PARLIAMENTARY DEBATES

HOUSE OF COMMONS
OFFICIAL REPORT
GENERAL COMMITTEES

Public Bill Committee

NATIONALITY AND BORDERS BILL

Twelfth Sitting

Thursday 28 October 2021

(Afternoon)

CONTENTS

No proofs can be supplied. Corrections that Members suggest for the final version of the report should be clearly marked in a copy of the report—not telephoned—and must be received in the Editor's Room, House of Commons,

not later than

Monday 1 November 2021

© Parliamentary Copyright House of Commons 2021
This publication may be reproduced under the terms of the Open Parliament licence, which is published at www.parliament.uk/site-information/copyright/.

The Committee consisted of the following Members:

Chairs: Sir Roger Gale, †Siobhain McDonagh

† Anderson, Stuart *(Wolverhampton South West)* (Con)
† Baker, Duncan *(North Norfolk)* (Con)
† Blomfield, Paul *(Sheffield Central)* (Lab)
† Charalambous, Bambos *(Enfield, Southgate)* (Lab)
† Coyle, Neil *(Bermondsey and Old Southwark)* (Lab)
Goodwill, Mr Robert *(Scarborough and Whitby)* (Con)
† Gullis, Jonathan *(Stoke-on-Trent North)* (Con)
† Holmes, Paul *(Eastleigh)* (Con)
Howell, Paul *(Sedgefield)* (Con)
† Lynch, Holly *(Halifax)* (Lab)
† McLaughlin, Anne *(Glasgow North East)* (SNP)
† McDonald, Stuart C. *(Cumbernauld, Kilsyth and Kirkintilloch East)* (SNP)
† Owatemi, Taiwo *(Coventry North West)* (Lab)
† Pursglove, Tom *(Parliamentary Under-Secretary of State for the Home Department)*
† Richards, Nicola *(West Bromwich East)* (Con)
† Whittaker, Craig *(Lord Commissioner of Her Majesty's Treasury)*
† Wood, Mike *(Dudley South)* (Con)

Rob Page, Sarah Thatcher, *Committee Clerks*

† attended the Committee

Public Bill Committee

Thursday 28 October 2021

(Afternoon)

[Siobhain McDonagh *in the Chair*]

Nationality and Borders Bill

Clause 41

Maritime enforcement

2 pm

Question (this day) again proposed, That the clause stand part of the Bill.

The Chair: I remind the Committee that with this we are discussing the following:

Government Amendment 82.

Amendment 144, in schedule 5, page 74, line 30, at end insert—

"provided that the relevant officer may not do any of the things mentioned in sub-paragraph (2) where they would risk the welfare or safety of persons on board the ship."

This amendment would require officers to assess welfare risk before stopping or boarding a ship, requiring it to be taken elsewhere or requiring it to leave UK waters, and not act if doing so would exacerbate these risks.

Government amendment 83.

Amendment 145, in schedule 5, page 75, line 8, at end insert—

"(7A) The Secretary of State must publish a list of States and relevant territories with which agreement has been reached for the purposes of sub-paragraph (7) within 30 days of the date of Royal Assent to this Act, and the Secretary of State must update that published list from time to time."

This amendment would require the Secretary of State to publish which states or territories she has agreed arrangements with for returning or removing asylum seekers to, within 30 days of Royal Assent.

Amendment 146, in schedule 5, page 76, line 24, at end insert—

"(9) A relevant officer may only exercise powers under this paragraph if they have passed relevant training, including training on the requirement to exercise powers under this paragraph in accordance with the provisions of the Human Rights Act 1998."

This amendment would require the relevant officer to have passed relevant training before acting under these powers, and only acts with regards to the Human Rights Act.

Amendment 148, in schedule 5, page 77, line 18, at end insert—

"(7) A relevant officer may only exercise powers under this paragraph if they have passed relevant training, including training on the requirement to exercise powers under this paragraph in accordance with the provisions of the Human Rights Act 1998."

This amendment would require the relevant officer to have passed relevant training before acting under these powers, and only acts with regards to the Human Rights Act.

Amendment 147, in schedule 5, page 78, line 12, at end insert—

"(10) A relevant officer may only exercise powers under this paragraph if they have passed relevant training, including training on the requirement to exercise powers under this paragraph in accordance with the provisions of the Human Rights Act 1998."

This amendment would require the relevant officer to have passed relevant training before acting under these powers, and only acts with regards to the Human Rights Act.

Amendment 149, in schedule 5, page 78, line 32, at end insert—

"(c) the act was carried out in accordance with the provisions of the Human Rights Act 1998."

This amendment would require the relevant officer to only act with regards to the Human Rights Act.

That schedule 5 be the Fifth schedule to the Bill.

The Parliamentary Under-Secretary of State for the Home Department (Tom Pursglove): In terms of schedule 5, let me just say that clause 42 is one of the six drafted as placeholder clauses, as indicated in the explanatory notes and memorandum for the Delegated Powers and Regulatory Reform Committee. It was drafted as such in the interests of transparency, to make clear our intention to bring forward substantive provisions on working in the territorial seas. The placeholder clause is now to be replaced by new clause 20.

The Government's clear position has always been that permission to work is needed for all foreign nationals intending to work in the United Kingdom landmass—that includes all UK waters. New clause 20 will bring legislative clarity: migrant workers wishing to work in the territorial seas or internal waters of the UK will need permission to do so. To obtain that permission, they will need to apply for a visa under the points-based system in the same way as when coming to work on the UK landmass.

New clause 20 will clarify the legal framework, but will not change the existing position that migrant workers need permission to work in UK waters. As such, the new clause does not invent a policy change and its effect should be negligible. The new clause does not impact on those engaging in innocent passage or crew who are covered by section 8 of the Immigration Act 1971.

Government amendments 126 to 128 are minor and technical. They are intended to ensure that the regime I have just talked about can be enforced.

The Chair: Order. Apologies, but I think you have strayed into the debate on schedule 5, which includes Government amendments 126, 127 and 128 and clause 43 stand part. I appreciate that there are a lot of different moving parts.

Tom Pursglove: I apologise if that is so, Ms McDonagh. The groupings on the selection list are not clear, because they are talking about schedule 5. I am happy to leave that there and return to it separately in a moment.

Paul Blomfield (Sheffield Central) (Lab): Despite the Minister's request, I would like to speak to amendments 144 to 149, which seek to address a couple of pretty serious issues: the immorality and the impracticality of the Government's approach to the policy of pushback.

As regards Australia, the United Nations special rapporteur expressed real concern that the policy could intentionally put lives at risk. We have also seen the reports on those who lost their lives as a result of pushbacks in the Mediterranean. Clearly, the Government do not want to risk death or injury. Ministers have told us repeatedly that the objective of the legislation is to prevent drowning in the channel. Amendment 144 therefore seeks simply to put that commitment in the Bill.

I heard the Minister's comments earlier, but a constant theme throughout our debate over the past few days has been that we identify real problems with the Bill and the Minister says, "Oh, don't worry, we'll sort it out." We are trying to say, "If we're in the same place on the issue, let's sort it out by putting something on the face of the Bill." Amendment 144 would do that by requiring officers not to act under powers granted by proposed new paragraph B1(2) if they risked the welfare of those on board. It would simply ensure that an officer who wants to stop a ship, board it or require it to be taken elsewhere in the UK or internationally and detained or to leave UK waters must first consider the implications for those on board. Given that we are in the same place in our intentions, I hope the Minister can accept amendment 144.

Amendment 145 addresses the issue of practicality. Clause 41 is disturbing enough in itself, but it also reflects a wider problem with the Bill. The Government are trying to talk tough and grab headlines but with proposals that are actually undeliverable and that will not solve the problem of people smuggling that we all agree needs to be tackled. We have discussed offshoring and third country returns on previous clauses, and here we are again. Amendment 145 seeks to press the Govt on the issue.

In schedule 5, proposed new paragraph B1(7) makes it clear that the Government can proceed with the policy of pushback only where the relevant territory

"is willing to receive the ship."

So where are the agreements? Amendment 145 would require the Home Secretary simply to publish a list of states with which she has secured agreement under sub-paragraph (7) to send ships with asylum seekers to, and to do so within 30 days of Royal Assent. That is not 30 days from today; that is 30 days from Royal Assent. That is a considerable amount of time. The Government have put a lot of thought into the Bill apparently, although there seem to be a lot of last-minute amendments. The Minister has said repeatedly that he does not want to provide a running commentary on negotiations. Let me reassure him: we do not want a running commentary. We just want some indication that there are agreements, or agreements in the pipeline, but there absolutely do not seem to be any. That is key.

The Government have so far failed to secure any agreements for returning asylum seekers. Instead, they encourage rumours that they are so close to securing an agreement with one country or another, but every country that has been mentioned has slammed those rumours. Rwanda said it had no agreement with Denmark, whose Government have been condemned by the African Union —an entire continent—in the strongest terms possible. The African Union said that offshore processing amounted to "responsibility and burden shifting" and criticised European attempts to extend border control to African shores as "xenophobic and completely unacceptable." As my hon. Friend the Member for Bermondsey and Old Southwark pointed out, the UK Government were rebuffed by Albania. The Albanian Foreign Minister told the press:

"Albania will proudly host 4,000 Afghan refugees based on its good will, but will never be a hub of anti-immigration policies of bigger and richer countries. We have instructed our Embassy in the UK to demand the retraction of this fake news."

There are not just no agreements, but the Government are managing to offend countries around the world by implying that they are prepared to enter into agreements when they are clearly not. How many other countries are the Government deciding to burn bridges with over this issue? When will they come clean on this empty rhetoric?

Amendment 145 is intended to be helpful. We want to see transparency and, at the end of this process, to give the Government the opportunity, which they have so far failed to take, to publish the agreements they have secured. I hope that by accepting the amendment the Minister can prove us wrong in our doubts about the Government's work in this area, and that he will agree that this information should be published well before the Bill takes effect.

Amendments 146 to 149 seek to ensure that officers adhere to the Human Rights Act 1998 and have completed relevant training before searching asylum seekers. These amendments relate to officials carrying out searches of people during maritime enforcement for documents, evidence of crime and other purposes. They seek to ensure that those officials have received training that is relevant to the task, and at all times are adhering to the Human Rights Act 1998.

As we have discussed many times in Committee, those fleeing persecution and danger to build new lives in the UK are likely to be victims of violence and trauma. They are vulnerable, and personal searches in particular could be extremely difficult or upsetting. Schedule 5 allows for officials to search a person, but forbids them to

"remove any clothing in public other than an outer coat, jacket or gloves."

That is welcome as a bare minimum, but there is no stipulation or description of what can be done in searches in private, so this amendment seeks to ensure that the Home Office designs and delivers training to officers to ensure they are sensitive to the needs of the vulnerable people they may search. Additionally, it would ensure that all those searches are conducted with consideration given to the Human Rights Act and the right to a private life, to encourage the use of these powers only in extreme circumstances and when absolutely necessary.

Again, I draw the Minister's attention to the lived experience of those who have come to our shores. In 2015, Women for Refugee Women published a report, "I Am Human", which details the impact of searches on those who have experienced sexual violence. The searches triggered mental health problems, flashbacks and traumatic memories because people felt handled and scared by the process. When addressing my earlier amendments, the Minister sought to reassure me on these points too, saying that the Government would of course be compliant with the Human Rights Act and would take account of all the issues I am raising—fine. So why not put that commitment on the face of the Bill?

Anne McLaughlin (Glasgow North East) (SNP): It is a pleasure to follow my friend, the hon. Member for Sheffield Central. When there are no safe and legal routes —or very few, as we have discovered throughout our many debates in this Committee—refugees will travel by unsafe means. We leave them no other choice. An estimated 40,000 refugees and other migrants died between 2014 and 2020 in the process of moving between countries,

[Anne McLaughlin]

so as you said during a previous Bill Committee sitting, Ms McDonagh, we all of course want these dangerous crossings stopped.

We need to establish a network of the safe and legal routes the Government keep claiming the Bill is all about. But if it was about safe and legal routes, the Government would not be spending so much time, energy and money on introducing this so-called pushback policy for vessels found in the English channel. In the Bill, they refer to ships, but they have stretched the definition of what a ship is beyond recognition: it is now anything that appears to float. I feel the need to emphasise that for the hon. Member for Stoke-on-Trent North—I see his ears pricking up at the mention of the word "Stoke". Given his comment that he is happy to holiday in Greece, and that refugees should therefore just stay there, he clearly thinks people are arriving here on cruise ships. He really ought to look into this issue a bit more before he casts another vote or speaks another word. The Bill specifically talks about

"any other structure (whether with or without means of propulsion)".

That is because people are making these perilous journeys on the flimsiest of vessels, so desperate are they.

Let us not sanitise things by talking about the pushing back of boats, ships or vessels of any description. Let us call it what it is: a policy of pushing back people—human beings. That is who we are pushing back. Who are these people? They are not, as the Home Secretary disgracefully claimed yesterday, economic migrants who just want to stay in UK hotels. Several very well-respected refugee organisations have spoken to me this morning to express their anger over those words, because as the Home Secretary knows, it is not true. The Home Office itself, over which she presides, accepted that 98% of those who arrived on boats in 2019 were asylum seekers, so I repeat: it is not true.

Who are these people, then? Migrant Voice and Amnesty International, in their evidence to their Committee, said that they are often babies; children; pregnant women; people who are ill; people with physical or mental incapacities; people suffering the traumas of past slavery, torture, or the frightening journeys they are on or have taken; or people who are afraid. Guess what? Young men, with the exception of being pregnant, can also be all of those things. It is clear that it takes just one person to panic or misunderstand an instruction for lives to be in jeopardy—the lives of all those aforementioned people.

2.15 pm

One of the most shocking things of all—I challenge the Minister to justify this—is the total absence of criminal or civil liability in exercising these powers. Negligence is overlooked and recklessness forgiven, as long as it was "done in good faith". That is absolutely disgraceful. The Bill refers to the "relevant officer" not being liable, so if 50 people drown because of a reckless pushback attempt, the Home Secretary will not pay a penny in compensation. Is that correct and is there any justification for that?

Much in schedule 5 will depend on the stance of the French authorities in respect of channel crossings. As the hon. Member for Sheffield Central said, we have not heard of any agreements or discussions with our European neighbours. In fact, it appears that Government amendment 83 would allow the Secretary of State to order a ship to be returned to France even if France has not agreed to it. I await the French response to that with interest.

When I first heard about plans to push back people on boats, my immediate response was, "Well, that can't be right. Surely maritime laws say there is a duty to rescue people at sea." I said that instinctively, because we all instinctively know that we have a moral duty at least to rescue people in distress, particularly at sea—don't we? That is why we have long-established rescue services—often voluntary—across the world, whether the RLNI, which has been spoken about repeatedly today, or the Cairngorm mountain rescue team. We know that when fellow human beings are in danger, regardless of how they got into that trouble or who they are, we want to rescue them.

Let us not forget that this is not just about instinct or morality; the duty to rescue has attained the status of customary international law and is enshrined in four binding international conventions addressing the issue. I think others have named them, so I will not, unless the Minister really wants me to. They all cover different areas of rescue, but when combined they impose a general duty to rescue those in distress at sea. Three of the four require state parties to establish search and rescue operations.

The Minister may well argue that if these poor, desperate people are putting themselves in this position, there is no duty to rescue, but the 2006 amendments to the international convention on maritime search and rescue and the international convention for the safety of life at sea make it clear that the duty of rescue applies regardless of the circumstances in which a person is found. The duty therefore applies just as much to a person who contributes to—or even causes—their own distress as to a person who takes all reasonable precautions. We all applaud the adventurous, plucky solo sailors circumnavigating the globe or crossing the Atlantic but, rightly, nobody has ever argued that they should be left to drown if they are in danger because they have put themselves in that position.

International conventions are simply obligations that the UK Government seem happy to flout—after all, there is little in the way of punishment for breaking them. However, the Minister has stood up several times and assured us—among a lot of things—that his Government are determined to abide by international obligations. I am struggling to understand how he can then justify giving power to the Secretary of State to do things in breach of the United Nations convention on the law of the sea in schedule 5.

How can we take any of his reassurances seriously when we are not provided with any insight into how various provisions can be lawful, and when he now proposes to give the Secretary of State express powers to dispense with international law? International human rights law, however, is an obligation we are bound by. Court action for compensation or restitution can be pursued against a state. We are legally obliged to consider the right to life when it comes to the duty to rescue. Yesterday, in response to a question from Baroness Chakrabarti, the Home Secretary said:

"let me just emphasise that none of this is illegal".

However, as always, and like the Minister, she can emphasise all she likes, but on the Opposition side of the House and across the sector, we are looking for something substantive to back up these assertions.

The Minister might be interested to know, or may already know, that there is an active case pending before the European Court of Human Rights: S.S. and others *v.* Italy. It relates to the deaths of 63 migrants on a boat that was left to drift in the Mediterranean in 2011. The outcome is keenly awaited and will determine how the Court finds on these issues in the future.

Is not Britain supposed to be a stable, wealthy and well-respected set of nations with a reputation for maritime greatness? Are the Government really intent on rubbishing that long tradition, which has been established over hundreds of years? At one time, they sang that Britannia ruled the waves. Now, they seem to simply waive the rules.

Jonathan Gullis (Stoke-on-Trent North) (Con): It is an honour to follow the hon. Member for Glasgow North East, and I am delighted that she is using the word "Stoke-on-Trent". It is wonderful to hear it mentioned by hon. Members from across the House, and I hope that we will spend much more time talking about the city of Stoke-on-Trent.

I will discuss clause 41 and schedule 5. As we heard from His Excellency the Australian High Commissioner in the evidence session, pushback was one of a range of methods used to deter people from making the dangerous journey. There is no single approach that works on its own, and the clause adds to the raft of measures already in place. We already have in the Bill increased prison sentences and the idea that if someone enters the country illegally, it will count against their application. The clause says that if someone makes an illegal entry or attempts to do so, there could be pushback.

Of course, we acknowledge that pushbacks are not simple; they are dangerous and need to be thought through carefully. In the current legislation, pushbacks can already take place, as the Home Office has announced. There is a small legal window for that to happen, and it is up to the commander on the boat to make a decision on whether a pushback is safe to do. I believe that we should give confidence to commanders to know that this country has their back when they fulfil their duty to the people who elected the Government, and who therefore wanted the Bill delivered.

Ultimately, we know that Monsieur Macron was terrified by the threat of money not ending up in his pocket. The idea was that the French were so busy not doing their job and allowing boats to make the dangerous journey—some people in my patch would even have said that the French were aiding such crossings. It is not for me to say whether that is true—I am sure there are questions that could be answered—but, ultimately, we know it is election year in France. My hon. Friend the Member for North Norfolk mentioned earlier today in the main Chamber that the French were seizing British maritime boats over fishing, but they are not seeking to do enough when it comes to illegal economic migrants making the dangerous journey across the English channel. We are asking that boats are pushed back to a safe place.

Let us not forget that His Excellency the Australian High Commissioner said that when the Australians were using the method of pushback, they were using military vessels to stop what they described as rickety wooden boats. We would be doing it with rubber dinghies in some cases, which means that, in his opinion, there is not as much danger to the pushback as what was undertaken by the Australian navy. That is from someone who has actually lived that experience and gone through it, and he is obviously an extinguished lawyer who understands the legal implications. Ultimately, the Government are ensuring that we add more strings to the bow in order to deter people from making illegal crossings and to try to stop people risking their lives.

Neil Coyle (Bermondsey and Old Southwark) (Lab): I think the hon. Gentleman meant "distinguished". To clarify the record, will he take this opportunity to correct his mistake this morning and perhaps even issue an apology to Islington Council, which he so sadly besmirched?

Jonathan Gullis: I do not believe that is in scope of the clause, but I will not apologise to Islington Council. I made it very clear that, by the end of 2020, it had not taken any refugees. Obviously, Stoke-on-Trent had taken far more. The statistics back up what I am saying, and I am more than happy to have exchanges with the hon. Gentleman on the Floor of the House at another time, if he wishes.

Anne McLaughlin: I do not know the hon. Gentleman's circumstances; he could have 10 kids or none. We have already established that most asylum seekers have no idea where they are going. They do not decide where they are going based on the immigration and asylum policies of the country where they end up, but imagine if they did. If the hon. Gentleman was one of them and was told, "If you go through that country, you will possibly end up in jail, but if you don't leave your country right now, you are going to end up dead," which would he choose for his family?

Jonathan Gullis: I have one daughter and a son on the way in early February, which I am pleased to announce to the House. What a lucky father I am going to be. The hon. Lady said it—there is nothing dangerous about France, Italy or Greece. People's lives are not at risk. They may well be in Afghanistan or Syria. People will have left those countries and made that dangerous journey, which they should not have done because there are safe and legal routes to the UK. Other countries across mainland Europe could look to us as an example. They can claim asylum in those countries and not risk their lives by crossing the channel from France to the United Kingdom.

As I said, 70% of people making that illegal crossing are men between the age of 18 and 35. Predominantly, women and children are not coming with them but staying in those dangerous countries, which is why what we did with Afghanistan and Syria was so brilliant—we took women and children from a terrorist regime that I have no time for whatsoever, who treat women as second-class citizens and force certain children into slavery. We need to ensure that those women and children are protected.

I therefore believe that we should give commanders the confidence to do that again if they believe it to be safe. It is the commanders who will make that decision, and I have full faith that they will do so knowing the law, and the legal system in this country will have their back.

[Jonathan Gullis]

Most importantly, they will take into account the condition of the waters at the time and the passengers onboard, so they can decide what is safe. The French can then do what they are meant to do when boats are in French territorial waters—stick to the obligations they sign up to for the money they get from British taxpayers and take those people back.

The people of Stoke-on-Trent North, Kidsgrove and Talke are so angry about what is going on that they want us to pick people up and take them straight back to Calais. I am sympathetic to their viewpoint, and that is one way to deter. This is a legal opportunity for us and the right one for the Government.

Bambos Charalambous (Enfield, Southgate) (Lab): It is a pleasure to follow the hon. Member for Stoke-on-Trent North. He has shown a real insight into seafaring from Stoke-on-Trent, which we all know is a coastal town.

It will come as no surprise that we will vote against clause 41 and schedule 5. Both plan to extend and enhance the new maritime enforcement powers beyond the UK territorial waters into international waters. They seek powers to stop, board, divert and detain foreign ships and ships without nationality.

The overarching goal of clause 41 is to push back asylum seekers, and for Government to redefine ships in legal terms, as the hon. Member for Glasgow North East mentioned. They broaden that definition to include fragile and insecure vessels that cross the English channel. At present, the definition of "ship" includes every description of vessel, including hovercraft, used in navigation. That definition is to be supplemented so that "ship" also includes any other structure, with or without means of propulsion, constructed or used to carry persons, goods, plant or machinery by water. To be more precise, it is referencing the small boats that cross the English channel.

The clause would grant new powers to the Home Office to stop or board ships, take them to any place on land or water in the UK or elsewhere, retain them there or require them to leave UK waters, if it has reasonable grounds to suspect that a relevant immigration-related offence is being committed. The powers may be exercised in relation to a UK ship, a ship without nationality, a foreign ship or a ship registered in another British territory. In addition, extensive new enforcement powers are to be conferred in this clause, and the power to seize and dispose of ships will be conferred in schedule 5. The problem with the power to divert ships bound for the UK is that it raises profound questions about the safety and wellbeing of the people on board, and ultimately presents a risk to lives. There is no proof that the diversion of a ship would occur only where safe, no suggestion of how it would be policed and enforced, and no intention from the Government to act in accordance with international law. Such intentions are likely to be assessed meaningfully only in retrospect, once people have been harmed.

2.30 pm

Strangely, the Bill will also restrict the exercise of existing maritime enforcement powers to police officers, whereas previously they could be exercised by immigration enforcement officers. The powers were introduced only by the Immigration Act 2016, and it is a bizarre change, as police operations at sea in connection with immigration issues are unheard of. It is therefore difficult to understand why the Government are making that change. Is it just posturing?

In addition to new powers to stop or divert and detain a ship, the Bill contains connected powers to search and obtain information, powers of arrest and seizure, powers to conduct protective searches of persons, and powers to search for nationality documents. It is clear that the Home Office has concerns that its own tactics may lead to risks to life, and thus to the commissioning of criminal acts by relevant officers, as the Bill later immunises them against criminal and civil court proceedings. That is contained in proposed new section J1 in schedule 4A of the Immigration Act 1971, which exempts relevant officers from being

"liable in any criminal or civil proceedings"

in certain circumstances.

The situation with regard to officers was ably put by Lucy Moreton from the Immigration Services Union in her evidence to the Committee on 21 September. In response to a question from the Scottish National party spokesperson, the hon. Member for Cumbernauld, Kilsyth and Kirkintilloch East, she said:

"On the issue of pushbacks, as things stand at the moment, given the instructions that we work under to ensure the safety of life at sea and the legality of it, it seems to us—the trade union, and the members who advise us—extremely unlikely to happen in practice. The restrictions are, quite rightly, very tight. No one wants to see a fatality from what is a very dangerous manoeuvre."—[*Official Report, Nationality and Borders Public Bill Committee,* Tuesday 21 September 2021; c. 30, Q30.]

Nevertheless, as many organisations have observed, this pretended excising of the UK's responsibility for refugees is wrong as a matter of international law. The proposed powers raise issues in terms of their compatibility with international legal commitments to which the UK is bound, such as those in international maritime law, human rights law and article 33 of the refugee convention. The duty of non-refoulement requires the party to assess whether an individual is being expelled or returned in any manner to the frontiers of territories where their life or freedom would be threatened. That has been the approach adopted in Australia. Australia is, unlike the UK, surrounded by expansive ocean and international waters, and relatively poor island states, some of which are willing to set up refugee camps for money. Moreover, the UK does not have the geographical capability for pushback operations to be pursued in the English channel in a way that would not endanger lives. There is no agreement with other countries, such as France, to receive asylum seekers who make claims for asylum in the UK, nor does it seem likely that such an agreement might be reached.

On the issue of Australia using pushbacks, in his evidence to us the Australian high commissioner, who I note had a very good Conservative party conference, said that the boats were coming from Indonesia. When I asked him how far Indonesia was from Australia, he said it was at least 1,000 km. It is actually a lot further than that, but that is more than 600 miles. The channel is a mere 22 miles, so clearly the tactics used in Australia would be very different from those used in the channel, purely because there would be far greater notice in the

ocean than there would in the English channel. Clearly, those tactics would not work if applied as they were in Australia.

Where the ship seized is one without nationality, the changes would allow the Secretary of State to dispose of that ship and other property or retain it after 31 days from the day of seizure. The means of disposal include the sale and destruction of the ship and property. That would grant an overwhelming power to the Secretary of State and Home Office officials, broad enough to allow the relevant officer to require a ship carrying asylum seekers across the channel to be diverted away from the UK and back to France. So much would depend on the stance of the French authorities in respect of the channel crossings, and we are still to know any details about the Government's agreement with France—there currently does not seem to be one.

Labour does not want to see the Government legislating to grant immunity to officials who have exercised new powers to push back asylum seekers trying to cross the English channel. Under the Bill, a relevant official is not liable for any criminal or civil proceedings for anything done in the purported performance of these functions if the court is satisfied that the act was done in good faith, and there were reasonable grounds for doing it. This cannot be guaranteed; there are clear breaches of international law in relation to the pursuit of those duties. I would like to call these proposals out for what they are: pushback powers. These are controversially designed powers to stop, board, divert and detain; in other words, to enforce hostility. Labour stands against these new pushback powers, which will be callous, ineffective and designed to distract from the abysmal mismanagement of the Government's Home Office operations, such as the speed of asylum decision making. Ultimately, these proposals are extremely dangerous, and, if attempts were made to exercise the powers, lives at sea will surely be endangered. If attempts are not made to exercise them, then what is the point of passing them into law? This is a mere exercise to allow the Government to posture their opposition to small boats. For these reasons, we strongly oppose clause 41 and schedule 5 standing part.

Tom Pursglove: There are a few points that I briefly want to address in concluding the debate on this clause. The first is the training that immigration officers have to undergo. I clarify again that all immigration officers have to pass the immigration foundation course to be appointed. This includes training on the Human Rights Act. Further specialist training is given to those officers working in the maritime environment, which includes vulnerability assessments in the context of human rights obligations. They will be exercising maritime powers using operational guidance that emphasises the need to take full account of relevant human rights aspects of the European Convention on Human Rights, and the Human Rights Act, in the context of safety of life at sea obligations. I know that the hon. Member for Sheffield Central is very keen that we include this in the Bill, but I respectfully disagree. There is already an established process in place that is delivering exactly what the hon. Gentleman wants to see. We are very mindful of these obligations on an ongoing basis.

The issue of immunity has also been raised; however, these protections are nothing new. Border Force has existing powers to intercept vessels in UK territorial seas; an officer is not liable in any criminal or civil proceedings if the court is satisfied that the act was done in good faith and there were reasonable grounds for it. This provision is also included in the Policing and Crime Act 2017, the Modern Slavery Act 2015, and applies in other contexts. This provision follows the same approach as the Immigration Act 1971.

The hon. Member for Glasgow North East raised a number of points in relation to search and rescue operations, which we had an extensive debate about during this morning's session. Again, I make the point that this Government are absolutely committed to search and rescue operations, as would be rightly expected. That is an important function and service, and it is right that it continues to be a strong commitment. We are committed to it and that service must be provided. Again, I will emphasise that this Government will abide by their international obligations at all times.

Neil Coyle: Can the Minister be absolutely clear that no new powers, or attempts at immunity that arguably do not follow international law, are being sought? This is contrary to some of the Government reports on this issue.

Tom Pursglove: All I can say in response, is that I refer the hon. Member to what I have just said. There is an established position in relation to this; these protections are nothing new.

Question put, That the clause stand part of the Bill.

The Committee divided: Ayes 8, Noes 7.

Division No. 36]

AYES

Anderson, Stuart	Pursglove, Tom
Baker, Duncan	Richards, Nicola
Gullis, Jonathan	Whittaker, Craig
Holmes, Paul	Wood, Mike

NOES

Blomfield, Paul	McLaughlin, Anne
Charalambous, Bambos	McDonald, Stuart C.
Coyle, Neil	
Lynch, Holly	Owatemi, Taiwo

Question accordingly agreed to.

Clause 41 ordered to stand part of the Bill.

Amendments made: 82, in schedule 5, page 71, leave out lines 14 to 16.

This amendment removes from the face of the Bill the limitation that the Secretary of State may give authority to exercise powers under new Part A1 of Schedule 4A to the Immigration Act 1971 in relation to certain ships only if the Secretary of State considers that the United Nations Convention on the Law of the Sea 1982 permits the exercise of those powers.

Amendment 125, in schedule 5, page 73, line 23, leave out "or (C1)" and insert ", (C1) or (C1A)".—*(Tom Pursglove.)*

This amendment is consequential on Amendment 110.

Tom Pursglove: I beg to move amendment 126, in schedule 5, page 73, line 23, at end insert "24B,".

This amendment and Amendments 127 and 128 are consequential on NC20.

The Chair: With this it will be convenient to discuss the following:

Government amendments 127 and 128.

[The Chair]

Clause 42 stand part.

Government amendment 124.

Government new clause 20—*Working in United Kingdom waters: arrival and entry.*

Tom Pursglove: As you noted, Ms McDonagh, I have spoken to various aspects of the grouping in my earlier remarks, so I do not propose repeating what I said. Amendments 126, 127 and 128 are changes to existing maritime enforcement powers to ensure that these are available in relation to illegal working offences in the UK's territorial sea. Amendment 124 brings new clause 20 into force automatically two months after the Bill receives Royal Assent for the purpose of making regulations.

Amendment 126 agreed to.

Amendments made: 127, in schedule 5, page 73, line 31, after "(S.I. 2020/1309)," insert—

"(ba) an offence under section 21 of the Immigration, Asylum and Nationality Act 2006,".

See the explanatory statement to Amendment 126.

Amendment 128, in schedule 5, page 73, line 37, leave out "paragraph (a) or (b)" and insert "paragraphs (a) to (ba)".—*(Tom Pursglove.)*

See the explanatory statement to Amendment 126.

Amendment proposed: 144, in schedule 5, page 74, line 30, at end insert—

"provided that the relevant officer may not do any of the things mentioned in sub-paragraph (2) where they would risk the welfare or safety of persons on board the ship."—*(Paul Blomfield.)*

This amendment would require officers to assess welfare risk before stopping or boarding a ship, requiring it to be taken elsewhere or requiring it to leave UK waters, and not act if doing so would exacerbate these risks.

Question put, That the amendment be made.

The Committee divided: Ayes 6, Noes 8.

Division No. 37]

AYES

Blomfield, Paul	McLaughlin, Anne
Charalambous, Bambos	McDonald, Stuart C.
Coyle, Neil	Owatemi, Taiwo

NOES

Anderson, Stuart	Pursglove, Tom
Baker, Duncan	Richards, Nicola
Gullis, Jonathan	Whittaker, Craig
Holmes, Paul	Wood, Mike

Question accordingly negatived.

2.45 pm

Amendment made: 83, in schedule 5, page 75, leave out lines 6 to 8.—*(Tom Pursglove.)*

Question put, That schedule 5, as amended, be the Fifth schedule to the Bill.

The Committee divided: Ayes 8, Noes 7.

Division No. 38]

AYES

Anderson, Stuart	Pursglove, Tom
Baker, Duncan	Richards, Nicola
Gullis, Jonathan	Whittaker, Craig
Holmes, Paul	Wood, Mike

NOES

Blomfield, Paul	McLaughlin, Anne
Charalambous, Bambos	McDonald, Stuart C.
Coyle, Neil	Owatemi, Taiwo
Lynch, Holly	

Question accordingly agreed to.

Schedule 5, as amended, agreed to.

Clause 42 disagreed to.

Clause 43

REMOVALS: NOTICE REQUIREMENTS

Bambos Charalambous: I beg to move amendment 137, in clause 43, page 40, line 8, leave out subsections (3) to (5).

The Chair: With this it will be convenient to discuss the following:

Clause stand part.

Government new clause 28—*Removals: notice requirements.*

Bambos Charalambous: Clause 43 refers to no-notice removals and presents another problem of access to justice in the Bill. The clause aims to provide a statutory minimum period to enable individuals to access justice prior to removal and makes provisions for removing individuals following a failed departure without the need for a further notice period. It also includes the provision of written notices of intention to remove and departure details. It makes clear in statute the duty of the Home Office to give people a maximum of five working days' notice when they are going to be removed from the UK.

For more than 10 years, the courts have recognised that that duty to give notice of removal is essential to accessing justice and the rule of law. As the Committee will acknowledge from our discussions on the Bill so far, it is vital that, when officials decide people should be removed, those people can access the courts to challenge that decision if they have a legitimate case.

However, while this clause sets out to provide access to justice, its effectiveness in doing so is very unclear. If the purpose of the notice period is, as stated, to enable those facing removal to access legal advice and the courts, it is essential that people served with a notice are able in practice to access that advice.

For example, the clause does not explain how the Government will ensure that access to legal advice will be provided. Asylum seekers can be highly vulnerable and may experience difficulties in effectively accessing legal advice and in understanding the legal intricacies of the asylum process, such as studying legal determinations or preparing submissions. As we know from our earlier scrutiny, clause 22 in part 2 provides for up to but no more than seven hours of legal aid for those served with a priority removal notice to receive advice on their immigration status and removal. We do not believe that provision goes far enough, but this clause is worse still. Unlike the provisions for priority removal notices, there is no specific provision in part 3 for ensuring that those who are served with notice of intention to remove can access legal advice within the notice period. The scheme therefore depends on existing legal aid provision, which has of course been decimated by the Conservatives for

more than a decade. There are serious limitations in the availability of this provision for those both in detention and in the community.

Subsection (8) inserts new section 10A in the Immigration and Asylum Act 1999. It sets out potential scenarios where a further notice period is not required, which includes, for example, where the person was not removed on the date specified in the first notice due to matters reasonably beyond the control of the Secretary of State, such as adverse weather conditions, technical faults or transport delays, or disruption by the person to be removed.

Disruption is very broad of course, and can be interpreted on a very broad basis. It could be applied to a person refusing to leave their room in detention because they want to speak to their lawyer. The fine print also states that a new notice of intention to remove and a further notice period are also not required where the person was not removed on the date specified in the first notice as a result of "ongoing judicial review proceedings".

That point is even more problematic. It applies where a planned removal does not proceed because of judicial review proceedings. If those proceedings are resolved in a way that means removal can proceed, the Home Office does not have to give any notice of removal if it is carried out within 21 days of the court's decision.

As the Public Law Project and JUSTICE have pointed out, that decision could come weeks, months, or even years after the first notice of removal. Over time, the person's circumstances could have changed fundamentally, important new evidence could have come to light or the situation in their own country might have changed dramatically. Such changes can happen virtually overnight, as recently witnessed in Afghanistan. Yet once the previous judicial review proceedings, which were potentially based on completely different facts and circumstances, are decided, a person can be removed without any notice or opportunity to raise these new circumstances with the Home Office or to access the court. If implemented, that could give rise to significant injustices.

I have one example to highlight this point—I thank the Public Law Project and JUSTICE for sharing this example. MLF is a Sri Lankan national whose asylum claim had been dismissed. During judicial review proceedings, in which he was unrepresented, he submitted further representations to the Home Office based on new evidence of the killing of three male relatives. That new evidence could not be considered in the judicial review proceedings because it post-dated the decision being challenged. The Home Office's barrister informed him that the material would be forwarded to the relevant part of the Home Office for consideration.

MLF was subsequently served with a decision that refused to consider his fresh representations. He was subsequently removed to Sri Lanka on the same day without any notice or opportunity to access the court. In hiding in Sri Lanka, MLF applied for judicial review of his removal without notice. The Home Office conceded that he had been unlawfully removed and arranged for MLF to return to the UK. He has since been granted refugee status on the basis of evidence that post-dated his original appeal, including that which he had submitted during his judicial review proceedings.

If clause 43 was implemented in that case, it would have authorised the removal of MLF without notice. To avoid situations where people are wrongly removed and evidence is not considered properly, amendment 137 seeks to delete subsections (3) to (5) of new section 10A of the 1999 Act. That change would ensure that people are required to be given notice of removal directions and an opportunity to ask the court to issue an injunction preventing their removal while additional elements of their case are considered or in order to present fresh evidence to challenge an initial decision.

Stuart C. McDonald (Cumbernauld, Kilsyth and Kirkintilloch East) (SNP): The shadow Minister has raised lots of sensible questions. I have one other brief question for the Minister, on new clause 28. He may not be able to answer it today, but I would like it clarified, if possible.

Proposed new section 10E to the 1999 Act that the new clause would add is supposed to apply when a person has applied for judicial review and the court has made a decision authorising the removal. To be clear, does that decision relate to the judicial review, or could it relate to any prior decision? That point will not affect lots of people, but it will be important. I appreciate that the Minister may not be able to answer immediately, but I hope we will get clarity on that in due course.

Tom Pursglove: It may be easier if I explain that the power in amendment 137 already exists—albeit for 10 days—in published policy that is available on gov.uk. The purpose of putting the policy into statute is not to introduce a new power, as it already exists. Rather, we want to place it on a statutory basis to enable parliamentary scrutiny.

We can currently rearrange a migrant's removal on another flight within 10 days of a failed removal without the need to give the migrant a fresh notice period. Clause 43 will increase the period to 21 days. Our recent experience during the pandemic has shown us that organising flights and complying with travel restrictions is difficult—dealing with self-isolation and rebooking escorts, for example. It is therefore entirely reasonable and sensible to allow the flexibility of 21 days to remove the migrant if the removal fails for reasons that are reasonably beyond the Secretary of State's control.

It may be helpful to provide some examples to illustrate that point. A migrant has already had time to access justice and is due to be removed, but the flight is cancelled because of bad weather. The removal fails, but we manage to book a flight for the next day. We do not want to be in the position of having to wait another five working days before we can remove that migrant. As a second example, if a removal fails because the migrant is deliberately disruptive, that person should not be rewarded with another five working days in which they can try to defer their removal further. For those reasons, I ask the hon. Member for Enfield, Southgate to withdraw his amendment.

To pick up on the point about access to legal aid during the notice period, migrants who are detained in immigration removal centres during the notice period will have access to the free legal advice surgery.

New clause 28 replaces clause 43 in its entirety. Our expert drafters have advised that it is better to do it that way because the text flows better and it is easier to navigate.

Unfortunately, migrants subject to enforced removal often wait until the last minute to challenge their removal from the UK. Consequently, flights are cancelled and removals are inevitably delayed at great cost to the taxpayer.

[Tom Pursglove]

We think it right that migrants subject to enforced removal must be allowed a reasonable opportunity to access justice. The sole purpose of the notice period is to give migrants time to seek legal advice. That is the rationale underpinning the clause.

Our current policy is complicated. Some migrants are given a minimum notice period of 72 hours, while others are given five working days. Calculating when the 72 hours start and end is confusing. They must include at least two working days, and the last 24 hours must include a working day. Evidently, there is scope for simplifying the process and making it consistent across the board. New clause 28 will do just that by placing in statute a single statutory minimum notice period of five working days for migrants. The new clause requires us to serve a written notice of intention to remove, setting out the notice period. Before the migrant can be removed, we must serve a written notice of departure details containing the date of removal.

A limited exception to the single statutory notice period relates to port cases. Migrants who are refused entry at the border can be removed within seven days without receiving a notice period. It is unlikely that they would have developed ties to the UK within that week.

The clause will create more clarity for Home Office staff, legal representatives and migrants. Migrants will know how long they have to access justice—in fact, some will have more time to access justice—and will therefore have fewer excuses to frustrate removal.

To be clear, we are not reintroducing removal windows, which were found to be unlawful by the Court of Appeal. Under the new clause, the migrant cannot be removed during the notice period. If the removal is cancelled or deferred because the migrant raises a fresh or further claim, a fresh notice period must be given before removal can proceed. Individuals will also be given a fresh notice period if there is a change to the previously notified destination or route, unless the place of transit is in a safe country.

The new clause provides that migrants can be removed within 21 days of a failed removal that was caused by their disruption. In such circumstances, a further notice period is not required because the migrant has already had sufficient opportunity to access justice, which is entirely reasonable when there are no significant changes to the migrant's circumstances. That is in our current published policy but with a timescale of 10 days. Extending the time from 10 to 21 days will give us more time to rearrange removal.

The pandemic has highlighted the fact that organising escorts and rebooking flights cannot always be turned around quickly. Migrants frequently challenge their removal by way of judicial review, and of course that is their right. As per the clause, once a court decides that the migrant can be removed, we can remove them within 21 days without a fresh notice period. The migrant has already had time to access justice, and the removal decision has been subject to judicial scrutiny. There is no justification for further time.

3 pm

The Committee has already debated priority removal notices, as set out in clauses 18 and 19, which are designed to give migrants time and enhanced legal aid provisions to access justice. In certain scenarios, the priority removal notice will function instead of a notice period. For example, a migrant receives a priority removal notice and then submits a human rights or protection claim. That claim is refused, and in time the migrant exhausts their appeal rights. We should then be able to remove them within 21 days without giving a new notice period. This will stop migrants having two bites of the cherry.

Extending the time up to 21 days will mean that some individuals may need to be detained until their departure is arranged, to prevent them from absconding in an attempt to avoid their removal. However, this could be undermined if the person could successfully be granted immigration bail during that period. We are therefore also amending the provision in the Immigration Act 2016 that currently allows the Secretary of State to refuse consent for the individual to be released from detention if the bail hearing is within 14 days of the person's planned removal. We are extending that to 21 days so that the two time periods are aligned.

It may be helpful to provide an example for illustration. A migrant deliberately disrupts their departure flight and, consequently, their removal needs to be rearranged on a different flight. We may have to book escorts to deal with any future disruption. The migrant is detained while the arrangements are made. If removal is organised within 14 days, detention can continue. However, if removal is set for 17 days, bail might be granted. I am sure we will all agree that a migrant should not be rewarded for their own disruptive behaviour.

The hon. Member for Cumbernauld, Kilsyth and Kirkintilloch East asked specifically about removal within 21 days after a judicial review without giving a notice period. The purpose of a notice period is to give the migrant sufficient opportunity to access justice. In this scenario, the person has time to access lawyers and the court has given the go-ahead to remove the migrant, so there is no need for further time to challenge our removal decision.

Government new clause 28 will ensure that migrants have ample time to access justice. The cumulative result will be a more efficient and streamlined removals process. I commend our amendment to the Committee.

Bambos Charalambous: We are not convinced by the Minister's response and wish to press amendment 137 to a Division.

Question put, That the amendment be made.

The Committee divided: Ayes 5, Noes 8.

Division No. 39]

AYES

Charalambous, Bambos	McLaughlin, Anne
Coyle, Neil	
Lynch, Holly	McDonald, Stuart C.

NOES

Anderson, Stuart	Pursglove, Tom
Baker, Duncan	Richards, Nicola
Gullis, Jonathan	Whittaker, Craig
Holmes, Paul	Wood, Mike

Question accordingly negatived.

Clause 43 disagreed to.

Clause 44

PRISONERS LIABLE TO REMOVAL FROM THE UNITED KINGDOM

Neil Coyle: I beg to move amendment 143, in clause 44, page 41, line 7, at end insert—

"(1A) A prisoner who arrived in the United Kingdom before their tenth birthday is not eligible for removal from the United Kingdom under subsection (1)."

This amendment would prevent deportation as an FNO for those who arrived in the UK before their tenth birthday, in line with the age of criminal responsibility.

The amendment is not down in my name; it was tabled by my hon. Friend the Member for Sheffield Central, who has an urgent constituency engagement. Forgive me if I am not as eloquent as my hon. Friend. I will try to do justice to his amendment.

In recent months and years we have seen a multitude of cases of individuals who have lived in the UK almost all of their lives, and in some cases were even born here, being deported as a result of past convictions. The amendment seeks to prevent that happening if the individual came to the UK before the age of 10, the age at which the UK deems one becomes criminally liable for their actions. Assuming that the age at which criminal liability kicks in is the age at which we believe someone starts to become at least partly responsible for their actions, why should their previous country of residence change how they are dealt with in the criminal justice system years or decades down the line? My hon. Friend the Member for Sheffield Central has provided a case study.

We hear of cases such as that of Sam Trye, who was born within sight of this room, just over the river in St Thomas' Hospital, where my daughter was born and where perhaps the son of the hon. Member for Stoke-on-Trent North will be born. We might not agree on many things, not least a scattergun approach to facts, but I congratulate him on his news, which I hope his wife gave permission for him to share before breaking it to us this morning. I hope our children have better life chances than Sam was afforded because he has since served a prison sentence for a non-violent crime, and the Home Office has been trying to deport him to Sierra Leone, from where his family moved to the UK. Despite Sam being born in the UK, he is treated differently as he lacks birthright citizenship. He has two British children and cares for his mum here in London, so his right to family life is therefore well established.

There is a question here about the UK's responsibility. When a child is born here and has been through our education system and our support services, and has grown up British in every sense, we have a duty to ensure that if they commit a crime, the British state takes responsibility for that individual. It is nonsensical to deport those who have never known another country, who came to the UK before they were ever criminally liable in UK law, let alone an adult with full independence and responsibility.

That issue was raised during the Windrush report, and by Sir Stephen Shaw in his 2016 "Review into the Welfare in Detention of Vulnerable Persons" and his 2018 follow-up progress report. Sir Stephen stated:

"I found during my visits across the immigration estate that a significant proportion of those deemed FNOs had grown up in the UK, some having been born here but the majority having arrived in very early childhood. These detainees often had strong UK accents, had been to UK schools, and all of their close family and friends were based in the UK… Many had no command of the language of the country to which they were to be 'returned', or any remaining family ties there… The removal of these individuals raises real ethical issues. Not only does their removal break up families in this country, and put them at risk in countries of which they have little or no awareness. It is also questionable how far it is fair to developing countries, without the criminal justice infrastructure of the UK, for one of the richest nations on earth to export those whose only chance of survival may be by way of further crime."

Sir Stephen's recommendation 33 was that

"The Home Office should no longer routinely seek to remove those who were born in the UK or have been brought up here from an early age."

That recommendation has been routinely ignored by Ministers, but we do know that the Government accept that premise in specific circumstances, so there is a precedent. Last year, when there was an outcry over their attempted deportation of people to Jamaica, the Government reached a private agreement with the Jamaican high commission that it would not deport those who came to the UK under the age of 12. When there were further charter flights this year, despite Ministers refusing to answer parliamentary questions from my hon. Friend the Member for Sheffield Central on the subject, as they wanted to hush up the agreement, we know that when the flights departed, no one who came to the UK under the age of 12 was on board. So which other countries does the Minister have other such agreements with, and which other countries are negotiating with him or others in the Government to secure such agreements? If the Minister has an agreement with Jamaica, which we know is sensible, why will he not make it a blanket policy? I invite him to respond if he can.

The amendment reflects British values, in the opinion of my hon. Friend the Member for Sheffield Central, and it take steps to enact Sir Stephen Shaw's recommendations. I urge the Government to accept it.

Tom Pursglove: I thank hon. Members for raising these important issues. Amendment 143 aims to prevent the deportation of a foreign national offender where they arrived in the UK before the age of 10. The clause enables the removal of a relevant prisoner at an earlier point in their sentence. The amendment would exempt FNOs who arrived in the UK before the age of 10 from the provision enabling them to be removed at an earlier point in their sentence, but it would not exempt them from deportation. I cannot see a rationale for exempting FNOs who arrived in the UK before the age of 10 from the provision enabling them to be removed at an earlier point in their sentence, given that they will still be liable to deportation at the end of the custodial part of their sentence if they have not been removed earlier.

The hon. Member for Bermondsey and Old Southwark stated that the purpose for the amendment is to align the age on arrival in the UK at which an exemption to deportation applies with the age of criminal responsibility. Almost all foreign national offenders that the Government deport from the UK have committed offences since they were adults. It does not make sense to provide an exception based on the age of criminal responsibility. Unlike England, Wales and Northern Ireland, the age of criminal responsibility in Scotland is 12.

Neil Coyle: I am keen to explore this on behalf of my hon. Friend the Member for Sheffield Central. Will the Minister tell us more about the arrangement with Jamaica, and those with any other countries? He says that it would

[Neil Coyle]

not make sense to have such an arrangement, but there is an existing one with a country. Perhaps he can tell us more about that specific arrangement, and any other countries we have entered into similar arrangements with.

Tom Pursglove: I am grateful for that question. The hon. Member for Sheffield Central is not here. I promised earlier to write to Committee members on the RNLI issue. I will make sure that this issue is addressed in that letter, particularly so that the hon. Gentleman can see that information in its full context, given that he is unable to be here because of a constituency commitment.

The amendment is too broad in scope. It does not define what is meant by "arrived in" the UK. This could include anyone who visited the UK for a short period or who arrived here clandestinely, as well as those who have been lawfully resident here since the age of 10. It is technically deficient and, I argue, wrong in principle. I also refer hon. Members to the requirements under the UK Borders Act 2007, passed under the previous Labour Government. For these reasons, I ask the hon. Gentleman to withdraw the amendment.

Neil Coyle: I beg to ask leave to withdraw the amendment.

Amendment, by leave, withdrawn.

Question proposed, That the clause stand part of the Bill.

The Chair: With this it will be convenient to discuss Government new clause 8—*Prisoners liable to removal from the United Kingdom.*

Tom Pursglove: Clause 44 is one of the six clauses drafted as placeholder clauses at the Bill's introduction. As indicated in the Bill's explanatory notes and the memorandum for the Delegated Powers and Regulatory Reform Committee, it was drafted as such in the interests of transparency, to make clear our intention to bring forward substantive provisions on the early removal scheme. New clause 8 is intended to replace clause 44.

New clause 8 forms part of a package of measures that will enable the swift removal of those who have no right to be in the UK. By expanding the existing early removal scheme and increasing the removal window from nine months to 12 months, we will have greater opportunity to remove as many foreign national offenders from the UK as early as possible. However, to ensure that those sentenced by the courts are not simply let off their sentence, and to maintain public confidence in the justice system, removal under the scheme is subject to at least half of the custodial period of the sentence—the "requisite custodial period"—being served in prison. The knowledge that offenders will serve punishment for their crime in prison and will be removed from prison and the UK before they have an opportunity to be released on licence will provide comfort for victims.

The new clause will also mean that eligible foreign national offenders can be removed at any point in their sentence provided they have served the requisite custodial period and are within 12 months of their earliest release point. Presently, the scheme does not permit removal for those foreign national offenders who are serving a recall—FNOs who have been released into the community after serving their custodial sentence and subsequently recalled to custody for breaching that licence. The new clause brings them into scope.

The new clause also serves to deter foreign national offenders who have already been deported once from returning to the UK through the introduction of a stop-the-clock provision. Should a foreign national offender ever return to the UK after being removed, they will be liable to immediate arrest and return to custody to serve the remainder of the custodial period of their sentence. This is in addition to a maximum 5-year prison sentence that may be imposed for returning in breach of a deportation order.

3.15 pm

Bambos Charalambous: The Government will disagree to clause 44 and replace it with new clause 8, although I understand that new clause 8 has fundamentally the same principle as the clause. Clause 44 and new clause 8 will extend the length of time a foreign national offender can be considered for early removal from the last nine months to the last 12 months of their sentence if they become eligible for the scheme. The Opposition have concerns that increasing that time limit will lead to unfairness in accessing justice for foreign national offenders as well as leaving them with inadequate time to obtain access to legal representation.

In our already overpopulated and overworked prison system, foreign national offenders have limited access to legal support and resources even when compared with people detained in immigration detention centres. They have no access to mobile phones or the internet. In the limited time that they do have access to a phone, the contacts they can call are vetted by the prison and this process can take many weeks. Thus, acquiring adequate legal representation becomes near impossible. Time is of the essence to these individuals and increasing this early removal widow will only lead to exacerbating these difficulties.

Bail for Immigration Detainees produced a report in 2017 on the lack of legal advice available to prisoners, which found that only five of the 86 prison detainees surveyed had received independent advice about their immigration case. They found that detainees in prison are routinely denied access to basic information that might help their immigration case. Cuts to legal aid have only made this situation worse. The High Court earlier this year held that detainees in prison have suffered discriminatory treatment due to obstacles in getting legal advice—in particular, exemptions from legal aid eligibility.

Despite what high-profile recent Home Office failings might imply, when it comes to deportations the already heavily stacked deck is stacked against the deportee. Not having proper legal representation means that the detainees will almost certainly be denied the fundamental right to a fair hearing. It would mean that they could be deported to countries in which they face persecution, or it would be in breach of their human rights. We should not undermine that right by extending the length of time they have for removal. Charities such as Bail for Immigration Detainees are already stretched to breaking point trying to support these vulnerable individuals. Instead of limiting access to justice, the Government should work on increasing its efficiency so that foreign national offenders who have committed serious crimes are dealt with swiftly and those who have claims to remain are given a fair hearing.

Question put and negatived.

Clause 44 disagreed to.

Clause 45

MATTERS RELEVANT TO DECISIONS RELATING TO IMMIGRATION BAIL

Question proposed, That the clause stand part of the Bill.

Tom Pursglove: For too long, individuals with no right to remain in the UK, including foreign criminals, have been gaming the system in order to get released from detention and frustrate their removal. We have seen individuals making asylum claims while in detention, but then delaying the resolution of that claim through their own deliberate actions, such as refusing to be interviewed. The current system incentivises non-compliant behaviour. By creating obstacles, bail is more likely to be granted due to the time it will take to resolve the claim and any subsequent appeals. It is not right that a person's non-compliance enables their release.

Similarly, an individual may refuse to provide fingerprints for a travel document or may lie about their true nationality, thereby obstructing the returns documentation process. This again makes the prospect of removal more remote and increases the likelihood that bail may be granted. From an operational perspective, non-compliance is difficult to tackle and becomes much harder to counter once individuals are released from detention into the community, where they have the ability to abscond or continue with non-compliance. Therefore, eliminating the risk and impact of non-compliance is a key benefit that arises from the use of immigration detention if appropriate in the individual case.

We must have an immigration system that encourages compliance. The purpose of clause 45 is to ensure that, so far as possible, appropriate weight is given to evidence that a person has not been co-operative with the immigration or returns processes without reasonable excuse when making immigration bail decisions. This is currently not explicitly referenced as one of the specific mandatory criteria for considering whether to grant immigration bail.

Stuart C. McDonald: The Minister did seem to accept that all those factors can be taken into account already if they are relevant to the question of whether the person is going to be removed in a reasonable time or whether they will abscond. Surely those are the only two questions. This is not necessary at all and seeks to use immigration detention as a form of punishment.

Tom Pursglove: I do not accept that depiction. We are requiring decision makers to take into account co-operation with removal proceedings and immigration processes when considering applications for immigration bail. We are mindful that non-compliance may already be considered, and that the tribunal takes such behaviour into account when deciding whether to grant bail. However, the intention behind the provision is that there be the same focus on evidence of non-compliant behaviour as there is on those factors already particularised and considered in every case. As we have always made clear, we do not detain indefinitely, and the clause will not mean that people will be detained solely due to non-compliance, as there must always be a realistic prospect of removal within a reasonable timescale.

Bambos Charalambous: We will oppose the clause. It makes it more difficult for individuals to get bail and leaves them stranded in immigration detention indefinitely.

The clause would require decision makers to consider previous failure "to cooperate with" certain immigration processes when considering whether to grant immigration bail. That is extremely vague and broad language. There is a risk of it being misconstrued and used to penalise those who use their legal rights to resist or appeal against immigration decisions made against them.

The Public Law Project has stated that if detainees are given the impression that any resistance to a decision of the Home Office may be held against them, it would increase unfairness and have a significant chilling effect on those bringing legitimate legal challenge. There is already an uneven playing field; the clause risks tipping things still further in the Home Office's favour. The Home Office is expanding its powers of detention, while preventing independent judicial oversight of its decisions to detain.

Immigration detention is a harsh measure. It has no time limit and little judicial oversight, and should be used only when necessary and for the shortest time possible. The Government hold vulnerable people in prison-like immigration detention centres for periods ranging from days to several years. That includes people who have lived in the UK since childhood, people fleeing war and persecution, torture survivors and victims of human trafficking. Such vulnerabilities cannot be managed in detention and will no doubt be worsened by the prospect of bail being denied.

Since 2000, 49 people have died in immigration detention centres, and incidents of self-harm are now recorded at more than one a day. The Home Office's immigration detention facilities are not fit for purpose, and narrowing the availability of immigration bail will only make the situation worse.

The uncertainty of indefinite detention is cruel not only for the detainee, but for family members waiting for them at home. Research by Bail for Immigration Detainees, which helps 3,500 detainees to apply for bail every year, shows that children of detainees are often British citizens, and suffer a range of physical and mental effects due to separation from their parent. Those are compounded by further, unexpected separation. For those children, cutting off the prospect of bail will lead to further mental ill health and suffering.

The majority of people in detention do not need to be there. More than 60% of people taken into detention are eventually released, their detention having served no purpose, at a cost of £76 million a year, according to Matrix Evidence research. BID has said that the Home Office repeatedly breaks the law and detains people unlawfully. In the past two years, the Home Office has paid out £15.1 million to 584 people whom it had detained unlawfully.

The clause will make it tougher for people to get bail and leave them trapped in detention for longer. The Government have committed to reducing detention, but this measure is counter to their own rhetoric. It means less justice for detainees, more harm for vulnerable refugees and more wasted costs for the taxpayer. That is why Labour opposes the clause.

Stuart C. McDonald: As I said in my intervention on the Minister, the decision has to be based on whether there is a reasonable prospect of imminent removal, and included in that is the question of the likelihood of the person absconding if bail is granted. If any historical

[Stuart C. McDonald]

non-compliance has any sort of relation to that question—if it is relevant—the tribunal will obviously already be able to take it into account. Today, the Minister is asking us to tell the decision makers to take into account historical non-compliance even where it has absolutely no bearing, in the decision maker's view, on the fundamental question of whether someone should be interned. That is moving from weighing up those considerations in the question about removal to using detention almost as a form of punishment. It is completely unjustified, and I echo what the shadow Minister has said.

Question put, That the clause stand part of the Bill.

The Committee divided: Ayes 8, Noes 5.

Division No. 40]

AYES

Anderson, Stuart	Pursglove, Tom
Baker, Duncan	Richards, Nicola
Gullis, Jonathan	Whittaker, Craig
Holmes, Paul	Wood, Mike

NOES

Charalambous, Bambos	McLaughlin, Anne
Coyle, Neil	
Lynch, Holly	McDonald, Stuart C.

Question accordingly agreed to.

Clause 45 ordered to stand part of the Bill.

Clause 46

PROVISION OF INFORMATION RELATING TO BEING A VICTIM OF SLAVERY OR HUMAN TRAFFICKING

Stuart C. McDonald: I beg to move amendment 170, in clause 46, page 41, line 41, leave out ", before the specified date,".

This amendment would remove the hard deadline for compliance for persons who have made protection claims or human rights claims to comply with a slavery or trafficking information notice.

The Chair: With this it will be convenient to discuss the following:

Amendment 169, in clause 46, page 42, line 4, leave out subsections (4) and (5) and insert—

"(4) Subsection (5) applies if the recipient of a slavery or trafficking information notice does not provide the Secretary of State or competent authority with relevant status information within a reasonable period of time.

(5) The Secretary of State must provide recipients with an ongoing opportunity to explain why they did not provide the relevant status information within a reasonable period of time (and see section 47)."

This amendment would remove the hard deadline for compliance for persons who have made protection claims or human rights claims to comply with a slavery or trafficking information notice.

Amendment 171, in clause 46, page 42, leave out lines 13 and 14.

This is a consequential amendment.

Stuart C. McDonald: Clause 46 brings us on to part 4 of the Bill, which relates to modern slavery. I will make a few general points in this debate, which will save me from having to repeat them in later debates. They are relevant to the clause and the amendment, and to other ones as well.

My first point is: why is modern slavery in a Bill that relates to immigration and border enforcement? The fact that it is included betrays the Government's motivation. It is not about protecting survivors or addressing the huge difficulties victims face in accessing protection and support. Rather, this has to do with border enforcement functions and is based on unevidenced assertions of abuse. It is important to remember that people cannot refer themselves to the national referral mechanism as a potential victim of slavery; they have to be referred into it. The majority of referrals come from the Home Office and the police. In the overwhelming majority of cases—nine in 10—the NRM results in positive and conclusive decisions. None of this is evidence of any sort of abuse.

This part of the Bill also pre-empts the review of the modern slavery strategy that is supposed to be happening. The proposals are all largely absent from the new plan that was published earlier this year, and they have not been consulted on—certainly not with trafficking survivors. Efforts to tackle the traffickers will suffer as a result of the lack of consultation and engagement. When we debate these clauses, let us also remember that a huge number of survivors are British citizens.

The real problem that we face with trafficking is encouraging people to come forward. That is partly because of the power that traffickers have over their victims, partly because of the trauma that victims have suffered, and partly because we are not doing enough to enable them to feel sure that they will have protection. Too often the experience of the NRM process is that people are re-traumatised and left in limbo waiting for a decision, often for years and without any right to work. Even when they are recognised as trafficking or slavery survivors, as the vast majority are, they are given no leave to remain and are subject to removal. It is little wonder that while some expert groups reckon that there could 100,000 or more modern slavery victims in the UK, we conclusively identify around just 3,000 or so each year. Instead of fixing that, the clause and others in this part of the Bill will make things worse.

The Chair: I am sorry to interrupt the hon. Gentleman, but there will be a clause stand part debate later. If he could concentrate on the amendments in this group, that would be good.

Stuart C. McDonald: I am happy to do that, Ms McDonagh.

I will not repeat the arguments that I have already made about why it is wrong for Parliament to tell decision makers how to assess evidence that they see, but that we never will—I have done that already in relation to other notices. I simply make the point that putting in place deadlines for disclosure and punishments for missing them is especially dangerous and counterproductive for victims of trafficking.

3.30 pm

We all know that victims of slavery face all sorts of challenges in disclosure, as the Home Office's own statutory guidance recognises. Self-evidently, if a survivor misses a deadline because they are in survivor mode, or they have not accessed the support they need, or they

are still loyal in some way to the person exploiting them, they will be less likely, rather than more likely, to disclose what has happened, for fear of disbelief. If the exploiter does still have influence, this is an absolute gift to them. They will be the first to point out the possible consequences of missing the deadline. To the survivor, the attempted reassurance that a reasonable excuse will be accepted is not worth the paper it is written on.

The amendments seek to salvage the clause. Providing information to survivors and providing them with encouragement to disclose could be positive, but not when it comes with these deadlines and threats, particularly when the notices will most often be served on people who have not yet entered the NRM and accessed the support that will enable them to make the disclosure. Why, unlike with priority removal notices, is there no provision for legal aid to allow a response to a trafficking information notice? What has happened to the places of safety announced by the Government back in 2017?

The clause just strengthens the hand of the people who are trying to exploit and influence victims of trafficking. It will discourage disclosure and prevent the protection of the survivor. In turn, that prevents detection and prosecution of the exploiters. Our amendments could turn the clause into something genuinely constructive and useful. If the Government are concerned about abuse, they should implement the commissioner's recommendations about training for first responders and single points of contact. They should not go off on this dangerous wild goose chase.

Tom Pursglove: Before turning to part 4, which deals with modern slavery, I would like to make a declaration of interest. In October, prior to my appointment as Minister, I ran the London marathon and raised funds for the Mintridge Foundation, which encourages young people to get into sport, and Justice and Care, a charity that works to tackle modern slavery. I make the declaration in the interests of complete transparency and for the information of the Committee.

I thank the hon. Members for Cumbernauld, Kilsyth and Kirkintilloch East, and for Glasgow North East for the amendment. The hon. Member for Cumbernauld, Kilsyth and Kirkintilloch East raised important questions about the purpose of the slavery and risk trafficking notice.

The clause forms part of our approach to expanding the one-stop process to include modern slavery through the establishment of a new slavery and trafficking information notice. We have already debated the one-stop process, so I will not repeat that discussion, but the aim of the process is to identify possible victims as early as possible and ensure they receive the support they need. To best achieve that, we also need to discourage misuse of the system by stating our expectations and stipulating the consequences of non-compliance with the process.

That being said, let me reassure hon. Members that the clause has safeguards built in, and decision makers will consider each case on its grounds. To seek to remove the deadline stipulated by the slavery or trafficking information notice, as suggested by amendment 170, would go against the approach I have outlined. Without a deadline, the Government would be unable to seek the information up front that supports speedier decision making. Equally, changing a "specified" time to

"a reasonable period of time"

would provide less certainty to victims and decision makers on what is required. That would be detrimental to the victim identification process and goes against what we are trying to achieve in the Bill.

The ability to identify victims at the earliest opportunity is fundamental to our ability to support them. The clause is part of a wider process of much-needed change to the system to enable quicker decision making and reduce opportunities for misuse of the system, which takes valuable resources from victims. To deliver on that aim, it is right that we specify the time period in which information should be given, so that there is a connection to the consequences of late provision. As I have already set out, that does not mean that late claims will not be considered; any individual who brings a late claim for a good reason will be treated as if the claim were made in time. That will enable us to strike the right balance between preventing misuse and focusing resources on victims. For the reasons I have outlined, I respectfully invite the hon. Gentleman to withdraw the amendment.

Stuart C. McDonald: We share the same goal, which is identifying victims. Unfortunately, every single trafficking organisation that has got in touch with us has said that putting these hard and fast deadlines in the Bill will make that harder, rather than easier. We will probably end up voting against this clause, but in the meantime, I beg to ask leave to withdraw the amendment.

Amendment, by leave, withdrawn.

Stuart C. McDonald: I beg to move amendment 172, in clause 46, page 41, line 42, at end insert—

"(2A) The requirement in subsection (2) does not apply in relation to anything that the slavery or trafficking information notice recipient has previously provided to the Secretary of State or any other competent authority."

This amendment would ensure a recipient of a slavery or trafficking information notice does not need to provide information that has already been submitted to the Secretary of State or any other competent authority.

This amendment makes a short and simple, but important, point. Requesting the same information that has already been disclosed could be needlessly re-traumatising for a victim of modern slavery or trafficking, so the simple question is whether the Minister can assure us that that will not be made necessary under clause 46. The clause seems to envisage that trafficking information notices could be served on someone who has already had a positive reasonable grounds decision. Can the Minister confirm whether that is right, and if so, why that would be necessary? As it stands, the clause calls for "any" information that might be relevant for the purposes of making a decision on reasonable or conclusive grounds. Surely there will be no penalty if information already provided is not once again provided in response to the notice being served.

Tom Pursglove: Again, I thank the hon. Gentleman for tabling the amendment. I reassure Members that the clause already has safeguards built in, and it is clear that decision makers will consider each case on its grounds. I appreciate the consideration given to the provision of information, and the recommendation that the clause should stipulate that information provided previously to the competent authority should not be included. However, the amendment is not needed. Decision makers in the competent authority will consider all information

[Tom Pursglove]

provided to them. Credibility considerations connected to lateness will, by implication, apply only where information has not been provided within a specified time period and without good reasons, which will be made clear in guidance. For that reason, I respectfully invite the hon. Member to withdraw the amendment.

Stuart C. McDonald: I am grateful to the Minister for his response, which I will go away and consider. In the meantime, I beg to ask leave to withdraw the amendment.

Amendment, by leave, withdrawn.

Holly Lynch (Halifax) (Lab): I beg to move amendment 184, in clause 46, page 42, line 3, at end insert—

"(3A) Any slavery or trafficking information notice must be accompanied by information regarding the Secretary of State's obligations to identify and support potential victims of modern slavery and trafficking."

This amendment would ensure that potential victims are given information regarding their rights at the same time the notice is served.

It is a pleasure to serve with you in the Chair, Ms McDonagh. I commend the Minister on having run the London marathon for Justice and Care, which does invaluable work.

We are supportive of the previous Scottish National party amendments to clause 46, which were outlined by the hon. Member for Cumbernauld, Kilsyth and Kirkintilloch East. If we achieve nothing else this afternoon, I did promise the SNP spokesperson that I would work on being able to pronounce his constituency in time for our debates on the Bill, having managed to avoid doing so entirely during the passage of last year's Immigration Act. I hope he will recognise those efforts.

With your permission, Chair, I will come back to clause 46 more broadly during the stand part debate. Our amendment follows a damning letter sent by 60 charities from across the human trafficking and modern slavery sector. They seeks to mitigate the effects of a Bill that they claim

"will have a disastrous impact on the UK's response to modern slavery."

In the light of the series of recommendations in that letter, amendment 184 would require any slavery or trafficking information notice to be

"accompanied by information regarding the Secretary of State's obligations to identify and support potential victims of modern slavery and trafficking."

We have serious concerns about both clauses 46 and 47, but these trafficking information notices are a new initiative, and should be accompanied by a full explanation of why the questions are being asked and what rights and support a potential victim of trafficking should be entitled to. The Government have placed significant emphasis on the need to reduce the time taken for victims to be identified, and on ensuring they receive the correct support package at the earliest opportunity. We strongly share that objective, so the requirement for information to be provided at the same time as the notice is served seeks to address any uncertainty and anxieties a potential victim may have.

Furthermore, it is critical that a trafficking notice is served with an assessment and awareness of risks and victims' needs, as they can be incredibly wide-ranging, and that assessment and awareness can be essential for safeguarding purposes. Some victims will not have English as their first language, and some may have limited literacy skills. They will need access to the correct translator and there should be recognition of any special educational needs. That reinforces the need for each case to be evaluated sensitively.

We seek to ensure that the basic entitlement to information is met. It is important to recognise that in cases of modern slavery, many first responders and expert witnesses have found that victims interviewed often have so little knowledge of the national referral mechanism that they do not know if they are, or have been, in the NRM. Victims being unable to self-identify and limited awareness of how to navigate the NRM are consistent issues, and we will return to them under other clauses in part 4. Amendment 184 seeks to mitigate potential restrictions to the NRM, and is a sensible suggestion, and I hope that the Minister sees its merit.

Tom Pursglove: I thank the hon. Members for Enfield, Southgate, and for Halifax, for tabling the amendment, and the hon. Member for Halifax for setting out the case for it. Clause 46 forms part of our expansion of the one-stop process to include modern slavery through the establishment of a new slavery and trafficking information notice.

Amendment 184 is not required, as the Government are providing mechanisms in the Bill to ensure that potential victims are fully aware of their rights and the Secretary of State's obligations to them, including the right to free legal aid where appropriate. Information on the Secretary of State's obligations to victims will be provided to individuals when a slavery or trafficking information notice is issued. These measures will ensure that potential victims better understand the national referral mechanism and their support entitlements.

In combination with clause 46, clauses 54 and 55 seek to ensure that individuals are provided with advice on the national referral mechanism when they receive advice on asylum and immigration matters. That will enable more victims of modern slavery to be referred, identified and properly supported.

Primary legislation on the process of providing information to possible victims is not required, and while I appreciate the sentiment behind the amendment, it would duplicate what happens through clauses 46, 54 and 55. In the light of that explanation, I hope that the hon. Member for Halifax is content to withdraw the amendment. We have had a pretty good debate on clause 46, so I hope that it can stand part of the Bill.

Holly Lynch: I am somewhat reassured by the Minister's remarks. I hope that he will inform Committee members when the draft notices have been finalised; we will continue to keep a close eye on that matter. We will not push the amendment to a vote, but given what the Minister said about the clause, I might move on now to my speech on clause stand part.

The Chair: We will have a clause stand part debate.

Holly Lynch: I beg to ask leave to withdraw the amendment.

Amendment, by leave, withdrawn.

Question proposed, That the clause stand part of the Bill.

Holly Lynch: I have some broader remarks on the clause, which we do not intend to support. I thank colleagues right across the human trafficking and modern slavery sector for their professional expertise, and their assistance with our scrutiny of the proposals before us.

As was said in the evidence sessions, and by the hon. Member for Cumbernauld, Kilsyth and Kirkintilloch East, part 4 came as a surprise to many; they had not anticipated its proposals, which were wrapped up in an otherwise very heavily trailed piece of immigration legislation. There are no two ways about it: part 4 is a backward step after the hard-won progress of the Modern Slavery Act 2015. Every Child Protected Against Trafficking was scathing about it in its briefing; it said there had been a complete lack of due process when it came to these elements of this primary legislation, and that for that reason, parliamentary scrutiny of them would be even more urgent and important. The Children's Society has been explicit in saying that part 4 of the Bill should be removed entirely. It has described the Bill as

"an affront to the Government's own recognition that identifying victims of modern slavery or human trafficking is a safeguarding, not immigration matter. Consequently, not only will this Bill have unjust and dire impacts on children and young people who have fled to this country seeking safety and protection, it will particularly harm children if they are then also trafficked or exploited."

That is a stark warning to us all.

3.45 pm

The Government argue that the clause will ensure that claims and information can be considered at the same time, and that this will aid Home Office and judicial decision makers by speeding up processes. While we share this intention unequivocally, the reality is that the hard deadline in the clause, combined with clause 47, which we will come on to, will undermine the ability to do that. The clause places a significant burden on victims to self-identify, to understand what information may be considered relevant and to provide full disclosure at the very early stages of having been identified as a potential victim of trafficking. Data from CARE International UK reveals that, last year, 2,178 of the adults identified by first responders as suspected victims of modern slavery in the UK did not agree to enter the NRM, which would have entitled them to support. Given that trained first responders recognised the signs of potential victims of modern slavery in that group, we need to understand the complicated reasons why that group did not identify as victims and consent to entering the NRM.

The success of the Government's proposal will rely on a misconstruction that we have heard time and again in earlier debates around the notion of a perfect victim—someone who recognises themselves as a victim and can fully disclose and evidence what happened to them against a Home Office deadline. A police officer recently told me of a case where agencies had to support a victim over the course of a year before that victim recognised that they had been exploited and abused by another individual, as had been immediately obvious to the authorities and first responders, rather than believing they had been cared for by the perpetrator, who as part of their exploitation had sought to present themselves to the victim as being entirely on the victim's side. The oral and written evidence presented to the Committee in relation to parts 2 and 4 have been explicit that those who have been subject to significant trauma will find it difficult to disclose the details of their experiences against a Home Office-mandated timeline.

In addition to the disclosure issues, there are also practical challenges. The Minister will have noted that a number of his colleagues have raised concerns about this proposal. On Second Reading, the right hon. Member for Maidenhead (Mrs May) stated:

"It takes time for many victims of modern slavery to identify as a victim, let alone be able to put forward the evidence to establish that. I would like reassurance about how that power will be exercised."—[*Official Report*, 19 July 2021; Vol. 699, c. 728.]

The Opposition very much share those concerns. The requirement for any information relevant for making both initial reasonable grounds and conclusive grounds decisions in subsection (3) raises questions about the process. Will the Minister confirm whether trafficking information notices will be routinely issued to a victim prior to making a reasonable grounds decision, as subsection (3) suggests? That could introduce a significant barrier to entering the NRM for victims who need swift entry into the system.

It is my understanding that currently a reasonable grounds decision is made by Home Office decision makers on the basis of evidence provided by the relevant agencies that made the referral, which assists with making decisions at pace. I am concerned that victim receiving a notice and being required to disclose information prior to a reasonable grounds decision being made could introduce a significant delay into the process, so I would be grateful if the Minister outlined how he envisages the notices working to ensure appropriate reasonable grounds decisions are not delayed unnecessarily.

The introduction of trafficking information notices is an example of immigration controls creeping into modern slavery protections, where they are simply inappropriate and do not belong. It is a regressive measure, particularly for those who have struggled to secure legal representation. I have indicated our support for SNP amendments that strip away the hard deadlines and establish a more trauma-informed approach. I hope the Minister will recognise those merits. I have received assurances about amendment 184, but ultimately the clause in its current form should not stand part of the Bill.

Stuart C. McDonald: I will be brief, given what I said in support of the amendment. All the anti-trafficking organisations that got in touch with us—60 or so—said that this clause could cause huge problems. I am not clear at all what issue the Government think it will resolve. What is the problem they are striving to tackle? It has not been outlined at all. All hon. Members agree that we need to identify more victims, but as the hon. Member for Halifax said, this will do the opposite and make it harder, not easier.

Tom Pursglove: It might assist the Committee if I say a little more. I am not concerned about covering ground that we may have already covered if it helps to clarify matters further and to put beyond any doubt the Government's undertaking.

The purpose of clause 46 is to ensure that genuine victims of modern slavery are identified at the earliest possible opportunity, so that they can get the support they need to recover from their exploitation. The clause is part of the measures that seek to expand the current one-stop process to include modern slavery through the

[Tom Pursglove]

establishment of the new slavery and trafficking information notice, which can be issued alongside the new evidence notice introduced by clause 16.

Asylum and human rights claimants will need to provide relevant information relating to being a victim of modern slavery or trafficking within a specified period and, if providing information outside that period, set out a statement of their reasons for doing so. The slavery and trafficking notice aims to help identify possible victims at the earliest opportunity, to ensure that they receive appropriate support. It also aims to ensure that those who are not genuine victims are identified at the earliest possible stage.

The clause is underpinned by access to legal advice to help individuals understand whether they are a potential victim of modern slavery or human trafficking, and to support a referral into the national referral mechanism if that is the case. The clause works in tandem with clause 47, which sets out the impact of not providing information in good time without a good reason, such as the effects of trauma. Individuals will also be made aware from the start that if they fail to disclose information, save for good reason, their credibility may be damaged. We will set out our approach in guidance, giving decision makers the tools to recognise the impact of exploitation and trauma, and ensuring any changes to processes resulting from those measures are designed to take full account of the impact of trauma on victims of modern slavery. We intend to work with the sector to develop the guidance around that. I hope that will give Members confidence that the views and experiences of those groups will be taken into account when developing the guidance.

Neil Coyle: Perhaps the Minister could name one of the expert organisations that support the inclusion of clause 46 or 47. As it stands, the vast majority of organisations in the sector oppose the inclusion of those measures. It is all very well the Minister saying he will impose a requirement on the sector to work with the Government on that guidance, but they are saying categorically that they do not want the clauses.

Tom Pursglove: I think the hon. Gentleman may have misunderstood my point. I was not saying there was any intention to impose a requirement on the sector to work with Government to develop the guidance, but undoubtedly we would welcome the input of the sector, which has a lot of experience and knowledge. We think there is a genuine issue that we need to address. The point I have made several times is that we want people to access the help they need when they need it as quickly as possible.

Stuart C. McDonald: The sector would have preferred to have been consulted on the clause. The key problem it has is what happens if someone has gone past that deadline. This scheme puts real pressure on that person not to disclose at all, because they will fear that the regime will lead to their being disbelieved. That is a fundamental problem. Consulting after the clause is already on the statute book will not fix that.

Tom Pursglove: I disagree with the hon. Gentleman's broader interpretation of the situation. We want to identify and help genuine victims as quickly as possible. I would expect cases to be looked at appropriately and individually to ensure that is exactly what happens. There was also a question of whether victims will receive a slavery and trafficking information notice before getting a reasonable grounds decision? Yes, we want to identify victims as soon as possible.

Holly Lynch: Will the Minister take an intervention?

Tom Pursglove: I will, although I think I had finished my sentence.

Holly Lynch: The Minister had, and I am eternally grateful to him for giving way.

It does worry me somewhat that, as I understand it, those decision makers at the Home Office would ordinarily make reasonable grounds decisions very quickly in order to facilitate a swift entry into the NRM. If that will no longer be the case and we will be issuing notices, bearing in mind what we have discussed about trauma and victims taking time to disclose it, that could introduce significant delays for a victim entering the NRM. That really worries me. Could the Minister say any more to assure us that we will not be preventing victims from accessing the support they need by introducing that additional process?

Tom Pursglove: I would expect cases to be looked at on an appropriate case-by-case basis that properly takes into account all of the relevant circumstances. It might be advantageous if, in my note to the Committee, I include some commentary on how we expect the process to work, to set that out for Members in more detail and make sure there is no confusion.

Question put, That the clause stand part of the Bill.

The Committee divided: Ayes 7, Noes 5.

Division No. 41]

AYES

Anderson, Stuart	Richards, Nicola
Baker, Duncan	Whittaker, Craig
Gullis, Jonathan	
Pursglove, Tom	Wood, Mike

NOES

Charalambous, Bambos	McLaughlin, Anne
Coyle, Neil	
Lynch, Holly	McDonald, Stuart C.

Question accordingly agreed to.

Clause 46 ordered to stand part of the Bill.

Clause 47

LATE COMPLIANCE WITH SLAVERY OR TRAFFICKING INFORMATION NOTICE: DAMAGE TO CREDIBILITY

Holly Lynch: I beg to move amendment 190, in clause 47, page 42, line 19, at end insert—

"(aa) the person was 18 or over at the time of the incident or incidents in respect of which the slavery or trafficking information notice was issued;".

This amendment seeks to ensure those exploited as children are not penalised for late disclosures.

The amendment seeks to ensure that those who were exploited as children are not penalised for late disclosure, because of their age-related vulnerability and safeguarding concerns. Statutory guidance under the Modern Slavery Act 2015 very clearly states:

"Whatever form it takes, modern slavery and child trafficking is child abuse and relevant child protection procedures…must be followed if modern slavery or trafficking is suspected."

There is a remarkable lack of distinction between children and adults in the proposals set out in the Bill. That issue was picked up by the Independent Anti-Slavery Commissioner, who commented in her letter to the Home Secretary in September on the lack of detail on provisions for children.

This is the first in a series of amendments to clauses in part 4 of the Bill that seek to ensure that the worst elements of part 4 do not apply to children. As we know, the Children's Society has been deeply critical of the Bill and of clause 47 in particular, arguing that the clause will disproportionately and unjustly affect children and young people, who we know are often unable to disclose evidence

"because of the trauma of their experiences, or due to inadequate legal representation."

Putting the responsibility of disclosure on to a child victim of slavery or trafficking in order to comply with a pre-determined Home Office timeframe, so that they can access the support they need to escape slavery or trafficking, is a perverse barrier. Surely that is not what the Minister intends to achieve. If it is not, I urge him to adopt amendment 190 to make that clear.

In its written evidence, Every Child Protected Against Trafficking points to a 10% increase in the number of children identified as potential victims of trafficking from 2019 to 2020. There were 4,946 referrals last year. That is why we must recognise children within the NRM as requiring a different approach from that required by adults. I return to the point that child protection procedures must be followed as outlined in the modern slavery guidance. Nowhere does that feature in this part of the Bill.

ECPAT makes the point that child trafficking is a form of child abuse and that identifying child victims of trafficking is a safeguarding matter, not an immigration one—not least because so many children in the NRM are British citizens. However, we have a responsibility to any child victim of trafficking to protect them from exploitation, first and foremost. To put the burden of proof on to a traumatised child with trafficking information notices is not right; nor, I suspect, would it comply with various other safeguarding obligations.

4 pm

The Children's Society quotes a young person talking about their Home Office interview experience as an indicator that procedures are not child-centred. The young person said:

"I was asked over 200 questions and it lasted five hours with no break. They kept asking me similar questions, which made it feel so complicated. They were asking me specific questions about dates of things that happened to me in my country and it really made me anxious as I couldn't remember as a lot of things happened and I can't remember all the dates. They wouldn't even look at me and kept typing on their laptop. They kept pushing me for specific dates."

That is far from being a trauma-informed approach, which is why we share the Children's Society's serious concerns about this clause. We feel that amendment 190 is entirely necessary if we are to safeguard children from trafficking, by removing them from the burden of trafficking information notices and the consequences of late disclosure.

Tom Pursglove: I thank the hon. Members for Halifax and for Enfield, Southgate for setting out their case, and for tabling this amendment. I appreciate their consideration of this clause and their concern for a vulnerable group of individuals. Ensuring that clause 47 enables decision makers to take account of individuals' vulnerabilities is fundamental to our approach. That is why we have included the condition of good reasons, and we will ensure decision makers have the flexibility and discretion to appropriately consider them without prejudicing what that should cover.

What constitutes "good reasons" has purposely not been defined in the Bill. The detail on how to apply good reasons will be set out in guidance for decision makers. This will give decision makers the tools, for instance, to recognise that the age at which traumatic events took place may affect an individual's ability to accurately recall, share or recognise such events, while maintaining a case-by-case approach. Doing so in guidance will ensure that we also have the flexibility to update and add to the range of considerations undertaken by a decision maker in exercising discretion. To create a carve-out for one group of individuals, as amendment 190 seeks to do, would undermine this approach and create a two-tiered system based on the age at which exploitation may have taken place.

I am sure that this is not the intention of the hon. Member for Halifax, but this amendment could also incentivise individuals to put forward falsified referrals regarding the timing of exploitation to delay removal action. Our approach avoids this potential avenue for misuse, but still allows for important considerations regarding the age of the victim to be looked at. Indeed, reasonable grounds decision making already takes account of the specific vulnerabilities of children by, for instance, not requiring there to be any means of exploitation when establishing whether an individual is a victim.

We believe that the right approach is to provide more detail in guidance on the varied and complicated reasons that may constitute good reasons. These will include the age when the exploitation took place, but a wider range of potential reasons and indicators will also be considered to avoid focusing specifically on one victim cohort. This approach will allow decision makers to consider each case on its merits, whilst considering all the information relevant to their case without prejudging it. To do otherwise would not be appropriate or fair to all victims. Again, I hope that the sector will work with Government to shape those guidelines and ensure that they are right. For these reasons, I respectfully invite the hon. Member to withdraw her amendment.

Holly Lynch: I am concerned by some of the Minister's response. He says that children, and the age of the victim, will be a consideration within good reasons. However, once again we have not got that guidance; it has not been nailed down, so we have no assurances of how the detail will look. He also says that it would not be appropriate to have a different approach for victims based on their age. However, I think that would be entirely responsible and appropriate, and we look to do so throughout a whole range of legislation and legislative approaches.

[Holly Lynch]

I think it would be a responsible requirement to place on the Government. With that in mind, I will press amendment 190 to a vote.

Question put, That the amendment be made.

The Committee divided: Ayes 5, Noes 7.

Division No. 42]

AYES

Charalambous, Bambos	McLaughlin, Anne
Coyle, Neil	
Lynch, Holly	McDonald, Stuart C.

NOES

Anderson, Stuart	Richards, Nicola
Baker, Duncan	Whittaker, Craig
Gullis, Jonathan	
Pursglove, Tom	Wood, Mike

Question accordingly negatived.

Stuart C. McDonald: I beg to move amendment 173, in clause 47, page 42, line 21, leave out—

"or a conclusive grounds decision"

This amendment would disapply this section when a conclusive grounds decision is being made (i.e. when a reasonable grounds decision will already have been made).

The amendment is designed to allow us to question how the new process will interplay with the NRM process, and to establish how long the notice period in the new process will be, so it is another short but important point. The amendment would disapply the section on credibility if a reasonable grounds decision is made. It is even less clear what sensible case can be made for the use of a trafficking information notice if sufficient information has already been provided to justify such a reasonable grounds decision.

Depending on how the system operates, and given the huge delays in making conclusive grounds decisions, the following scenario could play out. A person receives a reasonable grounds decision and is referred to the NRM process. That person makes a claim for protection, and the Secretary of State then serves them with a trafficking information notice. Full disclosure takes time because of their circumstances. The person is better placed to disclose much more information after the deadline for the trafficking information notice has passed but before a conclusive grounds decision is reached. It would surely be very strange, then, for the conclusive grounds decision to take account of late provision of information, but the clause appears to envisage that that could happen. Has that all been appropriately thought through? It would be useful to hear an explanation of how those two processes will interact.

Tom Pursglove: I thank the hon. Members for Cumbernauld, Kilsyth and Kirkintilloch East and for Glasgow North East for their amendments. I am pleased to see from the amendments that they acknowledge the benefits of a system that brings forward at the earliest opportunity all information related to modern slavery, enabling us to provide support and protection quickly to those who need it.

To that end, clause 47 covers information raised at the reasonable grounds and conclusive grounds stages, which are the two crucial decision-making stages in the national referral mechanism, and which both confer different rights on possible and confirmed victims. Although there are different standards of proof at those two stages, it is critical that the decision maker at both points can review all information to take decisions. Those decisions should include consideration of whether information has been provided late and whether there are good reasons for that. By removing that consideration at the conclusive grounds stage, amendment 173 would remove the consequence of providing late information when the decision-making threshold is higher. That could perversely incentivise misuse of the system at the later stage.

We are clear that that approach should be taken across both decision points to ensure that we meet the clause's aim of identifying victims as early as possible and reducing opportunities for misuse.

Stuart C. McDonald: I am confused. I cannot see the benefit of late disclosure if the conclusive grounds process is ongoing. What does the amendment incentivise?

Tom Pursglove: Again, I simply make the point that decisions are made case by case. We maintain that we need all the information at both decision points to reach the right decisions in individual cases. For those reasons, I respectfully invite the hon. Member to withdraw the amendment.

Stuart C. McDonald: We will go away and study what the Minister has said. I am still confused about the interaction between the two processes. The amendment was designed to seek an explanation, and I suspect that we will not be satisfied with it, but in the meantime I beg to ask leave to withdraw the amendment.

Amendment, by leave, withdrawn.

Stuart C. McDonald: I beg to move amendment 174, in clause 47, page 42, line 23, leave out "or on behalf of".

This amendment would exclude statements made on behalf of a slavery or trafficking information notice recipient (as opposed to statements made directly by them) from this subsection.

This is a very short point, but another important one. The amendment is designed to try to get further information from the Minister. I am sorry to have to test him on all the detail of the clause, but it is important. What we are asking here is why statements made on behalf of a trafficking information notice recipient should be impacted by the clause because of late provision of evidence. What does this cover? Is a medical report, for example, to be impacted by the clause so that its credibility is doubted because the recipient gave information late? Is analysis of the truth of what a social worker or a counsellor has said on behalf of the trafficking survivor to be impacted by the clause as well? We are really just asking this. What does it mean? What is the scope of the fact that this scheme applies to statements made on behalf of the trafficking information notice recipient and not just by the recipient himself or herself?

Tom Pursglove: Again, I am grateful to the hon. Member for setting out his case for the amendment. We know that, given the nature of modern slavery and human trafficking, many individuals often struggle to provide information relating to their abuse. That is why these

measures are supported by the provision of legal aid to support possible victims in understanding the process and the national referral mechanism. It is also for that reason that the clause is specifically drafted to capture information provided by the victim or on their behalf.

All relevant information should be considered, whoever provides it, when decision makers are taking into account the provision of late information. Not to do so would create an artificial divide between different cohorts of individuals, depending on who provides the information for consideration. That could inadvertently encourage misuse of the system by leaving it open for individuals to seek to use others to provide all information late, knowing that its late disclosure will not be part of the consideration of credibility, when they could provide it themselves. That could delay disclosure and therefore our ability to identify and support individuals at the earliest opportunity as well as reducing opportunities for misuse. To give a practical example, I am confident that if someone else failed to press "Send", the individual affected would not be impacted negatively by that.

For the reasons that I have outlined, I respectfully encourage the hon. Member to withdraw his amendment.

Stuart C. McDonald: Again, I am grateful to the Minister for his answer and we will consider it. I am still not absolutely clear on precisely what the scope of the provision is and whether, for example,

"a statement…on behalf of the person"

would include a medical statement—a medical report—so that its credibility would be damaged just because the person who underwent the medical report disclosed information late. We will go away and think about that. I think the Home Office may need to give it some consideration as well, but in the meantime I beg to ask leave to withdraw the amendment.

Amendment, by leave, withdrawn.

Anne McLaughlin: I beg to move amendment 175, in clause 47, page 42, line 24, leave out from "account" to the end of the subsection and insert

"of all the factors that may have led to the person providing the information late."

This amendment would remove the presumption that delayed disclosure in relation to slavery or trafficking will be deemed damaging to a person's credibility.

The Chair: With this it will be convenient to discuss amendment 163, in clause 47, page 42, line 26, at end insert—

"(2A) For the purposes of subsection (2) 'good reasons' include, but are not limited to—

(a) the impact of trauma, including avoidant behaviours and memory fragmentation consistent with Post-Traumatic Stress Disorder;

(b) distrust of authorities, including fear of punishment or a lack of confidence in the confidentiality of information sharing;

(c) fear of reprisals against them, their children, families or friends if they make an allegation of slavery;

(d) experiencing pressures and fears related to bonded debt;

(e) where the claimant was under the age of 18 years at their time of arrival in the UK or at the time of their exploitation;

(f) where the claimant has diminished capacity;

(g) fear of repercussions from people who exercise control over the individual;

(h) a lack of understanding of Modern Slavery including being unable to identify themselves as a 'victim';

(i) narrative reasons including being unable or unwilling to identify themselves as a 'victim';

(j) Stockholm syndrome; and

(k) an ongoing or previous relationship with the trafficker."

This amendment seeks to define "good reasons" for late disclosure.

Anne McLaughlin: We know that it is common for the impact of trauma on trafficking survivors to result in late disclosure of the trafficking experiences. I will not repeat things that we have already said, but let us not pretend that we do not know that already. The clause places an additional burden on people to demonstrate good reasons for their late disclosure, or lose credibility and be less likely to be recognised and given the support essential to recover—in as much as one can—from the crimes that have been visited on them, as a trafficked person. They are no less in need, however, and for that reason, amendment 175 would stop the very common delayed disclosure of information from damaging a victim's credibility.

4.15 pm

If some Members find it hard to be interested in the victims of trafficking, or if they have a general sense of distrust, let me give an analogy about the impact of trauma and delayed disclosure. Victims of childhood sexual abuse can take decades to come forward. These days, we have no problem understanding their delayed disclosure, but it was not always so. It is now well documented; it may be because of the fear of reprisals, because people blame themselves or simply because they shut out what happened as the only way to cope. A delayed response is common. It is similar to the delayed response that many adult victims of rape experience, and we do not punish them for it—at least, we do not punish them in law for it.

That response is similar for victims of trafficking, who have also often experienced sexual violence. I went to school with someone who was raped at the age of 15 and took a year to tell anyone. The reason was that she had ended up somewhere where she had been told by her parents not to go, so she had disobeyed her parents and she was so afraid that they would blame her for the rape. That is very similar for the victims of trafficking, who have perhaps disobeyed or broken the law—they may have been forced to break the law or told that they had broken the law, although they might not necessarily have done so—so we can understand why the delays happen.

Amendment 163 adds a list of good reasons for late disclosure. What I think is a good reason will be very different from what someone else thinks is a good reason, so let us have clarity, as opposed to having the ambiguous "good reasons", which will have to be defined in future anyway through the courts.

Holly Lynch: We very much support the SNP's amendment 175, which, as we heard, seeks to strike "as damaging" from the clause and hand that discretion back to the Home Office decision maker, as the Minister has already gone to some lengths to assure Members will be the case.

[Holly Lynch]

I will also speak to our amendment 163. We seek to mitigate the Government's refusal to spell out what, if anything, would constitute a good reason for late disclosure. In Committee on Tuesday, the SNP spokesperson, the hon. Member for Cumbernauld, Kilsyth and Kirkintilloch East, argued for a similar approach during our debates on part 2. The Minister responded that

"the situation will be set out clearly in guidance. We think that is the better approach, because it allows greater flexibility on the sorts of factors that might be relevant to the disclosure of late information, and obviously on matters that are relevant to individuals circumstances."—[*Official Report, Nationality and Borders Public Bill Committee,* 26 October 2021; c. 333.]

I understand the points that the Minister made, but he will appreciate that for the Opposition, it is feels although he is somewhat putting the cart before the horse. We are being asked to consider the clauses in blind faith without the guidance, and one way he could address that is by including something in the Bill. As the hon. Member for Cumbernauld, Kilsyth and Kirkintilloch East said earlier, we can debate only what is in front of us.

I expect one thing we can agree on is that no list can ever be exhaustive. I suspect that, as we have heard, the most convincing reasons for late disclosure are ones that we cannot comprehend. It would be nonsense to think that any list would be exhaustive, but without having in front of us any indication of what good reasons might be, we are being asked to take a leap of faith too far. The reasons in amendment 163 include, but are not limited to, a person's fear of reprisals against them, experiencing pressures related to bonded debt, and being unable to recognise themselves as a victim.

In discussing part 2, again, the Minister went on to say that

"the Home Office will have discretion over who is served an evidence notice and the extent to which credibility is damaged by late evidence",

and that

"claimants who raise matters late will have the opportunity to provide reasons for that lateness—and where those reasons are good, credibility will not be damaged. Decision makers will have the discretion to determine the extent to which credibility should be damaged, and that determination need not by itself be determinative of a claim"—[*Official Report, Nationality and Borders Public Bill Committee,* Tuesday 26 October 2021; c. 333.]

I felt that the Minister was very much talking up the discretion that the competent authority decision makers would have, in order to offer us assurances, but that is not reflected in the primary legislation in clause 47. I would be grateful if he could confirm that "good reasons" will be set out within the guidance for NRM decision making, as was the commitment for asylum decision making in part 2.

I would be grateful if the Minister also confirmed when that guidance will be published, and when the training, which he described as being necessary in accompanying the guidance, will begin. I hope he will recognise that amendment 163 is measured and sensible and that he will agree to adopt it.

Tom Pursglove: I thank hon. Members for their genuine interest in these matters and for bringing forward their amendments. By introducing a statutory requirement to provide information before a specified date, victims of modern slavery will be identified at the earliest opportunity, ensuring that those who need protection are afforded it quickly. This measure is supported by the provision of legal aid to ensure that possible victims feel able to share information in a safe and supported manner.

It is important to state that the requirement to bring forward information related to being a victim of modern slavery does not mean that referrals brought late will not be considered; all claims of modern slavery will be considered, irrespective of when they are raised. We have purposefully not defined "good reasons" in the Bill, and the detail on how to apply "good reasons" will be set out in guidance for decision makers. That is the appropriate place, giving the Government the flexibility to respond to our ever-increasing understanding of modern slavery victims.

We will of course work carefully with stakeholders as we operationalise guidance to ensure that decision makers have the tools to recognise the effect that traumatic events can have on people's ability to accurately recall, share, or recognise such events in some instances, while not seeking to prejudge their decision making by placing this detail in legislation. However, as has been recognised, we cannot legislate for every instance where someone may have "good reasons" for providing late information. To attempt to do so would be impractical. It would also limit the discretion and flexibility of decision makers, who are best placed to consider all factors on a case-by-case basis.

Amendment 163 would have the perverse impact of individuals facing different requirements simply because their situation is excluded from the amendment. It also ignores the possibility that a person may identify as one of the listed categories, but their information may be late for unrelated reasons. It would therefore create a blanket acceptance for late information in specific prescribed circumstances, while a vulnerable individual who did not fall within the specified categories would face a different test on whether they had good reason for providing late information. That would be unfair.

As I have set out, it is important that we are clear on the consequence of late disclosure of information in order to provide clarity for decision makers and victims, and to deter possible misuse of the system. Removing the reference to impacting credibility, as amendment 175 seeks to do, would remove our ability to require the provision of information up front. A duty to provide information requires a consequence and I think we are all agreed that seeking information on modern slavery issues up front is of benefit to all. The clause already includes mitigations to the possible consequence of damaged credibility, providing clear safeguards while still addressing the issue of potential misuse. The solution is not to stifle the clause of any robustness.

As I stated, more detail on good reasons and the credibility considerations will be set out in guidance. We will work to ensure that this takes account of vulnerabilities related to an individual's exploitation. However, as I have outlined, we believe that removing the consideration of credibility as damaging would impede the ability to reduce potential misuse and reduce the impetus to identify victims as early as possible. As a result, that would perpetuate the issues that these clauses are designed to address, to the detriment of victims.

Stuart C. McDonald: I am still not sure that the Minister has addressed a fundamental point here. The worry is that if somebody genuinely is a victim of trafficking—I

hate even having to describe people in that way—and misses that deadline, the fact that there are possible consequences of that, even if they might have a good reason, means that all they know is that they have missed the deadline. It is a huge disincentive for them to then come forward with other information. That is the whole point, and I still do not think that has been addressed by the Government.

Tom Pursglove: I recognise the sincerity of the hon. Gentleman's concern about this. What I would say to him, as I have now said many times, is that I expect appropriate decisions to be taken on a case-by-case basis, taking proper account of all the circumstances, mitigations and issues that people bring forward in relation to good reasons. I am confident that that process can be properly developed and delivered in a way that is responsive to those sorts of issues. That is why—to address the point made by the hon. Member for Halifax—it is difficult to put a precise time on when that guidance will be put in place, for the simple reason that we want to engage properly with the sector in the way that I have outlined. I want that to be a thorough process and for the guidance to be put in place in an appropriate manner that is as exhaustive as possible, but does not lack common sense and means that proper consideration is given to the many varied reasons that people may have for providing information late, for example.

Anne McLaughlin: I have a couple of points to make. My hon. Friend the Member for Cumbernauld, Kilsyth and Kirkintilloch East made the point that once people get past the deadline, they will be terrified to come forward. What will the Minister do about those people—

Tom Pursglove: Will the hon. Lady give way?

Anne McLaughlin: I had not quite finished, but okay.

Tom Pursglove: I apologise for interrupting the hon. Lady in mid-flow. I just want to provide some clarity on this point. If there are reasonable grounds to believe that someone is a victim, they will get positive identification even if the information is provided late. I want to be clear about that and place it on the record.

Anne McLaughlin: But the Government are refusing to accept amendment 163, which would put in the Bill what some of the good reasons could be. The Minister says that he will allow decision makers to have discretion, but what he is actually doing is allowing them to have discretion not to accept some perfectly valid reasons—including trauma, as we have covered. I would love to press the amendment to a vote, but we have to pick our battles in this place, so I reluctantly beg to ask leave to withdraw the amendment.

Amendment, by leave, withdrawn.

The Chair: Amendment 163 has already been debated. Do the Opposition wish to move it formally?

Holly Lynch: The Minister has heard my comments, and we anticipated his response. We will follow the issue closely, but at this stage we will not press it to a Division.

The Chair: We now come to amendment 181, which stands in the name of Dame Diana Johnson.

Neil Coyle: I beg to move amendment 181, in clause 47, page 42, line 31, at end insert—

"(5) The provision of relevant status information identifying a person as a likely victim of human trafficking for sexual services shall constitute a "good reason" for the purposes of this section."

This amendment would mean that the credibility of victims of human trafficking for sexual services would not be called into question by reason of the late provision of information relating to that fact.

The Chair: With this it will be convenient to discuss the following:

Amendment 187, in clause 47, page 42, line 31, at end insert—

"(5) Subsection (2) does not apply where the person is a victim of trafficking for the purposes of sexual exploitation.

(6) For the purposes of subsection (5) the person may be considered a victim of trafficking for the purposes of sexual exploitation if there is evidence that the person—

(a) Has been transported from one location to another for the purposes of sexual exploitation;

(b) Bears signs of physical abuse including but not limited to—

(i) Branding

(ii) Bruising

(iii) Scarring

(iv) Burns; or

(v) Tattoos indicating gang membership;

(c) Lacks access to their own earnings, such as by having no bank account in their own name;

(d) Has limited to no English language skills, or only such language skills as pertain to sexualised acts;

(e) Lives or stays at the same address as person(s) meeting the criteria in paragraphs (a) to (d); and

(f) Sleeps in the premises in which they are exploited."

Under this amendment, late provision of relevant status information would not be taken as damaging the credibility of the person providing the information if that person were a victim of trafficking for the purposes of commercial sexual exploitation.

Amendment 182, in clause 48, page 42, line 36, at end insert—

"(za) at the end of paragraph (a) insert—

(aa) the sorts of things which indicate that a person may be a victim of human trafficking for sexual services;"

This amendment would require the Secretary of State to issue specific guidance on the sorts of things which indicate that a person may be a victim of human trafficking for sexual services.

New clause 42—*Offence of human trafficking for sexual exploitation*—

"(1) A person commits an offence if the person arranges or facilitates the travel of another person ("V") to the United Kingdom with a view to V being sexually exploited in the United Kingdom.

(2) It is irrelevant whether V consents to the travel (whether V is an adult or a child).

(3) A person may in particular arrange or facilitate V's travel to the United Kingdom by recruiting V, transporting or transferring V, harbouring or receiving V, or transferring or exchanging control over V.

(4) A person arranges or facilitates V's travel to the United Kingdom with a view to V being sexually exploited in the United Kingdom only if—

(a) the person intends to sexually exploit V in the United Kingdom during or after the travel, or

(b) the person knows or ought to know that another person is likely to sexually exploit V in the United Kingdom during or after the travel.

(5) "Travel" means—

(a) arriving in, or entering, the United Kingdom,

(b) departing from any country outside the United Kingdom in circumstances where the person arranging or facilitating V's travel intends that the destination will be the United Kingdom.

(6) A person who is a UK national commits an offence under this section regardless of—

(a) where the arranging or facilitating takes place, or

(b) where the travel takes place.

(7) A person who is not a UK national commits an offence under this section if—

(a) any part of the arranging or facilitating takes place in the United Kingdom, or

(b) the travel consists of arrival in or entry into, departure from, or travel within, the United Kingdom.

(8) A person who commits an offence under this section is liable—

(a) on conviction on indictment, to imprisonment for life;

(b) on summary conviction, to imprisonment for a term not exceeding 12 months or a fine or both."

4.30 pm

Neil Coyle: I have always wanted to be a dame—*[Laughter.]*

I thank Tom Farr of CEASE and Kat Banyard of UK Feminista for assisting in the drafting of the amendments and for their valuable work. Before I address each amendment in turn, I want to quickly highlight the concern that we have seen online in response to today's discussions about some of the language that the Minister has used, specifically the issue of "genuine cases". It is my understanding that nine out of 10 "reasonable and conclusive grounds" decisions were positive last year, and I gently urge the Minister to consider the impact of his words, especially when it comes to more people coming forward in the future. He said that he will listen to the sector. I hope that is a genuine offer, given that the sector does not feel that it was listened to. The consultation period was very brief and unexpected and has left the sector very unhappy.

Amendment 181 would help ensure that the credibility of victims of human trafficking for sexual exploitation would not be called into question by a late disclosure of being trafficked, which clause 47 would do. If a person discloses that they have been a victim of human trafficking for sexual services, the lateness of the claim should not matter.

As we are all aware, the treatment of trafficked women and children subjected to sexual exploitation is unimaginable. It is widely understood to severely impact on their ability to escape from the situation they find themselves in. For many, it impacts on their ability even to understand or admit what has happened to them, for reasons of denial and other issues that my hon. Friend the Member for Halifax raised in the debate on clause 46.

There is a bureaucracy behind the Government's plans. Many individuals who have been sexually exploited are wholly unaware of the process of having to declare themselves as a victim of sexual exploitation. Many are likely to be suspicious of any involvement with the authorities. There may be a very good reason why a person feels that way, including that they have not been in control of their activities and are unaware that they have committed specific immigration offences or other criminal offences that they have been forced to engage in under duress, such as soliciting.

Clause 47, in practice, means that if trafficking status is disclosed at a late stage, that will have a devastating impact on credibility. That simply cannot be justified. As my hon. Friend argued, victims of trafficking for sexual exploitation must not be precluded from legal protections simply because they are too frightened or traumatised—we have previously discussed post-traumatic stress disorder—to disclose information as soon as they come to the attention of the authorities. To encourage disclosure can very often take time and sensitivity, something that the Home Office does not always currently allow for, and which the proposals in this Bill will affect to an even greater level. The amendment would make sure some of the most vulnerable people who have been trafficked continue to be protected under the law.

Amendment 187 supports amendment 181. It details how a person making a late disclosure of trafficking for sexual exploitation might better be identified by any relevant authority. A person may be considered a victim of trafficking for the purpose of sexual exploitation in a number of ways: first, if there is evidence they have been transported from one place to another for the purpose of sexual exploitation; secondly, if a person has signs of physical abuse, including but not limited to branding, bruising, scarring, burns or tattoos; thirdly, if a person has no access to their own earnings—for example, a person who does not have access to a bank account—fourthly, if a person has limited or no English language skills, could not cope on their own and has been managed previously; fifthly, if a person lives at the same address as anyone who meets any of these criteria; and finally, if they sleep in the same place they have been or were exploited.

Although authorities may have the best interests of an exploited individual at heart when investigating any trafficking-related crime, they may not even be aware of how to recognise such an individual, given the distinct and specific treatment that they have been subjected to. Putting these comprehensive but by no means exhaustive guiding factors into the Bill aims to ensure that authorities have a deeper understanding of the factors they should be aware of and how to identify and help victims.

It is important to note that it is often only when the authorities make wider arrests of criminal gangs that exploited individuals are discovered, usually in brothels or closely-controlled transient places of residence. In a situation of criminality, it may be difficult for authorities to discern who may ultimately be responsible for such criminality.

Acknowledging that exploitation often manifests in ways such as physical and mental trauma, as well as a total lack of autonomy over their own lives, will improve the current legal situation in two tangible ways. First, it may deter lengthy and expensive prosecutions of victims of exploitation, who may otherwise fall between the cracks and be prosecuted for an offence they committed under duress. Secondly, it will put into law current Crown Prosecution Service policy, which is to treat these individuals as victims as and where they are discovered. That is not happening now—we see the prosecution rate for sex crimes in this country at a historic and terrible low.

Amendment 187 would allow the UK to further build its status as the world leader it wants to be when it comes to a toolkit to combat human trafficking and sexual exploitation. These individuals must be viewed as victims of crime and not criminals requiring punishment.

Amendment 182 is an alternative probing amendment that would require the Secretary of State to issue guidance on the specific factors that may indicate that somebody is a victim of trafficking for the purposes of sexual exploitation. I hope the Minister will give an indication of whether that is the direction of travel for the Government.

The amendment would also provide greater clarity for the relevant authorities. As already said, it would prevent the prosecution of individuals who may have been compelled to commit offences while being sexually exploited, as well as providing a framework for authorities to refer to when trying to discern exactly the type of exploitation that has taken place. I hope that the aim behind these amendments will be welcomed by the Minister today, even if they are not accepted.

New clause 42 would put into law a specific offence of trafficking for the purposes of sexual exploitation. The clause makes it an offence to arrange or enable the travel of another person for the purpose of sexual exploitation, regardless of whether the person consented to travel. Arranging or enabling travel can be done in numerous ways: by recruiting a person, by moving or carrying a person, by holding or receiving a person, or by transferring or exchanging control of a person.

Trafficking for the purposes of sexual exploitation means planning to sexually exploit a person during or after travel to the UK, or knowing another person is planning to sexually exploit a person during or after travel to the United Kingdom. Travel means arriving in the UK or leaving any country outside of the UK if the destination is the United Kingdom. A UK national commits the offence regardless of where the facilitating, arranging or travelling takes place. A non-UK national commits the offence by facilitating, arranging or travelling into and out of the UK. Committing the offence carries up to life in imprisonment if tried in a Crown court and would be a welcome step forward.

New clause 42 is necessary because while the Modern Slavery Act 2015 covers exploitation more broadly, the issue of sexual exploitation, specifically within the commercial sex industry, now merits being recognised as a distinct offence due to the catastrophically high numbers of trafficking victims brought into the commercial sex industry in the UK, organised by serious organised crime outfits.

The link between trafficking and commercial sexual exploitation—industrial-level prostitution—is undeniable, and the problem is getting worse. During the covid pandemic there was a 280% increase in the advertising of sexual services online in the west midlands, with the women being predominantly of eastern European origin. A 2010 report suggested that at least 10,000 women involved in off-street prostitution were victims of trafficking or non-UK nationals who were highly vulnerable. These statistics are shocking. We are not seeing provisions in current legislation to match the scale of the problem in the country.

Introducing new clause 42 would ensure that authorities and the Government recognise these intrinsic links and would aid in all our efforts to combat the scourge that is human trafficking and broader violence against women and girls. The benefits of the clause would include, firstly, requiring authorities to dig deeper to examine whether human trafficking has taken place when investigating any prostitution-related offence. Second, it would protect victims of sexual exploitation who have been trafficked. If an individual is being investigated for a prostitution-related offence, it is wholly unacceptable that they should be prosecuted for acts committed under duress or threat of violence from exploitative traffickers.

Placing this specific offence in law would encourage authorities to think more carefully about whether individuals who may initially be viewed as criminals are, in fact, victims of trafficking for the purposes of sexual exploitation. It would further allow for the specific prosecution of those who traffic people for the purposes of sexual exploitation, and the full scale of what is going on would perhaps become clearer. Amendments 181, 187 and 182 and new clause 42 would ameliorate and offer some specific protection to women trafficked into the UK for sexual exploitation. I hope the Government will look favourably on these probing proposals.

Tom Pursglove: I thank the hon. Members for setting out, through the hon. Member for Bermondsey and Old Southwark, their case and for putting forward their amendments. I appreciate their consideration of these clauses and their concern for a vulnerable group of individuals. They have raised important issues around identifying victims who have faced the most heinous crimes.

Ensuring that clause 47 enables decision makers to take account of individuals' vulnerabilities is fundamental to our approach. That is why we have included the condition of good reasons, and ensured that decision makers have the flexibility and discretion to appropriately consider those without prejudging what that should cover. What constitutes good reasons has purposefully not been defined in the Bill: the detail on how to apply good reasons will be set out in guidance for decision makers, as we have already discussed. That will give decision makers the tools to, for instance, recognise the effect that traumatic events may have on individuals' ability to accurately recall, share or recognise such events, while maintaining a case-by-case approach. Doing so in guidance will also ensure that we have the flexibility to update and add to the range of considerations undertaken by a decision maker in exercising discretion.

To create a carve-out for one group of individuals, as amendments 181 and 187 seek to do, would undermine this approach and create a two-tiered system based on the type of exploitation faced. I am sure this is not the intention of the hon. Member for Bermondsey and Old Southwark, but amendment 181 could also incentivise individuals to put forward falsified referrals regarding the specific forms of exploitation, or delay removal action. We believe that the right approach is to provide more detail on the varied and complicated reasons that may constitute good reasons in guidance, where these can be explored in more detail and where we can be more flexible as our understanding of exploitation develops.

Neil Coyle: The Minister has said that the intention is to address some of the issues and concerns raised by organisations and by the hon. Member for Cumbernauld, Kilsyth and Kirkintilloch East in the guidance. Can I request that the Minister meets those organisations and the hon. Member before Report, to make sure that any guidance plans take those concerns fully into account their concerns?

Tom Pursglove: I have made this point several times now, but it is certainly worth repeating: there is a real willingness and desire to engage thoroughly in relation to the development of the guidance. I would of course be very happy to consider any meeting requests that come in the usual way, but I assure the hon. Member for Bermondsey and Old Southwark that there is a firm commitment here, which I have made several times. As I have said, the hon. Member is a canny parliamentarian, and will take every possible opportunity to hold Ministers to account on that commitment to engage constructively with the shaping of the guidance.

Neil Coyle: There is a real test here, because the Minister is saying that he wants to listen to the sector. The sector is saying that it does not feel particularly listened to up to this point. It is a simple request to meet before Report, and the Minister has not quite said yes.

Tom Pursglove: What I would say to the hon. Member is that if he makes contact with my office in the usual way, with information about who he would like me to meet alongside him, I will absolutely consider that appropriately.

Decision makers' considerations will include the indicators highlighted in the amendment, but they will also consider a wider range of potential reasons and indicators to avoid focusing specifically on one victim cohort. This approach will allow decision makers to consider each case on its merits while considering all the information relevant to that case without prejudice. To do otherwise would not be appropriate or fair to all victims.

Amendment 182 seeks to insert a specific reference to human trafficking for sexual services into clause 48. We are agreed that this provision must enable decision makers to identify the most vulnerable victims, including victims of trafficking for sexual services. However, to set out a particular purpose of trafficking on the face of the Bill would fragment the types of exploitation victims have faced.

Exploitation for the purpose of human trafficking is defined under section 3 of the Modern Slavery Act 2015, and that definition includes sexual exploitation. This is supported by the modern slavery statutory guidance in section 49 of the Act, which sets out considerations that may indicate that a person is a victim of human trafficking for sexual services. The existing guidance provides detail on indicators of specific types of modern slavery, including indicators that apply specifically to victims who have suffered from sexual exploitation. I am certain that hon. Members agree that there should be no grading of exploitation, and it is correct that exploitation for any one purpose should be considered with the same severity as exploitation for other purposes. We believe that to set out one particular purpose for exploitation on the face of the Bill would create fragmentation. Our guidance already provides detail on indicators of several types of modern slavery.

I will now turn to new clause 42. As I have already stated, I agree with hon. Members that the abhorrent crime of trafficking in individuals for the purposes of sexual exploitation should be treated with the utmost seriousness. That is why section 2 of the Modern Slavery Act 2015 already accounts for human trafficking offences, and makes specific reference to sexual exploitation in section 3. In fact, the Modern Slavery Act allows for a wider provision of the offence. Section 2 makes human trafficking an offence in any part of the world, which includes trafficking to the UK but also trafficking within the UK, which the amendment does not.

4.45 pm

On that basis, I want to ensure that we do not inadvertently narrow our scope to prosecute the most serious criminals by focusing only on people being trafficked to the UK. For completeness, both Scotland and Northern Ireland have equivalent legislation that also covers this offence in the Human Trafficking and Exploitation (Scotland) Act 2015 and the Human Trafficking and Exploitation (Criminal Justice and Support for Victims) Act (Northern Ireland) 2015. I recognise the terrible nature of these offences, which is why the Modern Slavery Act was introduced in 2015 to consolidate existing offences and provide enhanced protection for victims. In recognition of the seriousness of these crimes, these Acts have already increased the maximum sentences for slavery and human trafficking offences from 14 years to life in prison. For the reasons outlined, I respectfully invite the hon. Gentleman to withdraw his amendment.

Neil Coyle: I think the sector has a concern that the proposal in this legislation undermines the Modern Slavery Act and measures to encourage and support victims who have come forward. I hope that the Minister will hold that meeting before Report, but I beg to ask leave to withdraw the amendment.

Amendment, by leave, withdrawn.

Question proposed, That the clause stand part of the Bill.

Tom Pursglove: Clause 47 sets out the consequence if an individual who has been served with a slavery or trafficking information notice as discussed under clause 46 provides information relating to being a victim of modern slavery after the specified time period. The clause aims to ensure that possible victims are identified as early as possible to receive appropriate support and to reduce potential misuse of the national referral mechanism system from referrals intended to delay removal action. Under clause 47, the decision maker must decide whether information provided through the one-stop process is outside the specified time limit and therefore is late. This consideration will take into account whether there was a good reason for the late information, such as the impact of trauma, but where there are no good reasons, an individual's credibility is damaged due to the provision of late information.

Stuart C. McDonald: The Minister referred to abusing the process but he has not said much about what evidence there is for this problem. What is the scale of it? Much like statelessness, perhaps he could write to us with the evidence of what it is that the Government are trying to get at here. The big problem is the three-year delay for making decisions. Is not that the problem rather than anything that the Minister has referred to?

Tom Pursglove: I recognise the invitation to write with more detail around this and I am happy to do that. That would be advantageous to the Committee. Given that time is getting on and we want to continue to make progress, I am very happy to take that request back to the Department. I will provide that information.

The Government will ensure that any changes to processes as a result of these measures are designed in a way that accounts for the impact of trauma. This includes ensuring that individuals working in the system are aware of the factors that can affect the task of obtaining information such as the effects traumatic events can have on people's ability to accurately recall such events. This assessment will be set out in guidance for decision makers and we will engage stakeholders as we develop it. We will continue to consider all referrals on a case-by-case basis to ensure that support is tailored to the needs of genuine victims.

Holly Lynch: We intend to vote against clause 47. It is closely linked to clause 46 and I will try to avoid repetition as we are returning to elements that have been well discussed under part 2 on Tuesday.

The number of survivors able to receive support through the national referral mechanism will be reduced as a result of clause 47.

As the Human Trafficking Foundation outlined in written evidence:

"Introducing a trafficking information notice and so converging immigration with human trafficking risks creating another layer of bureaucracy and so would likely increase the length of time survivors must wait in the NRM."

If we are to ensure that victims with complex psychological and physical needs are not punished by the system or left in limbo while their claims are processed, the clause cannot stand part of the Bill.

As other hon. Members have said, the Home Office's own statutory guidance states:

"Victims' early accounts may be affected by the impact of trauma. This can result in delayed disclosure, difficulty recalling facts, or symptoms of post-traumatic stress disorder… It is also vital for decision makers to have an understanding of the mitigating reasons why a potential victim of modern slavery is incoherent, inconsistent or delays giving details of material facts… Throughout this process it is important to remember that victims of modern slavery have been through trauma".

The clause runs completely contrary to that guidance.

The VITA Network explained in its consultation response to the new plan for immigration that:

"Psychological trauma causes profound disturbances to normal brain function and memory, including memory loss and inconsistencies"

in recollection. We know that a high proportion of trafficked people experience violence prior to and during trafficking. Long after they have escaped exploitation, many still fear that harm will come to them and their families if they disclose information about their experiences. It is often those who are most in need of protection who will find it the hardest to disclose such information.

In 2015, the PROTECT programme was established. It was an independent piece of research, commissioned and funded by the Department of Health and Social Care's policy research programme, and led by King's College London and the London School of Hygiene and Tropical Medicine. The programme aimed to develop evidence to inform the NHS response to human trafficking, and it was comprised of surveys and qualitative research, including interviews with trafficked people and with NHS and non-NHS professionals. It found that psychological distress was highly prevalent: four fifths of women in contact with shelter services screened positive for anxiety, depression or post-traumatic stress disorder at interview.

My hon. Friend the shadow Minister told the harrowing story of Gloria in his contribution on Tuesday, and demonstrated why the clause will be damaging to those who have been subject to trauma. The clause flies in the face of best practice and runs contrary to all we heard from witnesses in oral evidence. Earlier this week, my hon. Friend the Member for Bermondsey and Old Southwark made excellent points about how PTSD is just one reason why the approach in the clause will be unworkable and unconscionable for those who really need our help. We do not seek to punish or discredit other victims for late disclosure, so why are the Government seeking to do so in this case? The clause highlights the inconsistencies and the unjust nature of the Government's approach.

It is also deeply worrying that the Government have offered no clarity in subsection (2) on the timescales within which individuals would have to provide that information. Will it be days, weeks, months? I would be grateful if the Minister gave us an indication of his thinking on that. As things stand, the clause will put barriers between victims and the support that they need to recover and secure prosecutions against the real criminals, who we all want to see brough to justice. On that basis, we cannot support clause 47.

Question put, That the clause stand part of the Bill.

The Committee divided: Ayes 7, Noes 6.

Division No. 43]

AYES

Anderson, Stuart	Richards, Nicola
Baker, Duncan	Whittaker, Craig
Gullis, Jonathan	
Pursglove, Tom	Wood, Mike

NOES

Charalambous, Bambos	McLaughlin, Anne
Coyle, Neil	McDonald, Stuart C.
Lynch, Holly	Owatemi, Taiwo

Question accordingly agreed to.

Clause 47 ordered to stand part of the Bill.

Clause 48

Identification of potential victims of slavery or human trafficking

Holly Lynch: I beg to move amendment 183, in clause 48, page 42, leave out line 38.

This amendment would ensure that the threshold applied (in the Modern Slavery Act 2015) when determining whether a person should be considered a potential victim of trafficking remains at its present level.

The amendment would leave out line 38 in clause 48, which moves the threshold from someone "may be" a potential victim of trafficking to someone "is" a potential victim of trafficking, to ensure that the threshold applied in the Modern Slavery Act 2015 when determining whether a person should be considered a potential victim of trafficking remains at its present level. It is our view that we should seek to build on the commitments in the Act, not undermine the hard-fought progress that it achieved. As I have raised already, the Government are seeking to tear up what were at one time world-leading principles in the Act, and to do so via an immigration Bill, conflating two very different processes.

[Holly Lynch]

The reception that clause 48 has had from across the sector should have stopped the Government in their tracks. The amendment is essential to ensure that we can identify victims effectively, rather than creating additional barriers to the national referral mechanism. Currently, around nine in 10 of all reasonable and conclusive grounds decisions are positive. In 2020, the Single Competent Authority made 10,608 reasonable grounds decisions and 3,454 conclusive grounds decisions. Of those, 92% of reasonable grounds decisions and 89% of conclusive grounds decisions were positive. Additionally, in 2020, 81% of all challenged negative reasonable grounds decisions were overturned.

Judging by the Home Office's own data, we can conclude that the current threshold is set at an appropriate level, so why are the Government seeking to raise it? Referral into the NRM is possible only when made by a designated first responder who has identified someone as a potential victim of trafficking and secured their informed consent to make a referral. That means that there should already be a very high level of positive reasonable grounds decisions at the threshold of "suspect but cannot prove", as the referral should not have been made if that threshold had not been reached.

It is important to remember that currently we are identifying only a small fraction of the estimated number of victims of trafficking. The Centre for Social Justice has estimated that the number of people trapped in modern slavery in the UK might be in excess of 100,000. Furthermore, there is still no pre-NRM specialist support available in the UK, despite the Government recognising the need for it to facilitate disclosure through having time in a safe space to receive information and advice in their 2017 announcement of places of safety. I would be grateful if the Minister told us why there is no mention of places of safety in the Bill—a point that the hon. Member for Cumbernauld, Kilsyth and Kirkintilloch East made earlier.

With the Government failing to deliver on their own promises, initial identification is therefore an even bigger priority. Every Child Protected Against Trafficking made the valid point that for someone to just fall short of the new threshold will make certain victims vulnerable to being re-trafficked. Would we not all be more satisfied knowing that professionals have had a proper look at a situation that gives first responders cause for concern by staying with a "may be" rather than an "is" threshold, when the data speaks for itself on that? The amendment is therefore essential in maintaining the threshold at a level where victims who have built up the courage to seek help are identified and admitted to the NRM.

Tom Pursglove: I thank hon. Members for their interest and valuable contributions to the debate. They have raised important issues around identifying victims who have faced the most heinous crimes. Under the Council of Europe convention on action against trafficking in human beings—ECAT—to which the UK is a signatory, certain obligations flow if there are

"reasonable grounds to believe that a person has been a victim of trafficking".

The amendment seeks to leave the reasonable grounds threshold as it stands, which is where there are reasonable grounds to believe that a person may be a victim of trafficking.

It is crucial that decision makers are able to quickly and appropriately identify possible victims. That is why we have proposed this minor change to the reasonable grounds threshold to closer align with our international obligations under ECAT and with the devolved Administrations. To not make that change would undermine the clarity on decision making. Additionally, as the amendment relates specifically to the provision of assistance and support to persons, it would create a different threshold from that applied when determining whether a person is a victim of slavery or human trafficking. That would create significant ambiguity around the reasonable grounds threshold and create further separation from our international obligations. For those reasons, I respectfully ask the hon. Member for Halifax to withdraw her amendment.

Holly Lynch: I am not entirely satisfied with that response, so I will press the amendment to a vote.

Question put, That the amendment be made.

The Committee divided: Ayes 4, Noes 7.

Division No. 44]

AYES

Charalambous, Bambos	Lynch, Holly
Coyle, Neil	Owatemi, Taiwo

NOES

Anderson, Stuart	Richards, Nicola
Baker, Duncan	Whittaker, Craig
Gullis, Jonathan	
Pursglove, Tom	Wood, Mike

Question accordingly negatived.

Ordered, That further consideration be now adjourned. *—(Craig Whittaker.)*

5.1 pm

Adjourned till Tuesday 2 November at twenty-five minutes past Nine o'clock.