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CB	Cross Bench
Con	Conservative
DUP	Democratic Unionist Party
GP	Green Party
Ind Lab	Independent Labour
Ind LD	Independent Liberal Democrat
Ind SD	Independent Social Democrat
Ind UU	Independent Ulster Unionist
Lab	Labour
LD	Liberal Democrat
LD Ind	Liberal Democrat Independent
Non-afl	Non-affiliated
PC	Plaid Cymru
UKIP	UK Independence Party
UUP	Ulster Unionist Party

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House of Lords

Monday, 1 February 2016.

2.30 pm

Prayers—read by the Lord Bishop of Norwich.

Death of a Former Member: Lord Roper

Announcement

2.36 pm

The Lord Speaker (Baroness D'Souza): My Lords, I regret to inform the House of the death on 29 January of the noble Lord, Lord Roper. On behalf of the House, I extend our sincere condolences to the noble Lord's family and friends.

Saudi Arabia: Executions

Question

2.36 pm

Asked by ***Baroness Falkner of Margravine***

To ask Her Majesty's Government what discussions they have had with the government of Saudi Arabia regarding the executions of political activists.

The Minister of State, Foreign and Commonwealth Office (Baroness Anelay of St Johns) (Con): My Lords, the British Government are firmly opposed to the death penalty in all circumstances and in every country. We have expressed our concern to the Saudi authorities, most recently during my honourable friend Tobias Ellwood's visit to Riyadh on 25 January—last week. The British Government do not shy away from raising legitimate human rights concerns, but we believe that we will be more successful discussing cases privately with Saudi Arabia than criticising it publicly.

Baroness Falkner of Margravine (LD): My Lords, it is widely reported that in King Salman's first year of office, 2015, Saudi Arabia executed more people than in any of the previous 20 years. Many of those people were executed for political dissent. The last time we discussed this, on 13 January, the noble Baroness was urged from all sides of this House to express those concerns to the Saudi Government. She has just told us that they have done so. What was the Saudi Government's response, and will they distinguish between political dissent and other crimes?

Baroness Anelay of St Johns: My Lords, during his visit, Tobias Ellwood had meetings with members of the National Society for Human Rights, the Saudi Arabian Ministry of Foreign Affairs and members of the Shura Council. He also met advisers, so he covered a wide variety of people with whom he could have this conversation. Naturally, as I explained in my Answer, we prefer to make our points in a private environment. The Saudi Arabian Government and others in Saudi Arabia are clear that we will not stop coming forward with our views on each and every case where someone has been arrested and faces the death penalty.

Lord Elton (Con): My Lords, the Minister said that we deplore executions for political reasons in all countries. Have our representations been equally private and powerful with Iran?

Baroness Anelay of St Johns: My Lords, of course, our diplomatic relationship with Iran has only recently resumed, and it is important that we are able to nurture it. Iran will be under no misunderstanding about the strength of opinion of the British Government—indeed, of all British Governments in recent decades—that the death penalty is wrong in principle, wrong in practice and can undermine a successful society.

Lord Singh of Wimbledon (CB): My Lords, I cannot understand why we make only private representations to Saudi Arabia. Is not public condemnation much more effective?

Baroness Anelay of St Johns: No, my Lords, our experience has been that with certain countries that is not the case and it can in fact be counterproductive. We are always careful to ensure that we make best use of our diplomatic voice in private. Saudi Arabia is not the only country that responds better to that kind of exchange. However, that does not stop me from being as public about this matter as I am today.

Lord Soley (Lab): My Lords, the Iranian and Saudi Governments are both extremely volatile. As we know, what is happening in Saudi spills over into Yemen and if we are not careful, it will also spill over into Bahrain. I ask the Minister to exercise as much pressure as we can on the Saudi Government to understand that it is almost impossible to defend them at times, given the behaviour of their regime.

Baroness Anelay of St Johns: My Lords, the point lying behind the words of the noble Lord, Lord Soley, is certainly right: all countries must have regard to the fact that their actions may lead to regional instability. It is important in the Gulf and Middle East that all countries recognise the impact their actions can have.

Lord Wright of Richmond (CB): My Lords, is the noble Baroness able to comment on reports that the execution of a young man under the age of 18 was in itself a breach of Sharia law?

Baroness Anelay of St Johns: My Lords, I am aware that there is a newspaper report to the effect that one person expected to be an adult at the time of his execution may not have been, but there is not yet proof of that. Certainly, with regard to three juveniles being held at the moment under a penalty that includes the death sentence, we have been given assurances, including most recently by the Saudi Foreign Affairs Minister, that those sentences will not be carried out. Of course, whatever we think of Sharia law—we may have different views on it—some countries have the death penalty and we need to work to ensure that it is removed.

Lord Wallace of Saltaire (LD): My Lords, Saudi Arabia has a substantial Shia minority. Will this Government, in the private conversations they have with the Saudi Government, tell them very strongly that the last thing we want is to see Middle Eastern politics deteriorate into a Sunni/Shia international conflict? The way that the Saudis treat the Shia minority is important regarding whether that will happen.

Baroness Anelay of St Johns: My Lords, it is important in all countries, whether there is either a Shia majority or a Shia minority, that all those holding the faith are treated with respect. It is worth noting that when Shia members at a mosque were killed so appallingly by a suicide bomb this weekend, the Sunni Foreign Minister not only ensured he made a public statement but commiserated with the Shia minority.

Lord Hughes of Woodside (Lab): My Lords—

Lord Naseby (Con): My Lords—

Lord Trefgarne (Con): My Lords—

The Lord Privy Seal (Baroness Stowell of Beeston) (Con): My Lords, it is the turn of the Conservative Benches. I urge noble Lords to allow the Minister to sit down before they stand up to ask the next question.

Lord Trefgarne: My Lords, I welcome my noble friend's preference for private representations in this matter. Would she not agree that megaphone diplomacy is almost always less effective in the long run and is therefore not to be supported? Will she also bear in mind the importance of our commercial relations with Saudi Arabia, not least in the defence field?

Baroness Anelay of St Johns: My Lords, megaphone diplomacy can indeed be counterproductive. One must consider its use in each and every country. Our trade relationship with Saudi Arabia is important from the point of view of security but also complements our work on human rights. Our work on human rights is never in any way diminished by our trade relationship with Saudi Arabia.

Lord Hughes of Woodside: My Lords, while not disputing in any way the efforts made by the Minister in her quiet diplomacy, there is no evidence whatever that that is working—in fact, the opposite is true. Is it not time to speak out clearly and loudly, making it plain to the Saudis exactly how we feel publicly?

Baroness Anelay of St Johns: My Lords, I have to disagree with the noble Lord when he says that it has not been working. One of the factors is that constant work behind the scenes can lead to some joint understanding of, for example, the introduction of the EU minimum standards with regard to the implementation of the death penalty—that it should not apply to those who are pregnant, who have learning difficulties or who are minors. So with that, and perhaps with women's rights, it is important to point to where there have been changes for the better.

Banks: Internet Banking

Question

2.45 pm

Asked by ***Lord Sharkey***

To ask Her Majesty's Government what assessment they have made of the number of failures of retail banks' software systems to provide internet banking to customers.

Lord Ashton of Hyde (Con): My Lords, it is the responsibility of firms to ensure the resilience of their IT systems. However, the financial authorities take the resilience of the sector seriously, which is why the Financial Conduct Authority and the Prudential Regulation Authority recently completed a technology resilience review of the largest UK retail deposit-taking firms. The review's outcomes have not been published, but the authorities are developing work plans to ensure that further improvements are made to IT systems, and customers protected.

Lord Sharkey (LD): Two years ago, the FCA said:

"We want to make sure that the banks have resilient IT systems in place that are able to cope with consumer demand, so customers aren't left financially stranded or disadvantaged".

It has not happened. HSBC alone had three systems failures in January, the latest last Friday, the most critical day of the month. Even the Bank of England systems collapsed at the end of 2014. Can the Minister say that the banks are devoting sufficient time and resource to long-term solutions and not just looking for an even more short-term patch? What assurance can he give that the FCA is really on top of all this?

Lord Ashton of Hyde: My Lords, it is true that there have been incidents, but none as serious as the one that occasioned the "Dear Chairman" review in 2012. Since then, they have not been as serious as that. I assure the noble Lord that the FCA and the PRA are taking this very seriously. They have initiated a second "Dear Chairman" exercise, which has sought to assess the improvements made since the first exercise and the extent to which good resilience practices are embedded with those firms. The regulators are aware that firms are spending considerable amounts on their IT systems.

Lord Reid of Cardowan (Lab): My Lords, given the significant dislocation and inconvenience caused by recent non-malign interventions on the bank systems, what degree of confidence does the Minister have that they are in a position adequately to protect against malign interventions, such as hacking, breaches of privacy, and theft of financial details and indeed of finance itself?

Lord Ashton of Hyde: My Lords, it would be very unwise for anyone to say that they were totally confident that cyberattacks are totally protected against. What I can say is that the Government are taking it seriously, and the Chancellor has announced that they have doubled spending on cybersecurity to £1.9 billion. The Financial Policy Committee has been given a remit by the Chancellor specifically to look at operational resilience. The PRA has financial stability as its core remit.

Baroness Hayter of Kentish Town (Lab): The people who suffer most from this are indeed the customers, particularly on the last occasion—on what was probably their first pay day this year. What action are the Government ensuring is taking place to make sure that those consumers can be compensated without each of them having to take their own case and prove their own personal discomfort?

Lord Ashton of Hyde: Of course, the point of setting up the regulatory system is that it is for the regulators to deal with consumer detriment, which is exactly what the Financial Conduct Authority has done. I believe that the banks involved in this have said that they would not allow consumers to suffer detriment.

Lord Flight (Con): My Lords, does the Minister recognise that part of the problem is that the long-standing banks have computer systems that go back a long way and which are often very difficult to modernise? They cannot suddenly turn off the whole of their system for a fortnight and put in a brand new one, so existing systems keep getting added to until the scope for mistake and failure if anything gets greater.

Lord Ashton of Hyde: I accept that old IT systems are more difficult to modernise than starting from scratch. That is why many challenger banks are now in the pipeline, ready to compete with the older banks. The Government support challenger banks and encourage customers who wish to change their banks to do so, and 2.1 million customers have done so under the CASS system.

Baroness Kramer (LD): My Lords, the unmodernised IT systems that the noble Lord, Lord Flight, just described add to the cost of every transaction by every customer. Does the Minister believe that this is an issue of customer detriment that ought to be investigated by the FCA? Will he back long-term bank investors who have been calling for far more disclosure of how the banks spend their IT money so that they can identify risks and support the banks that are making the necessary long-term investment?

Lord Ashton of Hyde: I agree that disclosure should take place within market norms, and that commercial organisations should be encouraged to disclose. I completely accept that. As far as the expense is concerned, it is a bit difficult; either we want the banks with old IT systems to bring them up to date or we do not, and to do so will cost money.

Lord Broers (CB): My Lords, what are the Government doing to pursue the perpetrators of fraud on the internet? The Select Committee several years ago recommended that the American practice be used, whereby those defrauded on the internet are required to report that fraud to the police before the bank is allowed to deal with it. Are the banks are obliged to report fraud to the police so that someone can pursue it in a co-ordinated way?

Lord Ashton of Hyde: I will write to the noble Lord to be absolutely specific about that, but fraud is fraud, whether it takes place on the internet or any other way, and banks are required to obey the law for internet fraud as any other.

Lord West of Spithead (Lab): In support of my noble friend Lord Reid, this problem is getting exponentially worse. Is it not right to say that banking and the money markets are effectively part of our critical national infrastructure? As was just said, although we are now encouraging people to report attacks on their systems, there have been some huge attacks—for example, on the New York Stock Exchange—where victims have refused to comment on it because they are scared of denting investor confidence. It is crucial that these things are reported so that we can learn lessons and move forward.

Lord Ashton of Hyde: I am not sure the noble Lord is correct that the problem is getting exponentially worse. However, I accept that the threat is evolving and changing all the time, and we certainly cannot be complacent. The Government have set up the Computer Emergency Response Team to co-ordinate responses to cybersecurity incidents that threaten critical national infrastructure, and it is certainly the case that the regulators require all firms to report any cyber-related or operation-related incidents in their IT systems to the regulator.

Anti-social Behaviour, Crime and Policing Act 2014

Question

2.52 pm

Asked by ***Lord Clement-Jones***

To ask Her Majesty's Government what assessment they have made of the impact on informal and spontaneous busking and on homeless people of the Anti-social Behaviour, Crime and Policing Act 2014 and guidelines made under that Act.

The Parliamentary Under-Secretary of State, Department for Transport and Home Office (Lord Ahmad of Wimbledon) (Con): My Lords, the Government have not carried out any such assessment. However, we have made it clear in the statutory guidance that anti-social behaviour powers should not be used against reasonable activities such as busking, where this does not cross the line into anti-social behaviour.

Lord Clement-Jones (LD): My Lords, that is not particularly reassuring. There is a real problem: scores of public space protection orders, thousands of community protection notices and tens of thousands of dispersal notices have already been issued routinely on an arbitrary basis against street entertainers, young people and the homeless for many legitimate, non-harmful activities such as busking, skateboarding and even carrying a golf bag. This is chilling. Is it not high time that we took stock of these powers and amended the guidance—and, if necessary, the primary legislation—before our freedoms are eroded any further?

Lord Ahmad of Wimbledon: I think that the position of the Government is very clear on this. Buskers are not criminalised. Indeed, we have seen some very good initiatives being taken at a local level. The noble Lord will be aware of the Busk in London initiative right here in London. What we need to see is more voluntary arrangements in place at a local level. I believe that about seven or eight councils have thus far signed up to the London voluntary code. We need to encourage the remaining boroughs out of the 32 to do so as well.

Lord Paddick (LD): My Lords, in December last year the Metropolitan Police justified the use of the Anti-social Behaviour, Crime and Policing Act to prevent a busker performing in Romford on the grounds that, "street performing attracts thieves as large crowds gather". Yet they do not seem to take any action when even larger crowds gather to watch street performing in Covent Garden. Will the Minister accept that better statutory guidance is needed to avoid heavy-handed policing?

Lord Ahmad of Wimbledon: What is required is for local councils to learn and look towards good practice. We have seen examples of good practice in place and have also seen how the Act has been used effectively—the transition from having 19 elements within the anti-social behaviour orders to having six has helped. But this is very much a matter for local authorities. We have seen good practice around the country, which needs to be replicated in those areas where we have seen such acts as the noble Lord just described.

Lord Brooke of Alverthorpe (Lab): My Lords, can the Minister give a stronger assurance to the Lib Dems that they will not be prosecuted for skateboarding?

Lord Ahmad of Wimbledon: I assure the Lib Dems that if they were to break into song, they would not be prosecuted.

Lord Spicer (Con): If the noble Lord, Lord Clement-Jones, is suggesting that police powers are forcing people to sleep rough on the streets, perhaps it is relevant to ask whether it is not true that there are now 20 times as many hostel places appropriate for people sleeping on the street as there are people sleeping on the street?

Lord Ahmad of Wimbledon: My noble friend raises an important issue in relation to housing and the need for more effective social housing. The challenge for all of us across the country, not just for central government but for local government as well, is to ensure good-quality, affordable housing for all. We all want to see the eradication of street sleeping.

Baroness Armstrong of Hill Top (Lab): My Lords, does the Minister understand that one of the big problems out there is the very steep rise in rough sleeping? There are not enough beds, either hostel beds or other sorts of beds such as detox beds, for them to go into. There has been an unprecedented rise since before 1997 in the number of people sleeping rough on our streets, which is giving local authorities and others massive problems. What will the Government do about it?

Lord Ahmad of Wimbledon: The noble Baroness's question goes wider than busking, but I can tell her that of course the Government have taken action; they have undertaken the biggest housebuilding programme that we have seen for decades. It is important that we work with local authorities to identify where the housing challenges are, face up to that crisis and address the housing issue. As I have already said, the issue of housing is a challenge not just for us in central government but across the country for local government as well.

Lord Rosser (Lab): I remind the Minister that the Question refers to homeless people—it is not exclusive to busking—and therefore the question from my noble friend was entirely legitimate. The reality is that the number of households accepted as homeless has risen by over a third since 2010, while the number of people who sleep rough has increased by over 50%. The Minister seeks to tell us about all the measures the Government are going to take, but could he tell us why they allowed this situation—the increase since 2010 in the number of homeless people and the number of people sleeping rough—to arise in the first place?

Lord Ahmad of Wimbledon: The noble Lord should also look at the record prior to 2010 and what his own party did. We have taken forward the biggest housebuilding project that we have seen for decades. There is an acute problem as regards the housing crisis and people sleeping rough on our streets; we are seeking to address it, but we must work hand in glove with local authorities.

Baroness Farrington of Ribbleton (Lab): My Lords, will the Minister care to comment on the availability—and on government policy on the availability—of housing for homeless people? In my experience, few of the people I have met who are homeless and sleeping on the streets will benefit from the Government's housing policy, which is to build lots of houses, including those at £400,000. How much do the Government believe should be spent specifically on the homeless?

Lord Ahmad of Wimbledon: The Government have taken a raft of different initiatives on building affordable houses and a raft of different initiatives to encourage home ownership. The Rent to Buy scheme is another good example of what the Government have looked towards—ensuring innovative solutions to the housing challenges people face, including those who are looking to buy a home for the first time.

Palestine

Question

3 pm

Asked by ***Baroness Tonge***

To ask Her Majesty's Government whether they plan to recognise Palestine as a state.

The Minister of State, Foreign and Commonwealth Office (Baroness Anelay of St Johns) (Con): My Lords, the United Kingdom retains the right to recognise a Palestinian state when we judge it can best help bring

about peace. We strongly believe that achieving a negotiated solution to the conflict is a priority and that bilateral recognition alone would not end the occupation.

Baroness Tonge (Ind LD): I thank the Minister for that Answer—the usual answer, if I may say so. Is she aware that, at the United Nations General Assembly on 22 December last year, the UK representatives voted for a resolution that recognised the,

"Permanent sovereignty of the Palestinian people in the Occupied … Territory, including East Jerusalem … over their natural resources"?

Could the Minister please explain to the House how the Palestinians can have this control unless we follow the example promised by the French Government in the last 24 hours since their offer of talks has broken down? Can we not do this and recognise Palestine as a sovereign state and persuade other countries to do so? Will the Minister also explain how, in the mean time, the Government will seek to protect the few remaining natural resources that the Palestinians have before Israel takes them all?

Baroness Anelay of St Johns: My Lords, the noble Baroness refers to a United Nations resolution. She may be aware that our team in the United Nations, led by Ambassador Matthew Rycroft, negotiate the best terms they can with regard to resolutions so that the language is as close to being realistic as possible, but there always have to be compromises on those matters. We did so against the background of maintaining the policy that I set out in my first Answer: that it is important that we have a negotiated solution. That is when there would be a two-state solution, and that would be followed by a discussion about the ownership of resources. Sadly, we are not in that position yet. I note what the noble Baroness says with regards to the reports today that the French Foreign Minister, Monsieur Fabius, has announced that the French will try to organise an international conference on the Middle East peace process in the coming weeks. Whatever conferences we have, and however welcome an exchange of views, the only thing that will bring about peace is for both Israel and the Palestinians to come together to agree those terms; terms that I have set out in detail on previous occasions.

Lord Polak (Con): My Lords, history teaches us that, when an Arab leader has direct talks with Israel, the result is territorial compromise and peace—look at Jordan and look at Egypt. Does the Minister agree that, instead of political point-scoring, Members of this House—I draw the attention of the House to my non-financial interests—could use their influence with the leadership of the Palestinian Authority to encourage them to stop inciting their young people, and really help the Palestinian people by encouraging them to return to the negotiating table without delay?

Baroness Anelay of St Johns: My Lords, all those who have the interests of peace at heart will want to bring together the sides that disagree to negotiate. I notice that, just recently, Secretary-General Ban Ki-Moon made the following comment,

"as we continue to uphold the right of Palestinians to self-determination, let us be equally firm that incitement has no place, and that questioning the right of Israel to exist cannot be tolerated".

Lord Grocott (Lab): My Lords, we all like the language of a negotiated solution, and sooner or later that is what must happen. But does the Minister agree that there is an increasingly uncomfortable comparison between the way in which the international community responds when Russia is involved in breaches of international law by violating its boundary with its neighbouring country and the response of the international community towards Israel, which for more than 50 years has violated international law by the occupation of a neighbouring country, by the building of a wall and by the continuing illegal occupation that makes a two-state solution nearly impossible? Is it not time that we had a more robust response to these flagrant breaches of international law?

Baroness Anelay of St Johns: My Lords, the noble Lord is right to point out that the Israeli occupation of the Palestinian territories flouts international law. We have made that clear in the past. We have urged Israel to obey the law and have pointed out that it should withdraw. The position that Israel takes on occupying Palestinian territories makes it more difficult to achieve the two-state solution that we wish to see.

Lord Pannick (CB): My Lords, did the Minister see the report in the *Times* last week that two Palestinian journalists in Gaza had been arrested and tortured by Hamas because they had written newspaper articles critical of that administration? Can she assure the House that there is no question of recognising a Palestinian state associated with Hamas until basic civil rights are respected?

Baroness Anelay of St Johns: My Lords, we have made it clear that Hamas needs to stop its aggressive actions and sending its rockets into Israel and that the Palestinian Authority needs to take responsibility and control of the administration in Gaza to avoid incidents such as that described by the noble Lord.

The Lord Bishop of Norwich: My Lords, does the Minister agree with the position taken in October 2014 by the Catholic Bishops' Conference of England and Wales and the Church of England bishops that,

"it is the reasonable aspiration of all peoples to belong to a state and enjoy the merits of full and active citizenship"?

Although the security of Israel is an absolute requirement, would not a principled recognition of Palestinian statehood facilitate rather than hamper renewed negotiations?

Baroness Anelay of St Johns: My Lords, I do not believe that it would. It would not of itself bring about what we need, which is an agreement for a two-state solution. It would be throwing away a key negotiating card.

Access to Medical Treatments (Innovation) Bill

First Reading

3.07 pm

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

Immigration Bill

Committee (3rd Day)

3.09 pm

Relevant documents: 7th Report from the Constitution Committee, 17th, 18th and 19th Reports from the Delegated Powers Committee

Clause 17: Powers to carry out searches relating to driving licences

Amendment 160

Moved by ***Lord Paddick***

160: Clause 17, page 18, line 9, at end insert "and the authorised officer has reasonable grounds to believe the power should be exercised urgently."

Lord Paddick (LD): My Lords, Amendment 160 is tabled in my name and that of my noble friend Lady Hamwee, and we also have Amendments 161 and 162 in this group. We have considerable misgivings about the powers provided under the clause that I will address in a moment. Under subsection (3)(c) an authorised officer who is not a constable can enter and search premises for a driving licence only if a senior officer, such as an immigration officer not below the rank of chief immigration officer, has given authority in writing. However, subsection (4) states that that written authority,

"does not apply where it is not reasonably practicable for the authorised officer to obtain the authorisation of a senior officer before exercising the power".

Our amendment would introduce the additional condition that,

"the authorised officer has reasonable grounds to believe the power should be exercised urgently".

It may not be reasonably practical for the authorised officer to obtain the authorisation of a senior officer simply because it is not possible to make contact with the senior officer whether because of communication issues or that no senior officer is available immediately. In such cases the authorised officer should make a decision as to whether there are reasonable grounds to believe that it is necessary to exercise the power there and then. In the absence of any urgent need, the authorised officer should have to wait until higher authority is obtained from the senior officer.

Amendment 161 refers to proposed new Section 25CC(5) in circumstances where a driving licence has been seized and retained by the Home Office, which under paragraph (a) is until a decision is taken to revoke it. Our amendment seeks to place a time limit on that decision so that a driving licence cannot be retained for longer than one month from the date of seizure unless it is being revoked. It does not seem reasonable to us that someone whose driving licence is not in the end revoked should have his licence withheld from him indefinitely while a decision is made. Amendment 162 seeks clarification of subsection (5)(b) of the proposed new section. Clearly a driving licence that is being held by the Home Office must be retained until it has been revoked, until the time limit for lodging an appeal has passed, or until the appeal is determined. But it is not clear what is meant by retaining a driving licence if it is "subsequently revoked". Can the Minister tell us what is intended by that phrase; what is it subsequent to?

Also included in the group is the intention to oppose the question that Clauses 17 and 18 stand part of the Bill, and I wish to address our opposition to both of these clauses. As I mentioned at Second Reading, when I was a police constable in the years leading up to the Brixton riots in 1981, police officers would routinely stop motor vehicles being driven by black men in particular and frequently arrest them on suspicion that they may be illegally in the country. The usual reason given was that they were a suspected overstayer. These arrests happened routinely simply because the person who was being stopped was evasive or did not appear to be co-operative. Together with the use of the offence of being a suspected person loitering with intent to commit an indictable offence under the Vagrancy Act 1824, commonly known as "sus", and the disproportionate use of stop and search, a problem that continues to this day, relations between the police and the black community deteriorated to such an extent that the Brixton riots, or uprising, was the result. A conscious decision was taken by senior police officers in the light of such deterioration that the police service would no longer proactively enforce immigration law. Instead, police officers would help and support the Immigration Service if called upon to do so. The arresting of black drivers on suspicion of being overstayers stopped, to the considerable benefit of police/community relations.

Clause 18 creates an offence of driving when unlawfully in the United Kingdom. A person found guilty can receive a sentence of imprisonment, a fine or both, and the court can order the forfeiture of the car that was being driven by that person. It is police officers who have the power to stop motor vehicles and require the driver to produce their driving licence, not immigration officers. The burden of enforcing this part of the Bill will fall on police officers, and when I say "burden", I mean it. The Government will want to see this law enforced. The police will come under pressure to proactively enforce immigration law for the first time in almost 30 years—30 years after the police service made a conscious decision to back away from proactive immigration law enforcement because of the damage that it was causing to police community relations.

3.15 pm

The Minister may say, "Well, that was 30 years ago and a lot of progress has been made between the police and certain sections of the community in terms of police community relations". I would say to him that the National Black Police Association—the current National Black Police Association—is also opposed to these clauses. It cites a survey of more than 10,000 drivers, conducted by Her Majesty's Inspectorate of Constabulary and published in March last year, showing that 7% to 8% of white drivers responded that they

were stopped in their vehicles by the police in the previous two years, whereas 10% to 14% of black drivers were stopped. Black drivers were more likely to have their vehicle searched and not to be given reasons for being stopped. Meanwhile, white drivers were more likely to be arrested and prosecuted than black drivers. This suggests that black drivers are more likely to be stopped by the police for no reason, and 73% of black respondents believe that the police unfairly target people from black and minority ethnic backgrounds for traffic stops. As I said, that survey was conducted by Her Majesty's Inspectorate of Constabulary and published in March last year.

Liberty, in its briefing on the Bill, concludes that as there is an existing power to stop vehicles without reason, so added to this by the Bill, there would be nothing to prevent routine stops to ascertain immigration status which, as I have said, was what happened 30 years ago, and which caused so much damage to police community relations. An issue that we did not have 30 years ago was racial profiling of people who look like Muslims, on suspicion that they may be terrorists. In addition to young black men, in particular, being stopped driving by the police, we might add this time round, if this clause comes into effect, dark-skinned, bearded people also being targeted by the police in this way.

It will not be white Australians, New Zealanders, Canadians or Americans who will be stopped by the police to establish whether they are driving unlawfully in this country. If this law makes it on to the statute book and the police come under pressure to produce results, the majority of people stopped on suspicion of this offence will be black, British people who were born in this country. The people least likely to carry a document to prove that they are not an illegal immigrant are British people who were born here. What happens then? Fear not, we have Clause 17: "I am sorry, officer, I don't have my driving licence on me". If the officer believes that the driver is being evasive or obstructive, or that he may well be illegally in the country, he can then,

"enter and search any premises … occupied or controlled by the person",

to search for his driving licence. A completely innocent British-born driver could end up having his home entered by the police without a warrant to search for his driving licence. While most people are given a form and seven days to produce their driving licence, we could end up in a situation where innocent, British drivers, suspected of being illegal immigrants, can have their home searched by the police.

These powers are disproportionate and could have significant impact on what are in some parts of the country already strained relations between the police and the black community. They should not be part of this Bill. We have seen recently the Home Secretary take bold steps to try to address the issue of disproportionality and stop and search—for example, changing the provisions of Section 44 of the Anti-terrorism, Crime and Security Act, to ensure that there is reasonable suspicion before somebody can be stopped and searched on suspicion of terrorism, whereas before no suspicion was required. Yet, the Bill seems to be going in the opposite direction.

Only yesterday the Prime Minister announced an inquiry by David Lammy into, among other things, why black people are disproportionately represented in the criminal justice system in general and in the prison population in particular. I can give Mr Lammy a heads up on this: that issue begins with the disproportionate stopping and searching of black people. These clauses are likely to make that disproportionality worse. I beg to move.

Baroness Lawrence of Clarendon (Lab): My Lords, I shall speak on the question of whether Clauses 17 and 18 should stand part of the Bill. Clause 18 proposes the creation of an offence of driving when unlawfully in the United Kingdom. Clause 17 proposes related search and seizure powers to be used by the police, immigration officers and others. I shall look at the practical, real-life implications of the driving provisions set out in the Bill.

We already have a law—Section 163 of the Road Traffic Act 1988—which allows for road traffic stops to be conducted by police without a reason. Traffic stops affect BME people disproportionately and are seen by BME drivers as a discriminatory tool. As the noble Lord, Lord Paddick, mentioned, a survey conducted by HMIC in 2014 found that 7% to 8% of white drivers had been stopped in their vehicle in the last two years, compared with 10% to 14% of black and minority ethnic drivers. Some 70% of black respondents agree or strongly agree that the police unfairly target people from an ethnic minority for traffic stops.

This is an incredibly serious problem for the police, who must command the trust and confidence of the community that they serve. But rather than addressing the issue, the Government intend, through the powers in the Bill, to pave the way for routine immigration checks during traffic stops to ascertain whether an individual is driving while an illegal immigrant. Noble Lords do not need to take my word for it: Met Chief Superintendent David Snelling told the Public Bill Committee in the other place that this is how he thinks the power would work in practice.

It is not hard to foresee the impact of such a move on police/community relations: police conducting traffic stops—which disproportionately affect BME drivers—and checking on their immigration status; police and immigration officials interchangeably searching individuals and their premises for driving licences on the basis that the individual is suspected of being here unlawfully. The Government's *Policy Equality Statement* says that a decision to search a driver or their premises cannot be based on race, but, as the Race Equality Foundation points out:

"This ignores current evidence on car stops".

It is small wonder that, as the noble Lord, Lord Paddick, said, the National Black Police Association warned that the Bill could return the UK back to,

"the bad old days of the SUS laws",

and create,

"the conditions for making every person of colour in the UK a priori suspect, and a potential illegal immigrant".

Many members of the House have lived through times when relations between the police and BME communities were in a critical condition. It is often in

[Baroness Lawrence of Clarendon]
the area of powers to stop, search and question individuals that the spectre of discrimination has grown up. In his 1981 report, Lord Scarman identified unquestionable evidence of unfair stop and search being used on black people under the notorious sus laws. In 1999, the Macpherson report identified a clear core of racial stereotyping in stop and search, noting:

"If there was one area of complaint which was universal it was the issue of 'stop and search'. Nobody in the minority ethnic communities believes that the complex arguments which are sometimes used to explain the figures as to stop and search are valid. In addition their experience goes beyond the formal stop and search figures recorded under the provisions of the Police and Criminal Evidence Act, and is conditioned by their experiences of being stopped under traffic legislation, drugs legislation and so called 'voluntary' stops".

The Government argue that this new offence is about cracking down on unlawful immigration but it will affect countless British citizens. Inevitably, black and Asian Brits will bear the brunt. The enforcement of this offence, together with lax traffic powers, will lead to discriminatory interference with the right to private life of these citizens.

Provisions allowing for intrusive, discriminatory stops have continued to be one of the greatest flashpoints for police and BME communities, but in recent years significant progress has been made. The Home Secretary has played her part by taking positive steps to reduce the discriminatory impact of stop and search. In 2014, she told Parliament that,

"nobody wins when stop-and-search is misapplied. It is a waste of police time. It is unfair, especially to young, black men. It is bad for public confidence in the police".—[*Official Report*, Commons, 30/4/14; col. 833.]

She is right, and I hope that she can be persuaded to bring the same insight to the provisions of this Bill.

Baroness Afshar (CB): I support the amendments to Clause 17, not least because alienating youths born and bred in this country results in their choosing to leave it to fight with groups that accept them, be it in terms of their creed or their colour. The measure will create active enemies of this country. It is unwise to do that to young people raised in this country with hope who then find themselves treated as terrorist suspects.

The Lord Bishop of Southwark: My Lords, I share some of the concerns of the noble Baroness, Lady Lawrence, who sketched out the problems with enacting this clause. As the Government rightly tell us, reasonable suspicion is a well-established precept in English law and policing practice. However, this does not mean that it is infinitely elastic in its application. A prior question needs to be asked when legislating: is it applicable in this circumstance, and with what effect?

This House is entitled to ask the Minister to consider that there will be circumstances where to exercise such judgment will involve the very real danger of identifying individuals who have leave to remain or who are not even subject to immigration control. Surely that would be an intolerable imposition. We know all too well that our fellow citizens do not take to being stopped for unfounded reasons.

Thus I return to the question I asked at Second Reading, which was not to query the idea of reasonable suspicion in all its existing applications but simply to ask what will constitute reasonable suspicion in these circumstances. A concrete example from the Minister would help.

The peril of such a path is made all the more obvious by the knowledge that alternative powers already exist, without this sort of provision. I trust that the Government will listen to the concerns expressed in this House about this clause and remove it from the Bill.

3.30 pm

Baroness Sheehan (LD): My Lords, I rise to lend support to the noble Baroness, Lady Lawrence, and to my noble friend Lord Paddick, in opposing the Questions that Clauses 17 and 18 stand part of the Bill. The two clauses extend stop, search and seizure powers—powers that have a long history of being acknowledged as contributing to racial disharmony and breakdown in community cohesion. In 1981, Lord Scarman, in his reports on the Brixton riots, concluded that mass use of stop and searches were a direct cause of the riots.

As recently as 2014, announcing reforms to stop and search under the Police and Criminal Evidence Act, the Home Secretary, Theresa May, said that,

"when innocent people are stopped and searched for no good reason, it is hugely damaging to the relationship between the police and the public. In those circumstances it is an unacceptable affront to justice".—[*Official Report*, Commons, 30/4/14; col. 831]

BME people in Britain today suffer such affronts to justice usually with a certain amount of stoicism. However, this Bill seeks to expand powers of stop, search and seizure. It is inevitable—and I would go as far as to say it is the Government's intent—that the number of stop and searches of those from visible ethnic minorities would increase under the powers contained in this Bill.

There is a great deal of documented evidence that current car stops are disproportionately targeted at those from BME backgrounds. I refer to the survey carried out by Her Majesty's Inspectorate of Constabulary, already cited by my noble friend Lord Paddick and the noble Baroness, Lady Lawrence. Rather than going over the figures again, I draw attention to the sample size of the survey—more than 10,000—and contrast that with the evaluation of the pilot carried out in the West Midlands, on which the Government are basing their evidence for rolling it out nationally which has happened today.

The Race Equality Foundation expresses concern that the Government have produced no policy equality statement on these stop, search and seizure provisions, and I share that concern. I hope that the Minister will address that. Such respected bodies as Liberty and the National Black Police Association have expressed deep concerns about the potential of Clauses 17 and 18 to foster distrust and disharmony between the police and the public. Both organisations express regret that the good work of the Home Secretary to date to undo some of the harm associated with previous inappropriate use of stop and search will be undermined by the proposals under Clauses 17 and 18.

It seems that a great deal of power already resides with the Home Office to revoke the licences of illegal immigrants, without resort to a measure that would exacerbate the situation and damage the public's

relationship with the police, who, as the NBPA rightly says, would become the "whipping boy" for immigration officers.

If the Government wish to tighten these measures further, perhaps they would be better to consider tightening the issuance and monitoring of licences by the DVLA, and extending the same responsibilities and duties to that body as they are seeking to deliver to private landlords.

Lord Alton of Liverpool (CB): My Lords, I hope the Minister will listen, as I know he usually would, to the contributions that have been made on all sides of your Lordships' House, but especially to those of the noble Lord, Lord Paddick, and the noble Baroness, Lady Lawrence.

As those contributions were being made, my mind went back to those riots in 1981, of course not just in Brixton but in Toxteth in Liverpool. I had been a young Member of Parliament for about 18 months. In the weeks before the riots occurred, I had raised on the Floor of the House in another place the dangerous relationship that had been deteriorating between police and public in that part of Liverpool. Sir Kenneth Oxford was then the chief constable on Merseyside and he took a very provocative view towards the black community in that neighbourhood. I was not entirely surprised when, on a hot summer's night in 1981, I was asked to come urgently to Upper Parliament Street, where two and a half days of rioting began, in which 1,000 policemen ended up in the local hospital. I dread to think what would have happened if guns had been so readily and easily available on the streets then as they often are now.

As a result of those riots, I visited the home of the young man who had been involved at the very outset, Leroy Cooper, who was a constituent of mine. I sat with him and his father as they described to me how the trigger had taken place on the street in Lodge Lane in Liverpool as an overzealous policeman confronted this young man. It was a traffic incident, which plays exactly into the amendments before your Lordships' House today—not a car but a motorcycle—and, as a consequence of the anger that had been building up for some time, it erupted and riots occurred which had a devastating effect.

The overuse of stop and search powers at that time, which had been part of the incident, was set aside in the months and years that followed and a much different form of policing emerged. Bernard Hogan-Howe, who became the assistant chief constable on Merseyside, played a leading part in the introduction of strong community policing, having learned the lessons of what had gone before. It would be a tragedy if we were now to turn the clock back. I hope therefore that the Minister will think very carefully about and look at the terms of this very good amendment, Amendment 160, which says that,

"the authorised officer has reasonable grounds to believe the power should be exercised urgently".

It does not take away the powers. As the right reverend Prelate said, those powers already exist in plenty of statute if there is a need to intervene. But something that could be used and seen as a deliberate attack on one part of our community will do nothing to enhance community relations. It will not foster good policing in our cities and could actually have a deleterious effect.

For all those reasons, I hope that the Minister will think very carefully about the arguments that have been deployed today. If he cannot agree today, I hope he will at least hold meetings with Members of your Lordships' House between now and Report to see whether this could be modified.

Lord Rosser (Lab): My noble friend Lady Lawrence of Clarendon has eloquently set out the reasons for her concerns about Clauses 17 and 18, which create an offence of driving when unlawfully in the UK and give powers to carry out searches relating to driving offences. The Bill provides a power for an authorised officer—police or immigration officers or third parties designated by the Secretary of State—to search premises, including a vehicle or residence, where the officer has reasonable grounds for believing that an individual is in possession of a driving licence, is not lawfully resident and the licence is on the premises.

As has already been said, the National Black Police Association has expressed concern at the potential of these provisions to undermine vital work promoting good relations between police and the communities they serve, saying that they could result in a return to the days of sus laws and the police being seen as part of the Immigration Service. Evidence indicates that black and minority ethnic drivers are around twice as likely to be stopped as white drivers.

The situation will not have been made any easier by evidence given by the police to the Commons Public Bill Committee when, as my noble friend Lady Lawrence of Clarendon said, a Metropolitan Police chief superintendent explained that they already had a power to stop any vehicle to ascertain ownership and driver details and, having done that, they would then inquire into whether the driver had the authority to drive that vehicle. He went on to say that, to fall within the new provisions in the Bill that we are debating, the police would then most likely need to do a further check with the immigration authorities, which at that stage would give them reasonable grounds—but not necessarily proof—based on a search of the immigration database to believe that the person driving was an illegal immigrant. In other words, these clauses relating to driving could effectively result in adding a routine immigration check into a traffic-stop regime which many in black and minority ethnic groups already regard as operating in a discriminatory fashion.

The points that have been made by my noble friend Lady Lawrence, the noble Lord, Lord Paddick, the right reverend Prelate the Bishop of Southwark and others about the impact of these two clauses on fostering distrust and disharmony between the police and the public require a full and considered response from the Government, including the Government's assessment of the impact on community cohesion if they disagree with what has been said on these proposed measures. This is yet another potential example in the Bill of measures that are intended by the Government to encourage illegal migrants to depart, by making it harder for them to live and work here, having highly

[LORD ROSSER]
likely unintended adverse consequences—this time for the role of the police, community relations and racial harmony.

The Minister of State, Home Office (Lord Bates) (Con): My Lords, I thank the noble Lord, Lord Paddick, for moving his amendment and giving us the opportunity to discuss these important matters. Perhaps I may make some general remarks on the clauses, setting out the Government's position, and then seek to respond to the very legitimate questions raised by noble Lords.

Clause 17 provides the power for an authorised officer, such as an immigration or police officer, to search people and premises and seize a UK driving licence held by a person not lawfully resident in the UK. It is envisaged that the power will be used primarily by immigration officers as an adjunct to their normal enforcement activities where immigration offenders are apprehended in the community. This represents the best opportunity to remove from circulation UK driving licences which are being used by illegal migrants. This power can be exercised only where there are reasonable grounds to conduct a search: it cannot be used to randomly target members of the public. The power contained in the clause will be used by the police only as a part of targeted, intelligence-led policing.

The Government are clear that this clause will not undermine their work in reforming police stop-and-search powers, nor will it result in random stop and searches being conducted by immigration officials. Home Office immigration enforcement officers would use the power where they, for example, visit a property or place of employment in response to intelligence received. With the exception of a constable, authorised officers must generally also obtain the consent of a senior officer before conducting a search of premises, unless it is not reasonably practicable to do so. A seized licence must be returned to the holder if a decision is taken not to revoke it, or where the holder successfully appeals against a revocation.

Amendment 160 would therefore add an extra constraint on when the power to enter premises to search for a driving licence may be used without the authorisation of a senior officer. This is unnecessary. Clause 17 provides that before searching premises an authorised officer must obtain the authorisation of a senior officer, unless it is not reasonably practicable to do so. Amendments 161 and 162 are also unnecessary. The arrangements introduced by the Immigration Act 2014 for the revocation of UK driving licences held by illegal immigrants are well established and operating effectively. They are not subject to significant delays, which would warrant introducing hard and fast time limits for the retention of seized licences pending revocation action.

Amendment 162 would limit the ability to retain licences if they are revoked after being seized. This conflicts with one of the main aims of the clause: namely, to remove revoked licences from circulation. It is already a criminal offence under the Road Traffic Act 1988 to retain a revoked licence but, despite this, only a very small proportion are returned.

3.45 pm

Clause 18 creates a new offence of driving a vehicle on a road or other public place when the driver of the vehicle is not lawfully in the UK and provisions regarding the detention and forfeiture of vehicles used in the offence. A person guilty of this offence will be liable on summary conviction to imprisonment of up to six months or a fine. Where a person is arrested for this offence, the vehicle believed to be used in the commission of the offence may be detained. This clause also provides the Secretary of State with the power to make provision, by regulations, about the circumstances in which a vehicle may be released from detention. On conviction for the new offence, the court may also order forfeiture of the vehicle used. A person with an interest in the vehicle may however apply to the court to make representations as to why the vehicle should not be forfeited. No forfeiture order can be made unless interested parties have been given the opportunity to make their representations.

Now I come to the main concerns in the debate, which surround how the police are going to use the powers being provided. In response to the noble Lord, Lord Paddick, and the noble Baroness, Lady Lawrence, the Government are clear that this provision will not undermine reform of police stop-and-search powers and will not undermine community cohesion. The police will first have to have cause to stop a vehicle. At this point, I turn to the point raised by the right reverend Prelate the Bishop of Southwark, who asked for examples of those circumstances. Reasonable suspicion may occur where a vehicle has been stopped for a suspected driving offence, the police have checked the circumstances of the driver, as appropriate, and those checks have revealed a match against a Home Office record. The search is therefore intelligence-led, not a random search of a member of the public. I draw noble Lords' attention to the policy equality statement which accompanies this Bill and sets out very clearly in section 3 what the power to search for UK driving licences means in practice. The cause cannot be based on a person's race or ethnicity. The stop must be for an objective reason. Once a vehicle has been stopped, the police check the circumstances of the driver. The provision will not therefore lead to stop and searches of vehicles in order to check the immigration status of the driver.

A number of noble Lords have recognised the significant steps forward which the Home Secretary has taken in seeking to improve the way stop and search is conducted. That is to address the type of scenario that the noble Lord, Lord Alton, outlined, which occurred 30 years ago in Liverpool. This is what she said at the National Black Police Association's conference in October 2015:

"We made sure officers are clear what 'reasonable grounds' of suspicion are, so that its use is both legal and reasonable—because Her Majesty's Inspectorate of Constabulary said that over a quarter of stop and searches were unlawful. We brought in much greater transparency and required police forces to record the outcome of each and every stop and search—because only one in ten stop and searches led to an arrest. And we gave communities the ability to hold their police force to account through a 'community trigger', which means that the police must explain how stop and search powers are being used should concerns be raised. And I am delighted that the

43 police forces in England and Wales, plus British Transport Police, have all voluntarily signed up to our Best Use of Stop and Search Scheme".

Moreover, the use of stop and search fell sharply in 2014-15. It was down by 40%, compared with 2013-14, to 540,870. This continues the recent downward trend. This is the largest year-on-year fall and sees the lowest number of stop and searches in a year since the current series began in 2001-02. The number of Section 60 stops, for which reasonable suspicion is not required, fell by 73%, compared to 2013-14, to 1,082 stops. Moreover, the Government announced a number of measures in 2014. Among them were: commissioning the College of Policing to review national stop-and-search training; including stop and search in the new HMIC PEEL inspections; commissioning HMIC to conduct a thematic inspection into other stop-and-search powers; introducing a strictly voluntary Best Use of Stop and Search Scheme to create more transparent and accountable use of stop and search; revising the PACE code of practice to make clear what constitutes reasonable grounds for suspicion—the legal basis for stop and search; mapping stop and search on Police.uk; exploring quick and efficient stop and search; and recording on the emergency services network.

The noble Lord, Lord Paddick, asked what "subsequently revoked" means in Clause 17. Clause 17 provides the power to seize unrevoked licences. Subsequently revoked means revoked after seizure.

A number of noble Lords referred to the comments by Chief Superintendent David Snelling in another place. In his evidence to the Public Bill Committee last year, he indicated that the police would use this power in the context of intelligence-led policing. If police have cause to stop a vehicle, they may then check the circumstances of the driver. If the driver is found to be an illegal migrant, their vehicle may be detained under these powers. In applying these new powers, the police will first have to have cause to stop a vehicle; for example, for a suspected motoring offence. They may then check the circumstances of the driver. There are, therefore, a series of objective steps that will be followed. This clause will not result in the police randomly stopping cars in order to check the immigration status of the driver. In the light of these points, I hope the noble Lord will agree to withdraw this amendment at this stage.

Lord Alton of Liverpool: Will the noble Lord tell your Lordships what will be done then to monitor whether we return to the stop-and-search regime that he described, where only one in 10 stops had any real legitimacy? Will there be accountability? Will statistics be published every year so we know how often the power has been used and how often it has been successful?

Lord Bates: Under one of the proposals introduced for stop-and-search powers, we are now collecting those data. The ability to make the statements that I have, about how stop and search has actually been reduced, is a very good thing. This is such a sensitive area but also one where I believe a significant amount of good work has been done in policing. We would not want anything in this to in any way undermine that wider effort to improve community cohesion and trust between the police and the communities which they serve. I would be very happy to organise a meeting with interested Peers between Committee and Report to explore this area further, to try to offer further reassurances and to hear more about any specific concerns.

Lord Kennedy of Southwark (Lab): I do not think the noble Lord has really answered the concerns raised by my noble friend Lady Lawrence or by the noble Lord, Lord Paddick, who was an experienced police officer in the Brixton area—he talked about the problems of the Brixton riots and so on. Whatever the intentions of the provisions, there are real concerns about what will happen in practice. Could he say a little more about that?

Lord Bates: The noble Lord is right to point to the immense experience of many noble Lords who have spoken, such as that of the noble Lord, Lord Paddick, in policing and of the noble Baroness, Lady Lawrence, in representing victims of crime over many years. That is why I am suggesting, in the light of the concerns that have been expressed, that we ought to look at this. Sometimes there is an overfocus on this particular element, without recognising the wider context of the Bill. This is not being targeted simply through stop-and-search powers but is consistent with the wider aim to reduce the ability of people who are here illegally to live a normal life while in the UK—such as by having bank accounts, being able to rent properties, being able to work and gain employment, or being able to gain a driving licence. In the wider context, it fits, but there are some specific concerns here. It is a very sensitive area. Therefore, I am very happy to meet noble Lords to discuss it further.

Lord Paddick: My Lords, I thank all noble Lords who have spoken, particularly the noble Baroness, Lady Lawrence of Clarendon. Our Amendments 160 to 162 are technical in nature, and so was the Minister's response, so I will read *Hansard* with interest. The major issue is with Clause 17, where the Minister has not answered our concerns. He talked about justification for this being where the police stop somebody and then a match is found against a Home Office record. That implies that the police would have to carry out an immigration check on the individual to establish whether an immigration offence had been committed. They are being pushed into proactively enforcing immigration law in a way that they have not previously.

Lord Bates: Again, I defer to the noble Lord's great experience, but I understand that that is part of normal practice when they establish the identity of the individual whom they have stopped for a suspected offence: that they try to establish that identity from the databases available to them.

Lord Paddick: My Lords, my understanding is that a routine check of the Home Office immigration database is not a normal part of a stop check.

The Minister says that the stop must not be based on race or ethnicity, but Her Majesty's Inspectorate of Constabulary research, to which I and other noble Lords referred, shows that drivers are being targeted on that basis. The Minister has not given the Committee

[LORD PADDICK]
any reassurance that things will be different under these powers. The Minister said that the Home Secretary, in addressing the National Black Police Association, admitted that a quarter of stop and searches by police are unlawful. The clauses extend the powers of the police to carry out stop and searches.

In answer to the noble Lord, Lord Alton of Liverpool, the Minister talked about monitoring. The fact is that police stops of vehicles under the Road Traffic Acts are not routinely recorded. This is something that we need to look into in the meeting with the Minister and other interested noble Lords, which I very much look forward to.

The Minister has heard from both sides here: from someone who has been a victim of racism and from someone who has previous experience of enforcing immigration law as a police officer, and the detrimental effect that that has had on police-community relations. I was in the Brixton riots, I was behind a plastic shield, and I felt the anger of the black community in those days towards the police. I do not want us to go back to anything like that situation—particularly, as the noble Lord, Lord Alton, said, bearing in mind the greater availability of firearms these days. However, I am very grateful to the Minister for agreeing to meet us to discuss those things, and I beg leave to withdraw the amendment.

Amendment 160 withdrawn.

Amendments 161 and 162 not moved.

Clause 17 agreed.

4 pm

Clause 18: Offence of driving when unlawfully in the United Kingdom

Amendment 163

Moved by ***Lord Rosser***

163: Clause 18, page 20, line 31, at end insert—

"( ) A person does not commit an offence under subsection (1) if, at the time of driving a motor vehicle, he or she had a reasonable belief that he or she had a legal right to remain in the United Kingdom and acted in good faith."

Lord Rosser: As was said in the previous discussion, the Bill creates a new criminal offence where a person,

"drives a motor vehicle on a road or other public place at a time when the person is not lawfully resident in the United Kingdom".

Of course, this new offence is part of the Government's objective, as set out so clearly in the Explanatory Notes, of,

"making it harder to live and work illegally in the UK",

to encourage those who do not have the appropriate immigration status to "depart voluntarily" and, where they do not do so, to use other measures in the Bill to "support enforced removals". As with the new offence of illegal working for employees, however, there appears to be no defence for this new offence in relation to driving.

The purpose of our amendment is to seek to provide such a defence for those prosecuted for driving while illegally in the UK if they can show that they had reason to believe that they had the legal right to be here. For example, there is the kind of person who has been sponsored but, unbeknown to them, there is something wrong with the sponsorship. As a result, they may fall foul of this new offence because they do not have the status they should, although they had reasonable belief of their right to be here and acted completely in good faith. Having a criminal record has serious implications for a person under immigration control, as such records can never be spent for immigration and nationality purposes, must always be declared and can form the basis for refusing a person leave, settlement or citizenship.

During the debate on this issue in the Commons, the Solicitor-General confirmed that effectively there was no defence for this new criminal offence. He said in response to a question on this point that a person who was prosecuted for this new offence would have the opportunity to,

"put in mitigation about their belief as to whether they were legally present in the UK, and that would affect any sentence that might be passed".

Of course, that is about mitigation of sentence, not a defence to the charge for which a person can be sent to prison for 12 months. The second point made by the Solicitor-General was that,

"the Crown Prosecution Service will have guidance to ensure that migrants are not inappropriately prosecuted for this",

new criminal offence. He went on:

"Should a migrant be able to genuinely show that they believed themselves to be legally present, the public interest test … would apply".

In other words, as with the offence of illegal working for which there is no defence for those employed, it would be up to the Director of Public Prosecutions rather than Parliament to decide whether there is a defence against an offence for which there is no such provision made in the Bill.

In the Commons, the Government accepted and recognised the reasons behind this amendment but maintained that it was "very broad", "very subjective" and would create scenarios in which,

"a defendant might claim they had reason to believe they were in the UK legally, simply because they had misunderstood the date on which their leave expired".

Yet that is precisely the kind of question that the DPP and Crown Prosecution Service will presumably have to resolve in carrying out the Solicitor-General's view that if a migrant can genuinely show that they believe themselves to be legally present, the public interest test would apply. Why then can the courts not be relied on to make appropriate decisions on reasonable belief, as called for in this amendment, and thus put a defence against this new offence in the Bill, debated and agreed by Parliament?

When the question was raised in the Commons debate about why this new offence was needed at all, since it appeared that the police were not seeking this new power and had not found any gap in their ability to deal with drivers who do not have regular status, the Solicitor-General, replying for the Government, said that there was,

"a loophole involving people who are unlawfully here … who are driving with foreign-issued licences".—[*Official Report*, Commons, Immigration Bill Committee, 3/11/15; cols. 307-08.]

For my benefit and to get it on the record, could the Minister spell out in detail what the existing problem is in relation to people who are here unlawfully and who drive with foreign-issued licences, as opposed to those here unlawfully but driving with British driving licences or no driving licence at all, and which can be resolved only with the creation of this new offence? It would also be helpful if the Minister in his response—I hope it will be favourable but am not too sure of that—could place on record the Government's assessment of the extent to which this new criminal offence of driving a motor vehicle while not lawfully resident in the United Kingdom will reduce the number of people not lawfully resident in the United Kingdom, and the basis on which that conclusion has been reached. I beg to move.

Lord Paddick: My Lords, I support the noble Lords, Lord Rosser and Lord Kennedy of Southwark, in their Amendment 163. It does not seem an absolute offence. Therefore, Amendment 163 seems reasonable.

We have Amendments 164, 169, 171, 172, and 173 in this group in my name and that of my noble friend Lady Hamwee. Amendment 164 would add to new Section 24D by placing a time limit on the time taken to make a decision whether to prosecute, when someone has had their vehicle detained, having been arrested for driving when unlawfully in the United Kingdom, of one month from the date of arrest. It could well be that the person arrested is a professional driver, who relies on the vehicle for their livelihood and, if that person turns out to be innocent of the offence, it could have serious implications for him if the vehicle is not returned to him promptly.

Amendment 169 is designed to restrict the ability to detain the vehicle if it belongs to a third party. Could the Minister clarify whether it is intended to detain vehicles innocently lent to others who are subsequently found to be in the UK illegally?

Amendments 171, 172 and 173 are to query the issue of all premises warrants, in new Section 24E(6)(b) and 24E(7), to search any premises owned or controlled by the person arrested for driving illegally to detain the car he was driving—particularly, as stated in new Section 24E(10), when such an all premises warrant cannot be issued in Scotland. Can the Minister explain why such a wide-ranging warrant is necessary in England and Wales but not in Scotland?

The Government also have Amendments 174 and 175 in this group, which widens the power even further, not just to all premises but not restricting such a power to a constable only, which is what was in the Bill originally. Surely, the power is broad enough as it is.

Lord Bates: My Lords, I have a couple of amendments in the group, so I shall speak to those first and then turn to the amendments in the names of the noble Lords, Lord Rosser and Lord Paddick.

The government amendments in this group relate to the Secretary of State's powers to make regulations governing the detention of vehicles used in committing the new offence of driving when unlawfully in the UK and to the criminal justice procedure for the offence in Scotland. Amendments 165 to 168 remove unnecessary references to the procedure applicable to solemn criminal procedure in Scotland, as opposed to summary procedure, since the offence is a summary-only offence in Scotland. Clause 18 provides a regulation-making power covering the destination of any proceeds from a vehicle being forfeited and disposed of. Amendment 170 extends this power to enable regulations to specify the destination of the proceeds of charges made for detaining a vehicle. This is necessary to ensure that it is possible for the charges to cover the cost of detaining the vehicle to be paid either to the police or to a private contractor who is detaining a vehicle on behalf of the police. Clause 18 provides that all premises and multi-entry warrants can be applied for in Scotland by an immigration officer. Amendments 174 and 175 remove this possibility to ensure compliance with the Scottish criminal justice system, which does not currently include provision for either all premises or multiple entry warrants. I invite noble Lords' support for these amendments at the point when they are moved.

I turn to the issues raised in the other amendments. Amendment 163 would have the effect of introducing a presumption that ignorance of immigration status provides a defence against conviction. The overwhelming majority of illegal immigrants will be fully cognisant of their status, having entered the country unlawfully or deliberately overstayed their visa. The requirements imposed by the amendment are open to vague and inconsistent interpretation and may provide a perverse incentive for some migrants to avoid communication with the Home Office and/or their legal representatives in order to establish the necessary doubt as to whether they could "reasonably" be expected to have known they were required to leave the UK.

Not all those who have entered the UK illegally or attempt to remain illegally in the UK have a history of communication with the Home Office. These are arguably the types of illegal migrant that this legislation is intended to deter. It would be a bizarre outcome should this group be better protected as a result of this amendment than those who have engaged with the authorities.

Where a migrant honestly believes that they have lawful status—for example, because they have been misled by a rogue legal adviser—this will be taken into account in considering whether prosecution would be appropriate in the public interest, and clear guidance to that end will be provided. Should a migrant be able to genuinely evidence that they believed themselves to be legally present, it is highly unlikely that it would be in the public interest to prosecute.

In light of these points, I hope that the noble Lords, Lord Rosser and Lord Kennedy of Southwark, will feel able to withdraw their amendment. Given the concerns about the strict liability nature of this offence, I may reflect further on this matter before Report.

The amendments proposed by the noble Lord, Lord Paddick, which are also in the name of the noble Baroness, Lady Hamwee, represent a significant potential weakening of the powers necessary to enforce the law and realise the intended benefits of this part of the Bill. Amendment 164 would require that a decision

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whether to charge a person with this offence or institute criminal proceedings be taken within a month of the arrest date. It is right that decisions on whether to prosecute a person for a criminal offence should be taken promptly, but the proposed amendment would introduce an arbitrary time limit and create an additional, and in our view unnecessary, administrative burden on the relevant agencies.

Amendment 169 would have the effect of disallowing the detention of the vehicle if it was under the person's control. This would defeat the principal purpose of the clause, which is to prevent illegal immigrants driving on our roads. I understand that noble Lords may have intended to probe how the legislation will operate where an illegal migrant is apprehended driving a vehicle belonging to someone else, and that vehicle is detained by the police. That is not an unusual scenario in the context of motoring offences, and the Bill provides appropriate safeguards to deal with just that situation. I draw noble Lords' attention to new Section 24D(8), which provides a power for the Secretary of State to make regulations about the release of a vehicle that has been detained. This power covers the circumstances in which a vehicle should be released to a third party who has an interest in it, such as the vehicle's owner. Where a person has been convicted of the new offence created by Clause 18, the courts will have the power to order the forfeiture of the vehicle used in the offence. However, a third party with an interest in the vehicle may apply to the court to have the vehicle returned to them.

Amendments 171 to 173 would significantly reduce the potential success of a search for a motor vehicle by removing the ability to apply for an all-premises warrant to search multiple premises. The power contained in the clause to apply for an all-premises warrant, which allows any premises occupied or controlled by a specified person to be searched, is consistent with the Police and Criminal Evidence Act 1984, which applies in England and Wales, and the equivalent order in Northern Ireland.

The provisions within the clause and within wider immigration legislation specify that the search power may be exercised only to the extent that it is reasonably required. In order to issue an all-premises warrant, the justice of the peace needs to be presented with reasonable grounds that it is necessary. Limiting the scope of searches to premises specified at the outset of an inquiry negates any possibility of using evidence gained during the initial inquiry that provides reasonable grounds to believe that a further search of additional premises would be successful. In the context of this clause, for instance, this might have the perverse effect of preventing officers who have searched one vehicle lock-up from also searching the one next door, despite information suggesting that the vehicle is kept there.

4.15 pm

The noble Lord, Lord Rosser, asked why the offence is needed. This immigration provision is designed to make it harder for illegal migrants to remain in the UK. The provision operates in parallel with other measures contained within the Immigration Bill. Although illegal migrants may have their driving licences revoked under provisions contained in the Immigration Act 2014, we cannot revoke foreign-issued licences. This means that, currently, illegal migrants may drive legally if they hold a valid licence issued overseas. Clause 18 closes this loophole. I should also say that the Director of Public Prosecutions will produce guidance with input from my Home Office officials as to how the CPS will operate this with regard to this offence.

Given that response, I hope that the noble Lord will feel able to withdraw his amendment; I will move mine when the time comes.

Baroness Hamwee (LD): My Lords, I am emulating the noble Lord, Lord Kennedy, in retreating to the Back Benches to intervene at this late stage. I was glad to hear the Minister say that the Government would consider further the issues raised by the noble Lord, Lord Rosser, in Amendment 163. The Minister did not quite address—again, I emulate the noble Lord, Lord Kennedy—the point made by the noble Lord about the desirability or otherwise of dealing with the matter either through the CPS taking a view as to whether to prosecute or through sentencing. I hope that the Government will consider whether it might be better not to have a strict liability offence rather than leaving it to the CPS to consider whether it is in the public interest to prosecute in a particular case.

Lord Bates: My Lords, the strict liability nature of this offence is consistent with some similar driving offences. It is an offence, for example, to drive whilst disqualified or drive otherwise than in accordance with a licence, regardless of whether or not you realised that you were committing an offence. Therefore, we believe that that is consistent, but obviously, I will look carefully at what the noble Baroness has said and if need be I will respond in writing to her.

Baroness Hamwee: My Lords, you are more likely to know whether you are disqualified than whether there is a problem over leave to remain.

Lord Rosser: I thank all noble Lords who have taken part in this relatively brief debate, and I thank the Minister for his response and for his willingness to look again at this issue of absolute liability with regard to this new offence prior to Report.

My feeling at the moment is that the Government want a defence to be available, but want it to be exercised through the DPP and the Crown Prosecution Service through not prosecuting cases rather than putting it in the Bill. Of course, if the DPP and the Crown Prosecution Service came to the conclusion that they did not think that there was a case for somebody to say that they believed that they had the appropriate status to be in this country and they were prosecuted, when it got to court the court would not have a chance to look at the grounds that had been put forward, because it would be an absolute offence and the individual would presumably be found guilty.

I hope that the noble Lord will look hard at this issue as to whether it is better for the courts to make the decisions on whether an individual has made a case that they genuinely believed they had the appropriate

immigration status with regard to this offence. However, I am grateful for what the Minister has said and I beg leave to withdraw the amendment.

Amendment 163 withdrawn.

Amendment 164 not moved.

Amendments 165 to 168

Moved by ***Lord Bates***

165: Clause 18, page 21, line 27, leave out "65 or"

166: Clause 18, page 21, line 28, leave out "discharged or"

167: Clause 18, page 21, line 34, leave out "on petition"

168: Clause 18, page 21, line 34, leave out "an indictment or" and insert "a"

Amendments 165 to 168 agreed.

Amendment 169 not moved.

Amendment 170

Moved by ***Lord Bates***

170: Clause 18, page 22, line 8, at end insert—

"( ) as to the destination of payments made in compliance with such a condition;"

Amendment 170 agreed.

Amendments 171 to 173 not moved.

Amendments 174 and 175

Moved by ***Lord Bates***

174: Clause 18, page 23, line 24, leave out "authorising entry on premises by a constable"

175: Clause 18, page 23, line 26, leave out "by a constable"

Amendments 174 and 175 agreed.

Clause 18, as amended, agreed.

Clause 19 agreed.

Amendment 176

Moved by ***Baroness Doocey***

176: After Clause 19, insert the following new Clause—

"Ability to pay the immigration health surcharge incrementally

In section 38 of the Immigration Act 2014 (immigration health charge), in subsection (3)(c), after "State" insert ", including allowing the Surcharge to be paid in multiple payments"."

Baroness Doocey (LD): My Lords, Amendments 176 and 177 seek to address two key issues affecting migrants not covered in the Bill. Amendment 176 deals with the immigration health surcharge, which came into effect last April. This requires migrants from non-European economic areas to pay an upfront health charge of £200 a year for each member of the family, including children, when they apply to have a visa renewed or submit an application for leave to remain in the UK. The charge is designed basically to cover any NHS care that the migrant or their family might need while their application is being processed, but it does not take account of how long each migrant has lived in the UK, their financial situation or whether they have dependent children. The people involved are largely industrious non-EEA citizens who have lived and worked in the UK for many years, but they face unsurmountable bills when they come to renew their visa. This causes major problems because almost half of them are in low-paid employment.

Irrespective of their financial situation, if they apply for leave to remain in the UK—which, if granted, is normally for a period of two and a half years—they must pay the health surcharge of £200 per person, per year, plus an administration charge of £649 per person. So a mother with three children would need to raise £2,000 to pay the health charge and a further £2,500 to pay the administration charge. That is a total of more than £4,500. Families unable to pay cannot renew their visa even in circumstances where an extension would be likely to be granted. So they are faced with a stark choice: they either find the money or they face destitution or deportation.

A simple, practical solution to this problem would be to allow these migrants to pay the health charge in instalments, rather than upfront. This would make a very significant difference. I urge the Government to consider this, not least because it would cost practically nothing to do it.

Amendment 177 seeks to extend the categories of migrant exempted from the health charge to cover people who have fled domestic violence, and dependent children. I recently visited the Cardinal Hume Centre in Westminster, which does outstanding work in this area. I met one of the many people there helping, whom I will refer to as Ruth. Ruth was originally from Kenya and came to the UK with her husband on a two-year spouse visa. But after they had had their two children, her husband became both physically and sexually violent. Like most people in this situation, Ruth was terrified to do anything about it. But she eventually plucked up the courage to flee, and is now living in a domestic violence refuge. Her husband, of course, kept control of all the papers, so she had no idea that her documents had expired. So here we have a woman who has been abused; she has had to flee her home; she has two children to care for; she has got no job; and she has got no money. How on earth can she possibly raise the money in order to pay the health charge and application fee that her family need in order to renew her visa?

Women in these situations are extremely susceptible to exploitation. Their reliance on the charity of others can leave them vulnerable, with nowhere to turn when things go wrong. Enforcing this charge just strengthens the hand of the abusers, because people—women in particular—feel unable to escape their partner or their situation because of fears of deportation or destitution. At the moment, asylum seekers, victims of human trafficking and those under humanitarian protection are already, rightly, exempted from the health surcharge. The amendment would extend that exemption to abused parents and their children.

In theory, a fee waiver system is available for migrants unable to pay the visa application fee. However, in practice, it is simply not working. Many migrants are being denied this waiver despite significant evidence to

[Baroness Doocey]
show that they meet all the criteria; I have many examples that I would be happy to share with the Minister. So I hope that the Government will consider extending these exemptions to victims of domestic violence and their dependents. I beg to move.

Lord Alton of Liverpool: My Lords, I am a signatory to Amendments 176 and 177 so ably moved by the noble Baroness, Lady Doocey. Amendment 176 provides for the ability to pay the immigration health surcharge incrementally, as the noble Baroness explained, and Amendment 177 deals with exemptions from the immigration health surcharge.

As the noble Baroness said, the fee waiver system, which is supposed to protect migrants unable to afford visa application fees, is simply not working in practice. All the evidence suggests that the fee waiver system is currently failing the very families who need it most. By way of illustration I will refer to another case from the Cardinal Hume Centre which is within Division Bell distance of the Palace of Westminster, where we are meeting today. Among its other clients, the centre is working with a lone parent who has four children, all aged under 18. In that context, I would be grateful if the Minister, when he comes to reply, will consider the implications therefore of Article 24 of the United Nations Convention on the Rights of the Child, which states that parties who are signatories to that convention, as we are,

"shall strive to ensure that no child is deprived of his or her rights of access to such health care services".

Also, perhaps he will comment on the applicability of this to all children, regardless of their immigration status, which is further emphasised in the Committee on the Rights of the Child's *General Comment No. 6*, paragraph 12, which states that,

"the enjoyment of rights stipulated in the Convention are not limited to children who are citizens of a State party and must … be available to all children—including asylum-seeking, refugee and migrant children—irrespective of their nationality, immigration status or statelessness".

In the case of this lone parent with her four children, the fees to extend her family's leave to remain, including the health surcharge, will be in excess of £6,000. Due to the threat of destitution, that family is currently supported by a London local authority, but they are still struggling to meet essential living costs, yet the Home Office has refused the fee waiver application, despite significant evidence being provided by the centre and the client. Perhaps the Minister, like the noble Baroness, Lady Doocey, would like to visit the centre to see that family for himself and talk to them so that the illustrations that the noble Baroness and I have given can be taken into account as he comes to consider these arguments between now and Report.

Sadly, these are just illustrative examples of many cases that could be raised today. If accepted, the admirable amendments tabled by the noble Baroness, Lady Doocey, would simplify the existing rules and give proper protection to all survivors of domestic violence, not just those who have been granted the destitute domestic violence concession.

The current protections and exemptions are far too narrow in definition. One unacceptable consequence is that professionals in the field report that many women remain deterred from leaving abusive relationships. As the Office for National Statistics points out in its *Focus On: Violent Crime and Sexual Offences 2011-12* for England and Wales, published on 7 February 2013, women are "more likely" to be the victims of domestic violence than men and can be left in a precarious and dangerous situation as a consequence of abuse. It is therefore imperative to simplify the rules and exemptions in this regard as much as possible to ensure that all victims of domestic abuse, in particular women, are properly supported and protected.

The burden of sourcing the necessary money to pay the health surcharge causes many families and individuals great distress. Granting applicants the option of paying the fee incrementally, as the noble Baroness described, would be a significant step in easing the strain and worry on those affected by the charge. Incremental payments would be a particular benefit to domestic workers, who tend to be on low pay, typically no more than the minimum wage, and who have to save not only for the application fees but also for the health surcharge and other essential living costs. This leaves them in a very precarious and vulnerable financial position and inevitably can make them susceptible to exploitation as they may have little option but to borrow money from people with few scruples to pay the necessary fees upfront.

We should also consider the impact that the burden of sourcing this money has on the cohesion and durability of families. As research from the Tavistock Institute shows, financial stress and being in poverty add to the risk of family breakdown. The introduction of incremental payments would make the charge more manageable as applicants would not face the intense pressure of sourcing large sums upfront. Overall, these amendments represent a sensible, modest solution and a way of mitigating many of the unreasonable challenges that migrants encounter when seeking to extend their leave to remain. I am therefore very happy to support them.

4.30 pm

Baroness Lister of Burtersett (Lab): My Lords, I was pleased to add my name to these amendments. They strike me as being reasonable and modest, and a very strong case has already been made by the noble Baroness, Lady Doocey, and the noble Lord, Lord Alton. ILPA also makes the case for allowing payment to be made by instalments:

"The sum at stake, the £200, £150 for students may appear modest. It is not. Factor in that it is a payment per year, that there will be a levy for each family member and then consider average earnings in different countries and exchange rates with the UK and it acts as a bar to entry … Any health levy payable prior to arrival risks presenting a barrier for those nationals of countries where earnings are low and currencies weak relative to the UK. Similarly if a person must pay the levy for their entire period of leave up front: to do so exacerbates the effect of existing disparities".

The Anti Trafficking and Labour Exploitation Unit has provided a case study which again illustrates the difficulties that upfront payments can create for low-paid workers:

"F is a domestic worker from South Asia. She has leave to remain granted under the rules for domestic workers in place before April 2012. In 2015 she sought to extend her leave to remain. She faced an application fee of £649 and a health surcharge

of £200 so a total of £849 to pay up front. This was more than her monthly wage of £800. From our experience, someone working in a minimum wage job is virtually certain to have their application for fee remission refused, even when human rights is the main focus of the application, which is not the case for domestic worker visa extensions who could not therefore hope to be given a fee waiver. F had to borrow the money from her employer which on this occasion was possible. Not all employers would be willing to assist in this way"—

I suspect that rather few employers would do so. It continues:

"For a domestic worker to find that much money up front inevitably necessitates borrowing, which can put a vulnerable person further at risk. To save that much money each month can be a huge task for someone on a minimum wage income but is more manageable than an upfront payment. The fee for such applications will go up to £811 in 2016 in addition to the health surcharge".

I suspect that all of us in this House live pretty comfortably, so for us to make a payment like that upfront is something that we probably do not even think about. It might just be a slight nuisance. We must put ourselves in the shoes of someone for whom making such an upfront payment is a huge burden, and something that seems impossible to comprehend. The difference it would make to them to be able to pay in instalments is enormous. It is important that we try to think what it means to the people for whom we legislate.

The exemptions also seem to me very fair. I was going to make reference to the UNCRC, but the noble Lord, Lord Alton, has already made it. There are questions about whether charging children is compatible with those provisions. To exclude victims of domestic abuse would simply build on the existing exemptions under the destitution domestic violence concession, without introducing a new principle. On the question of destitution, the briefing that I had from the Caritas Social Action Network gave the example of someone who was not considered destitute for this purpose because they had £60 in their bank account, but they were homeless. Perhaps I should know the answer, but will the Minister tell us the criteria for destitution when deciding on such cases? I hope that he will look kindly on these very reasonable, very modest and very just amendments.

Lord Hylton (CB): My Lords, I support these two amendments—in particular, where they deal with exemptions for children who cannot be expected to have large earnings and for victims of domestic violence. May I suggest to the Minister that he consults on this his noble friend Lady Anelay of St Johns? After all, she has worldwide responsibilities for protecting women in particular but also, no doubt, children against violence, whether domestic or arising from wars and civil conflicts. It would be paradoxical for us to go to considerable lengths to get better worldwide protection while diminishing it or removing it from people here.

Baroness Hamwee (LD): My Lords, I support my noble friend in these two amendments. They have been described as modest; I think they are remarkably modest in the light of the descriptions that we have heard. I would say to the noble Baroness, Lady Lister, that I would think twice about £640.

We are told that immigration fees are charged on the basis largely of cost recovery. Does this administration charge reflect the cost of administration? I find it quite interesting. It makes me wonder not only about the efficiency of it but that so much more is being paid for the administration than for the health service. When the proposals for a health surcharge were first mooted, there was a lot of debate about the dangers of either driving people underground or deterring people who have a right to a service from seeking it because they do not quite understand how it all works and fear that they might be prejudicing their own immigration status by seeking health advice and health treatment. My noble friend has raised immensely important points.

The Earl of Sandwich (CB): My Lords, the noble Baroness just said what I would have said, so I add only one plea to the Minister: would he please explain the point of the regulations? We have discussed them before on previous immigration Bills and they keep coming back because they are so obviously unfair. We have to know whether they are intended as a deterrent, because if they are they will not have the slightest effect.

Lord Rosser: I rise very briefly just to say that I await the Government's response with interest. I am not sure what the argument will be against being able to pay the immigration health surcharge incrementally. On exemptions from the surcharge, if the Government will not go down the road of the amendment, I await with interest to hear what their argument is for not having these exemptions.

Lord Bates: My Lords, I shall make some general points in response to the amendment from the noble Baroness, Lady Doocey, which we had the opportunity to discuss outside the Chamber a little bit before we reached this stage. I took the opportunity to look into it in more detail with officials.

For those reading this in the *Official Report*, it might be helpful if I address the point made by the noble Earl, Lord Sandwich, about the reason for this provision. The total cost of visitors and temporary migrants accessing NHS services in England alone has been estimated at £2 billion per year in 2013. Around £950 million was spent on temporary migrants, such as students and workers, from whom no charge was recoverable. Non-EEA temporary migrants—workers and family—here for more than 12 months had a weighted average cost to the NHS of just more than £800 per head, and a total estimated gross cost to the NHS of more than £500 million per year. Non-EEA students—for any length of stay—had a weighted average cost to the NHS of just more than £700 per head, with a total gross cost to the NHS of £430 million per year.

Noble Lords will be aware that the Immigration (Health Charge) Order 2015, made under the Immigration Act 2014, requires that non-EEA temporary migrants who make an immigration application to come to the UK for six months or more, or who apply to extend their stay in the UK, make a direct contribution to the NHS via payment of an immigration health surcharge. The Home Office collects the charge as part of the immigration application process and payment of it is

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mandatory. If the charge is not paid, the applicant is not processed. Temporary migrants pay upfront an amount that covers the entire period of their permission to stay in the UK. Where an application is refused, rejected or withdrawn, the charge is fully refunded.

The charge has been set at a competitive level of £200 per annum per migrant, and at a discounted rate of £150 per annum for students—well below the true cost to the NHS of treating these migrants, as stated in my opening remarks. It is also set below the rate that migrants expect to pay for health insurance in competitor countries, such as Australia and the USA. For example, a student applying to Harvard in the USA would, in most cases, have to pay a fee of around £600 per year to access basic health services. To access Harvard's most comprehensive health plan would cost an additional £1,500 per year. In contrast, the surcharge for a foreign student applying to the UK would be only £150 per year.

Upfront payment of the full amount of the charge covering the length of the visa period is administratively far simpler than requiring migrants to make multiple payments of the appropriate amount to the Home Office and the Home Office enforcing such a requirement. Any movement to an instalment approach would bring with it considerable administrative and operational burdens. An observation has already been made by the noble Baroness, Lady Hamwee, on the administrative costs. The amendment would raise them. Home Office staff would need to ensure that payments were being made. If they were not, they would need to chase payment and, in some cases, enforcement action might be required, which could involve curtailing a person's leave.

Payment by instalments would also lead to confusion about entitlement to free treatment and place unnecessary administrative burdens on the NHS, as NHS staff would have to check at each contact with a patient that they were up to date with their payments. There would also be uncertainty about whether our health system would actually receive all the expected income from the surcharge, which would be an unwelcome prospect for the NHS.

4.45 pm

Multiple payments would also require significant changes to the IT system which is an integrated part of the online immigration application process and which currently has no mechanism for visa applicants to make further payments at a later stage without manual intervention. It would be difficult, complex and costly, therefore, to enforce payment of the charge once the visa had been issued, and would put at risk some of the income generation necessary for our health services. Some noble Lords have, during the debate, noted that Home Office resources are limited. We should not divert valuable resources away from the important task of dealing with those illegal migrants who do most harm to our society to manage what would be an overly complicated surcharge payment system.

Baroness Lister of Burtersett: I may have misinterpreted what the noble Lord said, but I think that he used the phrase "simpler than requiring instalments". However, it is not the intention of the amendment to require instalments but rather to allow them to be used in what may be a very small number of cases—I do not know whether that is the case—of people who simply cannot pay upfront. Has he made any estimate of what proportion of people are likely to ask to pay by instalments, because I do not think it is assumed that that would be the default position?

Lord Bates: If you offered interest free credit in the commercial world, I guess that probably most people would take advantage of it. Therefore, the cost might be quite significant, unless the noble Baroness is proposing an additional charge for accessing the system through an instalment process, which I do not think she is. The points I made earlier related to the current system. I have not just arrived at this point, as it were. When the noble Baroness, Lady Doocey, raised this issue with me—the week before last, I think—I checked with officials and looked at the system. I was told that it is very difficult because at the moment everything is up front—the costs and everything—and the boxes have to be ticked in order to move on to the frame. As I say, we are not making a spurious objection to the measure. I have more to say on that, but I will now address Amendment 177.

Amendment 177 seeks to exempt children and victims of domestic violence from the charge. Following extensive debates in Parliament during the passage of the Immigration Act 2014, the Government put safeguards in place to protect vulnerable groups. The Immigration Act 2014 provides the Secretary of State with the power to exempt certain categories of applicant from the requirement to pay the immigration health charge. These categories are listed in Schedule 2 to the Immigration (Health Charge) Order. Current exemptions include children who make an immigration application or who are looked after by a local authority and a person who applies for limited leave under the Home Office concession known as the destitute domestic violence concession. In the case of the latter, these are individuals who are here as partners of British citizens who are settled here, and can consequently apply for settlement. Individuals who are in the UK for less than six months or who have not paid the charge can still access NHS services, although some of these might be chargeable. However, a key principle of the NHS is that medical treatment which is urgent or immediately necessary in the judgment of a clinician is never withheld from anyone, irrespective of their chargeable status.

Furthermore, since April 2015, treatment that is needed as a consequence of domestic violence is exempt from charge to all overseas visitors, regardless of whether or not they have paid the immigration health charge. This includes both physical and mental health needs. The only stipulation is that the visitor has not come to the UK for the purpose of seeking that treatment.

Lord Alton of Liverpool: I am grateful to the Minister for giving way. Before he moves on, he will recall that I raised the issue of our obligations under Article 18 of the United Nations Convention on the Rights of the Child. Has he taken advice from officials and Law Officers as to whether we are compliant in doing the very minimum, as he has described to the House today?

Lord Bates: On that point, which I was just coming to, migrants making an application for asylum or humanitarian protection, or a claim that their removal from the United Kingdom would be contrary to Article 3 of the European Convention on Human Rights, will be exempt under the existing rules.

A question was asked, very reasonably, about definition. The explanation is quite lengthy, so perhaps I might put it in writing to the noble Baroness, Lady Doocey, and copy it to other interested Members. I know that that information would be useful ahead of day four of consideration in Committee, when other related issues will be considered.

On the points made by the noble Lords, Lord Hylton and Lord Alton, and the noble Baroness, Lady Lister, children who are visiting the UK with their parents or guardians or whose parents are here unlawfully are generally not entitled to free NHS hospital treatment. However, they will always be provided with immediately necessary and urgent treatment, even if their parents have not paid in advance or are likely to be unable to pay afterwards. But some particularly vulnerable children are exempt from the charge—for example, refugees, those looked after by a local authority and victims of human trafficking. We do not intend to establish a blanket exemption for children, as this poses a significant risk that people would bring their children to the UK to seek treatment for existing serious illnesses. No child is deprived of access to health services, but in some cases this will have to be paid for, unless an exemption applies.

The noble Lord, Lord Alton, asked about the Cardinal Hume Centre, which I have heard of by reputation. I would be very happy to accompany him with one or two officials, ahead of Report stage, to see the work going on there and to hear about the practical concerns. That would be a good part of testing out what we are doing. However, the Government believe that those who make use of NHS services must pay for them. The immigration health charge is collected as a direct contribution to the NHS. Children are as likely to make use of NHS services as adults, and it is therefore only right that parents and guardians bear the responsibility of paying a charge for their child, except in the type of situation I have identified. Those who pay the charge will then receive free NHS treatment for the duration of their lawful stay in the United Kingdom.

With these explanations and that commitment to explore this issue further ahead of Report, particularly in relation to the Cardinal Hume Centre, I invite noble Lords to consider withdrawing their amendments at this stage.

Lord Hylton: Before the noble Baroness decides what to do about this group of amendments, I ask the Minister to reflect between now and Report on whether Section 38 of the Immigration Act 2014 is compatible with the agreements we have with other EU states for reciprocal health and welfare benefits. If it is not, that would seem to me to reflect very badly on our current efforts to renegotiate membership.

Lord Bates: I am very happy to reflect on that. Perhaps I will include the response to that with the response on destitution that I promised the noble Baroness.

Baroness Doocey: I thank all noble Lords who have spoken to this amendment. I really feel saddened that the Government will not even consider something as basic as allowing people to pay a health charge by instalments—certainly that is the message that is coming through loud and clear. We have heard excuses about an IT system that does not work—when has any government IT system ever worked for anything? I am afraid that just does not wash at all.

The Minister said that mothers ought to pay for their children. I do not think anyone would disagree in principle, but in the case that I mentioned of Ruth, who came here and is now destitute, living in a shelter, how on earth could she possibly raise the money to pay £200 for each child and herself to renew her visa? She just cannot. She has no job; she has no home; she has been abused. In those circumstances, surely the Government could think again. There is no way that people in this situation can raise the money. It is not a question of them not wanting to; they are physically unable to do so. I am very disappointed.

The Minister made great play about the cost of changing the systems and collecting money, but what about the costs that are being incurred day after day because the visa waiver system is not being applied properly? I have evidence—which, I repeat, I am very happy to go through with the Minister—of case after case of the applicant being turned down up to four times and then on the fifth occasion being accepted. What about the cost of all the staff involved in that—what about the cost of the lawyers? Why are the Government not concerned with that? If the Government managed to run the fee waiver system properly, they might have sufficient funds to pay the tiny charge that will be necessary in order to let these people pay their health charge by instalments.

I hope that the Minister might come and talk to me and some of these people, and see for himself that these problems are real. I would be very happy to share with him all the issues and all the evidence that has been accumulated. I hope that he might accept that invitation and think again and not just close it off now. For now, I beg leave to withdraw the amendment.

Amendment 176 withdrawn.

Amendment 177 not moved.

Schedule 4: Bank accounts

Amendment 178

Moved by ***Baroness Hamwee***

178: Schedule 4, page 90, line 26, leave out "may" and insert "shall"

Baroness Hamwee: My Lords, the amendments in this group are in my name and that of my noble friend Lord Paddick. They concern the provisions about bank accounts—the restrictions on bank accounts and, more particularly, the requirement for banks to make checks and the opportunities for the Secretary of State to apply for a freezing order prohibiting the use of the account.

[Baroness Hamwee]

I accept that all these provisions are to be reviewed within five years of the schedule coming fully into force. I am glad to see that in the Bill. We are often told that of course all legislation is routinely reviewed after three years so I do not know the significance of the five years or the particular significance of it coming "fully" into force. Is there some plan that perhaps the Minister can share with the Committee for the gradual implementation of the provisions?

Amendment 178 would provide that an exception shall—not may—make certain provisions. I assume that "may" in new Section 40D(4) is legislation speak for "shall" but as we so often say, if that is what it means, it would be nice if it said so, because the day will come when a court says, "Parliament knew what it was saying when it said 'may' not 'shall'", and that what we meant was that the matter was permissive not mandatory. Amendment 179 is to probe why the right of appeal is to be limited to a current order. That may relate to perhaps the major issue in this group: compensation.

5 pm

Amendment 180 would allow the court specifically to order compensation. It appears necessary as, when the matter was debated in the Public Bill Committee in the Commons, the Minister confirmed that compensation did not fall within the incidental or consequential orders that the relevant appeal court can make under the Bill. This concerned the Joint Committee on Human Rights, of which I am a member. It has written to the Home Secretary to raise the issue of compensation where a bank account is frozen and this results in financial loss to an individual, or an innocent third party who sustains an actual loss, as a result of an error on the part of the Home Office. The JCHR wrote that,

"the availability of compensation could be a relevant factor in judging compliance with the right to peaceful enjoyment of possessions in Article 1 to Protocol 1 of the European Convention on Human Rights".

That may sound slightly arcane to your Lordships but it is an additional argument to the one that it would, frankly, be right for the Home Office to pay compensation if it makes an error.

The Government have said that they are confident that any errors could be resolved "in real time"—I suppose that means immediately—and that compensation is perceived to be disproportionate in the case of an error. If it can be resolved, why are the Government worried about paying compensation and why would it be disproportionate? The chair of the JCHR, Harriet Harman, has said that given these factors,

"it is not clear why … compensation … is perceived to be disproportionate",

and, in the measured language that is always used in these circumstances, went on to write that an amendment might be considered to provide for payment of compensation.

As I understand it, there will be no independent oversight of the operation of these provisions and no opportunity for an individual to challenge the closure of the account, or to challenge incorrect or unreliable information that has led to that closure. My noble friend Lady Doocey referred to the reliability or otherwise of NHS IT systems. I do not think that that is solely the experience within the NHS. What if databases are not absolutely correct and up-to-date? I guess that I would not be the only noble Lord today who may have had the odd problem with an error regarding the operation of a bank account so, while our banks are wonderful institutions as well, the Government's responses are a bit too comforable.

Almost finally, Amendment 181 would provide that an application to freeze an account could be made only if it is overwhelmingly in the public interest in respect of the particular account holder. We know that so much of this Bill is directed at deterring would-be immigrants coming to this country, and I fear that this is another bit of message-sending. I would like to be reassured that an account holder's particular and individual circumstances are considered.

Amendment 182 is consequential. Amendment 183 would provide that regulations under these new sections of the Immigration Act 2014 would be affirmative instruments. I beg to move.

Lord Kennedy of Southwark: My Lords, the amendments in this group are all in the names of the noble Baroness, Lady Hamwee, and the noble Lord, Lord Paddick, and concern the regulations set out in Schedule 4 to the Bill about bank accounts and the processes around freezing orders. These amendments generally seek to improve this section of the Bill by bringing greater clarity to the process. Amendment 180 provides for the court to be able to award compensation, which seems reasonable to me. If a court has allowed an appeal, it has presumably determined that it was wrong to freeze the account in the first place. Taking into account how long the order was in force and the inconvenience to the person or body and being able to award an amount of compensation do not seem unreasonable, taking all relevant factors into account. If the noble Lord, Lord Ashton of Hyde, thinks that this is adequately covered in Section 40E(3)(b), it would be useful if he could say so when he responds to the debate.

I am not sure whether Amendment 182 has the desired effect when looking at Section 40C and the proposed amendment. Amendment 183 would increase the number of regulations that are subject to the affirmative resolution procedure, which is very welcome. I know the noble Lord, Lord Ashton, said recently that I never agree to negative procedures. That is just not the case. However, all sides of the House have voiced concern about the Bill, and the more regulations that are covered by the affirmative procedure, the better.

This section is on access to services. Clause 13 is about tenancies and landlords, who can potentially go to prison for up to five years and be fined. I could not find anything about directors of banks if bank accounts are opened improperly. What happens to bank directors? They seem to be able to get away scot free. It would be useful if the noble Lord will respond on what happens about bank accounts.

Lord Ashton of Hyde (Con): Amendment 178 would require, as opposed to permit, provision for reasonable living and legal expenses to be included in a freezing

order. Amendments 179 and 180 would permit an appeal to be made against an order that is no longer in force and allow courts to order compensation. Amendments 181 and 182 would mean freezing orders could be applied for or maintained only if that is overwhelmingly in the public interest. Amendment 183 would make nearly all the regulation-making powers in these provisions subject to the affirmative resolution procedure. I take back what I said about the noble Lord, Lord Kennedy: I am sure he addresses the affirmative and negative procedures with the due consideration they deserve, and he is eminently flexible.

The noble Lord will know that the Bank of England Bill, which is currently before the other place, puts in a new regime which gives specific responsibility to individual senior managers for various duties. Therefore, individual bank directors will not be able to escape as they have in the past.

Lord Kennedy of Southwark: May I press the Minister on this serious point? There are serious provisions for landlords who commit offences, but there is nothing about bank directors. The Minister should reflect on that and come back with regulations. I know he is busy on another Bill, but this is an important matter.

Lord Ashton of Hyde: I absolutely agree that it is an important matter. I do not necessarily think that this is the place for it, given that this is an immigration Bill, but I will certainly reflect, along with my noble friend the Minister, on what he said. But it may not be something for this Bill.

Significant safeguards against error are built into the bank account provisions. We already share with banks details of illegal migrants who are liable to removal or deportation and have no open application or appeal. These data are subject to rigorous checks. There will be a further check under the new provisions before the bank takes action to close an account or the Home Office applies to freeze it—in which case, of course, a court is also involved.

As the code of practice will set out, applications for freezing orders will be reserved for a small number of cases with significant funds. The person's circumstances, including the risk they pose to the public and their immigration history, will be carefully considered. I agree that it must be in the public interest to freeze an account, but not that the legislation needs to say so. We want people with no right to be here to leave the UK. Applying for and monitoring orders will involve a cost to the Government and the courts. They will only be used where we believe it to be necessary. This will be where a person's history and behaviour make it both difficult and very desirable to remove them. They will also have to have enough money to make freezing it until their departure a significant incentive to leave.

Freezing orders will not cause destitution. The court has a broad discretion to make exceptions, with reasonable living and legal expenses explicitly included. In some cases another source of funds may mean that such provision is not required. Standard provision for such expenses will normally be included when an order is first applied for. Affected persons can apply to the court to have an order varied or discharged, and the Home Office can support an application where it agrees with it. This would allow orders to be swiftly varied on the papers without a hearing.

Courts can consider complicated circumstances, and there is discretion as to which accounts are included. Further detail will be set out in rules of court and guidance. It is appropriate to provide for an appeal to a higher court, but it would be wasteful where an order is not in force. Nor do we believe that it is necessary to make provision for compensation. The risk of an order being erroneously imposed is extremely small. In addition to the checks outlined above, the court will have to be convinced that the order is appropriate and proportionate. I have already explained how it may be swiftly varied if necessary.

I turn to Amendment 183. Key regulation-making powers in these provisions are already subject to the affirmative resolution procedure. Of those subject to the negative procedure, all but one concern matters of administrative detail. The Government continue to work with representatives of the financial services sector to ensure that these provisions are effective without imposing an excessive burden on business. The remaining regulation-making power is to bring into force the code of practice on when a freezing order will be applied for. It is right that the code is laid before Parliament, so that the Government's intentions for the orders are clear, but ultimately it will be the court that decides if a freezing order is made. The negative procedure is therefore appropriate. The Delegated Powers Committee has made no criticism of the powers in this schedule and has recommended no changes.

The noble Lord, Lord Kennedy, asked about new Section 40E(3), which I confirm would allow a court to order compensation on appeal. However, there is no route to compensation if an order is lifted before it is appealed. The noble Baroness, Lady Hamwee, asked how an account closure can be challenged if the Home Office data were wrong. Individuals whose accounts are subject to closure will be informed by the bank of the reason, provided it is lawful to do so. If, despite all the checks, a person still considers that they are lawfully present, and that incorrect information has been provided, they will be given the information they need to contact the Home Office swiftly so that any error can be rectified. As is currently the case with data provided to Cifas, the Home Office will be able to correct any error in real time—as the noble Baroness mentioned—so that the person's details will be immediately removed from the data which are shared with the banks.

The noble Baroness also talked about the Joint Committee on Human Rights. I have explained why I do not think this is necessary, but we will consider with care any further representations from the committee.

There was a question on why there is compensation provision for errors made in closure orders but not in freezing orders. There will be repeated checks on the Home Office data and careful consideration of an individual's circumstances before a freezing order is applied for. The court must also be convinced that the order is appropriate and proportionate. In the light of those comments, for the moment, I ask the noble Baroness to withdraw her amendment.

5.15 pm

Baroness Hamwee: My Lords, I am glad to have confirmation that compensation falls within the phrase "incidental or consequential orders": that was not how I read, or misread, the previous debate.

The noble Lord, Lord Kennedy, made a really interesting point that was not fully answered. Unless there is a liability on the bank, we will not get to the point of considering whether individual directors have any liability. The Minister said that there would be no place for that in an immigration Bill; there is no place for a lot of the provisions in the Bill.

Overwhelmingly, I get the message: "We should not worry about it. Everything can be put right if it goes wrong, so there is no need for provision for compensation". A different way of putting that is, "We won't worry about it. Probably compensation would be appropriate only rarely, because things will be put right as soon as they go wrong, if they go wrong at all".

But clearly we need to move on to other business so, at this point, I beg leave to withdraw the amendment.

Amendment 178 withdrawn.

Amendments 179 to 183 not moved.

Schedule 4 agreed.

House resumed.

NHS: Trust Finances

Statement

5.17 pm

The Parliamentary Under-Secretary of State, Department of Health (Lord Prior of Brampton) (Con): My Lords, with the leave of the House, I shall now repeat as a Statement the response to an Urgent Question on NHS finances given in the other place by my honourable friend the Minister for Care Quality. The Statement is as follows:

"The House will know that in 2014, the NHS itself set out its plans for the next five years, which included a front-loaded funding requirement of £8 billion. Because of our strong economy, the Government have been able to honour that request and will be funding it in full, including a down payment of £2 billion in this financial year ahead of the spending review period. Next year, there will be an increase of £3.8 billion and, taken together, we shall therefore be providing £10 billion towards the NHS five-year forward view.

Within that context, a number of hospital trusts are running a financial deficit—in large part because of the need to staff wards safely after what was learned in the aftermath of the scandal of Mid Staffs. It is also the case that the best hospitals have begun to transform along the lines required by the NHS *Five Year Forward View*, but some have not, and this has made the management of their finances all the more difficult.

NHS Improvement expects that NHS hospital trusts will report an overall deficit for the current financial year, 2015-16. Savings achieved in the rest of the NHS have ensured that this overall deficit will be offset, so that the system as a whole will achieve financial balance. For the next financial year, NHS Improvement will continue to work with trusts to ensure that they improve their financial position. To help them in this endeavour, the department has introduced tough controls on the costs of staff agencies, a cap on consultancy contracts and central procurement rules, as proposed by the noble Lord, Lord Carter, in his review on improving hospital efficiency. The House should know that the savings identified by the noble Lord total £5 billion a year by 2020. The chief executive of NHS Improvement, Jim Mackey, is confident that, taken together, these measures will enable hospital trusts to recover a sustainable financial position next year".

That concludes the Statement.

5.19 pm

Lord Hunt of Kings Heath (Lab): My Lords, I thank the noble Lord for repeating the Answer to the Urgent Question in the other place. If ever the inadequacy of the 2012 Act needed illuminating, the Minister has certainly done that today. The reality is that we have two separate regulators giving exactly opposite instructions to NHS trusts. The CQC tells hospitals that they are unsafe and should increase their clinical staff—I do not believe that one single report by the CQC has not said that they need to increase their clinical staff. On the other hand, Monitor and the NHS TDA tell hospitals to cut staff.

Like me, the Minister has been chairman of an NHS foundation trust. What on earth are the chairman and board meant to do when they receive this conflicting advice from the regulators, all dressed up in gobbledegook and ambiguity to cover the regulators against the nonsense they are coming out with? What does the Minister say to the King's Fund? On Saturday, it said that, three years on from the report into Mid Staffs,

"which emphasises that safe staffing was the key to maintaining quality of care, the financial meltdown in the NHS … means that the policy is being abandoned for hospitals that have run out of money".

The Minister said that the settlement secured by the Department of Health in the spending review would sort out the financial pressures that hospitals are under. I know nobody actively serving on the front line of the NHS who believes that there is any chance whatever of that happening over the next five years. Monitor and the TDA have written to every hospital asking them to take urgent steps to regain control of their budgets, including headcount reductions. Was the Minister or the Secretary of State aware that that letter had been sent? Did it receive ministerial approval?

Finally, on the question of the £8 billion that the NHS was meant to have asked for, I point out to the Minister that the NHS did not ask for it; it was the NHS Commissioning Board, which is not the NHS. Again, I know of nobody of any repute in the NHS who thought that £8 billion was anywhere near enough. Would the Minister confirm that even the NHS Commissioning Board in its *Five Year Forward View* said that the £22 billion required in efficiency savings would be a huge stretch? Can he confirm the £5 billion identified by my noble friend Lord Carter? There seems to be a big gap between that £5 billion and the £22 billion.

Lord Prior of Brampton: My Lords, the noble Lord asked a number of questions. Starting in reverse order, the *Five Year Forward View* was signed by not just the NHS Commissioning Board but also all the ALBs. Of course the £22 billion is a huge stretch. No one denies that and it requires a transformation in the way in which healthcare is delivered in this country. In terms of efficiency savings, the requirement for next year is 2%. We expect that to continue at around 2% to 3% over the five-year period.

I come to the noble Lord's other questions. There is not a direct conflict between safe staffing levels, efficiency and financial balance. In good hospitals, the three go together. Of course I accept that there have been tensions and it is not surprising, looking back on it, that the reaction to what happened at Mid Staffs led to a number of hospitals increasing staffing levels very rapidly. I remember talking to the noble Lord when he was chairman of a trust—as I was at the time, or I might have been at the CQC—and of course I understand those pressures. All boards of all hospitals must live with those pressures and come to the right balance. I accept that the newly reinvigorated CQC has added to some of the pressures on hospitals to increase the level of staffing.

On the King's Fund, I have not seen the report that the noble Lord mentioned and that reference to the "financial meltdown". We expect to break even across the NHS this year. There is £3.8 billion extra spend going into the NHS next year and we hope that when all the plans have come in from the hospital trusts we will be in reasonable shape.

The noble Lord referred to the letter sent out, which I think was leaked in the *Guardian*, which led to this Urgent Question. I did not see the actual letter before it went out, but there is nothing in it that comes as a big surprise.

Baroness Walmsley (LD): My Lords, a good example of NHS trusts doing what the Government have asked them to do and working together to deliver care more efficiently is the Uniting Care Partnership in Cambridgeshire and Peterborough, which collapsed after only eight months. We are told that the three NHS entities involved in the contract will continue to deliver care under the new model without disruption. If this is able to be done, why was so much money wasted in the bidding process? Could not they have worked together anyway? How much did the whole process cost and how much was paid to their advisers, the Strategic Projects Team, which did not seem to realise that the contract at the agreed price was simply undeliverable? Is not it clear that the CCG simply did not have enough money to deliver those services?

Lord Prior of Brampton: I think that the noble Baroness's party was in government when that contract was negotiated, although it seems a bit churlish to remind her of that. The fact is that, as we move to these new ways in which to deliver care, risk is going to have to be taken. Some of the new ways in which we do it are not going to work. In this case, it clearly did not work. It was a very big project—£800 million in total value, I believe, over five years, for older people in Cambridgeshire. It was a highly complex contract and, tragically, it has not worked out. I shall have to come back to the noble Baroness if I can about how much it cost in fees.

Lord Warner (Non-Afl): My Lords, the Minister mentioned the chief executive of NHS Improvement in very approving terms. Is he aware that that same chief executive told the House of Commons Public Accounts Committee that the sector's deficit for the current financial year, 2015-16, looks,

"like it is heading towards £2.5 billion or perhaps even north of that".

Capital to revenue transfers and "accounting adjustments" will kick in before April to bring the number down. Does that mean that the much-touted £3.8 billion that will come into the NHS next financial year, 2016-17, already has £2.5 billion to be offset against it before the financial year starts?

Lord Prior of Brampton: My Lords, it is true indeed that Jim Mackey mentioned those figures. He is hoping that he can get that deficit down to £1.8 billion by the end of the year as a result of some of the capital to revenue and other accounting adjustments to which the noble Lord referred. We are also hoping that the reduction in agency spend will start to have a big impact in the final quarter of the year. We will get the third quarter results in two weeks' time, when we will have a better idea as to where we will end up at the end of the year.

Lord Patel (CB): Correct me if I am wrong, but the noble Lord mentioned in his Statement imposing a tariff on agency staff, cutting down on consultancy fees and the potential savings that the report of the noble Lord, Lord Carter, might produce—although most people doubt that it will. Where does he think that the finances of the NHS will be on 1 April 2017? What is his prediction?

Lord Prior of Brampton: The cap on agency staffing rates and on agency staff has really started to apply only in the past six weeks. So far, it looks as if we are making significant progress there. As I said in answer to the Question, the NHS is receiving £3.8 billion of extra funding in the forthcoming year. We believe that that will enable it to restore its finances to a proper balance by April 2017.

Baroness Finlay of Llandaff (CB): What are the Government going to do about the haemorrhage of finances into the PFI deals, given that £11.8 billion of buildings will have cost the country £79 billion by the time 31 years comes round? By then those buildings might very often not be fit for purpose because things have moved on so fast. Year on year there is a haemorrhage of money from the NHS to finance these deals. Last year, £2 billion went in that direction.

Lord Prior of Brampton: It is clear that a number of these PFI deals were massively expensive and have put huge pressure on a relatively small number of trusts. However, the fact is that we have entered into these long-term contracts and there is no way of getting out of them. I am afraid that it is a cost that the NHS will have to continue to bear.

Immigration Bill

Committee (3rd Day) (Continued)

5.30 pm

Clause 20: Powers in connection with examination, detention and removal

Amendment 184

Moved by ***Lord Paddick***

184: Clause 20, page 25, line 12, out "should" and insert "is required to"

Lord Paddick (LD): My Lords, Amendment 184, in my name and that of my noble friend Lady Hamwee, concerns the power of immigration officers to examine the immigration status of those entering the UK. Clause 20(2) inserts the ability of the immigration officer to curtail existing leave to enter the UK. The amendment would replace the consideration of whether the leave "should be" curtailed, which implies an inappropriate degree of discretion, and substitute "is required to" be.

Also in this group is our opposition to Clause 21 standing part of the Bill. It seems disproportionate that immigration officers should have the power to search premises simply to establish whether an employer should be given a civil penalty for employing an illegal worker, or to establish whether a landlord should be given a civil penalty for leasing a property to a disqualified person. Immigration officers already have powers to search for evidence in relation to criminal offences related to these two activities. Surely it is only in the most serious cases, where a criminal prosecution would at least be being considered, that it would be appropriate for immigration officers to search premises in this way. It is rare for powers of search to be granted in connection with civil penalties in British law, and Clause 21 should not undermine such a principle.

We also oppose Clause 22 standing part of the Bill. This clause allows an immigration officer who is lawfully on premises to seize anything that he thinks may be evidence of any offence, under any legislation, if he thinks it necessary to prevent the evidence being concealed, lost, altered or destroyed. Initially, this appears a sensible approach, to obviate the need to call for police assistance when something is discovered that is not related to an immigration offence—for example, discovering what appear to be class A drugs.

Police officers receive extensive training in securing and preserving evidence, and in the questioning of suspects in relation to the discovery of evidence during searches. In addition to the need to carefully question the subject about the ownership of the items in question, since usually the owner of the premises denies that the item belongs to them, there is the question of whether photographic or forensic evidence is required in situ. I have been involved in searches of premises, and there have been many cases of police being involved in searches of premises where the very facts that the substance in question was on the premises and who it belonged to have been questioned subsequently in court. It is something of which the police have now had extensive experience, and they know how to handle these situations. I suggest that it would take a lot of training and experience for immigration officers to reach the level of expertise necessary to ensure that convictions subsequently take place. Either immigration officers will require extensive, and necessarily expensive, training in evidence preservation and the questioning of those suspected of non-immigration offences, or there is a real danger that valuable evidence will be lost in such cases.

There is also the question of what I might call false positives, when immigration officers seize items that they wrongly believe to be evidence of an offence and then pass them on to the police, placing a significant administrative burden on the police to process, secure and subsequently return the items to the owners. With significant cuts to police resources, the last thing the police need is for immigration officers to dump innocent items on them that they then have to deal with. We therefore believe that Clause 22 should not be part of the Bill. I beg to move.

Lord Kennedy of Southwark (Lab): My Lords, Amendment 184 and the two clause stand part debates in respect of Clauses 21 and 22 give an important opportunity to explore here exactly what the intention is behind the clauses. It is important that the Minister carefully sets out what he believes are the reasonable grounds for immigration officers to conduct a search for documents in respect of illegal working or leasing premises to disqualified persons obtained in the commission of an offence. Will the Minister set out what he means by a search of the premises? At any point, would that include a search of the person? How would that be conducted?

These are very sensitive matters and I want to be satisfied that proper processes are in place, and that people are treated with respect. We often need to remember that asylum seekers have not always had a good experience of meeting officials of the state in other countries, and we must ensure that actions are taken in a proportionate manner and to the highest professional standards. I have the highest regard for the officers who undertake this work for the Immigration Service; they do a very difficult and challenging job.

The noble Lord, Lord Paddick, made an important point when he talked about the extensive experience and knowledge that police officers have when it comes to conducting searches and preserving evidence to secure convictions. Are we confident that the immigration officer would have this knowledge? The noble Lord makes another important point when he talks about the burden of bureaucracy arising from items taken during a search that are then passed on to police but in the end do not secure any convictions because there is no offence at all.

Lord Alton of Liverpool (CB): My Lords, before the Minister replies to the noble Lords, Lord Kennedy and Lord Paddick, may I add a word in support of their points, particularly the point about proportionality that has just been made by the noble Lord, Lord Kennedy? Why does the Minister feel we need to add to those powers that immigration officers already have, as set out in chapter 16 of the Home Office *Enforcement Instructions and Guidance*?

Would he also comment on the extensive powers that immigration officers already have to search without warrant in connection with a criminal offence? What is envisaged here, as I try to understand it, is to give those same officers powers to search premises without a warrant, in circumstances where they do not have any reasonable suspicion that a criminal offence has been committed. Is that the case? Is there no restriction in this clause authorising an immigration officer to act only where it is not practicable to obtain a warrant? If that is so, this is quite an extension of powers, and one that is disproportionate in the way that the noble Lord, Lord Kennedy, has described.

The Advocate-General for Scotland (Lord Keen of Elie) (Con): I am obliged to the noble Lords, Lord Paddick, Lord Kennedy and Lord Alton, for their observations on these provisions. I shall begin with Amendment 184, which seeks to insert the phrase "is required to" in place of "should", and explain why that would not be appropriate. As I observed, Amendment 184 seeks to ensure that an immigration officer's power to examine a person for the purpose of making a decision to curtail their leave is limited to whether the person's leave is required to be curtailed. The use of the words "should be", which appear in Clause 20, reflects the wording already included in paragraph (2) of Schedule 2 to the Immigration Act 1971, which refers to examination on the basis of whether a person should be given leave or refused it. It naturally follows that the power to examine for the possible purpose of making a curtailment decision is on the same basis. Indeed, it would be rather strange if one test differed from the other in that context.

The effect of the amendment would be to fetter the Secretary of State's discretion under the Immigration Act 1971 to decide when a person's leave should be curtailed. The basis on which leave may be curtailed is set out in the Immigration Rules. Some of these are mandatory probations and some are discretionary. An example of a discretionary ground on which leave may be curtailed is when the Secretary of State considers it undesirable to permit a person to remain in the United Kingdom in light of his or her conduct, character or associations. Immigration officers therefore need to be able to question a person to ascertain whether curtailment is or is not appropriate. I can reassure the noble Lord that immigration officers may question only people who have already entered the United Kingdom for immigration enforcement purposes where they already have some information, or reasonable grounds for suspecting, that the person is in breach of immigration law. Therefore it would be wholly inappropriate, having regard among other things to the terms of the Immigration Rules, to put in this amendment in the form of a requirement rather than a discretion.

Clause 21 gives immigration officers a power to search premises for documents that might help in determining whether a civil penalty should be imposed on an employer or landlord. This power may be exercised only where immigration officers are already lawfully on premises. I will come back to this point in the context of the observations from the noble Lord, Lord Alton; it is not a question of dispensing with the requirement for a warrant, but I will address that point directly. A primary role for immigration enforcement activity is the disruption of illegal working and illegal renting. We believe it is fitting for immigration officers to have specific administrative search powers where they are exercising powers for a non-criminal purpose.

Immigration officers already have powers to search for evidence of the offence of employing illegal workers and will do so for the new offence of leasing premises to a disqualified person. However, as I am sure noble Lords will agree, it is often more appropriate to impose a civil penalty than to pursue a criminal prosecution. Immigration officers provide employers and landlords with an opportunity, during a visit to the relevant premises, to supply evidence that they have undertaken right-to-work checks before taking any enforcement action. If an employer or landlord is able to do this, no further action is taken against them.

While I understand that some noble Lords may have concerns regarding the reasonableness of having a power of search in the context of a civil penalty, where immigration officers have established through existing powers that a migrant does not have a right to work or a right to rent, and the employer or landlord is unable to demonstrate that they have made the appropriate checks, it does not seem unreasonable for the immigration officer to be able to search for evidence such as payslips or timesheets, tenancy agreements and letting paperwork. This is especially important in cases where a migrant claims simply to be a guest at residential premises or "assisting", for example, in a restaurant.

While search powers in the civil penalty context are relatively rare, they should not be disregarded purely on this basis when there is a compelling case for introducing them. By equipping immigration officers with these new powers, the Home Office should be enabled to make better-informed decisions as to whether liability for a civil penalty has arisen and help to ensure that only non-compliant landlords and businesses are faced with civil penalties. To put the matter shortly, it would be rather strange if, having made provision for civil penalty, we should say to immigration officers, "You have the power to search if you intend to pursue a criminal prosecution but you have no power to search if you intend to take the lesser step of imposing only a civil penalty". For that reason, Clause 21 is considered material to these provisions.

5.45 pm

Clause 22 provides a power for immigration officers to seize anything they may find in the course of exercising a function under the Immigration Acts while lawfully on premises where they believe that it has been obtained in the consequence of committing a crime, or where it is evidence of an offence. Clause 22 allows them to seize such an item but only to prevent it being concealed, lost, altered or destroyed, and to retain it unless a photograph or copy is sufficient. It is sometimes the case that, while searching premises using immigration powers, immigration officers may encounter quite clear evidence of a criminal offence. Presently in such circumstances they are required to contact the police and invite them to attend the premises in the hope that perhaps some further steps may be taken to retain the relevant material. In the mean time,

[Lord Keen of Elie]
they have no power to prevent that material being removed, destroyed or simply taken away somehow, which seems a somewhat unusual situation for them to be left in.

This power will therefore enable immigration officers to retain such material in circumstances where they are already lawfully on premises, either by virtue of a warrant or because they have been given entry but only for the purpose of preserving that evidence. They will not be responsible for the chain of evidence through, for example, to a prosecution. They will take steps to hand that evidence over to the police at the first available opportunity. For that purpose, they will be trained with regard to obtaining that evidence. I make clear, to reassure the noble Lord, Lord Kennedy of Southwark, that there is no provision in Clause 22 for any search of the person. That power will not be conferred on immigration officers in this context.

As regards proportionality, it respectfully appears to us that it is appropriate and proportionate that immigration officers who encounter material which on the face of it is the product of some criminal act should be able to at least preserve that evidence pending its availability to the investigative authorities. I add that, in fact, some immigration officers have power under Section 19 of the Police and Criminal Evidence Act 1984 to search for and recover evidence of a crime. However, that power is exercised only when the relevant immigration officers have gone through the full training that would also be available to police officers. Therefore we accept that that is an exceptional case. Here there will be suitable training for immigration officers for the purpose of seizing and retaining evidence of a criminal act.

Lord Alton of Liverpool: My Lords, I am grateful to the Minister for what he said about the training of immigration officers. But before he goes on to the next point in his argument, does he recall that in 2014, in the case of R v Ntege and Others, his honour Judge Madge stayed the prosecution because of both bad faith and serious misconduct? He held:

"I am satisfied that officers at the heart of this prosecution have deliberately concealed important evidence and lied on oath".

In addition, in 2010, in Abdillaahi Muuse v Secretary of State for the Home Department, the Court of Appeal concluded that the conduct of what was then the Immigration and Nationality Directorate in the unlawful imprisonment of Mr Muuse,

"was not merely unconstitutional but an arbitrary exercise of executive power which was outrageous".

How can the Minister, in extending the powers that already exist for immigration officers, ensure that there is not a repetition of those sorts of cases?

Lord Keen of Elie: Clearly, I will not comment on the detail of individual cases in this context. Those findings were made, and clearly they indicate conduct that was wholly unacceptable, and—let us add—quite exceptional, with two cases cited in many years. It is regrettable that those events occurred, but let us remember that they are isolated events. As regards the general powers of immigration officers, they will be provided with training and guidance on the use of their powers and are given enforcement instructions in guidance.

Lord Kennedy of Southwark: My Lords, on that very point, I know that the Minister cannot do it today, but would he be prepared to write to noble Lords, or to the noble Lord, Lord Paddick, and explain what that training and guidance will be? He said it would be very extensive, and I am sure it will be, but I wonder how long it will take, what the cost will be and how practical it will be.

Lord Keen of Elie: I should add that the guidance on immigration officers' use of powers is set out in the enforcement instructions and guidance, which are published on the UK Government website. But I would be content to write to the noble Lord to set out an outline of the proposed training for those immigration officers who are going to have the limited power conferred by Clause 22 with regard to the preservation of evidence that they believe has been the product of some criminal act.

There was one further point made by the noble Lord, Lord Paddick, about the false positive, as he termed it, and the administrative burden. I respectfully suggest that that burden will be no greater than the burden imposed upon police officers in circumstances where immigration officers believe that they have encountered the product of a criminal act and then telephone or radio the police and invite them to attend a premises. So there is a question of balance here, but it is not, on the face of it, going to be a disproportionate burden when compared to the present circumstances in which the matter is, in any event, brought to the attention of the police.

Lord Paddick: My Lords, I thank the noble Lords, Lord Alton of Liverpool and Lord Kennedy of Southwark, for speaking to this group. I also thank the Minister for his explanation of Amendment 184. I will read with care what he said on that particular amendment.

As far as Clause 21 is concerned, which is the power to search premises simply to establish whether a civil penalty should be imposed, I am a little confused, because I am not sure how an immigration officer can establish whether a breach of the law is something that should be responded to by way of criminal prosecution or by civil penalty until the search of the premises and the necessary paperwork has been found. If the immigration officer has reasonable cause to suspect that a criminal offence has been committed, there is an existing power to carry out that search. Now it may be that in the course of that search, using the power under the suspicion of a criminal offence having been committed, the paperwork is found to show that it is not a serious breach and therefore that a civil penalty would be more appropriate. But the search can still be conducted without a specific power to search on the basis of a civil penalty.

The Minister said that having the power to search on the basis of a civil liability would ensure that only non-compliant employers and landlords would have action taken against them. But surely a compliant employer will offer up the necessary documentation and a search without the consent of the employer or landlord will not be required. Therefore, again, I do not see why that power is necessary.

As far as Clause 22 is concerned, if it were simply a case of restraining people who were on the premises from interfering with something that was believed to be evidence of a criminal offence while the police are called and come to investigate the matter, I might be a little more sympathetic. But the Minister kept talking about seizing and retaining property, and said that immigration officers would not be in the evidence chain. Clearly, if they seize and retain the property, they are in the evidence chain: the police cannot give evidence of the fact that the property was in the premises if the immigration officer just appears at the police station with the property and tells the police officer, "I found this".

As I said earlier, it is very important to question people in situ about, for example, a bag of drugs. It may be necessary for there to be forensic examination of those drugs for, say, fingerprints or perhaps even DNA, or for the property to be photographed in situ. That is something that I would have confidence that only the police would think about, rather than an immigration officer who is there to enforce the law on immigration rather than to deal with these other, arguably more serious, offences.

As far as the administration burden is concerned, with property being taken and given to the police versus the time that the police would have to spend going to collect the property from the premises, with the greatest respect, I do not think that the Minister realises the administrative burden that goes with police seizing property and the problems associated with it. I say that it would be a disproportionate burden on the police were immigration officers able to seize such property. But, at this stage, I beg leave to withdraw my amendment.

Amendment 184 withdrawn.

Clause 20 agreed.

Clauses 21 to 24 agreed.

Clause 25: Search for nationality documents by detainee custody officers etc

Amendment 185

Moved by ***Lord Paddick***

185: Clause 25, page 31, line 30, leave out ", or intends to make,"

Lord Paddick: My Lords, I beg to move Amendment 185 standing in my name and that of my noble friend Baroness Hamwee. We also have Amendments 186 through to 193 in this group.

Amendment 185 relates to the power of detainee custody officers, prison officers and prison custody officers to search for nationality documents. The powers set out in Clause 25(6) can be exercised not only when the Secretary of State has made a deportation order in relation to the individual but, as stated in Clause 25(2)(b), when the Secretary of State "intends to make" a deportation order. The briefing from the Immigration Law Practitioners' Association expresses serious concerns about the new powers to conduct searches for nationality documents, including strip searches, in the light of the concerns expressed about the treatment of vulnerable persons in immigration detention made by the all-party parliamentary groups on refugees and on migrants. That review was conducted by Stephen Shaw and others.

On the particular issue of the amendment, if the Government mean to extend the power to include cases where the Secretary of State has fulfilled the procedural requirement to give formal notice of her intention to make a deportation order, this should be in the Bill, rather than the current wording, which is simply,

"intends to make, a deportation order".

Amendments 186, 187, 188 and 189 relate to the circumstance where a nationality document has been seized but the person is not removed from the United Kingdom. Clause 25(13) states that the Secretary of State "may" arrange for the document to be returned, but surely she is under an obligation to return the document, so Amendment 185 seeks to replace "may" with "shall". Amendment 192 covers the same point in relation to documents seized by a detainee custody officer or a prison officer.

Amendment 187 refers to Clause 25(13)(b), which goes on to say that a document can be disposed of and not returned if the Secretary of State thinks that it would not be appropriate to do so. Can the Minister explain in what circumstances a search for a nationality document might produce a document that is not required as part of the process of deporting an individual but should nonetheless be disposed of rather than returned? For example, the Immigration Law Practitioners' Association reminds us that passports, one of the "nationality documents" listed in the Bill, remain the property of the issuing authority. As such, the Secretary of State has no right to dispose of these documents as she thinks fit.

6 pm

Amendment 193 covers the same point in relation to a document seized by a detainee custody officer or prison officer in Clause 26(7)(b) and Amendment 212 covers a similar point in Clause 29(10) and (11) in relation to a document supplied to the Secretary of State by a public body. The amendment suggests that the document is returned to the person who supplied it rather than being disposed of.

Amendment 188 relates to Clause 25(14)(b), which states that if it is it necessary to return a document and it was not found on someone, it should be returned to,

"the location in which it was found".

The amendment suggests as an alternative that the document should be returned to the person who appears to be entitled to it. It is difficult to envisage that a document seized as potential evidence of an immigration offence would not contain any information about the person to whom it belongs. As it stands, Clause 25(14)(b) could allow for a document that subsequently turns out to be stolen to be replaced where it was found. The Immigration Law Practitioners' Association has pointed out a flaw in this amendment in cases where someone is seeking asylum and the returning of a nationality

[LORD PADDICK]
document to the person's country of origin may place them in danger, but we can address this defect in our amendment on Report if necessary. Amendment 190 covers the same point for a document seized by a detainee custody officer in Clause 26(5)(b).

Amendment 189 was originally intended to challenge the inclusion of "citizenship" and documents that show where the person has come from or is going to in the definition of nationality documents, but we now accept that Section 44(5) of the UK Borders Act 2007 gives a similarly broad list of documents. However, the Immigration Law Practitioners' Association points out that in the UK Borders Act a,

"'nationality document' means a document showing … the individual's identity, nationality or citizenship",

whereas this provision defines a nationality document as a document which,

"might … establish a person's identity, nationality or citizenship"—

a significant widening of the power.

The document that indicates where a person has travelled from could include a guidebook, personal diary or hotel receipt. Will the Minister explain how a personal diary or a travel guide could be defined as a nationality document? If the Government want to be able to search and retain any document found, they should say so on the face of the Bill. Amendment 213 is on the same point in relation to nationality documents supplied by the police, local authorities and other public bodies at Clause 29(11) and (14).

Amendment 191 relates to Clause 26(6), which states:

"The Secretary of State may retain a relevant nationality document",

discovered during a search of a person detained,

"while the Secretary of State suspects that … a person to whom the document relates may be liable to removal from the United Kingdom … and … retention of the document may facilitate the removal".

Surely there must be a reasonable level of suspicion before the document can be retained rather than simply a gut instinct or a feeling of suspicion. I beg to move.

Lord Alton of Liverpool: My Lords, during the excellent remarks of the noble Lord, Lord Paddick, in introducing his amendments and talking about these clauses, he referred to Stephen Shaw's report and I want to ask the Minister some questions about that. He will know that the All-Party Parliamentary Group on Migration produced a pretty damning report on immigration detention, which led to the former Prisons and Probation Ombudsman, Stephen Shaw, being asked to investigate the treatment of vulnerable persons in detention. His report was published on Thursday 14 January, so another place had no opportunity to discuss that when it was considering the Bill, but we have a chance now to ask the Minister some questions about it in the context of these clauses.

Has the Minister had a chance to read the report in detail? It criticises the conduct of searches in immigration detention centres and it gives cause for further scrutiny of these provisions. The Minister himself, in his remarks on the previous set of amendments, said that things such as strip-searching would not be permitted, but I was concerned to read a number of accounts in Stephen Shaw's report that involved male detention staff in searches of women, although not with the removal of clothes, and of women's rooms in Yarl's Wood. I am particularly interested in the situation there, as, thanks to the Minister, my noble friend Lord Hylton and I have been able to arrange a visit to Yarl's Wood on Wednesday morning. I am glad that we will have the opportunity to put some of these questions directly to the staff who run that facility.

Mr Shaw says in his remarks:

"It is of the greatest importance that the proportion of female staff at Yarl's Wood is increased … In the meantime, Serco should only conduct searches of women and of women's rooms in the presence of men in the most extreme and pressing circumstances, and there should be monitoring and reporting (to Home Office Detention Operations) of these cases".

In recommendation 35 of the report, he states:

"I recommend that the service provider at Yarl's Wood should only conduct searches of women and of women's rooms in the presence of men in the most extreme and pressing circumstances, and that there should be monitoring and reporting of these cases".

During that review, Stephen Shaw identified evidence that the Home Office policy of not searching detainees, especially women, in the view of other people, is not always followed. I was struck by some examples that he gave. He said that:

"As far as the practices at Heathrow, Lunar house and Eaton House are concerned, the evidence of this review is that the Home Office's policy that detainees (especially women) should not be searched in view of other people is not always followed".

For instance, talking about Heathrow Terminal 3, Mr Shaw says, at paragraph 3.175:

"A female detainee was searched in front of several people"

At paragraph 3.227, talking about Lunar House, he says:

"Detainees were searched in an area where they could be seen by others in the main holding room".

At Eaton House, at paragraph 3.240, he says:

"A female detainee was searched in the holding room by the Tascor escort who had arrived to take her to Colnbrook. This was in front of a male detainee and a male member of staff".

Clearly, given the vulnerable position of detainees, particularly women, who are held as immigration detainees, and the lack of compliance by detention custody staff with existing policies on searching detainees, it would be highly inappropriate to extend those powers of search to include searches for the purpose of identifying nationality documents, particularly where they are so broadly defined in the way that the noble Lord, Lord Paddick, has already described to the Committee. When he comes to reply, I would be grateful if the Minister could tell us how the Government intend to respond to Stephen Shaw's observations and recommendations.

The Earl of Listowel (CB): My Lords, having visited Yarl's Wood several times in the past, I have noted the deep anxiety of those resident there. Anything like this will be particularly disturbing to them, so that should be kept in mind.

We must always draw attention to concerns about the treatment of these vulnerable individuals, but we must also commend the Government when they take steps to protect such individuals and treat them with respect. I take this opportunity to pay tribute once

again to the last coalition Government, which took children and families out of these settings. Many of us were very concerned at the large numbers of families who were detained at Yarl's Wood, often for many months on end. I remember speaking to a 16 year-old girl who was there with her mother and her six or seven year-old sister for nine months. It is very much to the coalition Government's credit that they decided to change the system.

Lord Keen of Elie: I am obliged to noble Lords. I shall begin by addressing the points raised by the noble Lord, Lord Alton, and the noble Earl, Lord Listowel, in the context of the report from Stephen Shaw. Of course the background to this was the detailed *Report of the Inquiry into the Use of Immigration Detention in the United Kingdom* by the All-Party Parliamentary Group on Refugees and the All-Party Parliamentary Group on Migration, of which the noble Baroness, Lady Hamwee, was a member. That led to the appointment of Stephen Shaw, and as the noble Lord, Lord Alton, has observed, he recently reported on this matter. My noble friend Lord Bates, upon receipt of that report, made a Statement to the House in which he pointed out that the Government welcomed the important contribution that Stephen Shaw had made to the debate about effective detention and accepted the broad thrust of his recommendations. That will be the subject of a further response in due course, and certainly I hope before the Report stage. I hope that the noble Lord, Lord Alton, will allow me to defer any detailed comments on the points he raised until that further response is made. But what I add is that we welcome observations that he may have to make following his visit to Yarl's Wood on Wednesday. His comments will be received in the appropriate spirit because this is a demanding area and one in which the Government are willing to seek to respond to the broad thrust of the recommendations that Stephen Shaw has made.

I turn to Amendment 185, moved by the noble Lord, Lord Paddick, but before doing so I will make this observation. He spoke about strip searches. I take issue with that term. There are full searches but they are not strip searches. It may be that he wishes to come back on that, but I take issue with the term "strip searches"; they are full searches.

Lord Paddick: Can the Minister tell us the difference between a full search and a strip search?

Lord Keen of Elie: It is set down in detail, but in general it means that someone is not stripped. It means that articles of clothing are removed and returned in turn, but without them being stripped.

I return to Amendment 185, which would limit the Secretary of State's ability to direct officers to search for nationality documents to those in respect of whom she has made a deportation order under Section 5(1) of the Immigration Act 1971, preventing its use for those whom she intends to deport. It may help if I explain that the Secretary of State, in accordance with regulations made under Section 105 of the Nationality, Immigration and Asylum Act 2002, issues a written notice to those foreign national offenders who are liable to deportation under Section 5(1) of the Immigration Act 1971 stating that she intends to seek a deportation order against them. Such persons may be detained by virtue of paragraph 2(2) of Schedule 3 to the Immigration Act 1971. Therefore, the reference to "intends to" is simply a way to ensure that such persons are within the ambit of the new powers while in detention. Being able to direct a search for nationality documents once a person has received such a notice but before a deportation order is made reduces the risk of documents being destroyed when the person knows that deportation is a realistic prospect. That is the purpose of the provision in its present form and why we resist the proposed amendment.

Amendments 186 to 188, 190, 192 and 193 seek to limit the Secretary of State's disposal options on nationality documents which are not used to remove a person, by ensuring that they must be returned to the person who was previously in possession of them or who appears to be entitled to them. On that last point the noble Lord, Lord Paddick, is of course right to say that the country which issues a passport is the proprietor of that passport, while the person to whom it is issued is the user. It is therefore that country which is entitled to claim ownership, as it were, of the passport document. That touches upon the point he mentioned about the potential risk of returning a document to an issuing authority creating a danger for a person in particular circumstances. That is a point I will take away and consider because it had not immediately occurred to me in this context.

The reason why the Secretary of State should be given the wider power indicated in the present clauses is because there may be circumstances in which she would wish to remove from circulation forged or counterfeit documents. The idea that, having identified a passport as forged or counterfeit, she should return it to the person who had been using it seems a little unusual. It is in these circumstances that the wider power is sought.

6.15 pm

Amendment 189 reduces the definition of "nationality document" to those which might establish a person's identity, nationality or citizenship. The noble Lord, Lord Paddick, was quite right to notice that this provision does in fact follow on from Sections 44 and 45 of the United Kingdom Borders Act 2007, which contain powers for immigration officers and constables to search for nationality documents, but with a wider definition than the one suggested by Amendment 189. The reason for that is that there may be circumstances in which it is important to identify the place from which a person came, or indeed the place to which they were intending to go, in the context of whether or not they should be subject to deportation. The noble Lord also asked how or why a hotel receipt, travel guide and other such documents might be considered relevant. In that context they would be considered relevant because they might disclose the first place of safety that a person had arrived at within the European Union, for example, where the provisions of the Dublin agreement apply. It is therefore entirely appropriate that one should be able to search for such documents. They could provide a trail in circumstances where a

[Lord Keen of Elie]
person may have been seeking to make repeated asylum applications in a whole series of countries once they had arrived in a relatively safe environment.

Finally, Amendment 191 seeks to ensure that the Secretary of State may retain a relevant nationality document only if she is reasonable in her suspicion that the person to whom the document relates may be liable to removal from the United Kingdom and that the document may facilitate that removal. All Ministers must comply with public law principles when exercising public functions. This includes the requirement to act reasonably. If those delegated to use such powers do not do so, that may be challenged in the courts by means of judicial review. It is therefore implicit that the Secretary of State will act reasonably in exercising the power to retain nationality documents. I should also emphasise that the wording used in Clause 26(6) is consistent with that used in Section 17 of the Asylum and Immigration (Treatment of Claimants etc.) Act 2004 regarding the retention of documents that come into the possession of the Secretary of State or an immigration officer in the course of exercising an immigration function. There is consistency in the proposed legislation.

In light of these points, I hope that the noble Lord will agree to withdraw his amendment.

Baroness Hamwee (LD): My Lords, I think that some Members of your Lordships' House are still struggling to work out how a search which is complete in bits sequentially is different from a strip search. However, what I want to say at this point is that I am not the only Member of your Lordships' House, or indeed the only Member present today, to take part in the inquiry by the all-party groups to which the Minister referred. The noble Baroness, Lady Lister, was also an energetic member of the group.

Lord Keen of Elie: The noble Baroness is of course quite right and I apologise to the noble Baroness, Lady Lister, for omitting her name from the reference. Of course it is acknowledged that the report was the precursor to Stephen Shaw's helpful and incisive report on this matter. I am obliged for that.

Lord Paddick: My Lords, I am very grateful to the Minister for his explanation. As noble Lords will be aware, many amendments at Committee stage are probing amendments, so the explanations given by the Minister on this occasion have been very helpful.

On Amendment 185, I mentioned that the Secretary of State has to serve a notice on people—a formal notice of the intention to make a deportation order. The Minister pointed to that as being the meaning in the Bill. I asked the question: if that is the case why is that wording not on the face of the Bill rather than the rather vague wording that is currently there? Maybe the Minister can reflect on that between now and the next stage.

As far as the definition of nationality documents is concerned, I accept that under the Dublin agreement, as long as we are a member of the European Union, it is important to establish the first place of safety in terms of where the person should apply for asylum. I am reassured that Secretaries of State must at all times act reasonably. On that basis, I beg leave to withdraw the amendment.

Amendment 185 withdrawn.

Amendments 186 to 189 not moved.

Clause 25 agreed.

Clause 26: Seizure of nationality documents by detainee custody officers etc

Amendments 190 to 193 not moved.

Clause 26 agreed.

Clauses 27 and 28 agreed.

Schedule 5: Amendments to search warrant provisions

The Deputy Speaker (Baroness Fookes) (Con): Before I call the noble Lord to move his Amendment 194, I should point out that if it were agreed it would not be possible to call government Amendment 195 in the name of the noble Lord, Lord Bates, as it would be pre-empted.

Amendment 194

Moved by ***Lord Paddick***

194: Schedule 5, page 94, line 13, leave out from "application" to end of line 17

Lord Paddick: My Lords, I move the amendment in my name and that of my noble friend Lady Hamwee. We also have Amendment 201 in this group.

Amendment 194 relates to Schedule 5 and amendments to the search warrant provisions in the Immigration Act 1971. We have already debated all premises warrants under Amendments 171, 172 and 173 in relation to the seizure of vehicles driven by someone illegally in this country. These provisions relate to search warrants issued to search for personnel records and nationality documents, and again allow any premises owned or occupied by the person specified in the warrant without having to specify the premises. The only thing I would say to that is that the explanation given under those previous amendments appeared to be simply to bring the Immigration Act into line with the Police and Criminal Evidence Act. Will the Minister say whether there are other specific reasons why all premises warrants would be valuable in the circumstances?

Amendment 201 is to probe the extension from one month to three of the time during which a search warrant issued under the Immigration Act 1971 can be executed. I accept that these provisions bring Immigration Act search warrants into line with those issued, predominantly to the police, under the Police and Criminal Evidence Act 1984, as amended by Section 15 of the Serious Organised Crime and Police Act 2005. However, is this necessary or safe in immigration cases?

The Immigration Law Practitioners' Association points to evidence in the March 2014 report of the Independent Chief Inspector of Borders and Immigration in relation to the use of the power to enter business

premises without a warrant by immigration officers. It found that in 59% of the cases examined, the required justification had not been made out. I appreciate that this provision is to extend powers given by warrant but the chief inspector's report indicates the need for increased, not less scrutiny by the courts of the powers used by immigration officers. I beg to move.

Lord Keen of Elie: My Lords, I am obliged to the noble Lord. As he indicated, Amendment 194 would remove the ability for immigration officers to seek an all premises warrant where they have a power to enter and search premises for material which is likely to be relevant evidence of an immigration offence under the 1971 Act. As the noble Lord anticipated, one purpose of this is to bring the provisions on such warrants into line with those for police warrants under PACE.

In addition, Amendment 201 is intended to do the same thing, but I should perhaps explain that when the immigration warrants were originally provided for, as running for one month, that was in parallel with the time that a police warrant would run under PACE. Subsequently, the warrant under the Police and Criminal Evidence Act was extended to a three-month period, so they fell out of sequence. The difficulty is that, from time to time, there are joint immigration officer and police operations which involve warrants being granted, and it is not convenient that the immigration warrant should be a period of one month while the police warrant is for a period of three months. The purpose of Amendment 201 in particular is simply to bring the time limit back into line with that which applies for police warrants.

Coming back to Amendment 194 and the use of all premises warrants, it is considered appropriate that an all premises warrant should be available to immigration officers, not only because that is consistent with the form of warrant available to police officers pursuing their own powers but because there are many circumstances in which an all premises warrant will be required for effective recovery of material pertaining to either illegal working or potential offences in respect of landlords and illegal renting. For example, where you have someone who has a number of restaurants employing persons who may be suspected of being illegal immigrants, you may have a warrant in respect of particular premises and then discover that all the records are actually kept elsewhere—in an office, a lock-up, or something of that kind. Therefore, it is appropriate that all the premises that are subject to the control of a particular employer should be available under the warrant, otherwise we would have a very long, drawn-out, step-by-step process of knocking down one domino, going from one warrant to the next one, and so on. It is in these circumstances that it is considered appropriate that an all premises warrant should be allowed in the case of immigration officers. I hope that that addresses the concerns or reservations expressed by reference to Amendments 194 and 201. In a sense, they bring immigration warrants into line with police warrants, but they were in line with police warrants before the amendment to the Police and Criminal Evidence Act. In addition, there are substantive reasons why it is practical and effective for immigration officers to have an all premises warrant facility available to them.

Government Amendments 195 to 200 and 202 to 209 may look rather complex, but have at their core a very simple proposition; that is, in Scotland it is not lawfully possible to secure an all premises warrant and a multiple entry warrant. Therefore, it is necessary to ensure that immigration officers operating in Scotland do so within the bounds of the Scottish criminal justice system.

Lord Kennedy of Southwark: I see the need for the amendments, but will the noble and learned Lord explain further how we have had to come to this stage in the Bill—I assume that it was drafted in the Home Office, checked and rechecked, and then went all through the Commons—and now we find that we have to table an amendment because these powers are not available in Scotland? I am surprised that we had to come to this stage to realise that point.

Lord Keen of Elie: It may be that the Scots only recently had a look at it. I am not in a position to elaborate, but I hope that the noble Lord will accept that as a potential explanation.

Lord Kennedy of Southwark: That is very helpful, thank you.

6.30 pm

Lord Keen of Elie: I shall go on to deal with government Amendment 214B, which is not concerned with warrants per se, but to clarify that the person who can undertake the role of custody review officer under Section 24A of the Criminal Law (Consolidation) (Scotland) Act 1995 includes a police inspector and is not limited to a person of equivalent rank. In Scotland, immigration officers currently have a power to detain pending arrest, and charge for immigration and nationality offences under Section 24 of the 1995 Act, which is similar to arresting a person pending charge in England, Wales and Northern Ireland. Under Section 24A of that Act a "custody review officer" may authorise an extension of the period for which a person can be held in detention under Section 24. This role has always been undertaken by a police inspector and the amendment is simply to ensure that there is no possible ambiguity in the provision that provides for this operational practice. Amendments 214C and 214D are minor and technical and simply remove redundant wording from the Bill.

I hope that these explanations will satisfy noble Lords and that they will feel able not to press their amendments, and I shall move the government amendments.

Lord Paddick: My Lords, I am grateful to the Minister for the explanations that he has given. I still have concerns relating to the Chief Inspector of Borders and Immigration's report on immigration officers' use of powers to enter premises without a warrant. In 59% of cases examined the required justification had not been made out. Giving immigration officers similar powers to those of police officers to enter any premises owned or occupied by the person named in the warrant and to do it over an extended period where it is not a joint operation with the police still causes me some concern.

[Lord Paddick]

I am not sure whether there is similar malpractice, so far as police officers are concerned, in the execution of PACE warrants, but the Chief Inspector of Borders and Immigration's report seems to suggest that the exercise of powers by immigration officers is not perhaps as thorough as it is by police officers. My concerns remain, but at this stage I beg leave to withdraw the amendment.

Amendment 194 withdrawn.

Amendments 195 to 200

Moved by ***Lord Keen of Elie***

195: Schedule 5, page 94, line 14, after "(b)" insert "subject to subsection (2A),"

196: Schedule 5, page 94, line 29, after "(1C)" insert "Subject to subsection (2A),"

197: Schedule 5, page 94, line 35, at end insert—

"( ) After subsection (2) insert—

"(2A) A justice of the peace in Scotland may not issue—

(a) an all premises warrant under this section, or

(b) a warrant under this section authorising multiple entries.""

198: Schedule 5, page 95, line 7, after "(b)" insert "subject to subsection (3C),"

199: Schedule 5, page 95, leave out lines 21 to 26 and insert—

"( ) After subsection (3) insert—

"(3A) Subject to subsection (3C), the warrant may authorise entry to and search of premises on more than one occasion if, on the application, the justice of the peace is satisfied that it is necessary to authorise multiple entries in order to achieve the purpose for which the justice issues the warrant.

(3B) If it authorises multiple entries, the number of entries authorised may be unlimited, or limited to a maximum.

(3C) A justice of the peace in Scotland may not issue—

(a) an all premises warrant under this section, or

(b) a warrant under this section authorising multiple entries.""

200: Schedule 5, page 96, line 35, leave out "28FB(1C)" and insert "28FB(3A)"

Amendments 195 to 200 agreed.

Amendment 201 not moved.

Amendments 202 to 209

Moved by ***Lord Keen of Elie***

202: Schedule 5, page 97, line 36, leave out "28FB(1C)" and insert "28FB(3A)"

203: Schedule 5, page 98, line 4, after "(b)" insert "subject to sub-paragraph (6BA),"

204: Schedule 5, page 98, line 17, after "(6AC)" insert "Subject to sub-paragraph (6BA),"

205: Schedule 5, page 98, line 24, at end insert—

"( ) After sub-paragraph (6B) insert—

"(6BA) A justice of the peace in Scotland may not issue—

(a) an all premises warrant under this paragraph, or

(b) a warrant under this paragraph authorising multiple entries.""

206: Schedule 5, page 98, line 26, leave out "(6AC)" and insert "(6BA)"

207: Schedule 5, page 98, line 38, after "(b)" insert "subject to subsection (3A),"

208: Schedule 5, page 99, line 6, after "(2C)" insert "Subject to subsection (3A),"

209: Schedule 5, page 99, line 12, at end insert—

"( ) After subsection (3) insert—

"(3A) A justice of the peace in Scotland may not issue—

(a) an all premises warrant under this section, or

(b) a warrant under this section authorising multiple entries.""

Amendments 202 to 209 agreed.

Schedule 5, as amended, agreed.

Clause 29: Supply of information to Secretary of State

Amendment 210

Moved by ***Lord Paddick***

210: Clause 29, page 36, line 2, after second "State" insert "reasonably"

Lord Paddick: My Lords, in moving Amendment 210, in my name and that of my noble friend Lady Hamwee, I shall speak to Amendments 211 to 213 and Amendment 215.

Amendment 210 suggests the addition of "reasonably" in the power of the Home Secretary to direct public agencies to supply documents, so that she must "reasonably suspect", rather than simply "suspect", that someone may be liable to deportation under new Section 20A(2). Amendment 211 suggests a similar change to the power of the Secretary of State to retain such a document. Amendment 212 requires the Secretary of State to return a nationality document that is no longer required to the person who supplied it, as previously debated on Amendment 188.

Amendment 213 again queries extending the definition of "nationality document" from "a document showing" the individual's "identity, nationality or citizenship", to one that "might establish" the individual's "identity, nationality or citizenship", as previously debated on Amendment 189. I do not think that the Minister addressed in that debate the broadening of the definition from a document "showing" the individual's identity to one that "might establish" their identity. That is a considerable broadening of the definition.

Amendment 215 would insert a new clause after Clause 30 relating to complaints and the investigation of serious concerns relating to the conduct of immigration officers. It suggests that a commission be established to,

"make recommendations about the establishment of an independent oversight body",

for immigration officers and other authorised officers, in so far as they exercise powers available to immigration officers. My understanding is that the Independent Police Complaints Commission currently investigates complaints against immigration officers, but only relating to powers similar to those exercised by the police. There is not one overall coherent complaints investigation or recording system. Would the Minister confirm this? Even if the IPCC has a role, we believe that such arrangements may be inadequate and should at least be reviewed to ensure that they are effective.

The Independent Police Complaints Commission is fighting an uphill struggle to win the trust and confidence of the public in general, and the black and minority ethnic communities in particular. Those most likely to come into contact with immigration officers are those seeking asylum and others in a very vulnerable position. The likelihood that such people will have a good understanding overall of their rights and the standard of conduct expected of immigration officers and other authorised officers is far less than among those born in this country or who have lived here for some time. Indeed, the way they may have been treated by officials in their own country may well be far below the standard expected of immigration officers and other authorised officers in the UK.

In all the circumstances, it seems that there is at least a question that needs to be examined as to whether the existing arrangements by which long-standing residents of the UK—well-versed in their rights and the conduct expected of officials—can have their concerns about the police and immigration officers investigated are adequate for asylum seekers and those newly arrived in the United Kingdom. I beg to move.

Lord Kennedy of Southwark: My Lords, this group of amendments concerns the supply of information to the Secretary of State and the establishment of a commission for standards for immigration officers. I was somewhat surprised that without Amendment 212 or something similar—it may need refining—it would be left to the Secretary of State to dispose of nationality documents as they think appropriate, without any further clarifications. It would be useful if the noble and learned Lord, Lord Keen, would confirm that there is no question that these documents will not be returned to the person when they are no longer needed by the Secretary of State or their officials. I understand that we would not want to return the documents to someone who had no right to have them, but if they have been obtained lawfully they should go back to them.

Amendment 215 requires the Secretary of State to establish a commission to make recommendations for an independent oversight board to set standards for immigration officers. Given the sort of powers that immigration officers exercise as public officials, it is right that we should have in place a proper process to look at complaints about their conduct and standards. It would be helpful if the noble and learned Lord were to set out what happens at present. Is this safeguard in place with regard to certain things but not to others, as the noble Lord, Lord Paddick, indicated? Does the noble and learned Lord think that the present system is adequate in all respects?

Lord Keen of Elie: I am obliged to the noble Lords, Lord Paddick and Lord Kennedy of Southwark, for their observations on these provisions.

Amendments 210 and 211 are essentially the same as those previously discussed in relation to Amendment 191 in seeking to ensure that the Secretary of State may direct a person to supply a relevant nationality document only—and may retain that document only—if she acts reasonably in her suspicion that the person to whom the document relates may be liable to removal from the United Kingdom, and that the document may facilitate that removal.

Amendment 213 is the same as Amendment 189, put forward to Clause 25, in seeking to limit the definition of "nationality document". The noble Lord, Lord Paddick, observed that I had not addressed the distinction between the term "showing" and the term "might establish". It respectfully appears to me that it is the distinction between that which is explicit on the face of a document and that which may be inferred from its terms. The terms of a document may not on their face show a particular position but an analysis of the terms of that document would lead to an implication about the source of the document, the person using it or the background of that person. So I suggest that it is the distinction between a document being explicit on its face, and giving rise to what might be termed a circumstantial evidential route to a determination with regard to a person's nationality or route of travel.

Amendment 212 differs slightly from those previous amendments to Clauses 25 and 26 on the Secretary of State's power to dispose of documents which she no longer wishes to retain in that it requires the document to be returned to the person who supplied it. However, to answer the question raised by the noble Lord, Lord Kennedy, we again face a difficulty when the Secretary of State is provided with documents which are clearly forged or counterfeit. The desire is to ensure that these should not remain in circulation and therefore be returned to someone who would put them back into circulation or use them again. I hope that that satisfies the noble Lord. It should be acknowledged that some of the bodies supplying documents will not be in a position to establish whether they are forged or fraudulently obtained—but, generally speaking, Immigration Enforcement personnel are able to determine that from the analysis of documents.

As we have discussed, Clause 29 contains powers that enable the Secretary of State to require public authorities, subject to certain conditions, to supply nationality documents to the Home Office for immigration purposes. Schedule 6 lists those public authorities to which the new duty applies. Government Amendment 214A is quite straightforward in terms of its effect in that it adds education bodies to that list: these are schools and further and higher education providers across the United Kingdom. This power will be exercisable only where the Secretary of State suspects that a person to whom the document relates may be liable to removal from the United Kingdom in accordance with a provision of the Immigration Acts, and that the document may facilitate the removal.

I wish to be absolutely clear that this is not a power to require education bodies or, indeed, any of those listed, to collect data or information on behalf of the Secretary of State, or to seize documents from people, as it applies only where the Secretary of State has reasonable grounds for believing that a nationality document is already lawfully in the possession of the relevant body—that is to say, that they hold the document for the purposes of their own functions.

6.45 pm

On the new clause proposed in Amendment 215, I fully understand the value of having standards for the actions of immigration officers, the handling of complaints against them and the investigation of serious concerns

[Lord Keen of Elie]
about their conduct. It is vital that the public are able to make complaints where they feel they have been mistreated by immigration officers, and, of course, it is right that serious incidents are subject to independent scrutiny. Indeed, it is precisely because of our commitment to protecting the public that we have ensured that adequate oversight mechanisms are in place for all areas of Great Britain and Northern Ireland.

In England and Wales, the Independent Police Complaints Commission provides oversight of serious complaints, matters of conduct and incidents involving immigration officers exercising enforcement powers. The Police Ombudsman for Northern Ireland's remit mirrors that of the IPCC, enabling oversight of serious incidents, complaints and conduct matters in Northern Ireland where immigration enforcement powers are exercised.

In Scotland, the Crown Office and Procurator Fiscal Service has the remit to investigate deaths and allegations of criminality in respect of immigration matters. In addition, all complaints about immigration officers who are exercising enforcement powers in Scotland may be investigated by the Police Investigations and Review Commissioner.

Furthermore, the United Kingdom's border and immigration functions as a whole are subject to the independent scrutiny of the Chief Inspector of Borders and Immigration, who was cited a little earlier by the noble Lord, Lord Paddick. Detention staff are also subject to a number of oversight and monitoring bodies. Her Majesty's Inspector of Prisons has a statutory responsibility to report on the conditions and treatment in not just prisons but all places of immigration detention in the United Kingdom; the Parliamentary and Health Ombudsman can conduct unannounced inspections; and detainees may ask for complaints to be reviewed by the independent Prisons and Probation Ombudsman.

The role of the Independent Chief Inspector of Borders and Immigration was created by Section 48 of the UK Borders Act 2007. It has been in place for a number of years and is believed to work effectively and efficiently. Guidance on how complaints are managed and resolved by UK Visas and Immigration, Immigration Enforcement and Border Force is publicly available on the Government's website. This includes information about the complaints management structure, types of complaints handled, dealing with complaints, service complaints, minor misconduct complaints, serious misconduct complaints, special circumstances, complaints from children and complaints for the purposes of financial redress. Complaints may be raised at a local level to a senior officer within the relevant immigration compliance and engagement team which conducted the search. Complaints about serious misconduct are allocated to, and investigated by, the immigration Professional Standards Unit.

So there is a wide-ranging series of bodies available to ensure that complaints from the public are properly handled and effectively disposed of. I again point to the observations made a little earlier by the noble Lord, Lord Paddick, about the use, or alleged misuse, of warrants in circumstances where they have been employed by immigration officers. That points up the fact that there is a very effective monitoring system in place. In these circumstances, I urge noble Lords to accept government Amendments 214A and 214B and invite the noble Lord, Lord Paddick, to withdraw his amendment.

Lord Kennedy of Southwark: The noble and learned Lord has gone through the various bodies to which we can complain. However, there are a lot of bodies to which one can complain about all sorts of different things. Perhaps his officials should reflect that there is a case for bringing all these things together because having all these bodies may not be the best way to run things. As regards the nationality documents, I entirely accept the point about fraudulent documents but if a document is genuine I assume that it would be returned to the relevant person.

Lord Keen of Elie: On the last point, the Secretary of State will act reasonably, and is lawfully obliged to act reasonably, so there cannot be any real difficulty about that. On the noble Lord's first point, our complaints procedure may be so comprehensive that it is difficult for him to get his arms round it. However, I would be content to write to outline that procedure in more detail if he felt that would assist.

Lord Paddick: My Lords, I am very grateful to the Minister for the explanations that he has given. As he said, many of them were similar to points that we had already debated. I am very grateful for his explanation about the broadening of the definition, which he did not cover on the previous amendments. I shall read with interest, and very carefully, what he has said on that issue.

On Amendment 215, I echo what the noble Lord has just said about the many and different avenues of complaint. How can somebody who has a genuine grievance against the Immigration Service possibly know which body to turn to among all that complexity? The Minister did not address the concerns that I expressed on behalf of many communities about their lack of trust and confidence in the Independent Police Complaints Commission, and the concern that those who are likely to come into contact with the Immigration Service are likely to be more vulnerable and less aware of their rights than those who do make complaints to the Independent Police Complaints Commission.

The Minister made reference to the Independent Chief Inspector of Borders and Immigration. I have to confess to not knowing exactly what the chief inspector's remit is, but if it is similar to that of Her Majesty's Chief Inspector of Constabulary, it is purely a monitoring function—an investigation and review function—rather than a complaint-examining function. Indeed, if any complaint were made to the Chief Inspector of Borders and Immigration about the conduct of the immigration office, I would expect him to refer it to—

Lord Keen of Elie: I should have added that Independent Police Complaints Commission's remit was extended to investigating complaints and serious conduct matters relating to the exercise of immigration enforcement powers by Section 41 of the Police and Justice Act 2006 and the UK Border Agency (Complaints and Misconduct) Regulations 2010. I had omitted to mention that.

Lord Paddick: I am very grateful to the Minister for that.

As I was saying, I expect that we would find in practice that complaints made to the Independent Chief Inspector of Borders and Immigration would just be passed on to the many and various organisations and bodies that the Minister highlighted.

I am therefore still unconvinced that there is no need to review whether the current procedures for making complaints against immigration officers are user-friendly to people who are going to find it very difficult to navigate all these different systems. But in the meantime, I beg leave to withdraw my amendment.

Amendment 210 withdrawn.

Amendments 211 to 213 not moved.

Clause 29 agreed.

Schedule 6: Duty to supply nationality documents to Secretary of State: persons to whom duty applies

Amendments 214 and 214A

Moved by ***Lord Bates***

214: Schedule 6, page 100, line 9, leave out "Licensing" and insert "and Labour Abuse"

214A: Schedule 6, page 100, line 23, at end insert—

"Education bodies

The proprietor of a school or 16 to 19 Academy within the meaning of the Education Act 1996 (see sections 4 and 579(1) of that Act).

The governing body of an institution within the further education sector within the meaning of the Further and Higher Education Act 1992 (see sections 90 and 91 of that Act).

The governing body of a qualifying institution within the meaning of Part 2 of the Higher Education Act 2004 (see sections 11 and 21 of that Act).

The proprietor or governing body of a school within the meaning of the Education (Scotland) Act 1980 (see section 135(1) of that Act).

The proprietor or governing body of a post-16 education body within the meaning of the Further and Higher Education (Scotland) Act 2005 (see section 35 of that Act).

The proprietor of a school within the meaning of the Education and Libraries (Northern Ireland) Order 1986 (SI 1986/594 (NI 3)) (see Article 2(2) of that Order).

The governing body of an institution of further education within the meaning of the Further Education (Northern Ireland) Order 1997 (SI 1997/1772 (NI 15)) (see Article 2(2) of that Order).

The governing body of a higher education institution as defined by Article 30(3) of the Education and Libraries (Northern Ireland) Order 1993 (SI 1993/2810 (NI 12))."

Amendments 214 and 214A agreed.

Schedule 6, as amended, agreed.

Clause 30: Detention etc. by immigration officers in Scotland

Amendments 214B to 214D

Moved by ***Lord Bates***

214B: Clause 30, page 37, line 27, at end insert—

"( ) The Criminal Law (Consolidation) (Scotland) Act 1995 is amended as follows.

( ) In section 24A (extension of period of detention under section 24) for subsection (7) insert—

"(7) In this section and section 24B, "custody review officer" means—

(a) an officer who—

(i) is of a rank at least equivalent to that of police inspector, and

(ii) has not been involved in the investigation in connection with which the person is detained, or

(b) in relation to the detention of a person under section 24 by an immigration officer, a constable—

(i) of the rank of inspector or above, and

(ii) who has not been involved in the investigation in connection with which the person is detained."

( ) In section 26A(2) (power of arrest of authorised immigration officers) omit "or immigration enforcement offence"."

214C: Clause 30, page 37, line 28, leave out "of the Criminal Law (Consolidation) (Scotland) Act 1995"

214D: Clause 30, page 37, line 37, leave out subsection (3) and insert—

"( ) Omit the definition of "immigration enforcement offence"."

Amendments 214B to 214D agreed.

Clause 30, as amended, agreed.

Amendment 214E

Moved by ***Lord Bates***

214E: After Clause 30, insert the following new Clause—

"Powers to take fingerprints etc. from dependants

(1) Section 141 of the Immigration and Asylum Act 1999 (powers to take fingerprints from certain persons and their dependants) is amended as follows.

(2) In subsection (7) for paragraph (f) substitute—

"(f) any person ("F") who is—

(i) a member of the family of a person within any of paragraphs (a), (b) or (ca) to (e), or

(ii) a dependant of a person within paragraph (c)(i)."

(3) In subsection (8)(f) after "person" insert "of whose family he is a member or".

(4) In subsection (9)(f) after "person" insert "of whose family he is a member or".

(5) After subsection (13) insert—

"(13A) For the purposes of subsection (7)(f)(i), a person is a member of the family of another person ("P") if—

(a) the person is—

(i) P's partner,

(ii) P's child, or a child living in the same household as P in circumstances where P has care of the child,

(iii) in a case where P is a child, P's parent, or

(iv) an adult dependant relative of P, and

(b) the person does not have a right of abode in the United Kingdom or indefinite leave to enter or remain in the United Kingdom.

(13B) In subsection (13A) "child" means a person who is under the age of 18."

(6) In subsection (14) for "(7)(f)" substitute "(7)(f)(ii)"."

(7) Section 142 of the Immigration and Asylum Act 1999 (attendance for fingerprinting) is amended as follows.

(8) In subsection (2) for "a dependant of" substitute "a member of the family of, or a dependant of,".

(9) In subsection (2A) for "a dependant of" substitute "a member of the family of".

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(10) Until the commencement of the repeal of section 143 of the Immigration and Asylum Act 1999 (destruction of fingerprints) by paragraph 17(2) of Schedule 9 to the Immigration Act 2014, subsection (9) of that section has effect as if after "the person" there were inserted "of whose family he is a member or".

(11) In section 144A(2) (application of regulations about use and retention of fingerprints etc to dependants) after "the person" insert "of whose family F is a member or"."

Amendment 214E agreed.

Amendment 215 not moved.

Clause 31 agreed.

Clause 32: Immigration bail

Amendment 215A

Moved by ***Baroness Hamwee***

215A: Clause 32, page 38, line 13, leave out "bail" and insert "temporary admission"

Baroness Hamwee: My Lords, my noble friend Lord Paddick and I have a number of amendments in this group, and we have added our names to other amendments in the names of the noble Lords, Lord Rosser and Lord Kennedy.

With this amendment we come to another big issue, starting with what may appear to be a triviality, although I do not regard it as such. The clause, of course, is about bail. The law as it currently stands is that if a person cannot lawfully be detained under immigration powers—for instance, because there is no prospect of removing her or him within a reasonable period, or at all, or because it is contrary to policy to detain because the person is a victim of torture or trafficking or is seriously mentally ill—that person must be released from immigration detention and cannot be subject to bail because the powers to grant bail and to impose bail conditions can apply only if there is a power lawfully to detain. Bail is not liberty, either conceptually or practically, because of conditions which may be applied.

The Master of the Rolls, Lord Dyson—I appreciate he may not be the flavour of the month in the Government's eyes, following evidence to the Justice Committee—recently referred to the long-established common law position that,

"The power to grant bail presupposes the existence of (and the ability to exercise) the power to detain lawfully. … It would be extraordinary if Parliament had intended to confer the power to grant bail where a person has been unlawfully detained or could not lawfully be detained".

But we have Clause 32 and Schedule 7, which say that a person may be granted bail,

"even if the person can no longer be detained",

which left my head spinning—but not spinning so much that I do not think that the language is important.

In this debate, we will all refer to "bail" because that is the term used in the Bill, but Amendments 215A and 216A would replace it with the term "temporary admission". Language should be accurate and should not imply what it is not. We are not wedded to the term "temporary admission". It is used in at least three immigration statutes which I have come across, and indeed there is a government amendment using the term. But if the Government wish to propose an alternative which does not suggest that detention is the norm, and that is accurate and does not carry connotations—in particular, that does not suggest that persons seeking asylum are criminals—I would of course be happy to entertain it.

I am spending a little time on this issue because it is not just me and the other noble Lords concerned who are nodding. Article 31 of the 1951 refugee convention expressly protects those who claim asylum from being treated as criminals, and I am advised that the UNHCR and other international guidance recognises that detention must always be the exception—a point I would like to emphasise.

In the Public Bill Committee in the Commons, the Minister said that the language was chosen deliberately because it is commonly understood by practitioners, but the point, surely, is how it is understood by others. Anything that risks designating an asylum seeker or someone who is seeking to register his status as an asylum seeker, who is not illegal, as a criminal—instead of, as he often is, as a victim—should be avoided.

7 pm

Moving on to the other amendments, the language is not new but the restrictive provisions of the Bill are. We have added our names to Amendment 217, tabled by the noble Lord, Lord Rosser, because it gives a role to the judiciary, not the Executive. That is probably the most important issue in this part of the Bill. It highlights the importance of regular and frequent reviews of detention in every case. It is implicit in that, certainly as I read it, that detention should not be automatic nor roll on automatically.

We have also added our names to Labour's Amendment 220 and to Amendment 221, tabled by the noble and learned Lord, Lord Mackay of Clashfern. It was originally shown as being in his name and that of my noble friend Lord Paddick. I respect the noble and learned Lord's views and I wondered why my noble friend had done a little exercise of his own. It was only on Thursday that I discovered that he had not, when the noble Lord, Lord Pannick, called me and asked me to speak, since neither he nor the noble and learned Lords, Lord Mackay and Lord Judge, could be here this evening—so the unlearned gets to go first on this. I predict the weight of learning might come to bear at the next stage if the Government do not concede on this point.

Paragraph 2 of the schedule deals with conditions of bail and the sub-paragraphs allow the Secretary of State to override the decisions of the tribunal about residence conditions and electronic monitoring. The organisation Justice—at this point one might say Justice without adding "the organisation", I think—describes the power of the Secretary of State, who will have requested the First-tier Tribunal to impose conditions, which the First-tier Tribunal will have considered and refused, then to overturn the decision as,

"a direct affront to the rule of law".

The Constitution Committee asks whether it is compatible with the rule of law for the Executive to be able to override the decision of an independent judicial body, and quotes a number of comments from the

noble and learned Lord, Lord Neuberger, in the recent Evans v Attorney-General case regarding freedom of information, when he said that,

"it is a basic principle that a decision of a court is binding as between the parties, and cannot be ignored or set aside by anyone, including (indeed it may fairly be said, least of all) the executive".

The Constitution Committee also says in its recent report:

"It is also worth noting that, unlike the matter at stake in the Evans case, electronic-monitoring and residence conditions engage considerations of individual liberty—something that arguably renders the prospect of executive intervention more constitutionally dubious".

The Constitution Committee goes on to express concern about the provisions being,

"in tension with the principles of the rule of law",

and says:

"The usual process, should a Minister have concerns about a judicial decision, would be to appeal against it. The House may wish to ask the Government"—

which is what I am doing now—

"to clarify how their proposals comply with the rule of law. The House may also wish to ask the Government why, if the intention is to ensure the use of certain bail conditions for particular offenders (such as satellite monitoring for foreign nationals), they do not simply propose new criteria for the First-tier Tribunal to take into account when setting bail conditions".

In the Commons Public Bill Committee, the Minister said that the powers would be used "very rarely". That hardly requires a response other than, perhaps, as I commented earlier, if one is not afraid of something, why not provide for it?

Our Amendments 221A and 221D address matters to which the Secretary of State or the First-tier Tribunal must have regard when determining the grant of bail or bail conditions. One of these is that the person might cause a danger to public health. I would be grateful if the Minister could explain why incarceration would be applied in this case. For instance, would treatment not be more appropriate? If someone is not in the group of people who are seeking asylum and who might be subject to immigration bail—you or me, I might say—but causes a danger to public health, they would not be incarcerated. Other public health provisions might apply but they would not be subject to bail conditions.

The other matter I wish to raise this evening is,

"whether the person's detention is necessary in that person's interests".

My concern is whether this could be used in the case of mental illness and whether it might be open to abuse. It is a very wide provision and there are a number of cases in which the courts have found that the use of immigration detention to protect a person from himself is unlawful. In view of the time I am taking, I will not quote them now, but I have them to hand.

Amendments 221C and 221D are about electronic monitoring and related arrangements, which may require the person to communicate,

"in a specified manner and at specified times".

Amendment 221C would insert reasonableness. This comes from evidence that a number of your Lordships will have heard during the period when control orders were being applied that controlees were often required to report at times and in places which were very unreasonable and precluded them from normal activities. It seemed to me that, in another context requiring reporting, reasonableness would be appropriate.

The arrangements in the Bill would allow the exercise of functions by persons other than the Secretary of State or First-tier Tribunal, and my Amendment 221D would insert "on behalf of" those. I assume that is what was meant, or has outsourcing crept even further? Certainly, if it has, whoever exercises the functions should be subject to the supervision and control of the Secretary of State or tribunal in this context. I beg to move.

Lord Keen of Elie: My Lords, I hope it may be for the convenience of the Committee if I observe that, with regard to Amendments 220, 222 and 223, which raise the question of bail conditions and the Secretary of State's proposed power to address conditions already set by the tribunal, I recognise the important constitutional issues that the noble Baroness, Lady Hamwee, has raised. Given the proposed amendments from all sides of the Committee and the concerns expressed by the Constitution Committee and the Joint Committee on Human Rights with regard to this matter, the Government will think again about this. We anticipate bringing forward before Report a suitable amendment to Schedule 7 with respect to bail conditions. I hope that this assists the Committee.

Baroness Lister of Burtersett: Very briefly, I support Amendment 215A because I absolutely agree that this is not a trivial matter. I am not an expert on these issues but a social scientist who knows the importance of language. Some years ago, it was quite common among the media and politicians to talk about bogus asylum seekers. That did immense harm, so I absolutely agree that language which has connotations of criminality when applied to asylum seekers is totally inappropriate and could be very harmful.

Lord Alton of Liverpool: My Lords, I intervene briefly to support the point that the noble Baroness, Lady Lister, and previously the noble Baroness, Lady Hamwee, have made about the importance of the language we use. When the Minister comes to consider this issue again between now and Report, I wonder whether he will look at the nomenclature that we use here and whether "immigration bail", with its connotations of criminality, really is the right language for us to use at all. In particular, people seeking asylum are not criminals when one considers that they will include refugees, children, survivors of torture and trafficked people. It is quite wrong to imply that they are necessarily people who are therefore trying to break our laws.

I hope that the Minister will also return specifically to the point made by the noble Baroness, Lady Hamwee, about our duties under international law, especially Article 31 of the 1951 refugee convention, which expressly protects those who claim asylum from being treated as criminals. The UNHCR and other international guidance recognises that the detention of persons seeking asylum must always be the exception, so let us at least start from the basis that those seeking asylum will be among people who are genuine. They will be trying to escape from the most appalling situations

[Lord Alton of Liverpool]
in their own countries and are not criminals. We therefore must have some regard for their well-being and status.

I would like to raise one other brief issue in relation to Schedule 7, which is not covered by these amendments but on which I hope that the Minister will be able to provide some clarification. It appears that the introduction of a restriction on studies as a condition either of temporary admission or bail for those subject to immigration control is a new provision. I would be grateful if the Minister would spell that out. No reason for the restriction is given in the Explanatory Notes to the Bill, so I wonder whether we could take this opportunity in Committee to find out what that reason is. Breach of a condition of immigration bail is, as we have just discovered in these exchanges, a criminal offence and therefore has serious consequences. Those lawfully present and in touch with the authorities should not be restricted from undertaking studies. All those subject to immigration control will be on immigration bail, not just persons released from detention. The condition could potentially be applied to children and young people, preventing them accessing further education and even attending their school. I am sure that that is not what the Government had in mind but I hope they will clarify what the consequences of this provision might be.

7.15 pm

Lord Hylton (CB): My Lords, for a long time I have been concerned about immigration detention and I have therefore visited two, if not three, of the detention centres. It is very important for us to take full note of the fact that the Shaw review was not available to the other place when considering the Bill. I emphasise that that review said that the length of detention should be reduced, whether by better screening, more effective reviews or a formal time limit. We also have to recall that this country makes more use of immigration detention than other, comparable western European countries, almost all of which have time limits for it. I also emphasise the extreme vulnerability of some of the people who get detained. I notice that my noble friend Lord Ramsbotham will speak to a specific amendment on this point later.

However, to reinforce that approach, I shall quote from a case detailed by the Detention Forum, which is a large consortium of voluntary organisations. A man whom the consortium code-named Jacques was, it said,

"detained for the purposes of removal to Denmark where he had previously claimed asylum. He had a traumatic history as a child soldier and was severely",

affected by post-traumatic stress disorder. The forum said:

"Despite being visibly unwell, and despite anecdotal evidence of staff feeling unable to manage the situation, he was detained for over two months before being removed to Denmark. During detention, Jacques suffered periodic blackouts and dizziness, which at least once led to injury. He was unable to communicate with staff or other detainees and exhibited erratic behaviour, at times running naked out of his room or speaking what was understood by staff as gibberish. In response, Jacques was regularly placed in isolation, which appeared to exacerbate his confusion and paranoia. The local visitors' group made efforts to raise concerns with the detention centre staff, but got no response from the healthcare centre. Attempts to support Jacques were made by a fellow detainee who spoke the same language as well as a solicitor who was willing to represent him for a temporary admission application and for unlawful detention. Jacques' paranoia made him unwilling to enter the room with the solicitor, and so it was impossible to represent him. Communication was so difficult that his fellow detainee was unable to do much to support him either".

That surely is the kind of situation which we should do our level best to avoid.

The Earl of Sandwich (CB): My Lords, my noble friends have been tempted to move into the next group of amendments. I can see why, as bail and detention are so inextricably intertwined, but I will try to resist that temptation. I would say that the question of bail has been raised on successive immigration Bills, and many of us remember that historic repeal by Labour of the clause that would have brought in automatic bail. This issue has a direct bearing on the next group of amendments and the old problem of the inadequacy of initial decisions.

I will simply quote here the words of the highly regarded Detention Forum, which was mentioned by my noble friend Lord Hylton. It said:

"Given the lack of automatic bail hearings for individuals who have been detained, and without the initial decision to detain being sanctioned by any kind of legal proceeding, the lack of effective case-working has serious and damaging consequences".

I have had some experience of visiting detention centres where there are a lot of patient and courageous visitors who, just like the inmates themselves, have become frustrated with the system. There are some who have committed serious offences but there are genuine migrants and asylum seekers in their hundreds, anxiously awaiting either sentences or appeals for crimes that they have not committed. I understand that in 2014, more than 30,000 individuals were detained but only 12,000 removed. I support the later amendments on the need for a time limit to detention but I will not mention that now. We have already heard the example of Yarl's Wood and of the work of the Shaw report, so I will leave that for later.

Lord Kennedy of Southwark: My Lords, the intervention by the noble and learned Lord, Lord Keen, is helpful in respect of this group of amendments. It starts with Amendments 215A and 216A in the names of the noble Baroness, Lady Hamwee, and the noble Lord, Lord Paddick. These amendments seem practical and proportionate. I concur with the points made by the noble Baroness, Lady Hamwee: a person must be released if there is no power to detain and they cannot lawfully be detained, and it does not seem right to use the term "bail". I particularly agree with the point made by the noble Baroness, Lady Hamwee, and other noble Lords that language must be accurate. People seeking asylum should be seen as victims and not treated as criminals. That is an important point.

Amendment 217, which was tabled by my noble friend Lord Rosser, the noble Baroness, Lady Hamwee, the noble Lord, Lord Paddick and me seeks to add an additional clause that sets out a process whereby somebody detained has a clear procedure to go before the First-tier Tribunal within eight days, then after 36 days and then every 28 days for it to determine whether they should

be released on bail. This is an important role for the judiciary, as the noble Baroness, Lady Hamwee, said. The amendment makes provision for detention not to be indefinite and for a proper review process. Depriving somebody of their liberty is a serious matter. It is right that the reasons for detention should be vigorously tested and that the tribunal should be satisfied that there is no other reasonable course but to detain the person. We support this amendment.

Amendment 219 seeks to remove from the Bill the power for the Secretary of State to detain an individual granted bail by the tribunal without just cause. Amendments 220, 222 and 223 would remove the provisions that would allow the Secretary of State to override the decisions of the tribunal with regard to electronic monitoring or residence conditions on immigration bail. Amendment 224 would require the Secretary of State to make provide accommodation facilities for a person released on bail. This is an important provision under the heading:

"Powers of Secretary of State to enable person to meet bail conditions".

Ensuring that a person has a roof over their head should be a primary concern. Amendments 221A and 221B in the names of the noble Baroness, Lady Hamwee, and the noble Lord, Lord Paddick, seek to remove the words,

"causing a danger to public health",

and,

"in that person's interests or".

I particularly look forward to the response of the noble and learned Lord, Lord Keen, on this. The noble Baroness, Lady Hamwee, made an excellent point.

Amendment 221C clarifies that the arrangements to communicate must be reasonable. It is an important requirement. These are difficult matters and the emphasis on the word "reasonable" is very welcome. Amendment 221D makes clear that the functions are exercised on behalf of the Secretary of State. The remaining amendments are in the name of the noble Lord, Lord Bates, and I looking forward to an explanation of them.

Lord Keen of Elie: I am obliged to the noble Baroness and to noble Lords for their observations on this part of the Bill and on bail. I notice that we have all referred to "bail" throughout the debate. Going back through various parliamentary reports over many years, the references are consistently to "bail". It is a term that we understand in this context. That is important because, as the noble Baroness observed, the use of language is significant in this context. It is as well to bear that in mind.

I shall look first at Amendments 215A and 216A on the use of the term "immigration bail". Let us be clear: no one is seeking to criminalise immigration or to treat immigrants as criminals. It so happens that the term "immigration bail" has come into common parlance in this context. Clause 32 and Schedule 7 are intended to simplify the current powers on bail and temporary release contained in various Immigration Acts, effectively reducing six different forms or statuses to one. The description "immigration bail" was chosen because it is a well-understood concept. The statutory underpinning for criminal bail and immigration bail are in entirely different pieces of legislation. The naming of immigration bail is not about criminalising people. It is about being clear about an individual's situation. The term "temporary admission" could have been chosen, but it is a less accurate way of describing the status as it would not capture, for example, the circumstances of individuals encountered in the UK without leave or those who had leave but are subject to a deportation order. In these circumstances, we resist the suggestion that "immigration bail", which is widely understood by those who engage in this debate, should be replaced by "temporary admission", which is less exact and less accurate as a means of describing the relevant status.

Amendment 217 is on automatic bail hearings. It would require a bail hearing in the tribunal after eight days of detention, then after 36 days and every 28 days thereafter. The Government take matters of liberty seriously and have made clear in the recent Written Ministerial Statement by my right honourable friend the Minister for Immigration that changes to policy and the operational approach to detention should lead to a reduction in the number of those detained and in the duration of detention before removal, especially for the most vulnerable. However, the Government do not consider that introducing mandatory and scheduled bail hearings will aid these reforms. There is already well-established judicial oversight available. Individuals detained under immigration powers have unrestricted opportunity to apply to the tribunal for bail at any time. They can also apply for a judicial review of their detention or for a writ of habeas corpus to the High Court, again at any time.

The current system is flexible by design, both in the interests of justice and in allowing the detainee ready access to the tribunal. Introducing automatic bail hearings at set periods in all cases would be a significant resource burden on the tribunal at the expense of the taxpayer and would take valuable judicial time that could be spent on other matters, potentially prolonging the time spent in detention and denying other appellants timely access to justice. Mandatory bail hearings at set intervals were placed on a statutory footing, as a noble Lord observed, the last time the Opposition formed a Government, being legislated for in Part III of the Immigration and Asylum Act 1999. However, they were never brought into force and were repealed in the Nationality, Immigration and Asylum Act 2002. What was the reason for the repeal? The plans were unworkable in practice and would have been a significant resource burden. That remains the position today, so we resist the amendment.

Amendment 221A would remove the requirement to consider the public health implications of bailing an individual. It is not about incarceration. In order to detain pending removal, there must be a realistic prospect of removal in a reasonable timeframe. Paragraph 3 of Schedule 7 sets out a number of factors that the bailing authority must have regard to when considering whether bail is appropriate and the conditions of bail that should be imposed. Naturally, risk to the public and community is a paramount consideration, whether that is the likelihood of the person committing an

[Lord Keen of Elie]
offence, the likelihood of the person absconding or the likelihood of the person's presence in the UK being a danger to public health. This would, for example, be a consideration if there were a pandemic and an individual were infected and detained pending removal. Clearly it would not be possible to detain under immigration powers if the sole consideration was protecting public health and there was no underlying immigration justification for the exercise of the detention power. It is a justifiable power in the context of protecting public health.

Amendment 221B would remove the requirement to consider whether it is in a person's best interests to be detained before being released on bail. I understand the reason why this amendment has been laid, as when could it ever be in anyone's best interests to be detained? First, let me be clear on a point of principle. It is the Government's policy that there is a presumption of liberty and that immigration detention should be used as a last resort. This is long standing and will not change. It is important to put that on the record and I am sure that the whole Committee will agree that this is right.

7.30 pm

The thinking behind this provision is simple. When detaining under immigration powers, normally for examination purposes, there will be a very limited number of cases where the Home Office's duty to safeguard individuals at risk—both adults and children—will mean that a very short period of detention may be justified while arrangements are made for an individual to be transferred to appropriate care. For example, a very short period of detention may be necessary for safeguarding reasons where an unaccompanied child arrives at a port, especially late at night, with uncertain or no care arrangements. At present there would be no lawful basis for detaining the child for their own benefit and their own protection.

I want to be clear to the Committee that detention under immigration powers to ensure that an individual is not put at risk and is safeguarded should be used in only a limited way, for the shortest period possible and only when there is a lawful underlying immigration power to detain. We are talking about a period of hours, not of days or weeks. Again, we resist this amendment.

Amendments 221C and 221D would make changes to the arrangements in support of electronic monitoring conditions and how they operate. These amendments are not necessary. The language on electronic monitoring in paragraph 4 of Schedule 7 is virtually a word-for-word reproduction of the current electronic monitoring power in Section 36(6) of the Asylum and Immigration (Treatment of Claimants, etc.) Act 2004. It is simply a case of importing the existing provisions into the new bail power.

Amendment 224, spoken to by the noble Lord, Lord Kennedy, concerns accommodation and support provided to anyone released on bail. This would be an unnecessary provision. Paragraph 7 of Schedule 7 provides a power for the Secretary of State to ensure that a person can meet bail conditions by paying for the costs of their accommodation and travel expenses in appropriate circumstances. It is not right to mandate in statute that the Secretary of State must pay for accommodation and travel costs, particularly in these times of austerity.

The arrangements in the Bill are designed to replace Section 4(1)(c) of the Immigration and Asylum Act 1999, which is repealed under the Bill but which to date has been used to provide accommodation for persons released on bail in the limited circumstances where it is felt that that would be appropriate. The repeal is part of the wider changes to support provision for failed asylum seekers and other irregular migrants. The power is deliberately drafted in a narrow way because it will not generally be necessary to arrange accommodation for those on bail or to pay for travel expenses. The individuals will usually be expected to accommodate themselves—for example, with friends or relatives. This is not any different from the way in which Section 4 is currently used. If the person really is unable to arrange their own accommodation, the powers can be used to provide it on a case-by-case consideration of the particular circumstances, including whether they are able to avoid the consequences of being left homeless by returning to their own countries.

The noble Lord, Lord Alton of Liverpool, made a point with regard to restrictions on studies and the provisions in Schedule 7. This existing power is used only in the context of a terrorism-related issue which is subject to SIAC provisions. I would be content to write and elaborate on that in due course. I had not anticipated that the point would be raised, but I emphasise that this is an existing power used only in the most exceptional circumstances pertaining to terrorism. If the noble Lord wishes me to write further on that, I would be glad to do so.

Lord Alton of Liverpool: My Lords, I am grateful to the Minister for giving that clarification. It would be a convenience and a help to the House and to those who have made representations about this if further clarity could be given. If the power is to be used only in circumstances relating to terrorism, that seems a reasonable and justifiable provision.

Lord Keen of Elie: I am most obliged to the noble Lord and I undertake to write on that point.

The government amendments that arise here are essentially consequential amendments. Amendments 224E to 224K are consequential amendments to legislation to ensure that the provisions in Schedule 7 work as they should, by bringing existing legislation into line with Schedule 7, removing references to provisions which have been or are being repealed by Schedule 7 and, where necessary, inserting references to the relevant provisions in Schedule 7. Amendments 229ZA and 230ZA are consequential amendments to Schedule 8 to the Bill to reflect the amendments and repeals made in Schedule 7.

I am conscious that your Lordships had in mind not only the question of bail but the question of detention. However, as that is going to be addressed in a further group of amendments, I will come to that when we address that further group. I hope your Lordships will support the amendments standing in

the name of my noble friend Lord Bates, but I ask that noble Lords withdraw their amendment—I say noble Lords, but I address that to the noble Baroness, Lady Hamwee.

Baroness Hamwee: My Lords, I think we are all Lords, whether Lords or Baronesses. I am obviously pleased to hear that the Government are considering the issues around the relationship between the Executive and the judiciary raised in the three amendments, although I am not entirely surprised, as I felt that the arguments—they were not mine—were irresistible. I was also interested to hear the response on the restriction of studies. It will be very helpful to see the detail of that.

I said when I moved my amendment that I would use the term "bail" in the debate because that is the term used in the Bill, although "temporary admission" is in fact used in a government amendment later. When we are bringing six statuses into one, it seems the perfect time to change the terminology. It does not necessarily have to be temporary admission—I heard what the noble and learned Lord said—but any ideas will be gratefully received on this. It is clearly something that other noble Lords feel as strongly about as I do.

I will just pick up two other points. On safeguarding for a very short time, I would be much happier if I saw that short time limit reflected in the legislation. After all, we are talking about detention here, and it is particularly ironic if it is applied to people who are on their way to care and support, which are the categories referred to. As regards public health, I suspect that if one holds a visa and comes in through a recognised route, but is found at Heathrow or wherever to be suffering from a communicable disease, one's destination is hospital not detention.

We will wait to see the amendments on the central issue of the Executive's power in this regard—or otherwise—and I beg leave to withdraw my Amendment 215A.

Amendment 215A withdrawn.

Clause 32 agreed.

House resumed. Committee to begin again not before 8.38 pm.

Neglected Tropical Diseases

Question for Short Debate

7.39 pm

Asked by ***Lord Trees***

To ask Her Majesty's Government what assessment they have made of the effects of Neglected Tropical Diseases in impairing social and economic development in developing countries in the light of the publication of the third progress report of the 2012 London Declaration on Neglected Tropical Diseases.

Lord Trees (CB): My Lords, it is a great pleasure to open this debate on neglected tropical diseases, which I will refer to as NTDs. This is the third debate we have had on this subject in as many years. I thank my noble friend Lady Hayman for her leadership in initiating the previous two debates. Certainly this House cannot be accused of neglecting these diseases. Nor should we: they are of huge global health and socioeconomic importance, as is now being recognised. Coincidentally, this Wednesday former US President Jimmy Carter will give a talk in this House convened by the Lord Speaker about one NTD, guinea worm disease, and its eradication.

NTDs are a group of infections associated with poverty in tropical and sub-tropical countries. Some, such as rabies, have a high mortality rate but most are characterised by their chronicity and high levels of disability such as gross disfigurement, blindness and inability to work. As such, sufferers are unable to be productive within their already poor communities and instead become a burden on the very limited healthcare resources of their countries. More than 1 billion people are affected in 149 countries worldwide. It is estimated that some 300,000 deaths per year are caused by NTDs.

However, until recently, in comparison with for example HIV, TB and malaria, these diseases received very modest international attention and support. The bundling and aggregation of these diseases and their branding as "neglected" was a masterstroke of public health communication. In 2012, WHO published its road map laying out targets for the control, elimination or eradication of 17 NTDs by 2020. Momentum gathered pace, with the London Declaration on NTDs in 2012 enshrining further commitments. Last year, the UN sustainable development goals to 2030 included NTDs within goal 3, aimed at "healthy lives" and "well-being for all" people.

This progress is substantially contingent upon the massive commitment by the pharmaceutical industries to donate key drugs essential for many of the control programmes. Donations worth a staggering $3.8 billion per year are a massive gesture of corporate generosity. While there is still some need for research to develop drugs for some NTDs and situations, there is available now a free toolkit of drugs for many NTDs.

Notable among these drugs is ivermectin, the mass administration of which to populations in Africa and Central and South America has massively reduced the incidence of clinical onchocerciasis—river blindness. Noble Lords may be aware that the Nobel Prize for Medicine in 2015 was awarded partly for the discovery and development of ivermectin by Campbell and Omura. Noble Lords may not be aware that this drug was in fact developed and initially marketed for veterinary use in 1981 as a wormer for cattle and other species. It was so successful commercially that the parent company, Merck, was able to commit to donate ivermectin for the control of onchocerciasis and lymphatic filariasis or elephantiasis for as long as needed. I mention this not only because of its significance in NTD control but to highlight the connectivity between human health and veterinary science—the so-called "one health" concept. That relationship is particularly close with respect to human tropical diseases.

That brings me to another NTD which exemplifies the "one health" approach—rabies. I am not an expert on rabies but, of all the lectures I had as an undergraduate veterinary student, one I particularly remember was

[LORD TREES]
on rabies. From nearly 50 years ago, I still remember the main message: the key to controlling human rabies is to control dog rabies. Human rabies was endemic in Britain until late in the 19th century. We eradicated it by stopping dogs biting people. Worldwide, 99% of human rabies is still contracted from dogs. Rabies is a horrible disease. It is still endemic in many countries in Asia and Africa. It is estimated that about 60,000 people die of it a year, of whom nearly 50% are children. During the nine minutes of this speech, someone somewhere will have died of rabies. Once clinical signs appear, death is inevitable; it is a very unpleasant death and you know what? It is entirely preventable. We have all the tools we need: a vaccine for humans, a vaccine for dogs and post-exposure treatment for humans.

The cheapest of these interventions and the principal means of control is to vaccinate dogs. By vaccinating 70% of the dog population, the transmission cycle is stopped. I am pleased to say that there is now a growing movement to tackle this problem, catalysed by the awareness that the elimination of nearly all human deaths from rabies is achievable. A number of campaigns at national, regional and local level in South America, Asia and Africa, conducted by health authorities, NGOs and charities, are starting to control rabies through control of rabies in dogs. I am pleased and proud that many British scientists and vets are active in this area. Late last year, WHO and the World Organisation for Animal Health, in collaboration with the FAO and the Global Alliance for Rabies Control, organised a conference in Geneva which agreed a framework of actions to achieve the WHO goal of eliminating dog-mediated human rabies by 2030. Later this month, my noble friend Lord Crisp and I will host in this House the launch of the End Rabies Now campaign from the global alliance.

For rabies and many designated NTDs, real progress is being made. I am sure we will hear further examples in today's debate. However, in spite of the donation of many of the drugs needed, there are still significant challenges. These relate more to the delivery of existing drugs and interventions than the development of new ones. Professor David Molyneux, a leading world expert on NTDs, argues that the availability of drugs is no longer a barrier to achieving universal coverage for most NTDs. It is estimated that there is an annual funding gap of $200 million to $300 million a year to ensure effective delivery of interventions and drugs we now have and that are given free. This funding gap should partly be met by the endemic countries themselves. Although extremely poor and with limited resources, it would only require a tiny percentage of their healthcare budgets to fund delivery of the free drugs available for NTD control.

The developed world could also do more. The UK's leadership in this area through DfID is commendable, but globally only about 0.6% of donor governmental financial aid for healthcare is provided to tackle NTDs. Our affluent neighbours in Europe and some other countries could do more. Action against NTDs will benefit the poorest of the world's poor. A recent study showed that tackling NTDs is highly cost-effective in terms of return on investment. The third progress report of the London declaration on NTDs said:

"This makes NTD programs a pro-poor best buy".

I commend DfID for its commitment and support for the control of NTDs, reinforced by the recent announcement of the Ross fund. Is the Ross fund additional money to that which the UK has been committing for NTD funding? Secondly, what are the Government doing to urge other affluent nations to follow our example? Collectively, we need to close the funding gap and ensure that the great progress to control NTDs achieved in the last few years will be sustained so as to permanently eliminate these infections and the terrible diseases they cause.

7.49 pm

Lord Sheikh (Con): My Lords, I take a great interest in this subject, as I was born and brought up in east Africa. It has now been four years since the launch of the historic London Declaration on Neglected Tropical Diseases. We cannot underestimate the importance of eliminating these diseases. They affect over 1 billion people across the world. Many of them are among the very poorest and in the hardest-to-reach areas, and they lack adequate sanitation. These are neglected diseases affecting neglected people. The personal suffering affects families and communities, resulting in greater economic hardship for all. In short, these diseases cost developing economies billions of dollars every year. Eliminating them will help to eliminate poverty. More widely, it will also greatly assist in achieving many of the new sustainable development goals. It is therefore crucial that work on eliminating NTDs forms part of wider initiatives on tackling poverty. I commend our Government's continued commitment on that front.

I am very proud that we have enshrined into law our commitment to spend 0.7% of gross national income on overseas aid every year. We are the first G7 country to meet this target and can now set an example to other countries around the world. I was very pleased last week to see the Chancellor pledge £3 billion of our international development budget towards combating malaria. I will shortly be leading a delegation of parliamentarians to Sudan, where tackling malaria will be very high on our agenda.

I am pleased that, on the whole, progress on neglected tropical diseases continues to be very positive. The most recent report states that a growing number of endemic countries are achieving their elimination goals and that more people are being reached through these programmes. This is due mainly to the increasing number of domestic programmes and greater political and funding commitments at a national level. For example, Bangladesh now funds 85% of its own NTD programmes. The Philippines provides 94% of its own funding. Honduras has been highly commended for becoming the first Latin American country fully to finance its own NTD programme.

I want to mention specifically the creation of the Addis Ababa commitment in December 2014, when 25 African countries pledged to increase their contributions to tackling NTDs. This is extremely significant, not least because many of these diseases are most prevalent on the African continent. I visited Addis Ababa in

October last year as part of a wider visit to Ethiopia, and I learned about the good work that is going on with its vaccination programmes and its attempts to tackle these diseases. I am pleased that these diseases are now high on the global agenda. Despite all this welcome news, it is crucial that the international community continues to drive forward and keep up momentum.

7.53 pm

Baroness Warwick of Undercliffe (Lab): My Lords, I share the concern of the noble Lord, Lord Trees, and others, that we must keep up the momentum in combating these awful diseases if we are to meet the World Health Organization road map targets. It is still shocking that so many of the world's poorest men, women and children suffer from avoidable infections that, where they do not kill, bring deformity, disability, blindness, and stigma. Virtually all the world's absolute poorest, those existing on barely more than a dollar a day, have one or more of the most common NTDs, such as river blindness, roundworm or hookworm. Adults with these diseases cannot work to support their families, and children affected by them cannot attend school. Families struggle to afford food and basic services, including healthcare, and communities blighted by these diseases are forced deeper into poverty, with few prospects for the future.

Combating NTDs is one of the best paths to cutting this cycle of poverty and enabling sustainable social and economic development. Indeed the third progress report of the 2012 London declaration confirms that NTDs provide one of the strongest returns on investment in public health. It suggests that, if countries achieve the WHO's 2020 goals for NTDs, their healthier citizens would generate some $623 billion in increased productivity between now and 2030. If these NTD goals are reached, the ongoing health benefits up to 2030 would be comparable to those achieved for HIV/AIDS, tuberculosis and malaria. Yet, compared to those "big three" diseases, the cost of reaching the WHO targets for NTDs is relatively modest.

Clearly it is vital that we do not let up in our collective attempts to combat any of these diseases, so I was pleased to read in the report that progress is being made. However, the report also makes it clear that progress is not being made fast enough to meet key milestones. To reach them, we need greater collaboration across countries, between development organisations and across government departments and sectors. One welcome recent announcement has been the £3 billion from the UK and the Gates Foundation for the Ross fund, to support R&D and work towards the eradication of malaria. This is good news, especially in light of the disturbing spread of the Zika virus. By understanding the prevention and treatment mechanisms for mosquito-borne diseases, such as the development of genetically modified sterile mosquitoes, the global community will be much better prepared to respond to, and prevent, diseases such as Zika. I mention this because I understand the Ross fund will also encompass work that targets neglected tropical diseases, where the need for more partnerships, greater collaboration, new approaches and better preparation continues. What further steps can the UK take to continue to lead the world in R&D and, in particular, to encourage more product development partnerships and support the research to deliver such products where they are most needed?

A few weeks ago we heard the welcome news that the WHO has declared Liberia free of the deadly Ebola epidemic, which claimed some 11,000 lives in that country in 2012. Of course, I am aware that neither Zika nor Ebola are neglected tropical diseases, but I was struck by comments made by Jeremy Farrar, director of the Wellcome Trust. I believe they are just as relevant to any discussion of NTDs. He outlined the lessons that need to be learned from the Ebola epidemic, stressing the need to change structures and strengthen health systems around the world. He called 2016 a pivotal year by which changes of global governance of health and preparedness need to be effected. He also said that if we do not change now we never will, but I am more optimistic. For our continuing work to combat NTDs there is hope, and there is political will. The progress report shows us that controlling NTDs can make a greater contribution to endemic countries' health and economies than any other investment. Getting more health for less money is a target we must continue to pursue.

7.57 pm

Lord Bruce of Bennachie (LD): My Lords, I recognise the importance of tackling neglected tropical diseases, for the reasons that other noble Lords have already identified. I do not have specialist knowledge of this subject, but I had the good fortune to have on the International Development Committee Jeremy Lefroy, chairman of the all-party group, who focused on it and kept me informed of the importance of it. It is no accident that the all-party group focuses on malaria and neglected tropical diseases, because their eradication is clearly linked. That is part of the theme that I would like to take forward. There should be no conflict between the silo approach to tackling specific diseases and ensuring that other diseases that impact on the same communities are tackled as well. For example, when evidence was provided about treating and preventing HIV/AIDS, it became obvious that malaria, TB, hepatitis and other diseases are linked to immune deficiency. It quickly becomes apparent that to tackle these diseases requires strengthened health systems, which can then provide the infrastructure for diagnosis, treatment and prevention and, equally important, health education.

I have seen at first hand, on successive visits to Ethiopia, the valuable impact of community health workers, who are recruited from their local communities and trained to offer informed advice on a range of public health matters, basic treatments and referrals. This can make a huge contribution to tackling, preventing and treating diseases. The British Government have been a major backer of the fight against high-profile diseases and, in particular, the quest to eradicate malaria. The announcement last week of the partnership with the Gates Foundation is of course welcome. The Liverpool School of Tropical Medicine, with which I am sure the noble Lord, Lord Trees, is very familiar, is a world leader in its field and can make a contribution to the challenge.

[Lord Bruce of Bennachie]

I ask the Minister to give us a little more information on how the £200 million identified within the Ross fund for NTDs will be spent, and how the spending on NTDs, malaria and other major diseases can be interlinked in ways that will give a synergy in tackling them.

I was aware of the fact that, prior to the Ebola outbreak—I take the point that Ebola is not one of these diseases, but this is instructive—the UK Government were planning to reduce spending on health systems in Sierra Leone and Liberia, but in the event ended up spending five times as much as they had been planning to in order to tackle the outbreak. Although they were late in tackling it, there was a very good example of cross-government co-operation when they finally addressed it.

What must be hoped for after such an event is that the health systems of affected countries have been strengthened so that there is a legacy and they have the ability, in future, to tackle these things much more effectively. We cannot just zoom in and zoom out; there has to be a continuing capacity to deliver. The Global Fund and other targeted funds have been criticised, not for failing to deliver their objectives but for not always leaving that legacy behind. I suggest that the Government consider, in their engagement with the Global Fund and their own substantial initiative, that the Global Fund should also address NDTs. It is logical to do so at the same time. These diseases cause death and disability to hundreds of millions, and people who are sick or disabled inevitably compromise development. They cannot work and their children suffer, missing out on education and having to work to help the family income, as well as being at risk themselves.

In my maiden speech in this House, I broadly welcomed the Government's development strategy but warned of the dangers of short-term changes in priorities. We have just heard that the demands of the Syrian refugee crisis have put pressure on DfID's development budget. It is therefore important that we get maximum synergy and that the Government co-ordinate everything they do on all these diseases, because in that way we can eradicate them much more quickly.

8.01 pm

Lord Patel (CB): My Lords, I am going to concentrate mainly on strategies to develop treatment for neglected tropical diseases. I am a doctor by background, as everyone knows. I was born in Tanzania and I visit there often in relation to charity. Last year, I was bitten extensively by the flies that carry sleeping sickness and every time I doze off I wonder if I caught it, so I am concerned about finding treatments.

Effective control against NTDs can be achieved if several public health approaches are combined, guided by local epidemiology and the availability of appropriate detection, prevention and control measures. Due to the nature of many of the parasites that cause NTDs, it has proved very difficult or impossible to develop vaccines that are suitable for mass administration. Other approaches are therefore required, and we are familiar with them, including: vector control, such as spraying to kill insects; strategies to reduce contact with insect vectors, such as bed nets; improved hygiene, housing and new drugs; and, more recently, as the House of Lords Science and Technology Committee report suggests, the genetic modification of insects, and today's news about gene editing, which can also apply to insects.

To reduce the burden of NTDs using drugs, we must address three main urgent issues. First, many current drugs to treat NTDs are extremely toxic and difficult to administer. Secondly, many drugs now simply do not work because parasites have become resistant, for a variety of reasons. Thirdly, disease diagnosis remains challenging. Additionally, the development of new treatments for NTDs is hampered by a historic lack of systemic drug discovery, due to the lack of a commercially viable market for drugs and insufficient understanding of parasite biology, resulting in a lack of validated drug targets—that is, good approaches to develop drugs.

Three years ago my university, the University of Dundee, made a commitment that by 2020 it would try to find cures for some of these diseases. To tackle those issues, the university has combined renowned scientists with expertise in NTDs with professional drug discovery within its drug discovery unit, mainly recruited from pharmaceutical industry and led by Professor Paul Wyatt. I declare an interest: not only have I been an associate of the university since I went there as a medical student, but I am now chancellor of the university. With support from organisations like the Wellcome Trust and the Gates Foundation, Dundee has been making good progress across the areas. A new and exciting antimalarial compound has recently been developed, with the potential not only to cure but to prevent and block the transmission of malaria with a single dose, and it is now going to clinical trials.

These are some examples, but the main thing is that, with support from the Gates Foundation, the university has made available a set of 70,000 compounds to initiate new drug discovery programmes for multiple NTDs. The new team is using cutting-edge technologies to determine the mechanisms by which drugs kill parasites. I hope that such strategies will lead to finding cures for many of the NTDs. To quote Richard Horton, editor-in-chief of the *Lancet*, in praising Dundee University's effort:

> "Something very special is taking place in Dundee … a drug discovery unit for parasitology … has torn down disciplinary walls to put chemists next to biologists, industry scientists beside academics. The result is a portfolio of promising new medicines for malaria".

I hope that the Ross Fund will be used to fund clinical trials when the time comes, because there will be no other way of doing so.

8.06 pm

Lord Crisp (CB): My Lords, I welcome this debate and the continuing attention that it gives to neglected tropical diseases, at a time when they are becoming more prominent and well known. After all, as my noble friend said, it was only a few years ago that some UK academics coined the phrase, in a masterstroke of marketing. It is very good to see that NTDs are now mentioned in the sustainable development goals, great foundations and indeed great NGOs are tackling them—here I declare an interest as a recently retired chairman of Sightsavers—and there are great efforts in that regard by the UK Government.

This is an area, like much in development, where the UK is a world leader. As an example, DfID funded the mapping of blinding trachoma globally, with Sightsavers as its lead co-ordinating agent. I am delighted to say, although I claim no personal credit, that Sightsavers delivered the mapping on time and on budget. Arguably, this is the largest ever public health mapping exercise, and is now bearing results as we can target the right areas globally to tackle the disease.

My noble friend Lord Trees draws attention to neglected tropical diseases in impairing social and economic development. This is two way—they do not occur in prosperous countries. He mentioned rabies, but trachoma was a major problem in 19th-century Europe. There are strong links between prosperity and these diseases, which are, as has already been mentioned, the diseases of neglected people, who are certainly excluded from prosperity. They impact most heavily on women because they are generally the care givers, and on their children, because they are most likely to come into contact with dirty water. My noble friend also makes a strong point that some things are associated with neglected tropical diseases as a class, not just with individual ones: poverty, dirty water, low levels of education, high birth rates, and much more.

My noble friend Lord Trees references the third report on progress since the 2012 London Declaration on Neglected Tropical Diseases. It points out that there has been pretty good progress: NTDs provide one of the strongest returns on public health investment, and points to the extraordinary levels of partnership here, between the public, private and voluntary sectors, and globally, nationally and locally. It is a terrific example for elsewhere.

However, here is the rub: it is now all about implementation: chasing down—as I suspect President Carter may say to us—the last guinea worm. As the report says,

> "Coverage is increasing, but the pace is too slow to meet key milestones".

We all know what will happen if the pace is slackened or people slow down. It happened with polio a few years ago, when it was eliminated in a number of countries but came back because people did not chase it down to the last moment. The paradox is that catching those last few microbes or worms is very expensive, and it is very important that we keep up the political will here in this country and elsewhere. The biggest risk for many of these diseases is that we do not finish the job properly; that is still an issue, for example, for polio. Like others, therefore, I urge the Government to keep up and even increase their current commitments.

Finally, I have two questions, which relate to the point made by my noble friend Lord Trees about the social and economic impacts, and which largely follow what the noble Baroness, Lady Warwick, and the noble Lord, Lord Bruce, have already said, on integration. We know that successful and sustainable elimination of these diseases will depend on many other developments, including provision of clean water, economic development and the education of adults and children. I therefore ask how the Government, through their wider development programmes, are integrating their support for eliminating NTDs with these wider programmes. I also note that this depends on surveillance and the provision of even basic health systems. How, therefore, are the Government both supporting the development of health systems in the poorest countries in the world and ensuring that these will be able to address NTDs?

8.10 pm

Lord Stone of Blackheath (Lab): My Lords, it is a shame that we have to use the term "neglected", but yes, ever since I joined the advisory board of the Schistosomiasis Control Initiative—SCI—I have found that whenever I mention schistosomiasis to friends and acquaintances they say, "What? What's that?". First, I explain the scale, that over 260 million people in the world need treatment for schistosomiasis and 120 million of these are of school age, and then, as noble Lords all know, that schistosomiasis causes malnutrition and anaemia in children and blood in their urine; if untreated, it goes on to cause liver fibrosis and bladder cancer; and female genital schistosomiasis increases the risk of HIV. I can only think that the world neglects such diseases because over 90% of these cases are in sub-Saharan Africa. However, wherever these diseases exist, their effects are appalling.

I myself come at this not as a medic, an academic or someone working in an NGO but as a businessperson seeing the numbers and the cost-effectiveness of compassion. Reaching out to treat these young children before the worms cause this extensive damage costs less than 50p per treatment per child per year. However, the recent "scorecards" show that schistosomiasis is lagging behind in coverage, and programmes targeting the intestinal worms still have a long way to go to reach the World Health Organization's target of annual treatment with 75% coverage of children at school age. This can be rectified. We have had generous help from the Bill and Melinda Gates Foundation, philanthropists such as Luke Ding through Prism the Gift Fund, the END Fund and, of course, DfID.

Along with this, SCI, which is centred at Imperial College, provides the drugs, microscopes, training materials, vehicles and other transport and ensures that the programmes are managed efficiently. As has been said, the pharmaceutical companies Merck, GlaxoSmithKline and Johnson & Johnson have generously offered to donate all the drugs that are needed to treat 100 million children with praziquantel every year against schistosomiasis and 600 million with deworming pills.

Where, then, is the problem? As was said, it is in delivery that there needs to be help. To treat children in schools, working with local governments, SCI has built a network in 11 countries. This network is set up, but in many of these countries many of the children are simply not at school. Delivery to these outlying children is vital.

The world can afford to help. The economics of the case are that, each and every year, 50 million years' work is lost through people's disability resulting from NTDs. Were these people well and able to contribute fully to their society, even at just $1 a day, as my noble friend Lady Warwick said, in each of these countries, this would mean an extra $18 billion a year for the African economy.

[Lord Stone of Blackheath]

I urge the Minister to follow up this excellent debate with a meeting of DfID with the expert people working on this at Imperial College, the Liverpool School of Tropical Medicine and Sightsavers, so we could see how we might allocate more money to those who are already implementing treatment to millions of children so that they may treble their coverage in the next five years to have a chance, as was said, of eliminating these diseases in many more countries.

Dealing with these NTDs in this way could change the world immensely for the better. It would give these young girls and boys a better future, help their countries begin to thrive and thence would add $18 billion a year to the wealth of their continent and, therefore, to the world's economy. I thank noble Lords.

8.14 pm

Baroness Hayman (CB): My Lords, I am delighted to follow other noble Lords in today's debate, and I draw attention to my interests as declared in the register. I am delighted, too, not to be introducing the debate tonight but speaking last from the Back Benches, because so many other speakers have dealt with the basics around NTDs. That includes the devastating effects that they have, not only on individuals in terms of debilitation or disfigurement and people often being excluded from their own society because of the effects of the diseases, but also the later effects on child development, educational attainment and pregnancy outcome, and of the interrelation of NTDs with other diseases such as HIV or malaria. All these things together are not only the results of the poverty in these communities but in themselves engender that poverty again. So NTDs are both the result of and the cause of poverty. We have done a great deal to recognise that and much progress has, as has already been stated, been made through the WHO road map, the London declaration, the announcement of the Ross fund and the inclusion of NTDs in the sustainable development goals. But there is much still to be done.

The funding gap, even for the provisions that we know about, has been pointed out tonight, but it goes wider than that because, as other noble Lords have pointed out, we need to tackle this problem not in individual silos. The public health measures that will defeat these diseases are to do with water and sanitation, public health education and the provision of basic services; without those, we will not get very far, and those are expensive items.

In the minute or so that I have left, I want to concentrate on the issue of vaccines. We know that we need to improve the toolbox that we have already. We know that we need better diagnostics, better medicines and better insecticides, and that is something that may become much more important in terms of Zika. But also, we need vaccines. There is some evidence that although for many diseases mass drug administration is extremely effective, for other diseases it is not so effective. Therefore, we need to not take our eye off the ball of vaccine development. We saw this in relation to Ebola, a different sort of disease that has already been mentioned tonight. Zika, I think, is a neglected tropical disease, but it is so neglected that it is not even included with dengue and chikungunya as one of those insect-borne diseases of the poor. It is not one of the 17 top priorities for the WHO. However, that is changing. It changed tonight by the declaration of an emergency. We need vaccines as well as all the other measures, and we know that product development partnerships are very important in getting round the failure of the market often to provide. So my question to the Minister is: what consideration is given within the Ross fund to extending its remit so that it would also cover vaccine development?

8.18 pm

Baroness Barker (LD): My Lords, as the noble Baroness, Lady Hayman, said, in the last two hours the WHO has declared the Zika outbreak in Latin America a global public health emergency. A silver lining may be that, as a neglected tropical disease, Zika may now receive the attention that it perhaps should have done already.

As my noble friend Lord Bruce of Bennachie made clear, public health is now a global issue and we have, in the last 20 years or so, because of the HIV/AIDS crisis and others, developed ways in which we can globally address those issues. The Global Fund brought together the private sector, Governments and the research community, and has made a major impact not only in the development of new treatments but in the new ways to get those treatments to people as quickly as possible. The Global Fund is due for replenishment this year. Will the Minister say whether the UK will remain committed to its level of contributions to that fund and encourage other international donors to do the same? As my noble friend said, the co-incidence of these diseases on the world population makes it important for that reason.

Many noble Lords referred to the announcement in the spending review of £1 billion for the Ross fund. Will the Minister indicate whether that will be additional to the funding previously made available for neglected tropical diseases and HIV? Can she tell us about the structure of that fund and whether the research findings that it funds will be made publicly available? How will access to any medical tools produced as a result of that fund be ensured?

As many noble Lords have indicated this evening, our current model of R&D for medicines is failing. If we continue to rely on a solely market-led R&D, the discovery of new medicines and, crucially, the access to those medicines by neglected populations will be hampered severely. Will the UK Government consider commissioning an economic paper to analyse the economic impact of our current market-oriented R&D model and a future model for R&D development in which the cost of research into drugs is decoupled from potential profits to companies? Much of the basic research on which the drug companies base their work is already publicly funded by Governments through academic institutions and so on. It is time that we moved to do that.

Will the UK Government, strong leader and advocate as they have been on public global public health issues, initiate a dialogue with the pharmaceutical industry and civil society to see whether it would be possible to reach agreement over a new R&D treaty in the run-up to the World Health Assembly? Noble Lords will

know about mechanisms such as product development partnerships. They have proven to be instrumental in making sure that the poorest people on earth get access to the best medicine in the world, much of which is produced by our academic institutions.

8.22 pm

Lord Collins of Highbury (Lab): My Lords, I, too, thank the noble Lord, Lord Trees, for initiating this important debate on neglected tropical diseases. Although the most common infections among the world's poorest communities, they receive little public attention. As we have heard from many noble Lords, while not always fatal, their effect on individuals and communities can be devastating, the brunt of which is often felt by women and children, and act as a serious impediment to economic development in many countries.

The third progress report on the London declaration highlighted the dramatic health and economic benefits from investing in combating NTDs. The positive returns of relatively inexpensive programmes are significant, with an economic rate of return of 15% to 30%. As the noble Lord, Lord Trees, highlighted, NTDs are now recognised in the SDGs through Goal 3, which relates to healthy lives, and are explicitly included in Target 3.3. This is a major step forward for the profile of NTDs and a global commitment towards ending these diseases. Continuing this momentum through to national implementation strategies and national action plans will be critical to achieving the WHO NTD road map targets.

Global coverage is increasing, with around 43% of at-risk populations being reached by at least one drug, compared with around 35% in 2008. As the noble Baroness, Lady Barker, said, individuals with NTDs are at higher risk of contracting or not recovering from HIV/AIDS, malaria and TB because they weaken the immune system. Will the Minister take forward for Global Fund board discussion an assessment of the value of strengthening HIV/AIDS, TB and malaria investments through collaboration with national NTD programmes?

The risks to achieving the WHO targets remain not least the wars and conflicts that we have seen, and vector control. There are risks to promoting mass drug administration as highlighted by the noble Baroness, Lady Hayman, which include undermining already fragile healthcare systems. Ebola has shown us the devastating effect that infectious diseases can have on countries with weak and underfunded health systems. Investment in new diagnostics and treatments must be matched by investment in strengthening health systems. I, too, welcome the launch of the £1 billion Ross fund with the Gates Foundation. Like other noble Lords, I hope the Minister can clarify how much of the £200 million announced for NTDs through the fund is new funding and how much is existing allocated resource.

I should also like to know what steps are in place to ensure that money allocated from the Ross fund for research is complemented by investments in health system strengthening and efforts to deliver treatments and care to the people who are most in need. Finally, what steps will the department take to measure the impact of its NTD funding on women and girls, who disproportionately suffer from these diseases and the stigma attached to them?

8.26 pm

The Parliamentary Under-Secretary of State, Department for International Development (Baroness Verma) (Con): My Lords, I, too, start by thanking the noble Lord, Lord Trees, for securing this debate and all noble Lords for their thoughtful contributions. I think that we should be proud of the role that the UK continues to play in its work on neglected tropical diseases, which I shall now refer to as NTDs. Her Majesty's Government remain strong in their commitment to fighting these diseases, which, as my noble friend Lord Sheikh and the noble Baronesses, Lady Warwick and Lady Hayman, and others, said, affect the poorest of the poor. Every year neglected tropical diseases affect the lives of more than 1 billion people, causing disability, disfigurement, stigma and an estimated 500,000 deaths.

As noble Lords will be aware, at the high-profile London Declaration on Neglected Tropical Diseases in 2012, we made a commitment to spending an additional £195 million on NTDs, and last year the Chancellor announced the new £1 billion Ross fund, which has been mentioned by all noble Lords. I am pleased to inform the House that that includes support for NTDs—both for research into new drugs and diagnostics and for the implementation of programmes. These commitments are a clear indication of our continuing commitment to improving the lives of the poorest people in the world and to the principle of leaving no one behind that is at the heart of the global sustainable development goals.

I want to make two important points, one on results and the other on resources. I also want to congratulate the noble Lord, Lord Crisp, and the organisation Sightsavers International on their work, along with DfID, on the mapping of trachoma, a disease that results in blindness. As the noble Lord said in his remarks, it was the largest mapping programme in the world and has provided us with valuable information on the geographic distribution of the disease so that we can target resources where they are most needed.

Our support for tackling bilharzia—I may have pronounced that wrongly—which is a disease that often kills young people in young adulthood, is also yielding real results. Our programme here, as noble Lords have said, is delivered through Imperial College. It has already delivered 60 million treatments and aims to deliver a total of 200 million by 2018. Our support for combating elephantiasis, which is managed by the Liverpool School of Tropical Medicine, is also showing results. This is a disease which results in abnormal enlargement of parts of the body, causing pain, severe disability and social stigma. At least 24 million treatments are provided annually through the UK's support, and 17 of the 73 elephantiasis-endemic countries are now able to stop treatment as they are thought to have achieved elimination. This is a huge achievement and the result of much effort by endemic countries and partners such as DfID.

Later this week, as the noble Lord, Lord Trees, alluded to in his opening remarks, former US President Jimmy Carter, who has led the international campaign

[Baroness Verma]

for the eradication of guinea worm, will be speaking in the Robing Room. Over recent years the UK has been the second largest donor to the eradication effort after the Bill and Melinda Gates Foundation. In 1986 guinea worm disease affected 3.5 million people. In 2015 there were only 22 cases. Noble Lords will agree that this is an enormous achievement, but many challenges, as has rightly been pointed out, remain before we can consign this disease to history. I agree with the noble Lord, Lord Crisp, and others that we need to remain vigilant and push commitment to ensure that we can consign it to history.

Coming to my point on resources, the UK is the second-largest donor to support the implementation of the NTD programmes. At present, the donor base is far too narrow and the UK actively encourages efforts to raise additional funding from other partners. We are doing our bit, and as my noble friend Lord Sheikh said rightly, the 0.7% commitment demonstrates that the UK is delivering and is committed to what the UK firmly believes in—but we need others to do much more.

I agree with the noble Lord, Lord Trees, that it is important that we recognise the very substantial contribution of the pharmaceutical companies. Most of the medicines used for neglected tropical diseases are donated. Without that vital contribution, our progress would be much slower and much more costly. For the period 2014 to 2020, pharmaceutical companies have pledged drugs valued at $17.8 billion.

Of course, national government leadership in endemic countries is essential and domestic resources must increase if progress on NTDs is to be sustained. In turn, we will continue to show leadership in our health system strengthening work, supporting health worker capacity and access to essential medicines and equipment.

The noble Lord, Lord Stone, asked if I would meet him and others. I am always happy to meet noble Lords with their interested groups. I very much take the view that sharing best practice is a good way of learning how we can better our own strategic and effective delivery. The noble Lord will just have to do what noble Lords do: contact my private office. I am sure that that meeting will be put in place.

I shall now respond to some of the questions that were asked. If I run out of time, as always, I will write to noble Lords. The noble Baroness, Lady Barker, and others asked about the Global Fund replenishment. As one of the largest and longest-standing donors to the Global Fund, we are working hard to ensure a successful replenishment for 2017 to 2019, but we will make our own decision on the contribution in a few months' time, after we have seen the outcomes of the multilateral aid review that is currently being undertaken by the department.

The noble Lord, Lord Crisp, the noble Baroness, Lady Hayman, and a number of other noble Lords asked how we are integrating NTD programmes with other sectors such as water sanitation. It is absolutely right that we look at integration across sectors, with water and sanitation being very important. We are increasingly doing so. We also have to encourage our partners to do the same. I hope that noble Lords who are involved in a number of organisations will take that message out because it is very important that we speak with one voice on these issues.

The noble Lord also asked how we are supporting the development of health systems in developing countries. I am pleased that DfID is a leader in supporting countries to strengthen their health systems. The noble Lord, Lord Collins, and a number of other noble Lords spoke about Ebola, where we saw that the response was slow in the beginning because of the weakness of those health systems. It highlighted to us that we need to make sure that we not only provide the funding but ensure that the capacity on the ground can respond to the issues and challenges that those people face. So it is essential that we ensure that they have the proper capacity and access, and proper medicines and equipment.

The noble Lord, Lord Patel, the noble Baroness, Lady Hayman, and others asked whether the Ross fund would be used to support clinical trials. The £1 billion Ross fund will include funding for research, including funding to develop, test and deliver a range of new products, including drugs and vaccines.

The noble Baroness, Lady Warwick, asked what further steps the UK can take in research, including product development partnerships. We support the Drugs for Neglected Diseases Initiative, or DNDi, a product development partnership developing new drugs for a range of NTDs, but we also support product development partnerships for new diagnostics. So it covers a wide range, not just of products with partners but the diagnostics behind them.

My noble friend Lord Sheikh rightly spoke about his experiences. He has vast experience in Africa. I am glad that he reminded us all of our commitment to 0.7%. Working with the Gates Foundation, we have demonstrated our joint ambition to see an end to malaria. My right honourable friend the Chancellor of the Exchequer made that announcement very recently.

All noble Lords said that we need to encourage others to step up. I absolutely agree. These issues and challenges will never be dealt with by individual countries or individual organisations. Part of our undertaking as a department is to make sure that we press at different fora and conferences for others to step up. We worked at the recent G7 meeting, which committed to address NTDs, and we are also working with developing countries to encourage them to commit domestic resources.

I have fast run out of time. I still have a couple of responses, but I will finish by saying that while much progress is being made, millions of people still need treatment and do not get it. The international community sees DfID as a global leader in tackling NTDs, but we cannot and must not be complacent. We need to continue to strive to have a transformational impact on the lives of the most vulnerable people across the world, ensuring, as we deliver our promise of leaving no one behind, that no one is left behind.

Immigration Bill

Committee (3rd Day) (Continued)

8.39 pm

Amendment 216

Moved by ***Lord Rosser***

216: After Clause 32, insert the following new Clause—

"Review of immigration detention

(1) Before the end of the period of three months beginning on the day on which subsection (1) of section 32 comes into force, the Secretary of State must commission a report on detention under the following powers—

(a) paragraph 16(1), (1A) or (2) of Schedule 2 to the Immigration Act 1971,

(b) paragraph 2(1), (2) or (3) of Schedule 3 to the 1971 Act,

(c) section 62 of the Nationality, Immigration and Asylum Act 2002, or

(d) section 36(1) of the UK Borders Act 2007.

(2) The report under subsection (1) must consider—

(a) the process for, and detail of, introducing a statutory maximum limit on the length of time an individual can be detained under the relevant provision;

(b) how to reduce the number of people detained under the relevant provision;

(c) how to minimise the length of time an individual is detained under the relevant provision;

(d) the effectiveness of detention in meeting the Secretary of State's objectives; and

(e) the effectiveness of procedures to review decisions to detain and to continue to detain.

(3) The report under subsection (1) must be prepared and published by a panel appointed by the Secretary of State.

(4) The panel appointed under subsection (3) must be independently chaired.

(5) On completion of the report, the Chair of the panel must send it to the Secretary of State.

(6) The Secretary of State must lay the report before both Houses of Parliament within three months of receiving the review."

Lord Rosser (Lab): Our Amendment 216 in the form of a new clause provides for an independently chaired report on immigration detention, including, among a number of other issues, looking at introducing a statutory limit on time in detention.

Detention takes place in what are called immigration removal centres. They are, as the name implies, intended for short-term stays. That, though, is not how they are always used now. The use of detention has expanded rapidly over the last two decades. In 1993, 250 detention places were available in the United Kingdom. At the beginning of last year, the figure had reached just over 3,900. The number of people starting detention in the year to June 2015 was just over 32,000—up 10% on the previous year. Yet Home Office policy is that detention should be used sparingly.

In the last Parliament, an all-party group looked at immigration detention. We are unusual in this country in having no limit on administrative detention for immigration purposes. The recommendation of the all-party group calling for the introduction of limits on indefinite immigration detention was endorsed by the House of Commons last September. Included in the evidence heard by the all-party group, which had parliamentarians from both Houses, and in which opposition members were in a minority, was a case of a young man who had been raped, tortured and trafficked before arriving in this country. He had been detained for three years in an immigration removal centre. The inquiry also heard evidence which reflected reported incidents of deaths and of allegations of sexual assault in immigration removal centres.

Home Office-stated aims are that those who have been trafficked should not be detained, those who have been tortured should not be detained, and that detention should be for the shortest possible time. There is clear evidence that these aims are not always achieved. The all-party group inquiry into immigration detention heard evidence that detention was worse than being in prison, since people in prison do at least know when they will be getting out. People in prison have also been convicted of an offence, unless they are on remand awaiting trial. For people in immigration detention, the uncertainty can be hard to take. Their life is in limbo. They are not told a great deal—or, indeed, perhaps anything—about how long they will have to stay, and they do not know whether they will be deported.

There is, I agree, little sympathy for people in immigration detention, which is precisely why the present situation goes on and on. The view, expressed to me again in a conversation two days ago—last Saturday, is that those coming to this country are doing it only for the benefits they can obtain and for the use of our National Health Service. Unfortunately, too many of those in a position, and with the power, to influence public opinion on this issue choose to use their position and power to reinforce, rather than refute, that impression.

The all-party inquiry heard from medical people with knowledge in this field that the sense of being in limbo in immigration detention, and the hopelessness and despair it generates, leads to deteriorating mental health. One such witness said that those who are detained for more than 30 days have a significantly higher level of mental health problems. In the first three quarters of 2014, 37% of those detained were detained for longer than 28 days, even though 28 days reflects best practice in other countries. Home Office guidance provides for detention to be used only as a genuine last resort to effect removal.

The inquiry also heard from a person with knowledge as a team leader at the prisons inspectorate that lack of any time limit encourages poor casework and ineffective procedures. The evidence this person gave was that a quarter of the cases of prolonged detention that the prisons inspectorate had considered were the result of inefficient casework rather than because it was inappropriate for people to be released.

Despite these places being called immigration removal centres, most people who leave detention do so for reasons other than being removed from the United Kingdom. According to government statistics, more than half the detainees are released back into this country. The system would therefore appear not only potentially damaging for those involved but expensive and a poor use of resources, since detaining someone costs £36,000 a year, with the overall cost being, as I

[LORD ROSSER]
understand it, just over £164 million—or some 165 times the figure the Government used in this House the other week to justify the new offence of illegal working because of the greater opportunity it was considered it would provide to secure more money under the Proceeds of Crime Act—namely, just under £1 million.

8.45 pm

Having a time limit would not only bring an end to the prospect of indefinite detention but would change the culture within the system, which arises when there is no limit to the length of time someone can be detained, without any independent outside check on or review of whether that continuing detention is justified and proportionate in the light of all the circumstances. Decisions to detain and for how long are taken as an administrative or executive decision, with no automatic judicial oversight. Yet we are not talking about people who are detained because they have committed criminal offences.

There needs to be a wider range of community-based alternatives to detention, enabling people to remain in communities while their cases are being resolved or when arrangements are being made for them to leave the country. According to the Home Office's own evaluation, the family returns process, designed to reduce the number of children detained, has resulted in most families being compliant with the process and no increase in absconding.

Following a visit to Yarl's Wood immigration removal centre last year, the Chief Inspector of Prisons said that the rigorously evidenced concerns that have been identified in an unannounced inspection provided strong support for the calls for time limits on administrative detention. He went on to say that a strict limit should now be introduced on the time that anyone can be administratively detained.

Not only have we heard the views of the all-party group inquiry report on immigration detention and the views of the Chief Inspector of Prisons; there is now also the government-commissioned report on immigration detention and the welfare in detention of vulnerable persons, by Stephen Shaw, the former Prisons and Probation Ombudsman.

In the Commons debates on this Bill on immigration detention, the Minister referred to detailed analysis being conducted by the Home Office; to coming back to the Commons in the new year, before the Bill had passed through both Houses; to setting out the broader piece of work the Government are undertaking; to responding to the Shaw report before the Immigration Bill had started its Committee stage in the House of Lords; and to setting out proposals for a new detained fast-track. I am not clear whether the documentation we have had so far from the Government is intended to have met all those undertakings, or whether there is more to come. No doubt, the Minister will clarify that point when he responds.

As far as the report commissioned by the Government from Stephen Shaw is concerned, the remit was to conduct an independent review of policies and procedures affecting the welfare of those held in immigration removal centres. Bearing in mind that the remit did not refer to considering the central issue of a statutory limit on detention, it had a surprising amount to say on the issue of detention and its impact—perhaps to the concern of the Government.

For his report, Mr Shaw commissioned a review by Professor Mary Bosworth of the evidence linking detention with adverse mental health outcomes. Mr Shaw said that he regarded her review as,

"a study of the greatest significance".

Two of Professor Bosworth's key findings were, first:

"There is a consistent finding from all the studies carried out across the globe and from different academic viewpoints that immigration detention has a negative impact upon detainees' mental health".

Secondly:

"The impact on mental health increases the longer detention continues".

Mr Shaw himself also said:

"Most of those currently in detention do not represent a serious (or any) risk to the public, and many represent a very low risk of non-compliance because of their strong domestic links to the UK".

He also said:

"Ideally, voluntary returns options should be exhausted, and a community-based approach attempted, before detention is considered".

In his conclusions, Mr Shaw stated:

"Most of those who have looked dispassionately at immigration detention have come to similar conclusions: there is too much detention; detention is not a particularly effective means of ensuring that those with no right to remain do in fact leave the UK; and many practices and processes associated with detention are in urgent need of reform".

He ended by saying:

"Immigration detention has increased, is increasing, and—whether by better screening, more effective reviews, or formal time limit—it ought to be reduced".

One assumes from that that Mr Shaw does not regard a formal time limit on immigration detention as being beyond the pale, as apparently do the Government, who, in their Written Statement on Shaw, referred to,

"the potential abuse of the system that arbitrary time limits would create".—[*Official Report*, Commons, 14/1/16; col. 28WS.]

In his report Mr Shaw also recommended that, in common with individuals who have been trafficked or tortured, there should be a presumption against detention for victims of rape and other sexual or gender-based violence; that for pregnant women it should be an absolute exclusion; and that for those suffering from serious mental illness the words,

"which cannot be satisfactorily managed in detention",

should be removed from the enforcement instructions and guidance.

The Government gave a response to Stephen Shaw's report in a Written Statement on 14 January 2016. In it they said that they accepted,

"the broad thrust of his recommendations".—[*Official Report*, Commons, 14/1/16; col. 26WS.]

That of course is as long as a piece of string. In order to clarify the Government's position, perhaps the Minister could say which of Mr Shaw's 64 recommendations the Government accept and which they do not. I beg to move.

Lord Ramsbotham (CB): My Lords, before speaking to the amendments in my name and those of the noble Baronesses, Lady Hamwee and Lady Lister of Burtersett, perhaps I might put a more general question to the Minister, to which I do not expect a definitive answer—it may be above his pay grade to give one.

An enormous number of government amendments were tabled just before Report in the other place, none of which was discussed in Committee. Since the Bill has been before this House, the Government have tabled more than 150 amendments; they have received a 350-page report from Stephen Shaw, which they commissioned on the welfare of vulnerable persons in immigration detention, to which they have published a one-and-a-half-page response; they have received a report commissioned by SERCO on detention arrangements in the immigration removal centre at Yarl's Wood; they have also received an internal report on immigration detention, announced by the Minister at Second Reading, about which no details have been disclosed or released.

This unprecedented volume of associated activity after a Bill has been formally introduced in the other place suggests that the Government do not know exactly what they want to achieve, and that the Bill as currently constructed is not fit for purpose. I speak from the point of view of someone who fervently hopes that the Bill, as ultimately approved, will improve the way in which immigration and asylum issues are conducted in this country, and I bear in mind the increasing strain under which the system is going to come as climate change pressures are added to those it is currently under. Given that, I put it to the Minister that further processing of something to which the Government have already made more than 200 amendments—which must be something of a record—seems a pretty pointless exercise until they have worked out exactly what they intend.

My question to the Minister is therefore in the form of a proposal; namely, that on common-sense grounds alone further processing should be suspended and the Bill temporarily withdrawn, as happened to the Health and Social Care Act 2012, until it has been adjusted to include the Government's many changes of mind and the implications of any recommendations they accept from the reports they have commissioned. In addition, such a pause would enable them to think again about some of the unnecessary bureaucratic complexity that the Bill, as currently constructed, will add to the demands on already overstretched officials on the front line, when simplicity should be the name of the game.

In speaking to my amendments, I first acknowledge what the Minister said about detention being used only as a last resort. The Government's short response to the Shaw report states:

"Where it is necessary for the purposes of removal",

of those with no right to remain in this country,

"and taking into account any risk that an individual may abscond",

the enforcement action that they take,

"will involve a period of detention (which of course can be avoided if the individual departs voluntarily)".

As the noble Lord, Lord Rosser, said, immigration removal centres—the official title of places in which immigration detention is conducted—are presumably intended to be only short-term holding facilities. This explains their lack of suitable facilities for anyone held for more than a few days. However, the Government do not appear to have made up their mind about what rules govern detention in short-term holding facilities because, despite a promise made as long ago as 2002, these rules have yet to be published. True, draft versions appeared in 2006 and 2009 but nothing more. The situation appears to be that announced by the noble Lord, Lord Taylor of Holbeach, in answer to a Question of mine in October 2013, namely that:

"The … Short-Term Holding Facility Rules have yet to be finalised and … there is at present no fixed date for when they will be made".—[*Official Report*, 30/10/13; col. *WA 261*.]

Can the Minister update the House on the current position?

Commenting on the Shaw report the Detention Forum, a network of 30 organisations working in the immigration arena which was mentioned by my noble friend Lord Hylton, has said that the damning conclusions of the wide-ranging recommendations demonstrate that fundamental reform is needed. I would have thought that 350 pages and 64 recommendations deserved more than a mere one-and-a-half pages of government response, particularly when everyone outside the Home Office who knows anything about the way that immigration detention is currently conducted knows that something so obviously flawed is in urgent need of fundamental reform. Report after report by successive chief inspectors of prisons and immigration are nothing more than catalogues of failure which successive Ministers, and senior Home Office officials, have done nothing to correct over too many years. Seen against what those currently responsible must know to be urgently needed, the Government's three proposals in their miserable response amount to nothing more than a sticking-plaster exercise. I hope that taken overall, my amendments and Amendment 216, moved by the noble Lord, Lord Rosser, will give those responsible for reform a comprehensive list of subjects that any review should encompass.

The Government's first proposal, to adopt a wider definition of those at risk, is covered by Amendment 216ZC. I declare an interest in their second proposal, as a vice-president of the Centre for Mental Health, which has been commissioned to carry out a detailed assessment of the mental health needs of those held in immigration detention and report next month. Following receipt of this report, the Government then allege that the Home Office and the Department of Health will publish a joint mental health action plan in April. I simply do not believe that a fully comprehensive mental health treatment action plan can be produced in this ridiculously short time. To suggest that it is possible discloses a lack of understanding of what will be required—no doubt spurred on by wanting to give the impression that, after years of masterly inactivity and refusals to listen, urgent action is about to be taken. As Chief Inspector of Prisons I reported on the inadequacy of mental health arrangements in what were then called immigration detention centres in 1998 and, 17 years later, nothing has happened. Is it really likely that they are now to be transformed in a matter of weeks?

[Lord Ramsbotham]

The Government's third proposal is also beyond the capability of the Home Office to deliver, bearing in mind how long we have been waiting for short-term holding facility rules. They say that they will,

"implement a new approach to the case management of those detained, replacing the existing detention review process with a clear removal plan for all those in detention … combined with a more rigorous assessment of who enters detention through a new gate-keeping function".

9 pm

As my Amendments 216ZB and 216ZD point out, there is far more to detaining someone in a removal centre than making a clear removal plan, which is something that should have been an automatic procedure for years.

I now move on to timing. The Government's response to the Shaw report says:

"It is a long-established principle … that where an individual is detained pending removal there must be a realistic prospect of removal within a reasonable time".

The committee established by the All-Party Group on Refugees and the All-Party Group on Migration, of which I was a member, recommended that immigration detention should be limited to a period of 28 days and the other place formally voted in favour of that on 15 September 2015. The committee also recommended that,

"the Government should introduce a robust system for reviewing the decision to detain early in the period of detention. This system might take, for example, the form of automatic bail hearings, a statutory presumption that detention is to be used exceptionally and for the shortest possible time, or judicial oversight".

This appears to be in line with the current statutory requirement on the Home Office that,

"detention should ... be reviewed during the initial stages"—

that is, in the first 28 days.

"This does not apply in criminal casework cases, where detainees come from prison, or remain there"—

in an immigration removal centre—

"on completion of custodial sentence".

The guidelines also state that:

"Criminal casework cases involving the detention of children must be reviewed at days 7, 10, 14 and every seven days thereafter".

I submit that, totally wrongly, too many reviews are conducted not by a court or tribunal, but by officials. Noble Lords may have seen an interview with the retiring Chief Inspector of Prisons, Nick Hardwick, which was published in the *Guardian* on Saturday 29 January, in which he spoke about his anger that comparatively junior officials in the Home Office were able to lock up someone who had not been convicted of anything. He added:

"If you lock someone up in a detention centre, you are punishing them, whether that's your intention of not … Even if you're trying not to run it like a prison. Even if you have the best staff in the world … it's still a prison ... It should be very exceptional that you lock someone up without going before a court, and at the moment, it's not exceptional enough ... It ought to be a huge decision to lock someone up, and the problem is that if you make that huge decision often enough it becomes not such a huge decision; it becomes routine".

My Amendments 218, 218A and 218B are designed to ensure that the Secretary of State, having denied civil servants the routine power to lock anyone up, also ensures that detention should be for no longer than 28 days, after which a detainee should be released on bail, unless that is refused on the grounds that that is not in the public interest by a First-tier Tribunal.

All my amendments reflect my agreement with the Detention Forum that the Shaw review is a damning demonstration of the need for fundamental reform. I do not believe that such reform can be carried out during the time that this Bill is being processed through Parliament. Therefore, in order not to waste the time of either House, I recommend that the Bill be withdrawn so that due consideration can be given to the legislative implications of processing the recommendations contained in reports that the Government have commissioned. There is more than enough evidence of what is required of the system, and many people are only too happy to contribute their expertise to such a process. I await the Minister's response with interest.

Baroness Hamwee: My Lords, were my noble friend Lord Avebury able to be here, I think he, too, would have started with short-term holding facilities. I feel I am letting him down by not having a specific amendment on the point.

When the all-party group undertook its inquiry, to which much reference has been made, I was particularly struck by the paradox of detainees both fearing and hoping for sudden change—or that things would stay the same way. It was well expressed by Dr Melanie Griffiths, who is quoted in the report as saying:

"By being detained indefinitely, without knowing how long for and with the continual possibility of both imminent release and removal, detainees worry that detention will continue forever and also that it will end in unexpected deportation the next morning. They have the simultaneous concern both that there will be sudden change and never-ending stasis. It is the lack of temporal predictability that prevents deportable individuals not only from being able to plan for the future, but also from having the 'stability' of knowing that the present will remain uncertain for a protracted length of time".

A number of these amendments are concerned with time limits and timescales. The inquiry made a number of recommendations and comments, one of which was about the link with mental health. As the report expresses it, there is,

"a considerable mental health cost to detainees".

The report also said that,

"the lack of a time limit, far from aiding Home Office effectiveness, was itself an incentive to poor case-working".

The Government say that an arbitrary time limit is unnecessary, because we should have whatever is reasonable—although of course what is reasonable is often in the eye of the beholder. They also say that an arbitrary time limit—"specific" would perhaps be a better word—would become the norm and an incentive for non-compliance. However, those of us advocating a time limit do not wish to overlook the individual characteristics or indeed the changes over time and the changes of combinations of factors which may apply to individuals. We do not like a tick-box approach to vulnerability.

There are a lot of amendments in this group. I have signed up to all of those in the name of the noble Lord, Lord Ramsbotham, and started by supporting Amendment 218, which is the straight 28-day amendment, rather than the proposal for a review, which is in the first of the amendments in the group. After the Shaw

report was published, and after we had addressed the issue at Second Reading, I discussed with the noble Lord, the noble Baroness, Lady Lister, and other members of that inquiry whether we might look for an alteration—I was going to say slight relaxation, as it were, but that would be a very bad term for me to use in the context—to the 28 days in the event of something exceptional.

The first of the two approaches in Amendments 218A and 218B is that the Secretary of State would go to the tribunal on the basis that bail is not in the public interest. I hope that would answer the critical comments made by the noble and learned Lord, Lord Brown of Eaton-under-Heywood, at Second Reading that there must always be some exceptions. We have had a go at a reference to offences which are in Schedule 4 to the Modern Slavery Act. That was suggested by somebody who has been concerned with this subject for a long time. I am not sure that it would be my preferred approach, but the intention was to present some possibilities to the Government as to how they might achieve 28 days, or a specific time limit, but with any absolutely necessary exceptions.

The other amendments—particularly Amendments 216ZA, 216ZB, 216ZC and 216ZD—are drafted directly from the Shaw report in the hope that the Government will give a detailed response to each of them. As the noble Lord said, we had a short response in the Written Ministerial Statement. I hope that the Minister, whose task tonight is considerable, has been briefed to give a response to each point. We could have tabled 64 amendments but that might have tested the patience of the Committee a little too much. Of course, none of this actually needs legislation; the Government could just get on with it. The essential items that lend themselves to an amendment are ones to which I and, I know, others would like a detailed and specific response.

Baroness Lister of Burtersett (Lab): My Lords, I rise to support the various amendments in this group, focused in particular on the case for a time limit and for the absolute exclusion from detention of pregnant women.

As has already been said, like the noble, Lord Ramsbotham, and the noble Baroness, Lady Hamwee, I was a member of the all-party parliamentary inquiry into detention. Unlike them, I knew very little about detention beforehand and so was perhaps the more shocked by what I heard from both professionals and people who had been detained. One message that hit me with particular force was the impact of detention on the mental health of detainees—we have heard a bit about that already. It is clear that this was true for Stephen Shaw, too. In his very fine report, he states at the outset that,

"the impact of detention upon detainees' mental health, has been at the heart of this review. For that reason alone, it is not possible to distinguish the fact of detention from the consequences for welfare and vulnerability".

He based this conclusion in part on a literature review by Professor Mary Bosworth, to which my noble friend Lord Rosser referred and which Shaw suggests was perhaps the "most important contribution" made by his report. He concludes that it,

"demonstrates incontrovertibly that detention in and of itself undermines welfare and contributes to vulnerability".

Professor Bosworth's review found a clear link between duration of detention and mental health outcomes. She also points to qualitative studies that indicate that the uncertainty arising from no time limit creates additional difficulties, and concludes that in the absence of clinical studies,

"it is clear at the very least that uncertainty makes detention more difficult".

That resonates with what we heard in our inquiry. For instance, Dr Robjant of the Helen Bamber Foundation told us that its clients talk about it increasing their sense of hopelessness and despair.

Despite the restrictions placed on his remit, Stephen Shaw raised serious questions about numbers detained, the length of detention, the impact of the unknown length of detention on vulnerability, and the need for alternatives. He emphasises from the outset that his recommendations, in themselves, do not go far enough. We must take seriously what in my view is a clear steer that we need to go beyond recommendations designed to mitigate the "diswelfares" associated with detention, important as they are, and address the underlying question of the role of detention itself, and in particular the question of the absence of a set time limit on its duration.

Since the parliamentary inquiry's report, the UN Human Rights Committee has recommended that the UK introduce a time limit. In oral evidence to the Public Bill Committee on this Bill, a representative of the UNHRC stated that his one wish would be the introduction of a time limit on detention—which, he underlined, was within the scope of the Bill. In addition to the unanimous vote in the other place in support of our inquiry which has already been mentioned, there was strong support for a time limit when the report was debated in your Lordships' House in March, including from the former Home Secretary, the noble Lord, Lord Hurd of Westwell, who deemed it "deeply unsatisfactory" that detainees,

"have no certainty in their lives about when they might be removed from detention".—[*Official Report*, 26/3/15; col. 1569.]

This point was echoed by the noble Lord, Lord Cormack, who said that,

"it is worse than that, because it deprives people of hope".—[*Official Report*, 26/3/2015; col. 1578.]

We have heard other arguments in favour of a time limit, which I shall not go into. Let us now use the opportunity of this Bill to provide hope for migrants and asylum seekers deprived of their liberty by a detention system shown to be deeply unsatisfactory by legislating for a time limit and encouraging the Government to develop effective community alternatives.

9.15 pm

I turn to Amendment 216ZC, which incorporates Shaw's recommendations concerning presumption against detention. I thank the Minister for responding to our March debate by extending Shaw's remit to include pregnant women and women who have been subject to rape or sexual violence. I applaud Stephen Shaw for the clear lead that he gave on this, including his recommendation that there should be an absolute exclusion of pregnant women, not just, as now, a presumption against exclusion. The recommendation

[Baroness Lister of Burtersett]
was based in part on the evidence of the damaging impact of detention on the health of pregnant women and their unborn children, submitted by the Royal College of Midwives and Medical Justice, among others. In fact, Medical Justice published a report on the matter in 2013 and, in the foreword, the Royal College of Obstetricians and Gynaecologists declared that it was unacceptable that pregnant asylum seekers were being incarcerated. The study concluded that current policy is ineffective, unworkable and damaging.

Like the Medical Justice study, the Shaw review found that the Home Office policy of a presumption against the detention of pregnant women is not being implemented properly. Mr Shaw was told by HM Inspectorate of Prisons that there is little to suggest that pregnant women are being detained only in exceptional circumstances. This was the finding of the parliamentary inquiry, too. The Shaw review also found that it is very rare for the detention of pregnant women to result in removal.

The ministerial Statement in response to Shaw, described by the noble Lord, Lord Ramsbotham, as a miserable response, did not make clear the Government's response to his recommendation on pregnant women, but the implication seemed to be that it had not been accepted. So I tabled a Written Question that asked whether the Government had accepted the recommendation and, if not, why not. The reply was that the Government's position on the Shaw review was set out in the ministerial Statement—as if I had not read it—and that its recommendations, including on pregnant women, would be taken into account as they developed arrangements for the proposed adults at risk policy. The term "taken into account" is rather vague, so the response is disappointing and really not good enough.

Stephen Shaw's report was dated September. I do not know when it was actually handed in, but it cannot have taken that long to print, even though it is a very substantial report. So it really should be possible to give us a clear yes or no answer as to the Government's response to this important recommendation. I therefore ask the Minister to do so now. I very much hope that it will be a yes. If it should be a no, I trust that he will provide a clear explanation so that we can assess whether this is an issue to which we want to return on Report.

Lord Roberts of Llandudno (LD): My Lords, I thank the noble Baroness, Lady Lister, for using one word especially—the word "hope". We have responsibility not only to our own people but to the whole world community. As we deny that responsibility and act in ways that make people very much inferior and in fear, they will grow up to be people without that hope. People might resort to extremism and terrorism. Our opportunity in this Bill is to restore hope to people. I heard from Calais just half an hour ago that both the mosque and the Christian church there have been bulldozed today, removing another element of hope for those people. It is an opportunity. We deal with clauses, amendments and all sorts of things, but we are basically dealing with people—people just like ourselves.

I must not take long, and I will not. The Universal Declaration of Human Rights states that everyone has the right to liberty and to protection from arbitrary detention. Are we in violation of that declaration? Article 31 of the United Nations Convention Relating to the Status of Refugees specifies that states shall not impose penalties or unnecessary restrictions on the movement of refugees entering their territory without authorisation. Are we also denying that here in the United Kingdom?

What if we compare ourselves with other countries in Europe? France has a limit of 32 days and Belgium of two months. Here, though, two years ago—the only figures that I could get were for 2013—400 immigrants were detained for more than six months. At the moment there are about 3,500 people detained in our removal centres—many more than there were a few years ago. Just think of the cost of this. It was revealed in an Answer in June 2011—and the figure will be higher now—that the cost of detaining an individual at an immigration centre was £102 a day. We are acting totally against what would be best for our own people.

So there is so much to be done. As the noble Baroness, Lady Lister, said, the psychological and physical effects of indefinite detention must be totally devastating. You have family and opportunities at home or elsewhere but you do not know when you are going to be released. I know that the Minister has a good heart; I have spoken to him many times on these issues, and I hold him in great respect. Can we in the House of Lords not move in such a way that the rest of Parliament will have to listen to us? We have the opportunity here to bring hope to many more people.

Lord Dubs (Lab): My Lords, I support the thrust of these amendments. I shall refer to two or three specific points. Amendment 216 is very moderate and the Government ought to have no difficulty in accepting it. The sort of review envisaged would give us more information; I think it would help to make the arguments clearer and might well come out more in favour of the tougher amendments that are also part of the group. It is up to the Government to say why they do not want this information to come to light and why they are against such a moderate amendment.

I turn to the question of time limits. I agree very much with the points that have been made. To detain vulnerable people and to give no sense of how long they are to be detained is not something that we as a country should be proud of doing. In a debate today on earlier amendments, it was put to us by the Minister that if people were in detention, they had other ways of getting out and processes they could go through—I think one example was judicial review and another was habeas corpus. It would be very difficult to achieve these safeguards, costly without legal aid to pay for them and indeed costly for the Government to defend such cases if people had the power to bring them. I do not think that that is a positive way forward.

Apart from supporting time limits, I also support the point made so clearly by my noble friend Lady Lister: to detain pregnant women must be entirely unacceptable. They are not going to run away, they can be of no danger to society, and I cannot understand what benefit there is to the country or to anybody else

in detaining people who are so vulnerable by definition of their pregnancy. That also goes for some of the other categories listed in Amendment 216ZC, such as victims of torture. How can we contemplate detaining victims of torture, who surely have already suffered enough? For some of these people Britain is a country of hope, with high standards, and when they find that the way they are treated does not meet those high standards, as the noble Lord said, hope is gone.

So I very much hope that the Government will come forward with some positive responses to these amendments. We cannot as a country allow our reputation to be blemished and besmirched by the practices we adopt in detaining some of these people, who surely have more rights than we give them at the moment.

Lord Hylton (CB): My Lords, at Second Reading I said that indefinite detention without charge was completely repugnant to public opinion in this country. Therefore I welcome Amendment 216 and other amendments in this group. It is hard to imagine a subject which calls out more loudly for review than this one. My noble friend Lord Ramsbotham, with his long experience of inspecting official institutions, pointed out very strongly that for years now we have been subject to drift on this very subject. We have excuses, palliatives and promises, which have fairly seldom been fulfilled.

It may help if I give some figures on the length of time that people have been held. During the full year 2014, 857 people were held for longer than six months, and by the time that those people had been released, 26 had been detained for between for between two and four years and one person had been held for over four years. Of course, these figures do not include those held in prisons under immigration powers. Of the 161 people who were released after more than 12 months, only 70 were actually removed from this country, while 86 were granted temporary admission, temporary release or bail. That throws some light on the seriousness of how things have been running lately.

Lord Alton of Liverpool (CB): My Lords, I will briefly intervene to support the speeches that have been made thus far in favour of these amendments. In doing so, I will return to something my noble friend Lord Ramsbotham said earlier on about the inappropriateness of our procedures. It seems that the cart and the horse have been confused here. Why did we bother asking Stephen Shaw to carry out his review and examine these procedures while we were steamrollering through legislation? Surely we should have waited for that review in the first place.

The terms of reference for the Shaw review were interesting in themselves. They were to "review the appropriateness" of the Government's,

"policies and practices concerning the welfare of those who have been placed in detention, whether in an immigration removal centre or a short-term holding facility, and those being escorted in the UK".

That goes to the very heart of this legislation. Surely it would have been wise to await the findings of that review before the other place considered this legislation, and before we in Committee were asked to look at 64 recommendations and consider which of those could be incorporated in amendments, as the noble Baroness, Lady Hamwee, said before.

Stephen Shaw called for a complete overhaul of the Rule 35 process, a supposed safeguard against the detention of victims of torture which—as the noble Lord, Lord Dubs, implied in his remarks earlier on—he said is not working. That something as serious as people who have been subject to torture is now being addressed in amendments to legislation at this stage shows again the inappropriateness of the procedures we are using.

9.30 pm

Although Shaw does not explicitly endorse the parliamentary inquiry's recommendation that a 28-day time limit should be introduced, he does argue that detention should be reduced,

"whether by better screening, more effective reviews, or formal time limit".

It would clearly be helpful to our debate, at least at this late stage, if when the Minister comes to reply he would say which of those proposals—better screening, more effective reviews or a formal time limit—the Government are likely to support.

In recommendations 62 and 63 of his report, Shaw calls on the Home Office to consider ways of strengthening legal safeguards against excessive lengths of detention and to explore alternatives to detention. I wonder whether rather more light could be shed on that too. What does that mean? What could the alternatives to detention that Shaw had in mind be, and are the Government examining such things?

I support what the noble Baroness, Lady Lister, said earlier about pregnant women. Will the Minister tell us how many pregnant women are in detention centres at present? What is the average length of stay? How many women in the last year or last five years have given birth in our detention centres? Shaw makes clear that a fundamental change of culture is required, not simply legislation. How are we going to go about that?

Finally, will the Minister tell the House what examination has been made, as Shaw did, of experience elsewhere? Currently, there is no statutory maximum time limit on how long an individual can be held in immigration detention, but this makes the United Kingdom an outlier among EU member states, most of which are signatories to the European Union returns directive, which specifies a six-month time limit. Many member states operate a shorter time limit. For example, in France the time limit is 45 days, in Spain and Portugal it is 60 days, and in Belgium it is two months. In Ireland, which along with the UK is the only EU member state not signed up to the returns directive, the maximum time limit is 21 days. What account have we taken of experience overseas and why are we not signatories to the returns directive? Is that still on the agenda and, if not, why not?

Lord Stunell (LD): My Lords, I support this run of amendments. I do so not with a lot of expertise but with real puzzlement. I hope that the Minister can deal with one or two of my puzzles relating to the cost, effectiveness and impact of the current policy and the

[LORD STUNELL]
possible risks there might be should it ever be changed. Does the Minister have a ready list of other policies that cost £160 million a year and produce no measurable benefits what ever to anybody? If he has, I recommend that he talks to the Chancellor about how that might be used effectively elsewhere by the Government.

The percentage of people who are detained and who subsequently return is not that high. Does the Minister have the figures for the returns percentage of those who are not detained? I strongly suspect that detaining people is no more successful in encouraging them not to return than not detaining them. However, the Minister may have some evidence that would contradict my impression, and I think we should hear it.

There are two impacts that I would like to hear some evidence from the Minister about. One of those is the impact on the United Kingdom's reputation for the rule of the law—the noble Lord, Lord Dubs, made the point just a few minutes ago—our reputation for fairness and our reputation for pragmatic common sense. We rather pride ourselves on our pragmatism and common sense when it comes to public administration. Does the Minister have any evidence that those countries that have a set time limit find that that leads to them having fewer returners than we do? What evidence is there that our asylum seekers—those who reach our shores—are more dangerous than those who get to France, Spain or Italy? Are they more likely to abscond than the people who go to those countries? In terms of the importance of having this policy at all, are we more successful in getting returners by not having that time limit than those countries are by having one? If that is a central part of the justification for the current policy, I am sure that the Minister will have those figures at his fingertips.

Then there is the impact on detainees themselves. The mental health impact and the impact on pregnant women have been mentioned. Bearing in mind that two-thirds of these people will be let out into the community eventually, the mental health costs and the costs for the children will fall on the National Health Service. What assessment have the Government made of the additional National Health Service costs generated by the impact of returning detainees to the community, with all the problems so ably set out in the Shaw report? I notice from an earlier debate that when it came to reporting complaints about treatment by immigration officers, the Government pointed out that there were five different routes to register a complaint. Obviously, if you do not speak English and have no experience of democratic public institutions and how they might be able to help you, those are formidable barriers to taking advantage of that help. So far as I understood from the puzzled looks around this Chamber, none of us knew how the process worked, never mind someone detained in Yarl's Wood. What information is put in the way of detainees about how they can claim the rights that the Minister sets out as being available?

My final question is the same as the one I started with. What purpose does it serve to have the current policy, which costs public money, is not effective and has such a negative impact on the UK's reputation abroad and on detainees themselves? I hope that the various amendments in front of the Committee today will provide some opportunities for the Minister to take back to the ministerial team a clear view that something has to change—to save money, to save the reputation of the United Kingdom and to save detainees the indignities that we are inflicting on them.

Lord Green of Deddington (CB): My Lords, I find myself once again in a minority of one in the Committee, but I am reassured that I am not in such a minority in the country as a whole.

The Bill and these amendments should be considered in a wider context. The removal of immigration offenders is central to the credibility of any immigration system. Furthermore, detention is an essential component of the removal process. Of course it is undesirable for people to spend long periods of time in detention, but in practice that is not the outcome of a majority of cases. The noble Lord, Lord Hylton, mentioned some statistics, but there are others from the same year, 2014. About 30,000 people were detained in that year, but 63% were detained for less than 28 days, of whom 37% were detained for less than seven days. Only 11% of those detained spent more than three months in detention and, of those, 62% were eventually removed from the UK, which suggests that those cases were among the more difficult ones and that detention was necessary to achieve removal.

Individual cases vary enormously. I do not think anyone would favour pregnant women being held in detention, but any specific time limit would be an invitation to those concerned and their lawyers to game the system. Let us not forget that 50% of all those who claim asylum in this country are in fact refused, and that includes those who have made an appeal and have lost it. That is the average over the past 10 years, so broadly speaking we are talking about a significant number of people who the immigration courts have decided no longer have the right to be in this country. Those are the people we are talking about here.

Those who attended the Second Reading debate will have heard the most eloquent intervention by the noble and learned Lord, Lord Brown of Eaton-under-Heywood, in which he stressed the complexities of the issues and the fact that detention is permitted only where there is a reasonable prospect of removal. That is the case law and he set it out clearly, and it seems to me a reasonable approach to this issue.

There are of course other entirely different approaches to reducing the time spent in detention. One example is to have effective returns agreements with third countries and to combine those with dedicated resources for enforcement so that the entire process speeds up. Meanwhile, any significant reduction in the use or indeed the prospect of detention could only encourage people to stay on illegally in the hope, and even the expectation, that they could dodge removal. Finally, we cannot be blind to the extraordinary events that are taking place in southern Europe. This is surely not the time to weaken our capability to return economic migrants to their countries of origin.

Lord Alton of Liverpool: My Lords, given that my noble friend has placed a great deal of reliance on public opinion and how he thinks public policy should

be shaped, and given that he has cited figures from 2014, has he had a chance to reflect on the figures produced by the House of Commons Library about the cost of running detention centres in the way we are at the moment? The cost was £164 million in 2014, while the cost of keeping one person in a detention centre is £36,000 a year. In addition, £15 million was paid out in compensation for illegal and unlawful detention. Surely he would agree with those of us who have been putting an alternative point of view that it is an issue which needs to be tackled at a fundamental level.

Lord Green of Deddington: Yes, I certainly agree that detention is a very expensive business in all circumstances; that is true. The people I would be most concerned about are those who plan to come here as economic migrants and who would have no right of asylum. They are the people who need to be deterred. It is not so much public opinion; it is having an asylum system which is seen to be effective. By all means, people who have been tortured need to be dealt with, but it would surprise me if many were actually in detention. They would not be there if their cases had not been heard and refused by the immigration courts.

Baroness Lister of Burtersett: I am not sure whether the noble Lord has read the report of the inquiry to which a number of us contributed, but we did quote from the International Detention Coalition about the experience in countries that do not rely so much on detention. The noble Lord seems to be worried about what that might mean in terms of the effect on compliance. The coalition found that alternatives to detention,

"maintain high rates of compliance and appearance, on average 90% compliance. A study collating evidence from 13 programs found compliance rates ranged between 80% and 99.9%. For instance, Hong Kong achieves a 97% compliance rate with asylum seekers or torture claimants in the community, and in Belgium, a pilot working with families facing removal had an 82% compliance rate".

Alternatives to detention have proved to be very effective and can address some of the concerns of the noble Lord.

Lord Green of Deddington: Yes indeed, but I would imagine that the conditions are very different in Hong Kong and to a certain extent in Belgium. You have to look at the circumstances that you find in a particular country. What we have here is a very large illegal population which people can quite easily join. I am not against looking at the kind of alternatives being suggested, but let us be pretty sure that they are going to be just as effective. Any move at this point to weaken, not so much the asylum system but our capability to remove those who have failed asylum, would be an extremely foolish step to take.

Baroness Hamwee: My Lords, this may be the last intervention, before the noble Lord sits down—again, using the language of this place. He has based his comments on immigration offenders. I wonder if he could explain what he means by that term. Certainly there are individuals who have committed offences within our criminal justice system and who are—not on the way to being deported; that being the problem—liable to deportation. There are people who have sought asylum but who are not offenders in the way that I would understand the term. Indeed, their claims have not been determined, which as we have heard in other debates, is a big problem. Could he just disaggregate that term?

9.45 pm

Lord Green of Deddington: The noble Baroness's point is rather similar to the point she made about bail earlier in the debate. The term "immigration offenders" is a broad term and applies to anyone who does not have, or no longer has, a legal right to be in the UK. It could be a whole range of people who do not have a right to be here; they have not taken opportunities for a voluntary return, or even an assisted voluntary return, both of which are available to them. Therefore, they might find themselves in detention for those reasons.

Baroness Hamwee: Does that include those who have sought asylum but whose claim has not been determined?

Lord Green of Deddington: Not when I use the term, and I do not think that it applies to those people. It applies to those whose cases have been rejected, and rejected on appeal, and they do not return home when they could do so.

The Advocate-General for Scotland (Lord Keen of Elie): I wonder whether I might, as it were, intervene at this point. I was obliged for the contributions from all corners of the House about what is a difficult and demanding issue. Having regard to the observations of the noble Lord, Lord Stunell, I notice that the immigration system with which he is struggling is a product, at least to a material degree, of the Immigration Act 2014, which is in turn the product of a coalition Government, in which I believe he was a Minister. That said, clearly there is room for improvement. On that we can agree, and that is why the Bill is before the House.

Lord Stunell: I thank the Minister for giving way, and of course he is absolutely right. I am very proud of the fact that we secured some mitigation of the existing scheme in what was achieved on child detention, which I am sure he welcomes.

Lord Keen of Elie: One of the points that the noble Lord referred to, and which was referred to also by the noble Lord, Lord Alton, was the question of set time limits, and the limits that apply in the context of the EU returns directive. It is important to have a full understanding of the EU returns directive. It sets a limit on immigration detention of six months and is extendable to 18 months. Some EU countries have shorter limits—France, for example—but Germany allows for the full 18 months' extension under the directive. So one has to have regard to the full terms of the EU directive.

The United Kingdom has not signed up to the EU returns directive; we prefer to maintain control of our own borders. There are other issues to be considered as well. The very legal system within each of these European countries is distinct, so for example, in some

[Lord Keen of Elie]
there is no concept of judicial review of executive action, as we understand it, and therefore no scope for review of executive action in the context of immigration control and the application of immigration policy. So one has to be a little careful when seeking to rely on comparative law and comparative data.

We are, of course, working towards the voluntary return of illegal migrants to this country, as well as implementing various schemes to deal with those who refuse to return. I notice that during the last two years there have been more than 50,000 voluntary returns by migrants to this country. Again, that is simply to put the matter in context.

The noble Lord, Lord Ramsbotham, raised issues about the Bill itself and whether, given the amendments that have been made, it should not at this stage simply be withdrawn for the Government to consider many of the changes that they might have in mind, or, indeed, have regard to the amendments that have already taken place. Again, at a general level, I note that the Bill deals with a whole series of issues: labour market reform, housing, driving and driving licences, illegal working, the appeals process, immigration and bail. Only one or two aspects of that are immediately impacted by the issue that we are addressing in the context of detention.

The noble Lord also alluded to the number of amendments—but again, to put that in context, amendments took place following the consultation on labour market enforcement. When one examines them, one sees that a great number of the amendments address only a few discrete issues. For example, a whole series of amendments were required because of the nature of the local rules that apply to taxis and taxi licensing. From Portsmouth to John O'Groats, there seem to be varying rules regarding that matter. In addition, as the noble Lord, Lord Kennedy, noted, there had to be extensive amendments with regard to warrants under the judicial system in Scotland. So one has to get this into context and have a sense of proportion about what the Bill is doing.

Reference was made to Stephen Shaw's report, which we welcomed, considered and continue to consider. Stephen Shaw did not make any recommendations about legislation. Much of what he says, so far as it is to be implemented, will be implemented by guidance, not by primary legislation. Again, it is important to get these points into context so that we understand what we are dealing with.

I will come back to some of the individual points raised, but first I will deal with the individual amendments, beginning with Amendment 216. This would require the Secretary of State to commission an independent report into the use of immigration detention, which would need to consider: how effective current use of detention is; how effective current safeguards are; how to reduce the numbers in detention; and the practical steps needed to introduce a maximum time limit for detention of 28 days.

While I understand the intentions behind the proposed new clause, in our submission it is not necessary. Stephen Shaw has undertaken an independent review of our approach to the detention of vulnerable individuals. The Government have published his report and our initial response to it, through a Written Ministerial Statement published on 14 January. It is not the length of that response that is material; it is the quality of it that truly matters. In it, we have set out our ambition to see a reduction in the number of those detained, and the duration of detention before removal, which in turn would improve the welfare of those detained.

The Government have broadly accepted the recommendations that Stephen Shaw made, and in particular will introduce a strengthened presumption that adults at risk should not be detained unless there is clear evidence of immigration risk factors. I take this opportunity, which I am sure that the whole Committee will echo, to thank Stephen Shaw for his thoughtful and in-depth consideration of these very material issues and for his associated recommendations.

If Amendment 216 is agreed it will simply duplicate the work that Stephen Shaw has undertaken and delay the Government's programme of implementation while the outcome of the new review is considered. Here we are addressing this Government's manifesto commitments.

Amendment 216ZA would place a statutory requirement on the Secretary of State to review our policy on detention and bail conditions, and consult as part of that exercise. Again, Stephen Shaw has already done much of this. He has undertaken an in-depth review of our policy and made recommendations for improvements. We will take forward this work and, again, it will be implemented not by primary legislation but by consideration of guidance.

Amendment 216ZB requires a review of the rules and regulations about how individuals are treated while in immigration detention. I wish to make it clear to the Committee that the Secretary of State takes her duty of care to these individuals very seriously indeed. Healthcare is provided by the National Health Service and there are meaningful activities provided. Individuals also have access to legal advice—a point that was raised earlier—and to translation services.

Immigration removal centres are not prisons and do not have as strict a regime as prisons. Individuals are allowed to associate and move freely throughout the centres. However, the Government have accepted the broad thrust of Stephen Shaw's report and will be taking further action to review our policies and procedures to ensure that detainee welfare is at the heart of immigration removal centres' regimes.

Amendment 216ZC would mean that an individual who claims to be vulnerable could not be detained on the authority of the Secretary of State; a request would need to be made to the tribunal to authorise detention. It would also have the effect of preventing the detention of pregnant women in any circumstances. I understand the intention of this amendment, and the whole House will agree that vulnerable individuals should not normally be detained. That is our current published policy. In response to Stephen Shaw we will be further strengthening our approach, introducing a new "adult at risk" concept into decision-making on immigration detention. This means adopting a wider definition than at present of what constitutes an adult at risk, with a clear presumption that people who are at risk, including pregnant women, should not be detained.

Baroness Lister of Burtersett: I may be pre-empting what the noble and learned Lord is about to say. However, Stephen Shaw is very clear that presumptive exclusion should be replaced with an absolute exclusion. The noble and learned Lord talks about strengthening presumption. That is qualitatively different from absolute exclusion. Do the Government accept the recommendation of absolute exclusion and, if not, why not?

Lord Keen of Elie: The present published guidance means that we do not, and should not, detain pregnant women except in exceptional circumstances. There are, in fact, very few pregnant women in the estate. The Government are reflecting on how to implement Stephen Shaw's policy in regard to adults at risk, and will address that in due course. However, as I say, it will be a matter of guidance.

Baroness Lister of Burtersett: I am sorry to press this. I accept that it is a matter of guidance. We put it in an amendment to have a debate on it. However, it seems to me that there is an attempt to slide out of answering the question of whether presumptive exclusion in the guidance will be replaced by absolute exclusion, because that is very clearly what Stephen Shaw recommended. I am not getting a clear answer on that.

Lord Keen of Elie: The clearest answer I can give is that it is a matter for consideration at present by Ministers. They will consider it because they have already said that. They noted the recommendations in Stephen Shaw's report. They have not yet determined in a black and white way that they will implement all 64 recommendations and no one would expect them to have done so in this timescale, but they will address them.

Lord Alton of Liverpool: My Lords, the noble and learned Lord, Lord Keen, has probably exhausted that line of argument for the moment. However, he was also asked during the debate not whether there are few or many but how many pregnant women are in detention centres at present, what their length of stay has been and whether any babies have been born there. If he cannot give those figures this evening, rather than simply saying "very few", which was the phrase he used a few minutes ago, perhaps he will agree to write to noble Lords and let us know exactly what the numbers are.

Lord Keen of Elie: I am perfectly happy to write to noble Lords to give the figures for the number of pregnant women at present in detention and perhaps over a period of six months to cover both before and after Stephen Shaw's report, so that there are some meaningful figures they can work from. I cannot give exact figures. That may not surprise your Lordships. I am advised that there are very few pregnant women in the estate. However, more precise figures will be given.

The adults at risk policy will take a more holistic and dynamic approach to the assessment of vulnerability, based on the best available evidence. That is what Stephen Shaw has identified as the most ambitious approach to ensuring that adults at risk are safeguarded. However, the approach in the proposed new clause would not be workable in practice. It does not take into account the realities of how individuals are discovered. For example, how would we handle cases at the border who can be returned on the next flight? Following this amendment, an individual could not be lawfully detained without an order of the tribunal. That would be an administrative challenge to obtain and would require significant extra resources. The same would be true of an individual encountered jumping off the back of a lorry. And what would happen if someone was already detained and raised these issues? Would they be unlawfully detained until an order of the tribunal was given? It is simply not workable in practice.

10 pm

Amendment 216 would require the Government to undertake a review of the quality of immigration detention. In the light of Stephen Shaw's recommendations, the Government are taking a close look at the quality and fitness of the accommodation on the detention estate and at the regimes within the detention centres. This is not, however, a matter for legislation. The Government already have a raft of guidance and standards in place for ensuring that the regimes in detention centres operate at appropriate levels and in the interests of the welfare of detainees.

Amendment 218 would introduce a statutory time limit on detention, with a requirement that a detained individual be released on bail after 28 days. Amendments 218A and 218B require release after 28 days if, in relation to Amendment 218A, the tribunal has not already refused bail as being not in the public interest or, in relation to Amendment 218B, unless the individual has been convicted of an offence listed in the Modern Slavery Act 2015. We consider Amendment 218 to be a blunt tool. It would be a statutory requirement to release from detention, no matter what risk was posed and no matter how imminent the removal of an individual might be.

While there is no fixed statutory time limit on the duration of detention under immigration powers, it is not the case that there is no limit on the length of detention. It is limited by statutory measures, by the European Convention on Human Rights, by the common law and what is sometimes referred to as the Hardial Singh principles, and by legal obligations arising from Home Office policy. Home Office policy is clear: detention must be used as a last resort and only for the shortest period necessary.

Published statistics show that the majority of individuals leave detention after 28 days or fewer, with over 90% having left detention within four months. The facts do not bear out the accusation that immigration detention is indefinite. Yes, there are exceptional cases, and one can often cite those without regard to the exceptional facts that lie behind them. Again, without full knowledge of the facts of those individual cases, it is very difficult just to take them out of context and say that there are people who have been there for X period of time.

Baroness Lister of Burtersett: I am sorry to intervene again, but "indefinite" does not mean that people are there for ever. It means that people do not know how long they will be there, and that is what has had the

[Baroness Lister of Burtersett]
terrible psychological impact on people. From that perspective it is "indefinite", because there is no clear time limit that gives people certainty and hope.

Lord Keen of Elie: With respect, it is not possible to say to somebody that they will be in detention for X period in this context. For example, if they choose not to co-operate by producing any documents, or they do not tell the truth about their point of origin or their journey—where they arrived in Europe, for example—it may be very difficult to investigate their circumstances, and they may yet during that period pose a risk, whether to the public or otherwise. Therefore, detention is not necessarily, and cannot be, dictated by reference to a fixed period. But of course, it is open to them to go to a tribunal and apply for bail—and that is the whole point. So it is not, in that sense, indefinite: they have the opportunity to canvass before the tribunal the issue of whether or not they should remain in detention.

At Second Reading, we heard a number of noble Lords speak on detention. As has been said, there was a contribution from the noble and learned Lord, Lord Brown of Eaton-under-Heywood. He rightly identified that:

"There are two basically different circumstances in which people are detained under the legislation: first, on initial application for asylum and, secondly, when, much further down the line, it is sought to remove people whose rights of whatever sort have expired and it is proposed that they finally be deported".—[*Official Report*, 22/12/15; col. 2473.]

The detained fast track generally related to the first category that the noble and learned Lord, Lord Brown, identified. Many noble Lords will be aware that the detained fast track has been suspended since July following my right honourable friend the Immigration Minister's decision that he could not be certain of the level of risk of unfairness to certain vulnerable applicants who may enter the process. I can confirm to the noble Lord, Lord Rosser, that the detained fast track will remain suspended until my right honourable friend is sure that the right structures are in place to minimise any risk of unfairness and that effective safeguards can be put in place. A Statement will be made when that point is reached.

Lord Roberts of Llandudno: Can the Minister tell me in what circumstances that was suspended? Was it not because of a High Court action, which found that it was illegal?

Lord Keen of Elie: There was, among other things, a determination as to the legality of the process. I accept that—but that is why it was suspended and why it remains suspended at the present time.

Those who are detained for any length in the removal centre estate will normally be cases that fall into the second category mentioned by the noble and learned Lord, Lord Brown: those who have had their application to remain in the United Kingdom refused, whose rights have expired and who it is proposed should finally be removed. I ask the Committee to reflect on the fact that if all individuals complied with a notice that they should leave the United Kingdom, there would be little need for immigration detention, and certainly very limited need for detention beyond a very short period. However, some individuals choose not to comply with the law and do not leave the United Kingdom when they should. That is the position we are in.

Amendment 218A would require a bail hearing in every case of detention within 28 days. As I have explained previously, mandatory bail hearings by set deadlines are incredibly resource-intensive for the tribunal and have been rejected previously as being unworkable in practice. Amendment 218B would impose a requirement to release on immigration bail after 28 days of detention, unless an individual had been convicted of an offence under the Modern Slavery Act.

I can understand the noble Baroness's reasoning for the amendment. The offences listed in Schedule 4 are very high-harm offences. But what justification could there be for detaining beyond 28 days anyone other than these high-harm criminals? Matters are not that simple. We seek to remove national security threats under deportation powers—individuals who do not have a conviction but where there is clear intelligence that they pose a risk to the public. This power would prevent detention of these individuals beyond 28 days. It would lead to the release, for example, of Abu Qatada, despite the clear threat that he and others like him pose.

The noble and learned Lord, Lord Brown, went on to say:

"Many participants in this debate have urged and will urge, benevolently, for fixed limits—sometimes as little as 28 days—to immigration detention. I say to those noble Lords: do not underestimate the ingenuity and persistence of many of those who seek to defeat immigration controls. Time and again, down the years, the system has been cleverly played, often by those who are least deserving of our sympathies. In the present edition of one of the standard textbooks on immigration law, the chapter on detention and bail extends to 96 dense pages and endless footnotes. A case on this topic in the Supreme Court in 2011 … stretched to 115 pages of judgments. This is a difficult area of the law and I respectfully suggest that we should not rush to impose some limit".—[*Official Report*, 22/12/15; col. 2474.]

Again, the noble and learned Lord, Lord Brown, summarised the position well. I ask this House to heed his wise words and not to legislate in haste. It is for these reasons that I ask that the amendment be withdrawn.

Before I sit down, I notice that I have not responded fully to the points made by the noble Lord, Lord Ramsbotham. In particular, he raised the question of consultation on the short-term holding facility rules. It is regrettable that we have not yet consulted on those rules. However it has to be remembered that they operate not in a vacuum but under the statutory framework contained in Part 8 of the Immigration and Asylum Act 1999 and its associated schedules. They are also covered by the Home Office's detention services orders. Now that the Shaw report has been published, we will take forward consultation on the draft rules.

Baroness Hamwee: My Lords, before the noble Lord, Lord Rosser, responds, the picture that has been painted of the situation, including those who are subject to detention, does not seem to accord with the observations which so many of us have heard, including

those of Stephen Shaw. The noble Lord, Lord Rosser, quoted the last sentence of Mr Shaw's conclusions, which is in paragraph 11.8. He said:

"Immigration detention has increased, is increasing, and—whether by better screening, more effective reviews, or formal time limit—it ought to be reduced".

It seems unlikely to me that it has been increasing because the number of people who have been convicted of offences and are due for deportation, but for some reason or another are not being deported, would account for that increase in the way in which I heard the explanation.

I took seriously the comments of the noble and learned Lord, Lord Brown of Eaton under Heywood. I ask again whether there is not a way in which those of us who are concerned properly to get to a situation where there is not the lack of hope to which noble Lords have referred cannot together find, with some imagination, a way of dealing with this that will give a structure to detention immigration but allow for the very rare exceptions that it might be proper to make.

Lord Green of Deddington: May I give one example of how this arises? There are some countries that require an interview with their consul in London to re-document someone who is here as an illegal immigrant and in detention. That requires an interview to which the person in detention has to agree. If there is a time limit of a month, he will know perfectly well that all that he has to do is to refuse the interview for a few weeks and he will be out.

Baroness Hamwee: I am not quite sure how that fits in with what I was saying. I am certainly not arguing that there should not be a good returns process; in fact, I have tabled an amendment to that effect later in the Bill.

Lord Alton of Liverpool: If the noble Baroness will allow me, one thing that does not seem to have been referred to in the course of our debates is the exponential increase in the number of people detained. I think that there was an 11% increase last year, with around 31,000 people being detained in this country. Does that not underline the importance of what she is saying about looking for alternatives to this? I gave the figures earlier: the cost to the public purse is around £36,000 per person detained. Millions of pounds are being spent on something that does not give great credit to our nation. Surely we should look for an alternative to this. We know that such alternatives exist elsewhere, which is where Stephen Shaw seems to be pointing us. Is that not what we should be doing between now and Report?

Baroness Hamwee: Indeed, and the sentence before the one which I quoted referred to a system,

"both … more protective of the welfare of vulnerable people and",

delivering,

"better value for the taxpayer".

Lord Rosser: I am sure the Committee will be relieved to know that I do not intend to say a great deal but, first, I thank everybody who has contributed to this debate and for the views that have been expressed.

10.15 pm

I am naturally disappointed by the Government's reply that things will be done through guidelines when it has been pointed out on more than one occasion during this debate that it is precisely because Home Office guidelines are not adhered to that we have ended up in this situation of concern over immigration detention. I am sure that the Minister will not mind me saying that statements that things will be in guidelines in future ring a little hollow. He said nothing whatever to give us any confidence that the situation in future will be any different from the situation that applies at the moment where it is clear that Home Office guidelines are not being properly and appropriately applied.

The Minister rejected my amendments, which basically call for a review. He did not say that there should be a time limit. He said that it should be looked at. He sought to say that that was what Stephen Shaw said. I am sorry, but he did not. He was not asked to consider a statutory maximum limit on the length of time an individual can be detained under the relevant provision, so I am not quite sure on what basis the Minister managed to make his statement that Stephen Shaw had already addressed the terms of my amendment. I suspect that I shall have to leave it in the context of registering my disagreement with the Minister's analysis.

The Government are clearly unmoved by what the Shaw review said. They are unmoved by the all-party inquiry into immigration attention. They are unmoved by the decision in the House of Commons, and they are unmoved by the view of the Chief Inspector of Prisons. If the Minister wishes to intervene, I am very happy to give way. There has been no indication that the Government intend to move on anything. I asked which of Stephen Shaw's recommendations were being accepted and which were being rejected. I have not been told of even one that has been accepted. I have been told that the Government continue to undertake a review of his recommendations. One of his recommendations—recommendation 62—has already been referred to.

Lord Keen of Elie: I believe that I did observe that we accept the broad thrust of his recommendations. At this stage, we have not determined which of the 64 individual recommendations we will implement. I cannot see that as surprising in the time available.

Lord Rosser: That comes back to the point that the noble Lord, Lord Ramsbotham, made about this legislation in relation to an inquiry that has just taken place. In my opening contribution, I commented that a statement that we are accepting the broad thrust of the recommendations is as long as a piece of string. Perhaps I can test the Minister on that. Recommendation 62 states:

"I recommend the Home Office give further consideration to ways of strengthening the legal safeguards against excessive length of detention".

Is that one that the Government intend to accept? I am only asking about one recommendation out of 64. The Minister shakes his head. That makes my point.

Lord Keen of Elie: With great respect, one could ask about one out of 64,000. It is not a question of which one but of addressing all of them in due course and in

[Lord Keen of Elie]
the context not necessarily of primary legislation but of the need for further guidance. The noble Lord has underlined the potential need for further guidance in this area.

Baroness Hamwee: I suspect that the noble Lord may be coming towards a halt, if not to the end of the issue. It occurs to me that I do not think that any of us asked about the Home Office's internal review on this subject, which we heard about in previous debates.

Lord Ramsbotham: I think I asked.

Baroness Hamwee: Well, I do not think the question was answered. Has the Minister any news about that? I appreciate that we are taking a long time on this, but the size and substance of the issue justifies it.

Lord Rosser: The reason for asking about recommendation 62 was that the Minister sought to tell us there was not a problem because people could apply for bail. But recommendation 62 is based on Mr Shaw looking at the situation with regard to bail. It is in the light of having looked at it that he said:

"I recommend that the Home Office give further consideration to ways of strengthening the legal safeguards against excessive length of detention".

So I would have thought that the Minister, having referred to the very issue that prompted recommendation 62, might have a view on what the Government's response was to it. But clearly there is silence from the Government on that particular score.

I do not know whether the Minister intends to respond to the question about the Home Office internal review. As I understand it, the noble Lord, Lord Ramsbotham, has said that he raised the question and has not had a response to it. Is there an internal Home Office review going on? I am obviously not going to get an answer, so it looks like a secret review.

Lord Keen of Elie: There could well be a secret review, but in so far as there is an ongoing review, we will write to the noble Lord about its progress. However, I have mentioned the matter which the noble Lord, Lord Ramsbotham, raised, about the short-term holding facility rules and the review of those rules. I indicated that we were going to consult on those draft rules in the light of the Shaw report.

Lord Rosser: Is the purpose of the Home Office internal review to decide whether to accept any or all of the Shaw report recommendations, or is it on another issue?

Lord Keen of Elie: There is an internal review, and I have already indicated that we will set out the position in writing.

Lord Rosser: That is a very interesting reply; the Minister is not prepared to tell me what the purpose of the review is. That is a fair comment, because he could have stood up and told me. I asked him the question and he has not answered it. I will just leave it in this context. We detain people who are not criminals for an unknown period of time as an administrative or executive decision and not as a judicial one at any meaningful stage. The message that has come over from the debate so far, in the absence of anything very specific from the Government, is that the Government find that situation entirely satisfactory. A number of noble Lords in the Committee this evening do not find that situation satisfactory. None the less, I beg leave to withdraw my amendment.

Amendment 216 withdrawn.

Amendments 216ZA to 216ZD not moved.

Schedule 7: Immigration bail

Amendments 216A to 224 not moved.

Amendment 224A

Moved by ***Baroness Hamwee***

224A: Schedule 7, page 106, line 16, leave out "may" and insert "must"

Baroness Hamwee: My Lords, this is a shorter group. Amendments 224A, 224B, 224C and 224D are in my name and that of my noble friend Lord Paddick.

Paragraph 7 of Schedule 7 gives powers to the Secretary of State to enable a person to meet bail conditions. Paragraph 7(1) provides for when a person is subject to a condition requiring him to reside at a particular address and he would not be able to support himself at that address without assistance. Sub-paragraph (2) allows the Secretary of State to,

"provide, or arrange for … facilities for the accommodation … at that address".

My first amendment would again change this from permissive to mandatory. If the Secretary of State requires someone to live at a particular address, it seems to us that, in the circumstances spelled out of the person not being able to otherwise support himself, the Secretary of State should provide the facilities. Sub-paragraph (3) limits the power I just described,

"to the extent that the Secretary of State thinks that there are exceptional circumstances which justify the exercise of the power".

We would take out the thinking element of that to make the limitation more objective.

Sub-paragraph (4) gives the power to make a payment for travelling expenses which the person incurs,

"for the purpose of complying with a bail condition".

Similarly, it applies,

"to the extent that the Secretary of State thinks that there are exceptional circumstances",

and we would make the same two amendments.

I rather wish now that we had also sought to delete the reference to "exceptional circumstances", given that by definition the person who is the subject of this cannot support himself. I failed to do that, but I do not think it invalidates the amendments. I beg to move.

Lord Keen of Elie: I am obliged to the noble Baroness. As she observed, Amendments 224A and 224B would create a duty to pay, in exceptional circumstances, for accommodation to anyone released on bail if the individual were required to live at a bail address not of

their choosing or if the person could not otherwise support themselves. In turn, Amendments 224C and 224D would require the Secretary of State to pay an individual for travel costs incurred while complying with conditions of immigration bail where there were exceptional circumstances, again limiting discretion.

We would submit that these amendments are unnecessary. As was noted by the noble Baroness, paragraph 7 of Schedule 7 provides a power for the Secretary of State to ensure a person can meet bail conditions by paying for the costs of their accommodation and travel expenses in appropriate circumstances. It is important to note that the Secretary of State is given a discretion on the matter of exceptional circumstances. Individuals released on bail will be able to be supported by the Home Office under the Bill if their individual circumstances warrant it, generally because they do not have the funds to obtain adequate accommodation, cannot obtain it from friends or relatives, and are unable to avoid the risk of destitution while they are here except by leaving the United Kingdom.

However, if a person is an asylum seeker, they will be able to apply for support under Section 95 of the Immigration and Asylum Act 1999, and the Bill makes no changes to the support available to asylum seekers who would otherwise be destitute. They will continue to be provided with accommodation and a cash allowance to cover their other essential living needs.

In our submission, it is right that the Secretary of State, who is accountable to Parliament, has the final discretion on whether to provide accommodation to, or to pay the travel expenses of, those released on bail. It is not a matter that she should be obliged to respond to. In those circumstances, I ask that these amendments be withdrawn.

Baroness Hamwee: My Lords, I thank the Minister for that reply. It seems that whether the amendments are necessary or not depends on whether you are the Secretary of State or the person subject to the bail condition. However, I heard what the Minister said. I do not think it would be appropriate to pursue the matter now. I beg leave to withdraw the amendment.

Amendment 224A withdrawn.

Amendments 224B to 224D not moved.

Amendments 224E to 224K

Moved by ***Lord Keen of Elie***

224E: Schedule 7, page 109, line 4, at end insert—

"In section 11(1) (construction of references to entry)—

(a) omit ", or temporarily admitted or released while liable to detention,",

(b) omit "or by Part III of the Immigration and Asylum Act 1999", and

(c) for "or by section 68 of the Nationality, Immigration and Asylum Act 2002" substitute "or on immigration bail within the meaning of Schedule 7 to the Immigration Act 2016"."

224F: Schedule 7, page 112, line 12, at end insert—

"Immigration and Asylum Act 1999 (c. 33)

The Immigration and Asylum Act 1999 is amended as follows.

In section 10(9) (removal of persons unlawfully in the United Kingdom: application of Schedule 2 to the Immigration Act 1971) omit paragraphs (h) and (i).

In section 53 (applications for bail in immigration cases) omit subsection (4).

In section 95(9A) (support for asylum seekers etc: matters to which conditions may relate) in paragraph (b) for the words from "restriction" to the end of the paragraph substitute "condition imposed under Schedule 7 to the Immigration Act 2016 (immigration bail)."

(1) Section 141 (fingerprinting: persons temporarily admitted to the United Kingdom) is amended as follows.

(2) In subsection (7)(b) for "temporarily admitted under paragraph 21 of Schedule 2 to the 1971 Act" substitute "granted immigration bail under Schedule 7 to the Immigration Act 2016".

(3) In subsection (8)(b) for "admit him temporarily" substitute "grant him bail".

224G: Schedule 7, page 112, line 14, at end insert—

"(1) Section 23 (power for residence restriction to include requirement to reside at accommodation centre) is amended as follows.

(2) In subsection (1) for "restriction" substitute "condition".

(3) For subsection (2) substitute—

"(2) In subsection (1) "residence condition" means a condition imposed under Schedule 7 to the Immigration Act 2016."

(4) In subsection (4) for "restriction" substitute "condition"."

In section 30 (conditions of residence at accommodation centres) in subsection (7) for the words from "restriction" to the end of the subsection substitute "condition imposed under Schedule 7 to the Immigration Act 2016.""

224H: Schedule 7, page 112, line 18, at end insert—

"(1) Section 70 (power for residence restriction to take account of induction programmes for asylum seekers) is amended as follows.

(2) In subsection (1) for "restriction" in both places substitute "condition".

(3) For subsection (2) substitute—

"(2) In subsection (1) "residence condition" means a condition imposed under Schedule 7 to the Immigration Act 2016."

(4) In subsection (5) for "restrictions" substitute "conditions".

(1) Section 71 (asylum seeker: residence etc restriction) is amended as follows.

(2) In subsection (2)—

(a) for the words from "restriction" to "restrictions)" substitute "condition which may be imposed under Schedule 7 to the Immigration Act 2016", and

(b) for "that Schedule" substitute "Schedule 2 to the Immigration Act 1971".

(3) In subsection (3)—

(a) for "restriction" in each place substitute "condition",

(b) for "paragraph 21 of that Schedule" substitute "Schedule 7 to the Immigration Act 2016", and

(c) for "that Schedule" substitute "Schedule 2 to the Immigration Act 1971".

(4) In subsection (4) for "restriction" substitute "condition"."

224J: Schedule 7, page 112, line 24, at end insert—

"( ) in the heading, for "Temporary admission, &c" substitute "Immigration bail","

224K: Schedule 7, page 113, line 6, at end insert—

"Criminal Justice and Immigration Act 2008 (c. 4)

The Criminal Justice and Immigration Act 2008 is amended as follows.

In section 132(4) (special immigration status: effect of designation) in paragraph (b) for the words from "temporary admission" to the end of the paragraph substitute "immigration bail under Schedule 7 to the Immigration Act 2016."

In section 133 (special immigration status: conditions) for subsections (3) and (4) substitute—

"(3) If a condition is imposed under this section on a designated person, the person imposing the condition may also impose an electronic monitoring condition within the meaning of Schedule 7 to the Immigration Act 2016 on the designated person.

(3A) Paragraph 4 (electronic monitoring conditions) of that Schedule applies in relation to a condition imposed under subsection (3) as it applies to an electronic monitoring condition imposed under that Schedule.

(4) Paragraph 7(4) and (5) (bail conditions: travelling expenses) of that Schedule applies in relation to conditions imposed under subsection (2)(c) as it applies to conditions imposed under that Schedule.""

Amendments 224E to 224K agreed.

Schedule 7, as amended, agreed.

Clause 33: Power to cancel leave extended under section 3C of the Immigration Act 1971

Amendment 225

Moved by ***Baroness Hamwee***

225: Clause 33, page 38, line 31, after "a" insert "material"

Baroness Hamwee: In moving Amendment 225, I shall speak also to Amendment 226, which takes us on to the next clause, about cancelling leave to enter or remain where there is an extension of limited leave. Leave which is extended may be cancelled if the applicant has failed to comply with the condition attached to the leave. I suggest that in the first of the amendments, that should be a reference to a material condition, not to a trivial condition, although the Bill does not use that language. Leave may also be cancelled if the individual has used deception in seeking leave to remain. I suggest that if there is deception, it should be deception directly for the purpose of seeking leave.

10.30 pm

These are very much probing amendments to ask how the power should be used and why it is necessary. Do the Government have recent experience in which the Secretary of State has been unable to cancel leave when, on a common-sense view, she should have been able to do so? I beg to move.

Lord Keen of Elie: I am obliged to the noble Baroness. As she observes, Amendment 225 seeks to change the wording of Clause 33 so that leave extended by Section 3C of the Immigration Act 1971 may be cancelled only when the failure to comply with a condition of their leave relates to a "material" condition. That would leave us in the situation whereby the original grant is not subject to that condition, but the extension was. The Immigration Rules allow for leave to be curtailed when a person has failed to comply with any condition attached to their grant of leave. However, the Home Office has published guidance on when failure to comply with conditions of leave may lead to curtailment of leave. For example, if a student is granted leave with the condition that they work no more than 10 hours each week, the guidance states that curtailment is appropriate if the student is working full time. However, when the breach of leave is very minor—for example where a student worked for 10.5 hours for one week only and was compliant with their conditions of leave in all other respects, the guidance states that it would normally be disproportionate to curtail their leave. In considering whether to cancel leave extended by Section 3C, caseworkers will apply the same principles as they do when considering whether to curtail leave under the Immigration Rules. So there is here consistency between the original leave and the extension allowed for, which is why the wording is as it is. The same considerations of proportionality will apply as in terms of the guidance that I have just indicated.

The effect of Amendment 226 is to change the power to cancel leave extended by Section 3C so that a person has to "deliberately" use or have used deception in seeking leave to remain. The wording of Clause 33 is the same as that used in the offence of deception in Section 24A of the 1971 Immigration Act and the wording used in the Immigration Rules to curtail immigration leave. The courts have confirmed that "deception" means something that is knowingly done and so the addition of the word deliberate is, with respect, unnecessary.

Both Amendment 225 and Amendment 226 would mean that the power to cancel leave extended by Section 3C would differ in its wording from equivalent powers to curtail leave under the Immigration Rules. This creates the risk of perceived differences between the circumstances in which Section 3C extended leave and leave granted under the Immigration Rules can be cancelled. I fear that if either of these amendments were to pass, much time and cost would be spent in the courts considering whether these differences in wording have the effect of creating different powers in practice.

I understand the concerns about how the power to cancel leave extended by Section 3C is to be exercised. I reassure noble Lords that the power to cancel leave extended by Section 3C is discretionary. For example, it would not be right to cancel leave extended by Section 3C where a person was unaware of the deception. In deciding whether to cancel leave extended by Section 3C, the same principles will apply as when considering the curtailment of immigration leave. For the benefit of the noble Baroness, the relevant decision on deception is the case of AA (Nigeria) v Secretary of State for the Home Department in 2010. In these circumstances, I invite her to withdraw her amendment.

Baroness Hamwee: My Lords, I did not disbelieve the noble and learned Lord when he said that there was case law on this. I understand that the term "deliberately" is encompassed within deception. As I said, my concern was to probe how the power would be used and why it would be necessary. From what we have heard, it seems to have been something of a tidying-up exercise, rather than because there has been a bad experience—the Minister is nodding his head.

I suspect that I am not alone in, as always, feeling just a little uneasy when we are told that the answer is "in guidance" so it will all be okay. Having made that observation, though, I beg leave to withdraw the amendment.

Amendment 225 withdrawn.

Amendment 226 not moved.

Amendment 226A

Moved by ***Baroness Hamwee***

226A: After Clause 33, insert the following new Clause—

"Return of asylum seekers: countries deemed safe

(1) Schedule 3 to the Asylum and Immigration (Treatment of Claimants, etc) Act 2004 (removal of asylum seeker to safe country) is amended as follows.

(2) In paragraph 8, omit sub-paragraph (2).

(3) In paragraph 12, omit sub-paragraph (2)."

Baroness Hamwee: My Lords, I apologise to the House; if any noble Lords have tried to follow my drafting, they may have thought either that I had completely lost it or that my drafting skills had gone out of the window. They might be right on both counts because what I have produced is the direct opposite to what I intended. I contacted the Bill team to explain that earlier today, and was very grateful to receive a sympathetic response from the Bill team manager. Having managed to communicate what I intended, it will take me about two or three minutes—perhaps five— to cover the principle of what I wanted to deal with: the use of a list of deemed safe countries of origin to which asylum seekers could be returned.

The Minister may be able to tell us whether there is any news about the common EU list that has been proposed and whether the UK is still not minded to opt into it. It is no secret that Liberal Democrats consider that there is a good deal to be said for an EU-wide approach to asylum and refugees.

It was not this that prompted my interest. I can see that it is administratively convenient to have a list of countries that are safe to return people to; I understand the rationale. However, this does not take account of the different characteristics and situations of different individuals. If there is a presumption that a country is safe, it becomes that much harder to counter the presumption by evidence, particularly if one is on the fast track, which is not being operated now, or any other equivalent of it.

There was a ruling in Canada in July that Canada's safe-country-of-origin list is unconstitutional because it is discriminatory on its face and serves to marginalise, prejudice and stereotype asylum seekers coming from countries that the Government have designated as unsafe. I have no doubt that the Home Office is aware of this and will be able to counter that if it were to be challenged on it.

The article which I saw said that:

"While it might seem reasonable to weed out claims of people coming from stable countries that respect human rights, the fact that Ukraine remained on the United Kingdom's SCO list throughout the crisis there—and still is today—is a warning how these lists can quickly become obsolete and not reflect changes in countries of origin".

I therefore wonder whether the Minister can give us any news on the EU list—I suspect that I know what the answer will be—but in particular, deal with the point about keeping lists up to date and that a country which might be safe for you and me might not be safe for him and her. I beg to move.

Lord Keen of Elie: I am obliged to the noble Baroness. Just to be clear, if I were to take the black letter of her amendment, I, like many of your Lordships, would be a little confused. Indeed, one part of the amendment appeared to remove the affirmative procedure of Parliament in approving the addition or removal of names from the safe list. I have no doubt that that was never her intention. I will therefore respond in the spirit in which the amendment was addressed.

There are various lists, of course; one has to be careful about this, because there are lists of countries for the purposes of Section 94, but in addition there are potential lists of safe third-party countries—that is, where someone has left one country but arrived in a safe country within Europe and then moved on to the United Kingdom. I will therefore deal with this at a fairly high level of generality, because the various lists have various different aspects to them. Indeed, the Part 3 list does not have any countries in it at the moment.

The Government have already made an announcement that they will not opt into the common EU list—just to be clear about that. However, in so far as we maintain lists of safe countries, we are conscious of the issues that can arise with respect to them. Indeed, it has been the subject of litigation in case law in this country, which cited, for example, Jamaica and the issue of whether it was a safe country of return. The Home Office keeps these lists, whether they are under the Immigration Act or under Part 3, under constant review, and consider all aspects of the list when deciding whether or not to maintain a country on that list or to remove it. I apologise for addressing the matter at that level of generality, but I hope that the noble Baroness will forgive me for responding to her amendment in that form.

Lord Alton of Liverpool: I would be grateful if I could ask him something about these lists—whether the Government accept that the guidance the Home Office gives can sometimes have extraordinary consequences. He will know that his noble friend Lord Bates was good enough to meet me to discuss the situation of detainees held in detention centres in the Far East—people who had escaped from Pakistan. These included people from the Ahmadiyya community, Shia Muslims, Hindus, Christians—they came from many backgrounds but all had faced what seemed to be absolute examples of persecution. However, the Home Office guidance simply said that these were people who risked discrimination. As the noble Lord, Lord Bates, knows, that became like holy writ as far as the UNHCR—which I met during the same visit, in September last year—was concerned. I had the Home Office guidance quoted back at me as though this was a trump card they were able to use to show that these people were perfectly safe and no consequences would befall them. However, in reality, because of that guidance many of those cases will not even be considered until 2020, and those people will go on living beneath the radar between now and then, living illegally in the country where they are because their asylum claims have not been settled and they are not allowed to work. Therefore the implications of Home Office lists and guidance can often be more far-reaching than maybe we ever imagine.

10.45 pm

Lord Keen of Elie: I notice what the noble Lord says and I do not take issue with it. I add only that, where an individual does identify particular circumstances pertaining to themselves, whether it be religion or whatever, those circumstances are taken into consideration. However, I appreciate the point that the noble Lord has made.

Baroness Hamwee: My Lords, I thank the Minister for his response. Jamaica is indeed an example, and maybe the Democratic Republic of Congo as well. In defence of my rubbish drafting, one of my then quite new colleagues told other colleagues that the most reassuring thing she had encountered in giving her confidence to speak in the Chamber was when I moved the wrong amendment and the sky did not fall. I may use this example in encouraging other new colleagues. I beg leave to withdraw the amendment.

Amendment 226A withdrawn.

Amendment 226B not moved.

Amendment 226C

Moved by ***Baroness Hamwee***

226C: After Clause 33, insert the following new Clause—

"Registration with police: requirement for review

(1) The Secretary of State shall undertake a review of the requirement that immigrants register with the police in accordance with section 4(3) of the Immigration Act 1971 and shall, within one year of the passing of this Act, lay before each House of Parliament a report on that review.

(2) The report shall include an assessment of—

(a) the resources required to conduct the registration process;

(b) the usefulness of registration;

(c) the uses to which the information obtained through registration is put;

(d) the necessity for the requirement; and

(e) any recommended changes including efficiencies."

Baroness Hamwee: My Lords, I beg to move Amendment 226C standing in my name and that of my noble friend Lord Wallace of Saltaire. This amendment deals with the requirement for certain immigrants to register with the police and calls for a review of the arrangements.

The matter was brought to our attention by Universities UK because of the experience of foreign students being required to register with the police within seven days. Failure to register in that time limit may lead to the curtailment of leave or may affect future applications. We heard of students having to queue through the night or round the block to register. The question that was asked of us, and which I now ask of the Minister, is: what is done with the information garnered through that registration process? That is why subsection (2) in the proposed new clause refers to an assessment of the resources that are required, how useful the registration is, the uses to which the information is put, the need for the requirement, and any recommended changes, including efficiencies. I have not used the term "cost-benefit analysis", but that is essentially what it amounts to, together with a concern for the individuals.

I also wonder about the cost of the administration for this. There is a fee of £34: not only do you have to register but you have to pay £34 for the privilege of queuing through the night. The numbers arising at particular times make the administration really quite difficult to handle. There is also the issue of this country's reputation internationally as a result of this procedure. I beg to move.

Lord Keen of Elie: Again, I am obliged to the noble Baroness for highlighting this point. The new clause would require the Secretary of State to review the requirement that non-visitor migrants of specified nationalities register with the police, and then lay before both Houses a report on that review. In our submission, such a review and report is not necessary.

The noble Baroness correctly identified that there is a police registration scheme. The provision is set out in Section 3(1)(c) of the Immigration Act 1971. The requirements to register with the police are specified in the Immigration Rules. The requirement to register with the police is normally placed on a migrant who is aged 16 or over, from a non-EU country and who is given leave for longer than six months. The requirement is to register within seven days of obtaining qualifying leave to enter or remain. There are a number of exceptions where the requirement will not usually apply, including ministers of religion, people exercising access rights to a child resident in the UK, and those granted refugee status.

The requirement to register with the police is not onerous. In the Metropolitan Police area, where there is the highest concentration of migrants required to register, there is a designated office in Borough. For all other police force areas, the individual should register at the nearest police registration office. As the noble Baroness noted, there is a registration fee, currently £34, which reflects the administration costs of the police registration certificate.

The noble Baroness mentioned an occasion when students were reported to have had to queue. In October 2012, some long queues of migrants, mainly students, were seeking to register at the London Overseas Visitors Records Office. OVRO made changes to its process following that incident, including providing pre-booked timeslots for migrants required to register, and I am advised that there has been no recurrence of those queues. Universities are also given the option of collating the relevant paperwork from their students who are required to register and delivering it to the OVRO in bulk. The police continue to work and engage with those involved to manage peak flows in registrations and to minimise any inconvenience from that. I accept that there was an occasion in 2012 when there were delays, but that has not repeated itself.

The information required for registration is all information that will be held by the individual, including personal details, a current photograph, passport details, address in the United Kingdom, their last place of residence outside the UK, and details of their employment and/or place of study. This information is then on record for the police and other law enforcement to access, as necessary, in order to maintain security.

The various requirements for those seeking to stay and live in the UK, as set out in the Immigration Rules, are periodically under review to ensure that they strike the right balance between immigration control and security in the UK. I believe that this current approach is proportionate, particularly in the current state of heightened security concerns, and it is unnecessary for there to be a statutory requirement for a formal review to be conducted and a report laid before both Houses. In light of these points, I invite the noble Baroness to withdraw the amendment.

Lord Rosser: How many people should have registered under this arrangement in 2014, or any other year that the Minister is aware of, and how many did register? What is the penalty for not registering and how many people have been penalised for not registering?

Lord Keen of Elie: I am obliged to the noble Lord for his three questions and I will write in response to provide the detail, which I do not have immediately to hand at this moment. I hope that was not a surprise to the noble Lord.

Lord Rosser: It was not, but I am grateful to the Minister for his response.

Baroness Hamwee: When the Minister writes, will he explain what he described to me to be functions of UK Visas and Immigration—if I have its current title correct? It sounded as though a degree of duplication is required on the part of the police. One would have thought that the visa implications of all the administration, particularly around students, would have been taken care of without having to go to a central point to register. I agree that the amendment is not necessary, because it does not require an amendment for the Government to undertake a review. However, on the Minister's comment that the arrangements are not onerous, I wonder why it was so specifically raised with us by Universities UK, which will no doubt read the comments and give us its response. I beg leave to withdraw the amendment.

Amendment 226C withdrawn.

House resumed.

House adjourned at 10.55 pm.

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