expect that consultations were formal and not limited. I do not like the idea of informal limited consultation on regulations of this importance. As the Minister said in his opening remarks, we take great pride in the fact that we have very high standards of regulation. I would not expect that we would be in any way limiting or seeking to make informal consultation on regulations on matters which are of great importance. What is meant by “limited and informal”? To reassure the House that there is complete transparency, will he publish the responses given by all the bodies listed in paragraph 10.1 of the Explanatory Memorandum?

If we were doing this by the normal procedures of the House and some normal standards of parliamentary scrutiny, I would now not expect the House to approve the regulation until noble Lords had the opportunity to read the limited and informal consultation responses set out in paragraph 10.1. I know what the Minister will say, because all these regulations are being railroaded through the House. He will tell us that he is unable to make them available to us and the Question will be put. That is another abject commentary on the procedures of this House in overseeing all this secondary legislation.

Now that my expectations have been so reduced as to what we can expect of the mother of Parliaments in its scrutiny of legislation, I shall not contest the passage of the order because we will not see this limited and informal consultation, but I hope that the Minister will send to noble Lords and place in the Library of the House all the responses listed in paragraph 10.1.

In respect of the other regulations that we have coming, including the conservation of habitats and species regulations, which are clearly going through the scrutiny processes of the House, when I read the Explanatory Memorandum to those regulations, the words “limited and informal” reappeared. Perhaps I can give the Minister notice, so that we can have some better order in our discussion of

these matters, that it would be very helpful if the department would publish all the limited and informal consultation responses that there have been before we have unlimited and formal debate on the regulations in the House in due course.

The Earl of Selborne >

(Con)

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My noble friend in his helpful introductory remarks reminded us that this country produced its own strategy for invasive non-native species first in 2008. That was followed in January 2015 by the EU invasive alien species regulation. When the second strategy was published later the same year, the document stated that the EU regulation,

“represents a step change in approach and requires Member States to implement a range of measures for the prevention and management of”,

invasive non-native species, from which I think we can infer that the EU regulation of January 2015 upped our act and that of other member states.

Of course, invasive non-native species, whether terrestrial, freshwater or marine, can have devastating commercial effects. The question on which we have to satisfy ourselves in scrutinising the regulation and hearing that the EU destined to be retained is: are there opportunities, now that we will be separated by Brexit—if that is to happen—because we can define the area from which we expect to be protected from invasive non-native species? We are no longer thinking just about continental Europe and this country. Rather than wait for the list to be amended in future, is there an opportunity that would not have been available under the previous administration to start looking at the list of invasive non-native species from a totally GB perspective?

Baroness Parminter >

(LD)

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My Lords, I thank the Minister for his opening remarks and for agreeing to a meeting with myself and the Labour Front Bench prior to the introduction of this statutory instrument, given that it is the first of what we know will be many for Defra. As might be expected in those circumstances, we on these Benches regret the necessity of these statutory instruments should we exit the EU. However, we support the statutory instrument's intent because controlling non-native invasive species is important for those of us who care passionately about biodiversity loss, which non-native invasive species are a primary means of achieving, and the cost to the public purse.

I will touch on a number of points for clarification. First, the preamble of the invasive alien species regulation, which frames the overall intent and ecological context of the regulations as they stand and therefore guides the implication of any future policy decisions, is not included in this statutory instrument. Can the department say why? I imagine the Minister will say that it is because of the expectation of a forthcoming environment Bill, on which we have heard warm words from the Secretary of State about the inclusion of overarching environmental principles. Of course, this House cannot see that Bill at the moment and therefore cannot be assured that critical matters in the preamble to this statutory instrument, such as the precautionary principle, will be a fundamental building block in it.

That point is particularly important given a letter sent by the noble Baroness, Lady Goldie, to my noble friend Lady Bakewell of Hardington Mandeville—she cannot be in her place today—in which the noble Baroness said: “Policy and decision-makers are likely to want to have regard to supporting material, such as recitals and preambles, to assist them in addressing questions of how policy might be made and how decisions might be taken in future”. Therefore, we as a House are beholden to ask the Minister to explain precisely why the preamble was removed from the regulations.

Secondly, as the Minister stated, there is a clear transferral of functions from the EU's committee on invasive alien species and the forum, both of which are independently constituted bodies for the specific purpose set up in the regulations. It would be helpful if the Minister could say a few more words about who in our domestic setting will take on those duties because they are particularly rigorous in terms of both scientific expertise and data processing capacity. I would appreciate more information about that.

Equally, the Minister kindly made it clear that there will be a ministerial duty to ensure close co-operation with European partners and other countries on non-native invasive species. As he rightly said, both flora and fauna are not singularly in our country, but are transported on the wind and via other mechanisms to and from the European mainland, so we need that level of co-operation.

Critical in that is the European Union's invasive alien species information system. Clearly, the Minister cannot say at this stage

whether we will have access to that critical system, which collates information about non-native invasive species from across the continent, but the department is obliged to say what domestic route we might take to replicate that remarkable database if we do not.

Governance is also an issue. The Minister was very clear that the responsible authorities will have a duty to report, but the overarching question is: who will they report to? He mentioned the office for environmental protection, which is as yet unconstituted because it will be introduced under the forthcoming Bill, and said that the responsible authorities have a reporting duty. As it stands, that office has no capacity to hold the Government to account; therefore, the systems currently in place for the European Commission to hold the Government to account will not be replicated in the processes and procedures in this statutory instrument. Equally, as other noble Lords may comment on, we are not expecting the office for environmental protection any day soon, given that we have not even had the legislation yet. So there is a question about how we are going to manage the reporting in holding the Government to account in the meantime.

Finally, because there are not significant costs to private companies, there has not been an impact assessment for this statutory instrument. Yet the Explanatory Notes make it quite clear that there will be a cost to the Government and public bodies, although it is below the plus or minus £5 million threshold. Given that this is the first statutory instrument—there will be many—there will clearly be significant costs to the Minister's department in delivering the new mechanisms and bodies to deliver the levels of safeguards we need for our environmental protection in this country. I hope the department has—I am sure this is not the right term—a running tally of costs, given that there is no impact assessment that we can see. It is important that we know the costs to the Minister's department, which does not have a significant budget, and that it will have the resources in future to deliver the services that our environment requires.

Baroness Young of Old Scone >

(Lab)

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My Lords, I add to the welcome from the noble Baroness, Lady Parminter, for the many happy hours we will spend together with Defra on statutory instruments—this being the first—over the next few weeks and perhaps longer. Many of the issues I will raise will be a common thread in several other statutory instruments as they come forward.

When I was chairman of Natural England, I was always taught that 10% of introduced species survived, 10% of those then bred, 10% of those species increased and 10% of that caused a problem. It was a very small number of introduced species that in the end caused huge problems, but the difficulty at each stage was knowing which 10% were going to be the culprit—so this is a really important piece of legislation.

I share the concern of the noble Baroness, Lady Parminter, about the replacement bodies. We have to set up our own supervisory committee and scientific forum. It will be interesting to hear from the Minister when he thinks they can be established by. I share the concern about the office for environmental protection not yet having had an airing in the environment Bill and therefore not being established in time, should we need it on 29 March, and its powers not being clear. There was considerable welly, if I can use that technical term, behind our duty to report and account to Europe, because the Government could be put into infraction and receive considerable fines if they were not performing to the requirements of the regulation. We will no longer have that requirement, so I am keen to hear from the Minister how he feels the discussions are going on the environment Bill and powers for the office for environmental protection. This will come up with many Defra statutory instruments, so it would be useful to hear quite soon.

The enforcement regime was consulted upon last year, and we need a revised system of enforcement in place by 29 March. Can the Minister bring us up to speed on that?

I also have some concerns about the scientific forum if it represents only UK-based scientists. In the past we had the breadth of EU knowledge to draw upon. That has implications. I have always been convinced that gathering together scientific advisers and Ministers in Europe achieved a level of ambition in environmental protection that the countries standing alone probably would not have had. Can we hear from the Minister how the Government will track EU best practice and a commitment that they plan to aspire to EU-wide best practice after we leave?

My understanding is that this is an administrative statutory instrument and that a second one on the same issue is due to come forward to deal with implementation, enforcement and permitting. Can the Minister tell us when that is due to be laid if it also has to be in place before 29 March?

There is of course unfinished EU business. The noble Earl, Lord Selborne, talked about the EU regulation on preventing damage from

non-native and alien species that came into force in the UK in January 2015. I understand that we have not yet set penalties under the EU regulation, which was due to happen by January 2016; nor have we established an action plan for widespread invasive species or established a surveillance system to monitor newly introduced species, both of which were due to happen by February 2018. Do the Government intend to finish this unfinished businesses and to meet proper standards?

🕒 5.45pm

Lord Teverson >

(LD)

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My Lords, one of the privileges I have in this House is to chair your Lordships' EU Energy and Environment Sub-Committee. We were very grateful to the Minister for giving evidence for the Brexit and biosecurity report we produced, and part of biosecurity is invasive species. One thing that particularly stood out for the committee was the cost of getting it wrong in this area, with the example given of the 2001 outbreak of foot and mouth disease: it cost us some £8 billion to solve that crisis over many weeks, to say nothing of the misery caused to the farming community. As we have not yet managed to debate that report—and I suspect we will not do so for some months—perhaps I could ask one or two questions that came out of it concerning invasive species.

My first question is on notification, which has been touched on by other Members. The Minister said that, once we leave the EU, this would be a responsibility for the Secretary of State. But what will happen during the implementation period, if there is one, and after that in terms of the divergence of the European list that we have at the moment? Will we just copy that current list when we start afresh as a third country? But that list will change rapidly over time, so how will we deal with that divergence, particularly when it comes to border control?

On border control, at the moment, one of the fundamental building blocks of protection is an IT system called TRACES, which concerns the transfer of animal products, animals and vegetable products, and whatever bugs and insects they happen to have with them. Are we still looking to try to integrate that system and use it ourselves? Post Brexit, particularly if there is no deal, how will we replicate IT systems for the import and export of these types of materials? That is absolutely fundamental to being able to control the management of this.

We were shocked—and shocked is the right word—by one thing that the Minister from the other end, George Eustice, told us when he appeared before us. We suggested that, if there was no deal, we would have huge border issues around transit times. The Minister said that, in that case, the phytosanitary checks would not be done. That is a pretty dangerous approach, to be honest, and one that is, I suspect, contrary to WHO rules—to WTO rules, sorry; although perhaps it may be contrary to WHO rules too. Can the Minister help me understand how we will approach phytosanitary controls, particularly in the case of no deal—an option that the Government have not taken off the table?

On the island of Ireland, there is clearly no barrier or sea border—ineffective as that might be against certain things, as my noble friend Lady Parminter said when she talked about species coming across the channel. But our committee felt strongly that Ireland as an island should be treated as a single ecological area, as it is at present, to some degree. I would be interested to hear the Minister's view on that. A lot of trade goes between the two parts of Ireland but obviously there are no natural barriers at all.

Lastly, I am interested in reference laboratories. I do not know whether they come into this area—they certainly come under biosecurity. I am interested to hear from the Minister whether we should be concerned about reference laboratories in terms of invasive species. This is an area where, as the Minister says, we have great expertise, but it covers only certain areas that other parts of the European Union also cover. Will we up our game through Defra funding to be able to ensure that our scientific and research base is sufficient for this area?

Viscount Ridley >

(Con)

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My Lords, I walked through Hyde Park this morning and saw three invasive alien species: Egyptian geese, ring-necked parakeets and, of course, grey squirrels. That reminded me that there is quite a gap between the way we talk about the issue in this place as mainly a bureaucratic issue of getting the right regulations, committees and quangos in place, and what is actually needed on the ground, which is to control and, where possible, eradicate these species. The grey squirrel is doing terrible harm to the position of the red squirrel in this country. Will my noble friend confirm that, in this case, we are not changing policy at all and this is a simple tidying-

up exercise, and what needs to follow is more effort going into actually doing something about these creatures?

Baroness Jones of Whitchurch >

(Lab)

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My Lords, I refer to my interests as set out in the register. I am grateful to the Minister for setting out the intention of this SI so clearly and for meeting with us prior to today, and to all noble Lords who raised important questions about the consequences of this SI. I share the concern raised about the scale and outcome of the consultations that allegedly have taken place. I agree that it would have been useful to have known the outcome because it might well have informed our debate this afternoon. But I pay tribute to the Minister, who I know takes a lead on this subject in the department. I know that he is passionate about the importance of effective biosecurity measures in the UK and he has been assiduous in his role in that. I know that he will share that expertise in his response to the many questions raised today.

Undoubtedly, biosecurity issues are critical to protecting animal, plant and human health, which in turn protect our environment, economy and food supply chain. As we know, invasive species alone already cost the UK economy at least £1.7 billion a year. Past outbreaks of diseases imported from overseas have killed millions of animals and trees, with new fears on the horizon including ash dieback and African swine fever. Those examples illustrate just how important biosecurity is and the devastating impact that animal and plant diseases can have if they are not controlled. But it is also true that we cannot tackle biosecurity issues alone. We have benefited in the past from EU data-sharing and collaboration and we will continue to need that cross-border liaison if we are to keep our flora and fauna safe in the future.

We debated the widespread consequences for the environment of leaving the EU during the EU withdrawal Bill, and many of those issues remain unresolved. It is a concern that will apply to this SI as well as many others that we will debate in the weeks and months ahead. At this time, with no deal on the horizon, there is a real risk that we will crash out of the EU on 29 March without a transition period. In those circumstances, as several noble Lords have said, we face a real governance gap as there will be no independent authority to which reports on actions on invasive species can be given and any UK biosecurity failings held to account. The promised office of environmental protection, which is supposed to replicate the functions of the European Commission, will not be operational until at least 2020 and we have yet to determine its precise duties, so will the Minister explain how that governance gap will be filled in the interim? Is it intended to revisit this, and other SIs that will also lose out from a lack of governance, to add the oversight of the OEP once the environment (principles and governance) Bill is passed?

In this SI, the obligation to report to the European Commission by 1 June 2019 and every six years thereafter is replaced by an obligation for Ministers to make and publish a report on the same timescales. That is all well and good, but where will those reports go and who will assess their validity? Does the Minister recognise that it is not acceptable simply to publish a report without any independent scrutiny of it, or is it assumed that we will have to rely on our good friends ClientEarth to take the Government to court when there are perceived failings?

I will revisit the EU environmental principles and preambles which we also debated at length in during scrutiny of the EU withdrawal Bill. They set a very important context for the scrutiny of this SI, especially as the EU invasive alien species regulation constitutes a key manifestation of the principle of preventive action. The noble Baroness, Lady Parminter, praised it today. As the Minister will know, Greener UK has expressed concern that the preamble of the IAS regulation is not included in this SI. It quite rightly makes the point that the preamble has a significant purpose in framing the intention and ecological context of the regulation's articles, thereby guiding its implementation. Indeed, during the passage of the EU withdrawal Bill, the Government clarified that the future use of preambles and recitals is key to ensuring that the withdrawal Act meets its aim of providing legal certainty and stability within our domestic statute book. The Government also said that policy- and decision-makers are likely to want to have regard to supporting material, such as recitals and preambles, to assist them in addressing questions of how policy might be made and how decisions might be taken in future, so they ought to be in SIs such as this so that we can be assured that they apply.

Greener UK has also advised that unless the letter and spirit of domestic legislation reflect this core focus in future, we would fail adequately to reflect Article 8 of the Convention on Biological Diversity domestically. Can the Minister tell us why these essential principles and provisions have been omitted in the transposing process? Will he commit to addressing this omission to ensure effective transposition in future?

Turning to the UK structures set out in this SI, we are concerned that the EU structures and governance mechanisms currently in place are not simple or straightforward to replicate domestically; for example, where decisions required for the effective application of EU regulations and directives are currently made by Ministers from the 28 EU member states, with all that breadth of knowledae

and input, this SI will assign that role to Ministers from just the three UK countries. On the one hand, we are losing expertise from across the EU and, on the other hand, there is an assumption that the devolved Administrations will co-operate seamlessly. Can the Minister reassure us that mechanisms will be in place on day one after exit day to ensure full co-ordination between the devolved nations?

We are also concerned about the interplay between devolved and reserved competencies, given that each part of the UK has responsibility for its own biosecurity but also contributes to the UK's overall biosecurity. Does the Minister agree that it would be undesirable for an invasive non-native species to be legally imported and/or kept and traded in one part of the UK while those activities were restricted in another part? Does the Minister share my concern that a lack of internal border controls could undermine the goals of one or more of the UK's Administrations if differences were allowed to develop?

At the same time, we are concerned about whether Defra's proposal to replace current access to the EU IAS scientific forum with a UK forum risks creating a knowledge and data gap—another issue raised by my noble friend Lady Young. What assessment have the Government made of the expertise and data-processing capacity of the UK agencies and organisations that will take over these new duties? Also, which organisation will gain responsibility for implementing the invasive non-native species legislation after the UK leaves the EU, and what checks will be put in place to ensure that it has the relevant expertise and resources?

🕒 6.00pm

Perhaps I may now address the post-Brexit relationship with the EU, which this SI omits to define. As we have argued, the UK currently benefits from EU-wide regulation, with intelligence-gathering, disease alerts and research all being undertaken at a European scale. After Brexit, the UK will no longer be part of this system. Tackling invasive non-native species in a cost-effective manner is intrinsically a cross-border undertaking, given that these organisms do not respect national boundaries and can enter the UK via land, sea or air.

A recent study identified 47 pests and diseases present in Europe which, if they got into the UK, would cost over £1 billion to clean up. Therefore, what happens in Europe is still of great interest to us. Geographical proximity means that the EU will always be a key source of biosecurity risk to the UK, so shared intelligence and continuing co-operation post Brexit will be essential.

In its excellent report, the House of Lords EU Energy and Environment Sub-Committee urged the Government to maintain as close a relationship as possible with the EU on biosecurity. I pay tribute to the noble Lord, Lord Teverson, and his committee for their work on this issue. They concluded that the most expedient mechanism would be to ensure ongoing access to the EU IAS information system—a point echoed by the noble Baroness, Lady Parminter. Can the Minister confirm that the Government intend to negotiate continued participation in as many of the EU's notification and intelligence-sharing networks as possible, including continued access to the EU IAS information system?

I turn to the trade implications of this SI. As the Minister knows, biosecurity hazards are a constant concern for British agriculture and wildlife, with hundreds of threats intercepted at the border each year. Infections transmitted from abroad, such as foot and mouth and Dutch elm disease, have cost the country billions, and alien species such as signal crayfish and grey squirrels are contributing to the decline of native animals and plants. As trade is the most significant pathway whereby invasive non-native species are moved around the world, the appropriate management of international trade to reduce the risk of invasion via this pathway is particularly relevant, given the likelihood of new UK trade deals being struck post Brexit.

The explanatory document states that there is no policy change, but this SI will enable the UK to establish its own lists of restricted species both by removing items on the EU lists and by adding items where doing so would improve the UK's biosecurity. However, we need to be clear about the terms on which changes to those lists will be made. The ability to secure new trade deals must not be allowed to compromise the UK's biosecurity. Therefore, can the Minister outline the measures that are in place to ensure that any future trade deal does not lead to new uncontrolled pathways for invasive non-native species to enter the UK, or to the UK's becoming an exporter of non-native invasive species to other nations? Meanwhile, the EU is likely to remain the UK's largest trading partner, so what assessment have the Government made of the implications for the UK's ability to trade with the EU post Brexit of removing organisms that are on the EU lists and adding items that are not on the EU lists?

The outcome of last year's consultation on an enforcement regime for the invasive non-native species regulations is still awaited, as has been commented on. It is clear that significant work remains to be done to ensure that the UK has a functioning system in place for monitoring, inspection and enforcement by the time we exit the EU, potentially leaving the UK's biosecurity compromised if it is not. How confident is the Minister that this work will be completed by 29 March 2019, when it would be needed in the case of a no-

deal Brexit? I look forward to his response.

Lord Gardiner of Kimble >

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My Lords, I thank noble Lords for their considerable contributions on a subject that is enormously important. Picking up on what my noble friend Lord Ridley said, I emphasise that there are no policy changes; this is about the operability of this important secondary legislation. I also thank the noble Baronesses for their kind remarks: yes, I am ferociously exercised about this matter because I have seen at first-hand the damage to water courses, trees, flora and fauna that the arrival of these species has caused.

I say to my noble friend Lord Selborne that, yes, there are opportunities—as the noble Lord, Lord Teverson, suggested—which often relate to the speed of implementing biosecurity measures. The Spruce beetle has been discovered in woodland in Kent, for instance; it is about how quickly we can act to eradicate an arrival. These are tremendously important issues.

I say to the noble Lord, Lord Adonis, and the noble Baroness, Lady Jones of Whitchurch, that this is about operability. There is no statutory requirement to consult because it is literally a question of changing a reference to “member state” to “responsible authority”, for example. This was certainly done properly in Defra, with stakeholders that we thought would be interested. With enormous respect to the noble Lord, consulting extensively and formally on a matter of operability—we are maintaining operability so that the policies are incorporated in what we retain—rather than on the nature of these obviously essential issues is not only unnecessary but disproportionate. If this was a discussion about the formal nature, consultation would, I agree, be necessary, but this is precisely about operability. There was actually no statutory requirement to consult, but we thought it right to engage with stakeholders, who in fact had no comment to make. However, I am on notice that in any future exercises with Defra, I must be ready for limited, informal commentary. I assure your Lordships that we want to have an open discussion with stakeholders on this issue.

I turn to the many other issues that have been raised. The noble Baroness, Lady Jones—

Baroness Jones of Whitchurch >

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I am sorry; I do not intervene often but this is important because it will have an impact on forthcoming SI debates. My understanding was that a process would be set up whereby, in advance of all the SIs, a group of interested NGOs and other stakeholders would be brought together so that they could not only identify any changes but iron out any concerns about omissions in the SIs, inappropriate transpositions or issues that been neglected.

The Minister has heard me say that Greener UK is still raising concerns about the legislation’s having missed out some of the requirements. The preambles were one issue, but there were also other concerns. He does not necessarily have to deal with all that now, but I am concerned that a process that was meant to iron things out does not seem to be working, given that we are being alerted at this late stage to the ongoing concerns of organisations such as Greener UK.

Lord Gardiner of Kimble >

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I am very mindful of that and I do not want to be dismissive to any noble Lords about the importance of dialogue, consultation and so forth. However, I wanted to raise another point that came up, raised particularly by the noble Baronesses, Lady Jones of Whitchurch and Lady Parminter, about appropriate bodies, and to give a little more detail. There were many questions on which I may want to write in greater detail if there are points that I do not cover in full.

We are proposing that the programme board on non-native species takes over the role of the committee, while the GB non-native risk analysis panel will take on the role of the scientific forum. Both the programme board and NRAP are supported by the GB non-native species secretariat. The remit and membership of the existing GB bodies will need to be expanded to include Northern Ireland, as I mentioned. There is already a close working relationship between existing GB bodies and Northern Ireland. This statutory instrument places obligations on Ministers, who will ultimately have responsibility for taking decisions—for instance, to add a species to the list of species of special concern—and they are obliged to have a committee to support them and to have a scientific forum providing advice.

On the question of providing expertise, which the noble Baronesses rightly raised, I say that we in this country have significant expertise in invasive non-native species. In fact, I am very proud to say that it is acknowledged that we are considered one of the leaders in this respect. We have had a comprehensive framework for assessing the risk posed by these species since 2007 and that framework strongly influenced the EU's approach, including its risk methodology, when the EU invasive alien species regulation came into force in 2015.

The analysis panel is chaired by Professor John **Mumford** of Imperial College, London. The panel's members are highly respected in the UK's scientific community, including experts from Imperial College, Sheffield University, the Scottish Association for Marine Science, the Animal and Plant Health Agency and the Centre for Environment, Fisheries and Aquaculture Science. Through that body, we draw on expertise from scientists around the world as well as the UK.

On collaboration with the EU, I say to all noble Lords that this instrument is designed to make the matter operable but, going beyond that in terms of the requirements, of course we have obligations relating to invasive non-native species under many international agreements to which we ^{Column 676} w for myself, very active participants—for example, the Convention on Biological Diversity, the convention on wetlands of international importance, especially waterfowl habitats, the Ramsar Convention, the Convention on the Conservation of European Wildlife and Natural Habitats and the Berne convention. We are not going to remove ourselves into a silo.

As I said in my opening remarks, we have worked very closely with the devolved Administrations. I think the references within our own United Kingdom are absolutely right. That is clearly important, for all sorts of reasons that I have already described. Borders and boundaries are no respecters when it comes to pest diseases and invasive diseases, so we will be working extremely hard and effectively on this. Scotland is not part of this exercise because it wants to bring forward its own SI under its own arrangements, but it is essential that we can all rely on these UK bodies to help us to come forward with the right mechanism. We are bringing back all the existing list. I do not see this as a diminution. As my noble friend Lord Selborne says, there may be opportunities which we need to think of, particularly in terms of not letting invasive species in. That is absolutely paramount. The noble Lord, Lord Teverson, referred to this in terms of border security, which is vital. We will be replacing TRACES because we want to bring forward our own arrangements, but biosecurity at the border is absolutely essential. I think the point that my honourable friend in the other place was referring to is that in our analysis of day-one readiness—the early days after our exit— goods that come in from the EU would be on the same risk basis. But I am absolutely clear that biosecurity is of vital importance for trade; the noble Baroness mentioned trade issues. This is why we are subject to international obligations as well.

🕒 6.15pm

There were a number of points made by the noble Baroness, Lady Jones of Whitchurch, about obligations. Yes, member states are obliged to report. This obligation will be replaced by an obligation on Ministers to publish a report, drafted by the relevant bodies, on the same six-year cycle. It is intended that this report will be made publicly available on GOV.UK, enabling widespread scrutiny, in the same way that this debate has moved beyond the operability of these matters and into how important it is to have regulation, rigour and expertise with invasive species. Therefore, at no time will there be a position where the Government will not be held to account—looking particularly at your Lordships.

It is important to say that in the interim between exit day and the launch of the OEP, we will set up a body, headed by an independent expert, to receive complaints about breaches of environmental law. Once the OEP is statutorily established, it will have the power to review and take actions on any breaches which occurred from exit day. It is obviously the Opposition's responsibility to hold the Government's feet to the fire, but I hope that your Lordships will accept our bona fides as to absolutely understanding the importance of invasive species, environmental protection and the consultations that will take place—consultations that Members of your Lordships' House and elsewhere will doubtless contribute to.

I am very conscious of what the noble Baroness, Lady Young of Old Scone, said about when are we going to come forward with our own "business as usual" matters on this. I have a note somewhere which recalls that we are expecting the order containing the enforcement regime to be in place by March of this year. We need to get a move on, but all I can say is that we like to think of ourselves as a world leader, and I will be pushing on this because it is important. To have everything in order is part of our responsibility.

The noble Baronesses, Lady Parminter and Lady Jones of Whitchurch, raised the issue of access to the European Commission's intelligence-sharing system. Future access is dependent on the outcome of negotiations with the European Union and on our future relationship. Noble Lords would expect me to say that; it is the truth. This system enables critical information on new incursions. Whatever comes forward, we want to ensure that we collaborate internationally, within Europe, within the whole United Kingdom and within the parts of the United Kingdom with the expertise that we have, and ensure that that collaboration arrests the progress and

within the parts of the United Kingdom, with the expertise that we have, and ensure that that collaboration arrests the progress and stops invasive species. We need, and will develop, contingency plans to mitigate the impact of losing access to that system. We acknowledge that it is an important system and we are negotiating on it.

A number of other points were made. The noble Baroness, Lady Jones of Whitchurch, mentioned the devolved Administrations. I hope I explained that given the intentions from all the very constructive discussions that have been had with all parts—we have had very collaborative discussions in Wales—I cannot imagine any circumstance in which we would all wish to diverge. It would not be possible to manage it if there were that divergence, so I see us working together in the forum.

Again, on the point made about Ireland, on that landmass we need to work with our friends in the Republic, and I know that Northern Ireland will want to work closely on it. Bringing together all the parts of the United Kingdom with the UK expertise in our grasp is important. The island of Ireland, with its two parts, has fewer invasive species than we do in Great Britain, so again it is in its vital interests to be absolutely clear about biosecurity and the pathways for this. I say to the noble Baroness, Lady Jones of Whitchurch, that we are bringing over the list and the only way in which we would wish to change it would be if there were pressing scientific advice as to why that should be the case.

The noble Lord, Lord Teverson, mentioned biosecurity and the evidence and checks. I will look at his remarks but we certainly see border control and the infrastructure of borders as somewhere where biosecurity will always be important. It is one area which I am always very concerned about. We need to make sure that we have that. Regarding the reference labs and research, we have some outstanding scientific endeavour. We have not only world-class reference laboratories in our midst but some of the world's top scientists at our disposal—I often meet them. Again, worldwide and European collaboration in this area will be essential.

We recognise that the preamble to the EU regulation contains critical information about its underlying principles—for example, on the precautionary principle and the inclusion of taxonomic groups of species in the list as species of Union concern. Retained EU legislation will be construed in the light of the preamble after leaving the European Union. The draft clauses of the environment Bill will also introduce a set of environmental principles that will be used to guide future government policy-making and lead us towards a greener future. I think we all share in wanting that.

I have a feeling that there may be more questions but I will look at *Hansard*. As I said, this debate has extended into some interesting areas which are essential for our biosecurity in terms of invasive species and beyond. However, the purpose of this provision is to make us operable with no changes of policy. Clearly, any future changes of policy would need to be considered and I am sure that your Lordships would want engagement, as I would. This instrument is about operability and I therefore ask the House to approve the Motion.

Motion agreed.