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PARLIAMENTARY DEBATES
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HOUSE OF LORDS
OFFICIAL REPORT

ORDER OF BUSINESS

Grand Committee

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In Hybrid sittings, [V] after a Member's name indicates that they contributed by video call.

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

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

No party affiliation is given for Members serving the House in a formal capacity, the Lords spiritual, Members on leave of absence or Members who are otherwise disqualified from sitting in the House.

House of Lords

Wednesday 16 September 2020

The House met in a hybrid proceeding.

Noon

Prayers—read by the Lord Bishop of St Albans.

Arrangement of Business

Announcement

12.08 pm

The Senior Deputy Speaker (Lord McFall of Alcluith): My Lords, the Hybrid Sitting of the House will now begin. Some Members are here in the Chamber, respecting social distancing, and others are participating remotely, but all Members will be treated equally. If the capacity of the Chamber is exceeded, I will immediately adjourn the House. Oral Questions will now commence. Noble Lords asking supplementary questions should please keep them short and confined to two points. I ask that Ministers' answers are also brief.

House of Lords: Number of Members

Question

12.08 pm

Asked by ***Lord Grocott***

To ask Her Majesty's Government what assessment they have made of the case for an upper limit on the number of members of the House of Lords.

The Minister of State, Cabinet Office (Lord True) (Con): My Lords, the size of the House of Lords needs addressing, but given retirements and other departures, some new Members are essential to keep the expertise and outlook of the House fresh. This will ensure that the House continues to fulfil its role in scrutinising and revising legislation, while respecting the primacy of the Commons.

Lord Grocott (Lab) [V]: My Lords, when the Minister checks *Hansard*, he will see that that was not an Answer to the Question that I put. Is he aware of the concern right across the House that, at a time when we are voluntarily reducing our numbers, the Government seem to be going in exactly the opposite direction? Have the Johnson Government abandoned the May Government's support for reducing our size, and do they believe that there should be any limit whatever on how much larger the House should become?

Lord True (Con): My Lords, the preceding Prime Minister did not accept the Burns committee's recommendation that the Prime Minister should commit to a specific cap on numbers, and that is the position of the Government.

Lord Dubs (Lab) [V]: My Lords, is not the truth that the Government are doing everything possible to belittle this place by stuffing it, staffing the Tory Benches and other means? Is not the problem for the Government that they want to reduce the legitimacy of this House because they do not like our stand on humanitarian principles and the rule of law?

Lord True (Con): My Lords, the noble Lord sat in this House when it was much larger than it is today. So far as stuffing the House is concerned, Mr Blair put 374 Peers in this place.

Lord Wigley (PC) [V]: My Lords, my party, Plaid Cymru, has four times as many Members in the House of Commons as it has in this Chamber. If the proportions were correct, we would have a Chamber of just 200 Members. Given that that is not going to happen, is the only way for smaller parties to get a fair voice here by having a fully elected Chamber that would deliver greater representational fairness and give this Chamber the political credibility that it currently lacks?

Lord True (Con): My Lords, the voice of Wales is extraordinarily important, and it is well served in this House by some of the outstanding Members who come from that great Principality. The noble Lord makes a point of policy. The last coalition Government presented to your Lordships and the other place proposals for an elected House, but they did not at that time find favour.

Baroness Noakes (Con): My Lords, last year, your Lordships' House demonstrated that it was spectacularly out of step with the country as a whole over Brexit. Does the Minister agree that it is more important to remedy that than to focus on the numerical size of the House?

Lord True (Con): My Lords, every Member of your Lordships' House has the right to express a personal opinion, and long may we do so. However, it is important, as my noble friend says, that the House reflects on the risk of becoming out of step with public opinion on this great question.

Lord Tyler (LD) [V]: My Lords, does the Minister accept that, following the huge majority for the 2012 House of Lords Reform Bill which Sir George Young, as he then was, secured at Second Reading, this House could by now be well on the way to being a 450-strong senate with a democratic mandate? Further, will he acknowledge that it was only the silly party games played by the then Labour leadership with reactionary Tory Back-Benchers that stopped that Bill in its tracks?

Lord True (Con): My Lords, I think that the noble Lord has rather upset our colleagues on the Labour Benches. Many histories of that period could be written. The fact is that legislation was presented and, as I said in an earlier answer, it did not find favour at the time.

Lord Norton of Louth (Con) [V]: Does my noble friend accept that an upper limit on the size of the House would impose a valuable discipline upon the Government in selecting nominees to fill a vacancy, and, combined with the other recommendations of the Burns committee, ensure a House that was not only smaller but more balanced than the existing House?

Lord True (Con): No, my Lords. The cardinal facts of this House—which is unique, and that is one of its splendours—are that it is unelected, its Members sit for life and it cannot be dissolved. In those circumstances, the question of a cap raises profound constitutional questions, which, as the previous Prime Minister said, deserve reflection.

Baroness Hayman (CB) [V]: My Lords, when numbers in your Lordships' House go up, public respect for the House goes down. The Minister said that the previous Prime Minister did not endorse a cap on the size of the House, and that is quite correct, but she did commit to restraint in appointments. Given how seriously the House takes the issue of reducing numbers, can the Minister tell me what conversations the noble Baroness the Leader of the House—the whole House—has had with colleagues in the House, with the leaders and the Convenor, and with her right honourable friend the Prime Minister, about this issue? If he does not have that information to hand, perhaps he could write to me.

Lord True (Con): My Lords, as that question is about the Leader of the House, I think that she would have to address it herself. So far as the numbers are concerned, I dispute that there is any correlation between the size of the House and the respect in which it is held. I remember the very great respect in which the House was held before 1999.

Baroness Smith of Basildon (Lab): My Lords, there is so much in what the Minister has said that it is hard to know where to start. First, his Answer to my noble friend Lord Grocott on what assessment has been made of the case for an upper limit was that no assessment has been made. On his point about the House having been larger, it was significantly larger pre-1999, with a large number of hereditary Peers, 92 of whom remain. On his comment about Prime Ministers making appointments, the fact remains that David Cameron, when Prime Minister, appointed more Peers per year than any other Prime Minister since 1958, when life peerages came in, with more for the governing party.

The Minister talks about the House needing to be refreshed, and he is absolutely right. However, if he wants to refresh the numbers in the House, why is it that, having lost over 30 Members from the Labour Benches since June 2017, nothing like that figure has replaced them to refresh our numbers, whereas there were huge numbers on the last list to refresh the Conservative Benches? If this House wants to reduce the numbers, it must be so that we can be effective and do the job that we are best at, not to play party-political games, which the leader of the Conservative Party, the Prime Minister, seems to want to do. He wants to play the numbers game and pack this House, because he thinks that the winner takes all.

Lord True (Con): My Lords, I do not agree with the strictures of the noble Baroness, who I respect tremendously. I said in my first Answer that the size of the Lords needs addressing, but I added some considerations thereafter. I do not accept that my right honourable friend the Prime Minister is "packing the House". The question asked by my noble friend Lady Noakes shows that the House has a very independent mind.

The Senior Deputy Speaker (Lord McFall of Alcluith): I call the noble Lord, Lord Roberts of Llandudno. Lord Roberts? I call the noble Baroness, Lady Deech.

Baroness Deech (CB) [V]: It seems to me that legislation to cap our numbers is being blocked in a way that does us no credit. Will the Minister urge the party groupings each to find a consensual way to limit their own numbers? The House of Lords Appointments Commission needs power to vet the suitability of proposed Peers or to cap the numbers. I hope that he agrees. If ever there was a case for getting rid of royal prerogative, this is it. I suspect that the Government think that only by shovelling us into a less comfortable venue during refurbishment, or by going entirely virtual for the duration, will we find a large number of retirements. That is not the way to do it. How does he propose that we do it?

Lord True (Con): My Lords, I cannot follow the noble Baroness on many of the things that she has said, other than I hope that one day we might get back to not being a virtual House—that I do agree with. I repeat that there are difficulties in relation to this House: it is unelected, Members sit for life and the House cannot be dissolved. That raises issues for reflection on a cap, as the previous Prime Minister implied.

The Earl of Shrewsbury (Con): My Lords, as an excepted hereditary Peer, I am obviously fair game. However, does my noble friend not agree that one way to reduce the size of this House is to ask the Liberal Democrat Benches to reduce their number to one which is proportionate to their share of the national vote?

Lord True (Con): My noble friend is spot on on that one, and I hear assent in many parts of the House—perhaps not all. That used to be that party's policy, and perhaps it would be good if it returned to it.

The Senior Deputy Speaker (Lord McFall of Alcluith): My Lords, all supplementary questions have been asked and we now move to the next Question.

Planning

Question

12.19 pm

Asked by ***Lord Kennedy of Southwark***

To ask Her Majesty's Government what plans they have to ensure that any changes to the planning system will improve (1) building standards, (2) safety, (3) environmental impacts, and (4) the well-being of residents.

The Minister of State, Home Office and Ministry of Housing, Communities and Local Government (Lord Greenhalgh) (Con): My Lords, our proposal for a reformed planning system is centred on encouraging more beautiful development in places, improving the quality of housing and green spaces, and increasing community engagement in ensuring development enhances the environment, health and character of local areas. We are also implementing fundamental reforms to the building safety system so that residents are, and feel, safe in their homes.

Lord Kennedy of Southwark (Lab Co-op): My Lords, I declare my relevant interest as a vice-president of the Local Government Association, chair of Heart of Medway Housing Association and non-executive director of MHS Homes Ltd. Planning decisions are here for the long term, so how will the Minister and his department ensure that developers' interests are also clearly focused on building stable communities—on that community partnership he talks about—and building for a future that really will stand the test of time?

Lord Greenhalgh (Con): My Lords, there is a strong case for reform of a system that was first put into place some seven decades ago with the Town and Country Planning Act 1947. The focus is on ensuring a much more map-based system towards local plans and engaging with communities to work out whether those developments should take place. In that sense, the development community will follow.

The Lord Bishop of St Albans: My Lords, the latest English housing survey reveals that only 9% of our housing stock has key disability accessibility features. Disability in old age is frequent, and with the ONS estimating that one in four people will be aged 65 or over by 2050 it is vital that we cater for what we are going to need. Although the recently announced government consultation into this issue is welcome, can the Minister confirm that prior to any changes in planning law, the recommendations of this consultation will be fully implemented to ensure that the vulnerable are not left behind?

Lord Greenhalgh (Con): My Lords, I can assure the House that we will consider the needs of all residents, including the vulnerable and the disabled, in ensuring that we have the high-quality design and the beautiful and healthy places that they need.

Lord Moynihan (Con): My Lords, will the Minister ensure that in any changes to the planning system there will be an emphasis on recreational opportunities to deliver improvements in the quality of life, health and well-being of the population? The protection and provision of sports pitches and the promotion of dual and multiuse facilities where feasible is critical to achieving public health outcomes relating to diet, obesity and physical activity.

Lord Greenhalgh (Con): My Lords, my noble friend is, of course, a great champion for the importance of sport and recreation. I can give him those assurances. The National Planning Policy Framework encourages local planning policy decisions to ensure that developments create places that promote health and well-being, with a high standard of amenity for existing and future users.

Lord Best (CB) [V]: My Lords, the Government are proposing that the usual planning requirement on housebuilders to provide some affordable housing will be removed from all new developments of up to 40 or even 50 homes for the next two years or so. Does the Minister accept that this change would lead to the loss of some 20% per annum of affordable accommodation from these planning agreements, as Savills has calculated? Does he agree that the loss could be far worse if housebuilders divide their larger schemes into two or more developments of fewer than 40 homes each? In rural areas, where most developments are, of course, smaller, will this not virtually wipe out desperately needed affordable new homes from this source for local people?

Lord Greenhalgh (Con): My Lords, the noble Lord, Lord Best, is an absolute expert in social housing. I recognise that there is a proposed change and I encourage him to communicate with the consultation, which is ongoing until the end of October. We have committed to delivering a range of different types of affordable housing and have announced a £12 billion affordable homes programme to ensure the continued development of affordable housing.

Baroness Warwick of Undercliffe (Lab): My Lords, I declare an interest as the chair of the National Housing Federation. I am anxious that the proposed changes to the planning system will undermine the already limited provision of affordable homes for rent, particularly, as the noble Lord, Lord Best, said, in rural areas. The White Paper's revised method for calculating housing need appears to divert funding for new homes to prosperous areas. Will the Minister explain how this contributes to the Government's levelling-up agenda? Will he work with the affordable housing sector to ensure that any reforms deliver for the communities that need these houses most?

Lord Greenhalgh (Con): My Lords, there is absolutely no intention to divert funding to prosperous areas from more deprived communities. I am meeting with the National Housing Federation later this week and I will take this up and make relevant representations to the department, but that is certainly not the policy intention of the proposed reforms.

Baroness Thornhill (LD): My Lords, I declare my interest: I too am a vice-president of the Local Government Association. The Minister referred to building beautiful and quality. The reality is that every single day, planning officers encourage, argue with, and even go to battle with developers to produce high-quality schemes according to their local policies. Will the Minister explain how things will be different with the nationally proposed, one-size-fits-all design codes? Does he not agree that the answer might be not government-devised design codes, but giving local councils more power to enforce their own?

Lord Greenhalgh (Con): My Lords, the approach is obviously to move to a more zonal system, although there needs to be a strong design code. The design codes and pattern books draw on the historical use of the Victorians to build beautiful homes, the likes of which we see in Bath and other parts of the country. The aim is to create a range of designs that will enable speedier planning. That is the benefit, rather than having an ad hoc approach to design.

Baroness Gardner of Parkes (Con) [V]: My Lords, while there are many good things in this plan, it is essential that we retain the planning committee rights of local councils, which are so much more in touch with their communities than more remote groups. Local councils can see whether, for example, it is all right to add two extra floors to a house, but if that can just be done without any permission being sought as is suggested, that could be deadly for local people who suddenly find that that happens, and the next one does it and the next one. It really is important to leave the powers with local councils, which really care about their residents, and the residents feel closer to them than they do to a Parliament that often seems rather remote from them. Can I be assured that local councils will not be ousted in this matter?

Lord Greenhalgh (Con): My Lords, I can assure my noble friend that local authorities will be essential in the process. They will continue to prepare the local plans and councils will have better, stronger tools to ensure good design and make the most of brownfield land.

Lord Whitty (Lab) [V]: My Lords, will the Government welcome the Architects' Journal's campaign on retrofit first? Far too often, developers favour demolition and rebuild when retrofit would have been more appropriate. This often has detrimental environmental effects such as emissions, detrimental social effects and sometimes dangerous safety outcomes. Will the new planning system favour retrofit as the first option wherever possible and ensure that in any replacement build or conversions, safety standards will really be effectively enforced?

Lord Greenhalgh (Con): My Lords, I am aware of the campaign for retrofitting, and it often has a place instead of demolition and rebuild. I will look at the campaign and make sure that is fed into our policy as it evolves.

Baroness Thomas of Winchester (LD) [V]: My Lords, further to the right reverend Prelate's question about accessible housing, does the Minister agree that category 2 housing should be the mandatory baseline for all new housing, as is the policy in London?

Lord Greenhalgh (Con): My Lords, I will have to write to the noble Baroness about that suggestion.

The Senior Deputy Speaker (Lord McFall of Alcluith): Baroness Bakewell. No? My Lords, all supplementary questions have been asked. We now move to the next Question.

River Pollution

Question

12.29 pm

Asked by ***Lord Harries of Pentregarth***

To ask Her Majesty's Government what assessment they have made of (1) the level of the pollution in rivers in England, and (2) the causes.

The Minister of State, Department for the Environment, Food and Rural Affairs and Foreign, Commonwealth and Development Office (Lord Goldsmith of Richmond Park) (Con) [V]: My Lords, the Environment Agency's *State of the Environment: Water Quality* report in 2018 is the most recent assessment of water pollution. We assess pollution levels to understand their impact on water ecology and human health and to mitigate them. The main causes of pollution are agriculture, sewage discharges and chemicals from industry and other sectors, some of which still persist from past activities.

Lord Harries of Pentregarth (CB) [V]: I thank the Minister for his Answer, but would he agree that the present situation is a total disgrace? More than 200,000 tonnes of raw sewage go into our rivers every year. Even in 2018 only 14% of our rivers passed as fit for purpose and they have probably got worse since then, and only three cases were taken to court in 2018, despite all this. Does he agree that there is a need for a much stronger regulatory regime? Does he also agree that the situation is so serious that we need some kind of parliamentary inquiry into what is happening to the nation's well-being and health?

Lord Goldsmith of Richmond Park (Con) [V]: My Lords, I certainly agree that much more needs to be done. I can tell noble Lords that a new task force has recently been set up between Defra, the Environment Agency, Ofwat and water companies, which will meet very regularly and set out proposals to reduce the frequency and volume of sewage discharge, while the Environment Bill that is coming soon to the House will place a statutory requirement on water companies to produce drainage and wastewater management plans. Investment by water companies, incidentally, has meant that pollutant loads to rivers from water industry discharges have declined by between 40% and 70% since 1995, and there are commitments of £4.6 billion of additional investment over the next five years.

Baroness Blackwood of North Oxford (Con) [V]: My Lords, while we respond to the Covid crisis, we must not neglect the public health risk posed by AMR. Some 12,000 people die every day from a resistant infection, and this is more important than ever during a pandemic. So the proper treatment of wastewater is essential to prevent the spread of antibiotic-resistant bacteria and genes into the environment, but research has recently found that the amount of antibiotics entering the River Thames would need to be cut by 80% to avoid the spread of superbugs. The AMR action plan commits us to finding innovative solutions

for removing these drugs and bugs from our watercourses. Will the Minister please make addressing this a personal priority?

Lord Goldsmith of Richmond Park (Con) [V]: AMR is one of the greatest health threats that we face, and there is an increasing focus globally on the environment as a potential reservoir and conduit for it. We are conducting research into the extent of human and animal exposure to AMR from the environment and the risks that it poses. We are funding research at the University of Newcastle, for instance, and working with academics at other universities, including Exeter. We are looking at the impacts of the overuse of antibiotics on industrial farms as well—a problem, I should say, that the industry itself has made a real effort to address. We have a five-year UK national action plan and we will take whatever additional action is necessary.

Lord Berkeley of Knighton (CB) [V]: My Lords, I contribute from the Welsh Marches in Powys, which contain the headwaters of the Wye and the Severn. Our rivers are seriously at risk from an absolutely vast increase of intensive poultry units, in Powys in particular but also in Herefordshire in Shropshire. These leech phosphates and nitrogen into our rivers. May I respectfully suggest that the Government urgently look at this dangerous cross-border issue?

Lord Goldsmith of Richmond Park (Con) [V]: The noble Lord is right: poor practice by farmers leads to run-off fertiliser, slurry, pesticides and various other chemicals, which are extremely damaging to river ecosystems. But even well-managed farms can have impacts on the environment. The catchment-sensitive farming and countryside stewardship schemes inform and incentivise farmers to manage their land in a better way—for example, creating buffer strips between fields and water courses, planting crops that preserve soil health and improving slurry storage, while the new Environmental Land Management Scheme set out in the Agriculture Bill will be a critically important part of a transition to more environmentally sensitive agriculture.

Lord Berkeley (Lab) [V]: My Lords, the 200,000 occasions of raw sewage being discharged into rivers in 2019, mentioned by the noble and right reverend Lord, Lord Harries, in his follow-up question, totalled 1.5 million hours of discharge, according to the *Guardian*. Does the Minister accept that it is quite clear that the Government or their agencies have no interest in enforcement? Do the Government accept the legal position, originally stated by the European Court of Justice, that untreated sewage can be released into water bodies only under exceptional circumstances? Clearly this is not being complied with. What urgent action are the Government going to take to deal with this—or are we leaving the EU just to become the dirty man of Europe?

Lord Goldsmith of Richmond Park (Con) [V]: I certainly agree with the noble Lord that raw sewage should only ever be released into water systems as a last resort and in exceptional circumstances. As I mentioned in a previous answer, this issue has been taken up with great energy by my colleague in Defra, Minister Pow, who established and chairs the task force and is committed to doing what is needed from the regulatory, legislative and funding points of view to tackle this very serious problem.

Baroness Bakewell of Hardington Mandeville (LD) [V]: My Lords, there has been a steady increase in outdoor swimming clubs—"wild swimming", as it has become known. Swimmers are unaware that rivers across the country contain toxic materials such as lead and mercury, as well as insecticides. The Government have committed themselves to ensuring that all rivers are of a good ecological standard by 2027. Will that target be reached? If not, when might it be?

Lord Goldsmith of Richmond Park (Con) [V]: The Environment Agency takes water quality samples at all designated bathing waters during the bathing season. If the water fails in any way to meet the minimum standards, the agency then investigates. If a water company is found to be the cause, the agency then requires the company to take action. In 2019, 98.3% of designated bathing waters met the minimum standards, with 71% classified as excellent. Clearly we have a lot more to do, as all surveys have shown, but the Government have shown a commitment to tackling this issue, both from a legislative point of view and in terms of funding.

Lord Grantchester (Lab) [V]: With Brexit achieved, reports over the summer suggested that the UK Government could now amend the requirements of the EU-derived water framework directive to make it easier to classify rivers as "good". Can the Minister confirm whether this is the department's intention? If so, would not the department's time be better spent on addressing the root causes of river pollution rather than on lowering standards?

Lord Goldsmith of Richmond Park (Con) [V]: Those reports were based on comments by Sir James Bevan, but they were inaccurate; in fact, they were entirely wrong. Sir James was talking about the importance of environmental regulation and how it can be used to achieve the best outcomes for our environment. He identified ways in which, for example, the water framework directive is not always the best measure of the health of our rivers, but he was very clear that the test of any changes whatever should be better environmental outcomes.

Baroness Redfern (Con) [V]: My Lords, sewage remains one of the main pollutants in English waterways. With many pipes not monitored, and under a self-reporting system, it is up to individual water companies to tell the regulator. What level of duty are the Government proposing to require water companies to release figures on exactly how much raw sewage is being released, along with its duration and frequency?

Lord Goldsmith of Richmond Park (Con) [V]: The Environment Bill that is soon to be introduced will, as I said, place a statutory requirement on water companies

[Lord Goldsmith of Richmond Park]
to produce drainage and wastewater management plans. In addition to that, water companies have agreed that between 2020 and 2025 they will be investing £4.6 billion to protect the environment, of which around £4 billion relates to wastewater.

Baroness Jones of Moulsecoomb (GP) [V]: My Lords, while I believe in tackling root causes, the Minister mentioned buffer zones. They are extremely practical because they reduce pollution going into watercourses and also create biodiversity corridors. At the moment the advice is for 20 metres. Is it perhaps time to increase that to 30 or even 40 metres, to make them even more effective?

Lord Goldsmith of Richmond Park (Con) [V]: The noble Baroness makes an extremely important point. The department is actively looking at what more we can do using the new Nature4Climate Fund and the transition from CAP to ELM to incentivise a much higher standard of management either side of waterways throughout the country. I hope that on the back of that we will be able to produce a compelling programme.

Lord Browne of Ladyton (Lab) [V]: My Lords, according to studies by Greenpeace and Manchester University, microplastic contamination, which brings an array of biodiversity problems to our waterways, is "pervasive on all river channel beds."
The UK banning microbeads is a step in the right direction, but only a drop in the ocean. What measures are the Government considering to prevent this and to clear the existing contamination of plastics, preferably before they break down into microplastics—or, worse, nanoplastics—en route to the sea?

Lord Goldsmith of Richmond Park (Con) [V]: Chemicals come from almost all human activities. Much chemical pollution comes from domestic properties—for example, detergents, which go into the sewers—and that is going to continue as long as those chemicals are permissible to use. Particularly damaging chemicals such as mercury are priorities for international action and their use is now regulated or banned. Defra is looking very closely at microplastic pollution in the environment, specifically the water environment, and its work will inform the development of policies to mitigate it and to build on the recent microbead ban, which we introduced last year.

The Senior Deputy Speaker (Lord McFall of Alcluith): My Lords, the time allowed for this Question has elapsed.

Biodiversity
Question

12.40 pm

Tabled by ***Lord Teverson***

To ask Her Majesty's Government, following the report by the Royal Society for the Protection of Birds, *A lost decade for nature*, published on 14 September, what action they are taking (1) to reverse biodiversity loss in the United Kingdom, and (2) to meet the Aichi Biodiversity Targets.

Baroness Parminter (LD) [V]: My Lords, on behalf of my noble friend Lord Teverson, and with his permission, I beg leave to ask the Question standing in his name on the Order Paper.

The Minister of State, Department for the Environment, Food and Rural Affairs and Foreign, Commonwealth and Development Office (Lord Goldsmith of Richmond Park) (Con) [V]: My Lords, in England the 25-year environment plan marks a step change in ambition for wildlife and the natural environment. The Government have announced significant funding and legislation to meet this ambition. The Aichi targets are international in scope. The Government have increased international biodiversity spending and are playing a leading role in developing an ambitious new global diversity framework. Nature will be at the heart of the UK COP 26 presidency, paving the way for transformative action.

Baroness Parminter (LD) [V]: I hear what the Minister says, but last October he said that the Government were looking at legislative options to ban the burning of upland peat bogs and yet it has been reported that these plans have been shelved. Peat bogs are incredibly important ecological sites, supporting many rare and endangered species, helping to prevent flooding and store carbon. Are the Government going to ban peat burning or continue their failure over the last decade to meet agreed international biodiversity targets?

Lord Goldsmith of Richmond Park (Con) [V]: As the noble Baroness will know, we are currently engaging with stakeholders on the content of the England peat strategy and we expect it to be published later this year. The Government have always been clear—as I have—on the need to phase out the burning of protected blanket bog to conserve those vulnerable habitats. We are looking at how legislation can achieve this and are considering next steps.

Lord McNicol of West Kilbride (Lab): My Lords, the United Kingdom's sixth national report on the convention on biological diversity, published by the JNCC in 2019, concluded that there is still significant work to be done. To cite a few examples: there is an overall picture of ongoing species decline and a significant proportion of the best wildlife habitat inside and outside protected sites remains unfavourable. There has also been a short-term fall in the Government's funding of biodiversity in the UK. Will the Minister explain exactly what has been done since the release of the JNCC report to rectify these failings?

Lord Goldsmith of Richmond Park (Con) [V]: The noble Lord is right in that, from 1970 to 2016 the relative abundance of priority species in the UK saw a dramatic decline of around 60%. Many but not all species groups show long-term decline, so we clearly need major improvements. We have expanded our protected areas at sea dramatically in recent months

and years. We have provided new funding for woodland expansion. We have put aside a £640 million nature for climate fund. We have committed to 30,000 hectares of tree planting or regeneration each year. Peatland restoration and nature recovery have also been resourced to bring us closer to achieving the 25-year plan goals. We have greatly increased our funding for international biodiversity; perhaps more than any other country.

Baroness Walmsley (LD) [V]: My Lords, the RSPB report emphasises that biodiversity is strongly linked to climate change. To meet our targets, we must take action on all fronts, including farming. In order to produce low-carbon British food, a company wants to build greenhouses in Wrexham using waste heat and emissions from the sewage works next to the site. Will the Minister support this enterprise in the interests of climate action and biodiversity protection?

Lord Goldsmith of Richmond Park (Con) [V]: The Government stand ready to support whatever action is necessary to boost biodiversity in this country and to reverse the depressing trends that have already been described. The RSPB is absolutely right to say that we cannot solve climate change without restoring and protecting nature on an unprecedented scale. Forests, for instance, hold 80% of the world's biodiversity; their destruction is the second biggest source of carbon emissions. As president of COP, we intend to draw as strong a link as possible between what we are doing at COP and what the Chinese will be doing as host of the CBD just a few months before the biodiversity COP. We are working very closely with China to ensure that that happens.

Baroness Hooper (Con) [V]: My Lords, may I start by congratulating and thanking the RSPB not only on this report but on the regular briefings and support it gives us? Since most of the UK's biodiversity is to be found in the overseas territories, will the Minister tell us to what extent the Government's plans to which he has referred cover and include the overseas territories? Will he welcome a short debate on this topic? I have a motion tabled and am merely seeking a slot.

Lord Goldsmith of Richmond Park (Con) [V]: I always welcome debate, particularly around the issue of our magnificent overseas territories. My noble friend is right: the overseas territories contain about 90% of the UK's endemic species and we are very keen to increase our protection of them. For instance, we have increased to £10 million a year the Darwin Plus funding scheme. We are also on track, as my noble friend will know, with our Blue Belt programme to protect an area roughly the size of India. We hope to be able to grow it still further, perhaps even in the remaining months of this year. Protecting the biodiversity on land and in the waters around our overseas territories is and will remain a priority.

Baroness Boycott (CB) [V]: My Lords, I thank the Minister for his answers. In the wake of this devastating report and the UN report, the design of cities also comes under the spotlight. We live in cities more and more, and yet they do not need to be environmental wastelands. What will come forward in the Environment Bill to create green infrastructures and make space for nature inside our cities, so they can play their part in helping us recover our lost biodiversity?

Lord Goldsmith of Richmond Park (Con) [V]: The noble Baroness is right. In addition to greatly increasing our investments overseas in cities to enable people to deal with the warming effects of climate change and to reduce the temperature of cities, in this country we are increasing our funding for tree planting in our cities. We are yet to provide all the details for that. We will allow the policies to be informed by the England Tree Strategy, which we are processing at the moment and on the back of which we will develop what we hope will be a compelling and ambitious programme. I recognise that that is just one part of what needs to happen in our cities to enable people to have better access to and enjoyment of nature, but it is an important part.

Lord Grantchester (Lab) [V]: The RSPB's report, supported by the publication of *Global Biodiversity Outlook 5*, suggests a significant disparity between the UK Government's view of their progress towards the Aichi targets and reality on the ground. What steps will the Minister's department take to review how such progress is measured, and how will the Government ensure that they achieve greater compliance with the targets to be set for 2030?

Lord Goldsmith of Richmond Park (Con) [V]: We do not dispute that protected areas, which include protected sites and landscapes and other measures, need to be better managed. The Government have been very clear on this issue. I think the RSPB accepts that the quantity target has been exceeded but clearly, more needs to be done to improve the quality of our protected areas. As I have outlined, actions are in place to do so.

Baroness Burt of Solihull (LD) [V]: My Lords, we have failed. Not only have we not met 17 of the 20 Aichi targets in Britain; we have gone backwards on some of them. Clearly, we cannot be trusted to save our own wildlife unless we make ourselves take the action needed. Is not now the time to get serious and set legally binding targets for our own sakes, as well as the sake of our wildlife and, ultimately, our planet?

Lord Goldsmith of Richmond Park (Con) [V]: It is absolutely correct to say that we have failed to meet those Aichi targets. The Government have not sought to shirk from that or to mask the research that has been produced. However, I argue that the Environment Bill, Agriculture Bill and Fisheries Bill—combined with new sources of funding such as the Nature4Climate fund, our plans for nature recovery networks and much more besides—will put us on track to meet the obligations that we signed up to internationally. In addition, we have not only doubled our international climate finance to £11.6 billion, we have committed to spending a big chunk of that uplift on nature-based solutions. We are taking that core message to the world in the run-up to the COP.

Baroness Bennett of Manor Castle (GP) [V]: Further to the Written Answer that the Minister gave me on 25 June, which said that

"it is not possible to confirm on available data whether there has been an increase in"

raptor persecution during the Covid crisis, have the Government now caught up with the statistics? If not, I can direct him to the Raptor Persecution UK website, which reports today the total tally of

"44 hen harriers 'missing' or confirmed killed since 2018".

It notes that this is

"ten times more likely to occur over … land managed for grouse shooting".

Given this, why did the Government create a special exemption from Covid-19 health restrictions last weekend for driven grouse shooting and other shooting? Should they not instead ban driven grouse shooting and the release of pheasants for shooting, as an emergency measure to tackle the crisis that this report identifies?

Lord Goldsmith of Richmond Park (Con) [V]: We are aware of reports that there has been an increase in wildlife crime, particularly that associated with raptor persecution, during lockdown. Raptor persecution is one of the UK's six wildlife crime priorities and we understand that there are a number of criminal investigations ongoing. However, I am afraid that it is not yet possible to confirm, on available data, whether there has been an increase. I would welcome access to the report that the noble Baroness mentions. On the Government's decision last week, she will note that it exactly mirrors decisions taken by the Labour Government in Wales and the SNP in Scotland, and is not—as has been reported—a special dispensation for any particular form of activity.

The Senior Deputy Speaker (Lord McFall of Alcluith): My Lords, the time allowed for this Question has elapsed.

Business of the House

Timing of Debates

12.52 pm

Moved by ***Baroness Evans of Bowes Park***

That the debate on the motion in the name of Lord True set down for Wednesday 23 September be limited to 4½ hours and not 3 hours.

Lord Cormack (Con): My Lords, I do not want to detain the House for more than a few seconds, really. While I am grateful that there is to be a debate on the negotiations with our European friends and former partners, I regret the fact that it is not on the Floor of the House. There is a strong tradition in your Lordships' House that important constitutional issues are debated on the Floor of the House. I cannot think of any more important issue, particularly in the light of very recent announcements. Therefore, while I thank my noble friend for the opportunity to have the debate. could we not have a guarantee that, within a short space of time, there will be a full day's debate on the Floor of your Lordships' House?

The Lord Privy Seal (Baroness Evans of Bowes Park) (Con): The debate will take place in Grand Committee because we need to debate SIs on the Floor of the House that day. Obviously, all noble Lords will be aware—because many are participating—that we have an extremely heavy legislative agenda, which we are working through together. However, we recognise that many noble Lords have requested a debate on this topic so we have come to this arrangement in order to facilitate it.

Motion agreed.

Immigration and Social Security Co-ordination (EU Withdrawal) Bill

Order of Commitment

12.54 pm

Moved by ***Baroness Evans of Bowes Park***

That, if the bill's Committee stage is not concluded by the rise of the House on Wednesday 16 September, the bill be reported from the Committee of the Whole House in respect of proceedings up to that date; and that, for the remainder of the bill, the order of commitment of 22 July 2020 be discharged and the bill be committed to a Grand Committee.

The Lord Privy Seal (Baroness Evans of Bowes Park) (Con): My Lords, on behalf of my noble friend Lady Williams, I beg to move the Motion standing in her name on the Order Paper.

Motion agreed.

Pension Protection Fund (Moratorium and Arrangements and Reconstructions for Companies in Financial Difficulty) Regulations 2020

Motion to Approve

12.54 pm

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

That the Regulations laid before the House on 6 July be approved.

Relevant document: 23rd Report from the Secondary Legislation Scrutiny Committee. Considered in Grand Committee on 14 September.

The Parliamentary Under-Secretary of State, Department for Work and Pensions (Baroness Stedman-Scott) (Con): My Lords, in moving this Motion I should clarify remarks I made during the debate on these regulations, which took place in Grand Committee on Monday, concerning their application to certain charitable incorporated organisations. Following the making and laying of these regulations, the Department for Digital, Culture, Media and Sport made the Charitable Incorporated Organisations (Insolvency and Dissolution) (Amendment) (No. 2) Regulations 2020, which disapplied Section A51 of the Insolvency Act 1986 in relation to charitable incorporated organisations. Section A51 was cited in the making of the SI before the House, which means that as a result of the DCMS regulations the provisions in this SI have not applied to charitable incorporated organisations since 13 August 2020. This does not

affect the validity of the powers used to make these regulations; the powers applied to charitable incorporated organisations at the time this SI was made. Likewise, its application to charitable incorporated organisations until 13 August is not affected.

The legal effect of the DCMS SI is one of implied repeal of the provisions from that date onwards. So far as they apply to charitable incorporated organisations, a legal position, we think, is clear. The Department for Digital, Culture, Media and Sport has since indicated in a memorandum to the Joint Committee on Statutory Instruments its intention to bring forward legislation, at the next available opportunity, to correct the position to that reflected in the regulations before the House today.

Baroness Smith of Basildon (Lab): My Lords, I am grateful to the Minister, but I cannot have been the only one in your Lordships' House struggling to follow the information she gave to us. I was not 100% clear because she said that the "legal position, we think, is clear". I do not know whether that means "We are not sure whether it is clear; we only think it is clear", or whether those who debated this in Committee have been made aware of the information she has brought before your Lordships' House today.

I have not fully understood the implications of everything she said—I do not know whether other noble Lords have. It may be that it has no material impact, but maybe it does. Before we agree this Motion today, I wonder whether she ought to consult those who were in that Committee so that everyone who debated the regulations is clear that there is no material difference, given the rather lengthy and complex explanation she has given today.

Baroness Stedman-Scott (Con): I am happy to respond to the noble Baroness's points; this is, indeed, a complex matter. I am confident that the legislation we intend to bring forward at the earliest opportunity will clarify matters, but I will consult with the Members of the Grand Committee to make sure that everybody is clear about the impact of this change.

The Senior Deputy Speaker (Lord McFall of Alcluith): The Question is that the Motion in the name of the noble Baroness, Lady Stedman-Scott, be agreed to. As many—

Baroness Smith of Basildon (Lab): My Lords, I think that the Minister has just said that, before agreeing it, she will take it back to Members to see if they are happy with it because there is some complication. That was the implication of what she said: she was not going to put it forward for a vote today until she had consulted people.

She is checking with the Clerk so I will keep talking for a second while she gets advice. However, I am still not clear. I thought she said she was agreeing to take it back and consult with Members who were on that Committee.

Baroness Stedman-Scott (Con): I am advised that I am not able to withdraw the Motion, but I am quite happy to make sure that people understand exactly what is meant. I beg to move.

The Senior Deputy Speaker (Lord McFall of Alcluith): The Question is that the Motion in the name of the noble Baroness, Lady Stedman-Scott, be agreed to. As many as are of that opinion will say "Content"; to the contrary "Not content".

Noble Lords: Content.

The Senior Deputy Speaker (Lord McFall of Alcluith): The Contents have it.

Noble Lords: Not Content.

Baroness Smith of Basildon (Lab): My Lords, I will not necessarily push this to a vote at the moment, but I say to the Minister that the reason why she says it cannot be withdrawn is that it comes into force today. If she has not consulted Members of the Committee on something so complex before bringing a Motion to your Lordships' House today, there is a serious issue here. Are these "made affirmative" regulations, which come into force whether we debate and agree them or not? I am not clear. I have to be honest that I am completely at a loss as to what is happening at the moment, but it seems that there is some question mark over the validity of this and whether it is correct. I may be wrong and everything may be in order. However, it was complex and I did not fully understand what she was putting forward today.

Baroness Stedman-Scott (Con): I advise that they are "made affirmative" and to be dealt with today. I can only reaffirm what I have said: it is a complex matter but I am confident that the legislation we intend to bring forward at the earliest opportunity will clarify matters.

The Senior Deputy Speaker (Lord McFall of Alcluith): If that is of sufficient clarity, I will ask the Question.

Motion agreed.

1 pm

Sitting suspended.

Arrangement of Business

Announcement

1.06 pm

The Deputy Speaker (Lord Duncan of Springbank) (Con): My Lords, a technical difficulty has caused a little delay. Noble Lords will be pleased to know that the difficulty now appears to have been resolved. The Hybrid Sitting of the House will now resume.

Coronavirus

Commons Urgent Question

The following Answer to an Urgent Question was given on Tuesday 15 September in the House of Commons.

"Coronavirus exists only to spread, and yesterday the World Health Organization once again announced a record number of cases globally. France and Spain have both reported daily figures of over 10,000 positive cases and increasing hospitalisations. Here in the UK,

[Lord Duncan of Springbank]
we saw around 2,600 new cases yesterday, and last week medical advisers advised that R is above 1. The epidemic is growing.

There are signs that the number of cases in care homes and the number of hospitalisations is starting to rise again, so last week we acted quickly, putting in place new measures—the rule of six, which came into force yesterday. We do not do this lightly, but the cost of doing nothing is much greater.

Testing also has a vital part to play. Everyone in this House knows that we are doing more testing per head of population than almost any other major nation, and I can tell the House that we have now carried out over 20 million tests for coronavirus in this country. As we expand capacity further, we are working round the clock to make sure that everyone who needs a test can get a test. The vast majority of people who use our testing service get a test that is close to home, and the average distance travelled to a test site is now just 5.8 miles—down from 6.4 miles last week; but the whole House knows that there are operational challenges, and we are working hard to fix them.

We have seen a sharp rise in people coming forward for a test, including those who are not eligible. Throughout this pandemic, we have prioritised testing according to need. Over the summer when demand was low, we were able to meet all requirements for testing, whether priorities or not, but as demand has risen we are having to prioritise once again. I do not shirk from decisions about prioritisation. They are not always comfortable, but they are important. The top priority is, and always has been, acute clinical care. The next priority is social care, where we are now sending over 100,000 tests a day, because we have all seen the risks this virus poses in care homes. We will set out in full an updated prioritisation, and I do not rule out further steps to ensure our tests are used according to those priorities. It is a choice that we must make.

Finally, to defeat this virus in the long term needs effective vaccines and treatments. I am delighted to say that over the weekend the trial of the Oxford vaccine restarted, and I can tell the House that we will now be trialling a promising new antibody treatment on coronavirus patients in the UK. The challenges are serious. We must work to overcome them, optimistic in the face even of these huge challenges, and to keep this deadly virus under control."

1.07 pm

Baroness Thornton (Lab): My Lords, the Prime Minister claimed again today that the UK does more Covid tests than anywhere else in Europe. This is not true. Denmark does almost twice as many per 1,000 people, and the UK figure includes antibody tests, which others do not do, and is based on when tests are sent out and not on results. So it is more hyperbole.

I hope today we can look at facts. There is now a backlog of 185,000 swabs and tests are being dispatched abroad. Can the Minister advise the House how many tests have been sent abroad, to which countries, the processing time and the void rates? If the Minister does not have that information at his fingertips today, can he please to write to me and put the answer in the Library?

Secondly, Coronavirus infection rates among middle-aged people have reached the same level now as rates among those in their 20s two weeks ago, and Professor Neil Ferguson has warned us that infections are back where they were in late February. So what discussions have the Government had with the Joint Biosecurity Centre and the CMO about raising the alert level from three to four?

The Parliamentary Under-Secretary of State, Department of Health and Social Care (Lord Bethell) (Con): I am grateful for the noble Baroness's questions. In terms of European rates, Britain is way ahead of many of its fellow countries in Europe. On Friday last week, we did 240,312 tests. It is a massive number and, I believe, the highest we have done on any day. This is a huge achievement and I pay testimony to those in the NHS and in test and trace who have contributed to that figure.

In terms of tests being sent abroad, our testing environment and economy are part of an international system. Reagents, swabs, consumables and machines are regularly exchanged between countries and I pay tribute to the enterprise and energy of the NHS and the test and trace scheme for using whatever schemes they can find in order to process the tests accurately, efficiently and promptly. I will be glad to send the noble Baroness details of the rates which she asked for.

In terms of the increase in prevalence among the middle-aged—yes, we are deeply concerned about this. As I have said at the Dispatch Box before, as night follows day, rates progress from the young to the middle-aged and, I fear, to the elderly. We are keeping a close eye on this progress.

Lord Scriven (LD): My Lords, we know that the Minister is an avid listener of Radio 4's "More or Less." In today's episode, Professor Alastair Grant of the University of East Anglia pointed out that 70% of coronavirus test results were completed within 48 hours at the start of August. Looking at official figures and analyses, he pointed out that by Monday, it was just 11.8%. The Minister may dispute the exact figures, but the trend clearly is down, which is worrying when we need an effective trace and isolate system to trace and isolate people as fast as possible. Can he tell the House and the country by what date all results of coronavirus testing will be turned around within a maximum of 24 hours?

Lord Bethell (Con): My Lords, I am indeed an avid listener of "More or Less," although I have not heard the episode to which the noble Lord referred. Can I just explain that not all tests need to be done within 24 hours? There are tests that are done for surveillance, to support clinical trials and to help our investigation into vaccines and therapeutics. Those kinds of tests have a much longer turnaround time, and that is entirely appropriate and will be built into the numbers to which "More or Less" referred. Some 89.6% of in-person test results were received the next day after tests were taken; those are the ones that need fast turnaround times and the ones that will be delivered promptly.

Lord Balfe (Con): I want to talk about care homes and hospital in-patients, many of whom have been marooned for literally months. One of the problems is the testing regime. Could I ask the Minister, first, to give priority to relatives of people in care, so that they can be tested and go in and see their loved ones? Secondly, there is clearly a problem with a lot of the staff, because they are moved around a lot. Can the Minister undertake that his department will consult UNISON, the main trade union for those staff, and see what it can do to open things up so that people in care homes and hospitals are able to be visited again?

Lord Bethell (Con): My Lords, I note my noble friend's comments. However, I flatly deny that the social care system and social care homes have been in any way marooned. We have made a profound commitment, particularly in the testing environment, to supporting social care. One hundred thousand tests a day out of our capacity of between 200,000 and 250,000 are ring-fenced for social care and delivered to social care every day. Many of the challenges that we have for walk-in and drive-through testing centres are exactly because we are so committed to the ring-fenced testing for social care. That is a commitment that we are proud of and remain committed to.

I want to clarify with my noble friend that it is not an appropriate use of government test and trace capacity for relatives to use test and trace as a convenient method to find out whether they have the disease before they go to see relatives. That is not an appropriate use and not in the guidance.

As for UNISON, we are very much engaged with the union and are supporting staff in every way we can. However, I very much take on board my noble friend's notes, and we will maintain that correspondence.

The Lord Bishop of St Albans: My Lords, can the Minister clarify one or two issues? Does the rule of six mean that it will no longer be possible to have any public marking of Remembrance Sunday outdoors this year? Will he also clarify whether this effectively means that all public protests and demonstrations are now illegal?

Lord Bethell (Con): I thank the right reverend Prelate for his question. I thank greatly those local authorities and charities that are putting in place Remembrance Day service arrangements that will abide by the new rule of six. Some of those guidelines are being written now, and I will be glad to share the guidelines with the right reverend Prelate when they are published. One thing I note is that virtual attendance at these services and the use of virtual remembrance books will be an aspect of Remembrance Day this year.

Lord Bilimoria (CB) [V]: My Lords, Professor William Hanage of the TH Chan School of Public Health at Harvard University has said of the lack of mass testing that:

"By the time you become aware of the problem it is likely to already be much larger. You are not going to detect outbreaks if you don't look for them."

He also said that you need

"very good diagnostic tests as well as tests that may be less sensitive but can be used more frequently."

I am totally with the Government in their aim for mass testing, but would the Minister agree with Professor Alan McNally of the University of Birmingham that the £500 million already announced

"could have funded around 33 million standard swab PCR tests that could have been run in well-equipped university labs"?

Why is that not happening? On rapid saliva tests, the Abbott Laboratories' BinaxNOW $5, 20-minute test has been FDA approved, with 10 million tests produced this month and 50 million to be produced next month. Why are we not getting on with it? We need to do this really urgently. Does the Minister agree?

Lord Bethell (Con): I completely support the noble Lord's commitment to mass testing. We are looking at ways in which to use less sensitive machines to provide the kind of prophylactic testing to which he alludes. I thank very much indeed all universities for their contribution to our testing programme.

Lord Triesman (Lab) [V]: My Lords, in the course of the pandemic, a significant number of contracts with private companies have been signed without tender and a number of these have been in areas such as PPE and test and trace. Most appear to have failed to deliver essential services and equipment—

Baroness Penn (Con): I am afraid that we cannot hear the noble Lord. Maybe he would like to get closer to his microphone and try again.

Lord Triesman (Lab) [V]: I do not think I can get much closer to the microphone without eating it.

In the course of the pandemic, a significant number of contracts have been issued to private companies without tender. What is the value of the contracts that have been signed without competitive tender? Will the Minister place in the Library a list of all such contracts, their value, the companies involved and their ultimate beneficial owners?

Lord Bethell (Con): That list is already published. I would be glad to send the noble Lord a link.

Lord Lansley (Con) [V]: My Lords, one of the big risks this autumn is from students going to university and, perhaps more particularly, returning from university in the run-up to Christmas. How has the guidance been prepared with universities to try to mitigate that risk? I know that Cambridge University is looking even at the possibility of testing all its students on a weekly basis.

Lord Bethell (Con): My Lords, I thank colleagues at the DfE for their hard work in providing guidelines to universities and to vice-chancellors for implementing thoughtful arrangements for the return of students. It is very much the ambition of this Government that universities are brought back to life and that education and the impact of their work continues. None the less, it is not just the campus environment that concerns us—it is also the off-campus activities of students. For that, we look to universities to provide pastoral guidance

[Lord Bethell]
to students to ensure that they are socially distanced and behave responsibly. We are keeping an eye on those behaviours and, should outbreaks or prevalence rise among students, we will have to review those guidelines.

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

1.18 pm

Sitting suspended.

Arrangement of Business

Announcement

1.30 pm

The Deputy Speaker (Lord Duncan of Springbank) (Con): My Lords, hybrid proceedings will now resume. Some Members are here in the Chamber, respecting social distancing, others are participating remotely, but all Members will be treated equally. If the capacity of the Chamber is exceeded, I will immediately adjourn the House.

I will call Members to speak in the order listed in the annexe to today's list. Members are not permitted to intervene spontaneously; the Chair calls each speaker. Interventions during speeches or before the noble Lord sits down are not permitted. During the debate on each group I invite Members, including Members in the Chamber, to email the clerk if they wish to speak after the Minister. I will call Members to speak in order of request and will call the Minister to reply each time.

The groupings are binding and it will not be possible to degroup an amendment for separate debate. A Member intending to press an amendment already debated to a Division should have given notice in the debate. Leave should be given to withdraw amendments. When putting the question, I will collect voices in the Chamber only. If a Member taking part remotely intends to trigger a Division, they should make this clear when speaking on the group.

Immigration and Social Security Co-ordination (EU Withdrawal) Bill

Committee (4th Day)

1.31 pm

Relevant document: 11th Report from the Constitution Committee

Amendment 56

Moved by ***Lord Dubs***

56: After Clause 4, insert the following new Clause—

"Children in care and children entitled to care leaving support: entitlement to remain

(1) Any child who has the right of free movement removed by the provisions contained in Part 1 of this Act, and who is in the care of a local authority or entitled to care leaving support, is deemed to have and be granted indefinite leave to remain within the United Kingdom under the EU Settlement Scheme ("the Scheme").

(2) The Secretary of State must, for the purposes of subsection (1), issue guidance to local authorities in England, Scotland, Wales and Northern Ireland setting out their duty to identify the children of EEA and Swiss nationals in their care or entitled to care leaving support.

(3) Before issuing guidance under this section the Secretary of State must consult—

(a) the relevant Scottish Minister;

(b) the relevant Welsh Minister; and

(c) the relevant Northern Ireland Minister.

(4) The Secretary of State must make arrangements to ensure that personal data relating to nationality processed by local authorities for purposes of identification under subsection (1) is used solely for this purpose and no other immigration control purpose.

(5) Any child subject to subsection (1) who is identified and granted indefinite leave to remain status after the deadline for applications under the Scheme will be deemed to have had such status and all rights associated with that status from the time of the Scheme deadline.

(6) This section comes into force on the day on which this Act is passed and remains in effect for 5 years from the day of the deadline of the Scheme.

(7) For the purposes of this section, children "in the care of a local authority" are defined as children receiving care under any of the following provisions—

(a) section 20 of the Children Act 1989 (provision of accommodation for children: general);

(b) section 31 of the Children Act 1989 (care and supervision);

(c) section 75 of the Social Services and Well-being (Wales) Act 2014 (general duty of local authority to secure sufficient accommodation for looked after children);

(d) section 25 of the Children (Scotland) Act 1995 (provision of accommodation for children);

(e) Article 25 of the Children (Northern Ireland) Order 1995 (interpretation); and

(f) Article 50 of the Children (Northern Ireland) Order 1995 (care orders and supervision orders).

(8) For the purposes of this section, children "entitled to care leaving support" means a child receiving support under any of the following provisions—

(a) paragraph 19B of Schedule 2 to the Children Act 1989 (preparation for ceasing to be looked after);

(b) section 23A(2) of the Children Act 1989 (the responsible authority and relevant children);

(c) section 23C(1) of the Children Act 1989 (continuing functions in respect of former relevant children);

(d) section 104 of the Social Services and Well-being (Wales) Act 2014 (young people entitled to support under sections 105 to 115);

(e) sections 29 and 30 of the Children (Scotland) Act 1995 (advice and assistance for young persons formerly looked after by local authorities); and

(f) Article 35(2) of the Children (Northern Ireland) Order 1995 (persons qualifying for advice and assistance)."

Member's explanatory statement

This new Clause aims to ensure that the children of EEA and Swiss nationals who are in care, and those who are entitled to care leaving support, are granted automatic Indefinite Leave to Remain under the EU Settlement Scheme to ensure they do not become undocumented.

Lord Dubs (Lab) [V]: My Lords, Amendment 56 has cross-party support in this Committee and in the House of Commons, where it was debated some time ago. Its purpose is to fast-track children in care and care leavers through the EU settlement scheme and

grant them settled status. I am grateful to the Children's Society and other NGOs for their help in preparing for this debate. It is my contention that very little decisive action has been taken to ensure that none of these children becomes undocumented as the scheme draws to a close in June next year. By the Government's own estimates, 5,000 looked-after children and 4,000 care leavers need to regularise their immigration status because the UK is leaving the EU. The children in this group face three distinct problems: their identification, the problems they may have in applying, and whether they have settled or pre-settled status. I will deal with each of these in turn.

An analysis by the Children's Society found that, in January this year, 153 out of 211 local authorities across the UK had identified just 3,612 EU, EEA or Swiss looked-after children and care leavers. Even with a margin of error factored into these statistics, that is well off the mark of the estimated total of 9,000. The Government have stated that it is the duty of local authorities to gather information and apply to the scheme on behalf of children in care and to assist care leavers in applying. I am well aware of the enormous pressure on local authorities, particularly on social workers, and I shall argue later that this amendment, if accepted, will actually lessen the burden on social workers rather than increase them.

Evidence given through research by Coram shows mixed practice among local authorities, with fears that some are not totally aware of their duties as set out in the guidance and are making no attempt to identify children in their care who need to regularise their status. Even before we come to the question of rates of applications for status received, there is the issue of oversight. What more are the Government going to do to ensure that children are being identified as needing to regularise their status before the EU settlement scheme draws to a close in 10 months' time?

Turning to the problems of applying, of the 3,612 children in care and care leavers identified by local authorities in the Children's Society's analysis, only 11% have received either pre-settled or settled status. Evidence from the Greater Manchester Immigration Aid Unit shows that this group is having difficulties acquiring nationality documents and evidencing their length of residence in the UK in order to apply for settled status. Social workers, who are hard pressed enough, are often having to spend their time chasing various European embassies to acquire the appropriate paperwork. Everyone should agree that this is not the best use of their time, particularly in the present circumstances.

If the amendment is accepted, social workers could apply straight to the Home Office, without having to pursue the case through various European embassies. That would speed up the process and lessen the total burden on social workers. The children I am talking about have led complex lives. They often require expert legal and immigration advice to understand their options, including their eligibility for British citizenship. The Government should be streamlining this process for children in their care, not making it more difficult. Would the Minister consider lowering the evidential burden to ensure that these children receive settled status?

The third hurdle faced by some of these children is that, if they receive pre-settled, rather than settled, status, they will be in a vulnerable position. Children in care should not be given a temporary immigration status that expires. In five years' time, when a young person with pre-settled status needs to reapply for settled status, it may well be that their social worker has changed, that they are no longer in care, or that grant-funded projects to support application have ended. The child surely has a right to apply for status under the EU settlement scheme either independently or in line with their parents' status. For obvious reasons, it may be difficult for children in care to claim status linked to their parents' situation. This right should be extended for children in care, so that they can apply in line with their corporate parents—the local authority—and receive permanent immigration status. What safeguards are the Government putting in place to ensure that children in care and care leavers do not face a cliff edge when their pre-settled status expires and they reapply for settled status?

I am aware that the Home Office has sought to alleviate fears by stating that these children will be able to apply past the EUSS deadline of June 2021. What this means in reality is that children not identified and assisted through the EU settlement scheme would still be undocumented and in a difficult position. As is true of all undocumented children in the UK, this group will run into issues in adulthood when trying to rent a property, applying for a university grant or they are required to pay for NHS treatment while their immigration status is being regularised. Care leavers will still have to deal with a mountain of difficulties by themselves in order to secure the status they are owed. It can never, ever be in a child's best interests to be undocumented. The Government have been warned that failure to act will result in this for children in the care of authorities across the UK.

To conclude, it is important to see that the amendment would place a duty on local authorities to identify children in their care who need to regularise their status. Within the guidelines issued to local authorities and Home Office workers, it would lower the evidential burden needed for children to apply and propose a fast track through the EU settlement scheme. It would end the concept of pre-settled status and ensure that all children had settled status only. I beg to move.

The Earl of Dundee (Con) [V]: My Lords, I support Amendment 56 in the name of the noble Lord, Lord Dubs. As he just explained, the proposed new clause would ensure that the children of EEA citizens and Swiss nationals who are already in care, along with those entitled to care, are able to stay in the United Kingdom under the EU settlement scheme. Where otherwise would these children go? Therefore, in guaranteeing their protection, this amendment is both logical and necessary. I am sure that the Minister will agree.

Lord Kerr of Kinlochard (CB) [V]: Like the noble Earl, Lord Dundee, my name is on this amendment and, like him, I can be very brief in speaking to it, because the noble Lord, Lord Dubs, gave a masterly explanation of it.

[Lord Kerr of Kinlochard]

We are dealing here with a small problem. The amendment would ensure that children in care do not fall into a crack, with their status undetermined and undocumented, now or in the future. The numbers involved are not huge; as the noble Lord, Lord Dubs, explained, they are probably in the thousands. Nobody would accuse the Government of deliberately creating this crack into which these young people might fall. It is accidental that this has emerged. I would not want to suggest that the Government have been remiss in letting it arise, provided, of course, that they feel able to do the decent thing and accept the overwhelming case that the noble Lord, Lord Dubs, made and either accept his amendment or produce a similar one that does the trick. It is the decent thing to do and I am convinced that the Government will want to do that to prevent the children falling into the crack that has accidentally been created.

I have one other point, and it is one I fear I may be becoming tedious on—perhaps I am always tedious. It is about Lesbos and the Moria camp. Yesterday in Berlin, the German ruling CDU, CSU, SPD coalition announced its agreement that Germany would take 2,750 homeless refugees from Lesbos, including 150 unaccompanied children and, in addition, children with serious illnesses and their immediate families. I asked what we will do about the disaster on Lesbos twice in Committee and the Minister did not feel able to pick up my remarks on either occasion, so this time I shall ask her four simple, straightforward questions. I hope she will be able to answer them.

First, does she agree that there would be reputational benefit for this country, at a time when we need friends, in doing what the Germans are doing? Secondly, does she agree that there is a strong humanitarian case for our doing so? Thirdly, does she agree that it is an emergency case, given that more than 14,000 people, including more than 400 unaccompanied children, are sleeping rough around the ruins of the burnt-out camp? Fourthly, will she please tell us, at the end of the discussion on this amendment, what the Government are going to do about it?

1.45 pm

Lord Bruce of Bennachie (LD) [V]: My Lords, I support Amendment 56. I associate myself with the remarks of the noble Lord, Lord Kerr, in connection with the situation in Lesbos, and I hope the Minister will be able answer his questions. I commend the proposers of the amendment, in particular the noble Lord, Lord Dubs, in his consistent championing of vulnerable child refugees and vulnerable children in general.

We all know that children in care are especially disadvantaged, almost by definition, and there are too many tragic and at times disgraceful stories of the suffering of such children. The commitment to expand foster care is testimony to the fact that being looked after by the state is a last resort. The state is not usually the best parent a child can have, but for some it is the only one. That puts extra responsibility on us when rules change dramatically, as they are because of Brexit, to go the extra mile to ensure that these children are not further disadvantaged as they embark on adult life. It is and should be the responsibility of the state as parent to ensure that children without parents and in the care of the state get the support they need to secure their status. This amendment sets out to secure this.

The Children's Society's excellent briefing, to which the noble Lord, Lord Dubs, referred, highlights that more than 3 million people have completed applications, including more than 400,000 children. However, the society points out that the children's rate is low compared with that for adults. I will not repeat its statistics, but they clearly point to the likelihood that thousands of children could be left undocumented and potentially stateless without the proactive measures proposed in the amendment. Although I say, "thousands of children", and in the grand scheme of things the numbers are not that large, these are real people with real needs.

This could further blight the lives of young people who will be struggling to build their lives in a post-Covid, post-Brexit environment. The last thing they will need is to be confronted, at a critical point in their lives when seeking employment or other roles, with a challenge to their status because they did not know and were not properly informed of the need to secure settled status or helped to go about it. Because, on the face of it, this is not an urgent matter, overstretched local authorities might postpone support as a priority, but surely it is better to address it while the issue is fresh rather than wait until time has elapsed, people have forgotten, the circumstances have been overlooked and the possibility of people finding themselves on the wrong side of their status is therefore enhanced at a later stage. None of us wants to see tragic headlines about children facing either deportation or lack of identity and status.

I urge the Government to accept the amendment and show that they are on the side of young people. I accept that it is not their intention to create these problems, but, given the opportunity of this amendment, I hope they will recognise that these young people do not need additional barriers to their progress in life and that this amendment is to be commended.

Baroness Lister of Burtersett (Lab): My Lords, I strongly support the amendment. The Government should be doing all they can to ensure that the estimated nearly 10,000 looked-after children and care leavers are registered. It would seem that the Children's Society has done more to identify these children than the Government have. It is not sufficient to say that they will allow late applications, welcome as that is, because that means these children will, as has already been said, be undocumented and could then run into all sorts of problems under the hostile/compliant environments. Will the Minister undertake to issue a formal policy statement and guidance that confirms formally what has been said about late claims? Stakeholder groups such as the Children's Society and the3million are concerned that it is not there in a formal way.

It is not enough to say that it is the responsibility of local authorities and leave it at that, with only non-statutory guidance. According to the Children's Society and the3million, many local authorities seem unaware of this, as my noble friend Lord Dubs said. To reinforce his questions, will the Minister say exactly what the Government are doing to ensure that local authorities are aware of their responsibilities; to support local

authorities to fulfil those responsibilities, because we know the pressure they are under; and to ensure that local authorities are doing all they can to identify and support children for whom they have a responsibility? The evidence suggests that many of these hard-pressed local authorities are not doing what is required.

The noble Lord, Lord Kerr, said that to accept this amendment would be to do the decent thing. Indeed, it would, and I do not think it is tedious at all for him to remind noble Lords about what is happening in Lesbos. It is decent that he has done that, and I hope the Minister will answer his questions in a decent way.

Baroness Bennett of Manor Castle (GP) [V]: My Lords, it is a pleasure to follow all the noble Lords who have spoken on this amendment thus far. I particularly commend the noble Lord, Lord Dubs, as others have, for his tireless work in this area.

Most of the questions have been asked and most of the issues have been canvassed, so I will be brief. I think everybody accepts that these are acutely vulnerable children. They do not have a parent who is able to look out for them; the state is their guardian, and that creates huge humanitarian responsibilities for the state that we expect our Government to live up to.

I also echo the comments of the noble Lord, Lord Kerr: where is the Statement and the action from the Government on the situation in Lesbos? We have seen significant action from European Governments, particularly the German and French Governments, so I join others in saying that I very much hope that we will hear an answer from the Minister on what the Government are going to do to help those intensely vulnerable people.

Baroness Hamwee (LD) [V]: My Lords, I have added my name to this amendment. The Government have given us an example of the reasonable grounds there may be for submitting a late application to the EU settled status scheme, but in this case the applicant is a child whose parent or guardian failed to apply on their behalf.

This amendment is about children of a corporate parent: the state. As we have heard, the Home Office estimates that there are 5,000 looked-after children and 4,000 care leavers who would need to apply. Not only are these children considered vulnerable—a word we are applying quite widely to very different situations—but in this context they have rights which it is not possible, or certainly not easy in practical terms, for them to exercise. Their parent, the state, is in a rather different position from a flesh-and-blood mother or father.

This is a very nifty amendment. It means that social workers would not have to chase after paperwork; they are very overloaded, as we have heard. It does not leave children in the precarious position of having to apply late, or of being undocumented, when they would be exposed to ineligibility for NHS treatment that is not charged for, and there would be no cliff edge at the end of pre-settled status. I think I am right in saying that the five-year period in subsection (6) of the proposed new clause would mean that it would apply to babies who are currently, or by next June, under five years old.

As the noble Lord, Lord Kerr, said, this is not too hard to sort out—at least, it does not seem so to me. I hope the Minister will agree. Like others, I think that the noble Lord's questions are relevant to today, if not relevant precisely to this amendment. They are very important. I look forward to supporting this amendment.

Lord Kennedy of Southwark (Lab Co-op): My Lords, I fully support Amendment 56, moved by my noble friend Lord Dubs, which would add a new clause to the Bill. This clause would provide for children who are EEA and Swiss nationals and in care, along with those entitled to care-leaving support, to be granted automatic indefinite leave to remain under the EU settlement scheme.

This amendment has wide cross-party support. The idea behind it had support in the other House, and it has that today. Every speaker so far, from different sides of the House, has spoken in support of the amendment. I am sure the Minister has taken that on board and will want to give us a positive response.

As my noble friend Lord Dubs said, there are vast numbers of these children and the amendment would ensure that none of them become undocumented. Identification is a serious problem, as my noble friend outlined. The different practices adopted by different local authorities is a real problem in itself.

The amendment would speed up the process and enable social workers, who do a fantastic job—we all know that they are under extreme pressure—to apply directly to the Home Office without having to deal with consulates and embassies and all the bureaucracy you have in dealing with another country when trying to get the right documents identified. You would avoid all that work, paperwork and bureaucracy, and go straight to the Home Office.

My noble friend Lord Dubs also asked the Minister about the safeguards in place for children who have pre-settled status, and that question deserves a careful response. As the noble Earl, Lord Dundee, said, this is a sensible amendment that really deserves a positive response from the Government.

I agree with all the remarks of the noble Lord, Lord Kerr of Kinlochard, on this amendment. It is the decent thing to do for these children. We are talking about a relatively small number of children, but it would ensure that nobody falls into the trap of becoming undocumented. As the noble Lord, Lord Bruce of Bennachie, said, children in care face all sorts of additional challenges; they are not with their parents and the local authority in effect is looking after them. All this amendment seeks to do is to ensure that they do not have further issues to deal with; a young person leaving care, or in many years' time, may have the problem of being undocumented and unable to establish their identity properly. This is a very small measure which the Government should give way on.

Like my noble friend Lady Lister of Burtersett, I commend the work of the Children's Society to identify and raise the plights of these children. The society has campaigned to ensure that they have protection and that their problems are not added to by becoming undocumented. As I say, it is the decent thing to do. Equally, I am sure that we will get a response from the Minister on the amendment, and on the issue in Lesbos.

[Lord Kennedy of Southwark]

I should also draw the attention of the House to the fact that I am a vice-president of the Local Government Association. Local authorities do a fantastic job. Certain authorities, particularly Kent, are under particular pressure regarding children's issues, but they generally do a fantastic job. This is one small measure which the Government could accept to help authorities and make it a bit easier for them in the work that they do. I hope that the Minister can give a positive response to us today, and maybe we can come back to this on Report.

The Minister of State, Home Office (Baroness Williams of Trafford) (Con): My Lords, I thank the noble Lord, Lord Dubs, for moving his Amendment 56, which calls for children in care and care leavers who have their right of free movement removed by the Bill to be granted indefinite leave to remain.

May I say at the outset that I absolutely agree with the noble Lords, Lord Dubs and Lord Kennedy, and others that no child should be undocumented, and with the noble Lord, Lord Kerr, that we should not create any cracks? So that I do not disappoint the noble Lord, Lord Kerr, yet again, I will immediately address the issues that he raised.

First, he asked if we should do as the Germans do. I think we should do as we do. As far as reputational risk is concerned, I do not think we should help these children because it has an influence on our reputation; I think we should help children because it is the right thing to do, and in fact this country has a very long history of helping children who need our support.

The noble Lord asked me if I agree that it is an emergency. Absolutely, I agree that it is an emergency. Of course, I also agree that it is a humanitarian issue. One could not fail to be moved by the plight that these children and their families sometimes go through.

The noble Lord then asked me the million-dollar question: what the Government are doing about it. On 22 April, the UK and Greece signed a joint historic migration plan that reaffirms our commitment to closer co-operation with Greece on a range of migration issues. On the direct help for some of those people on the Greek islands, we have given £500,000 for urgent humanitarian help for the most vulnerable.

2 pm

The noble Lord also asked me about Dublin family reunion cases for unaccompanied children affected by the fire. We remain fully committed to ensuring that eligible individuals seeking asylum in Europe, including unaccompanied children with family members in the UK, can continue to be transferred under the Dublin regulation until the end of the transition period. It might be helpful for the House to know that throughout the pandemic, the UK has continued to remain open to receiving Dublin transfers. I mentioned on Monday that three group flights from Greece have taken place in recent months—on 11 May, 28 July and 6 August. We continue to make arrangements with Greek officials to facilitate transfers of people we have accepted under the regulation, although I must make it clear that all arrangements to complete a transfer are the responsibility of the sending state.

The noble Lord asked whether the UK will accept resettlement of migrants in Greece to the UK. As he probably knows, we do not participate in the relocation within Europe scheme but we have refugee resettlement schemes that, crucially, provide safe and legal routes direct from refugee host countries for more than 25,000 vulnerable refugees in the greatest need of protection. We work closely with the UNHCR, which is the internationally recognised and mandated agency for dealing with refugees.

Having dealt with the questions of the noble Lord, Lord Kerr, which I could not go another Committee day without answering, I think I should also clarify our slight difference of views on Monday. Having looked at *Hansard,* I have realised what the issue was: I was talking about unaccompanied asylum-seeking children; he was talking about asylum seekers more generally. I hope that that is a clarification.

I want to acknowledge that this amendment is very well intentioned because it concerns the important issue of how, as we end free movement, we ensure that we protect the rights of a key vulnerable group—children in care and care leavers. The amendment does not achieve this but places that vulnerable group at greater risk of ending up without secure evidence, which is so important, of UK immigration status. We know from Windrush that a declaratory system, under which immigration is conferred automatically without providing secure evidence, does not work. The new clause would risk repeating that experience for this vulnerable group of children and young people, something the Government cannot support. What they want to do is focus their efforts—which noble Lords have talked about this afternoon—and resources on working closely with local authorities and other partners to ensure that these children and young people, like any other vulnerable group, get UK immigration status under the EU settlement scheme and the secure evidence they will need to prove their rights and entitlements for decades to come.

Since the full launch in March last year, we have had agreements and plans in place with local authorities to ensure this. Local authorities and, in Northern Ireland, health and social care trusts, are responsible for making an application under the scheme on behalf of an eligible looked-after child for whom they have parental responsibility by way of a court order. Surely, that order provides a date. Their responsibilities in other cases to signpost the scheme and support applications have also been agreed. These concern children for whom there is no court order but where the local authority has a clear interest in supporting the best interests of the child—for example, children accommodated by the local authority, children in need and care leavers.

I understand totally the concerns expressed by noble Lords about looked-after children and care leavers, and we must absolutely ensure that their corporate parents secure the best possible outcomes for them. We have therefore provided a range of support services such as the Home Office-run settlement resolution centre, open seven days a week, to ensure that local authorities and health and social care trusts can access help and advice when they need it. We have engaged extensively with relevant stakeholders such as the

Department for Education, the Local Government Association, the Ministry of Justice, the Association of Directors of Children's Services and equivalents in the devolved Administrations, just to understand and address the needs of looked-after children and care leavers and to ensure they are supported.

I should also say that guidance has been issued to local authorities regarding their role and responsibilities for making or supporting applications under the EU settlement scheme for looked-after children and care leavers. The Home Office is also holding teleconferences specifically for local authority staff responsible for making relevant applications in order to support them and provide a direct point of contact for them within the Home Office. As an illustration—and returning to the point made by the noble Lord, Lord Dubs—the EUSS safeguarding user group network of voluntary organisations has helped more than 200,000 at-risk and vulnerable people to apply to the scheme.

In addition, the Home Office has provided £9 million of grant funding to 57 voluntary organisations across the UK to support vulnerable citizens in applying to the scheme. I have alluded to several organisations specialising in that support for vulnerable children and young people. We have now committed a further £8 million for this work, allowing charities and local authorities to bid for grant funding to provide support to vulnerable people and ensure that nobody is left behind.

Finally, the noble Baroness, Lady Lister, asked about a formal policy statement on late claims. Early next year, we will issue guidance—not on an exhaustive list because that would be restrictive in its own right—on the areas where a late claim might be valid. She talked about children who are in local authority care. There could be women in coercive or controlling relationships—absolutely—and they could be a cohort. The guidance will be issued early next year but for now, we want people to apply to the scheme.

I hope that, with those explanations, the noble Lord, Lord Dubs, will be happy to withdraw the amendment.

The Deputy Chairman of Committees (Lord Bates) (Con): We have received a number of requests to speak after the Minister: from the noble Lord, Lord Kerr, the noble Baronesses, Lady Hamwee and Lady Lister, and the noble Lords, Lord Paddick and Lord Kennedy. I will call each Member in turn and then invite the Minister to respond.

Lord Kerr of Kinlochard (CB) [V]: I am grateful to the Minister for responding to my questions. I guess that I am rightly rebuked for suggesting that a relevant factor in considering what we should do about the victims of Lesbos is our reputation around the world. I suppose it is a case of déformation professionnelle. I used to be a diplomat and I am therefore keen on our trying to recover some of our lost reputation. Perhaps the Government—less the noble and learned Lord, Lord Keen—are less keen today. Perhaps they do not recognise the extent of the reputational damage. Anyway, I agree that that is not strictly relevant.

The Minister agreed that there is an emergency case for helping and an overwhelming humanitarian case for helping. But—I hope the Minister will forgive my saying so—she seems to be saying that we propose to do nothing at all about it. Everything that she cited—the money in April and the flights in July and August—took place before the fire on the island of Lesbos and before these 14,500 people, who are now sleeping rough, were displaced. If she accepts that there is a new urgent humanitarian case then it would be very good if the Government could do something about it.

I note that a number of people spoke on the same lines as me about this problem, so I hope the Minister will take back to Whitehall the idea that there seems to be a feeling in this House that we ought to be doing something to help the victims of Moria.

Baroness Williams of Trafford (Con): My Lords, the noble Lord can probably tell that I have never been a diplomat. However, I take his point in absolutely good faith. It is probably both reputational and our duty to help those in need around the world.

I spoke to the noble Lord about the joint historic migration plan, which confirms our closer co-operation with Greece. I was speaking to the noble Lord, Lord Alton, before we even began this Committee stage, and I think that we all need to get together and work out solutions for upstream work and to help the desperate people in the regions who will never even get to Europe. We need to tackle some of the drivers of the terrible criminality that goes on, which has no intention of helping the most vulnerable people at all.

Baroness Hamwee (LD) [V]: I was not sure whether the Minister was talking about money that had been paid to Greece to help, or money that was going to be paid. Clearly, money is needed—I am in no position to think how much that might be—but it is not just about money.

I commend to noble Lords the BBC Radio 4 programme "More or Less" this morning, which objectively dealt with where the UK comes in comparison with other nations in taking refugees and assisting asylum seekers. The tables I have in front of me show that, combining both resettled refugees and asylum seekers, we take less than a quarter of the number taken by Greece and less than 10% of the number taken by Germany. This is not a competition, except a competition to do better. I wanted to put that on the record.

I also want to respond to the points the Minister has just made. The best upstream action is to provide safe and legal routes. She mentioned that in her first response, and I commend her for that. That is where the focus needs to be.

Baroness Williams of Trafford (Con): My Lords, I do not disagree with the noble Baroness, Lady Hamwee: we need to provide safe and legal routes, and through our resettlement schemes we do provide them. We are all in danger of agreeing violently, because we want to help the most vulnerable and we want places like Greece, that need our support, to get it.

The noble Baroness asked whether the money had been paid or would be paid. It has been paid. She will of course remember that, back in the day, we put quite a phenomenal amount of money into helping people in the region who will never get out and who will never make the journey over to Europe.

Baroness Lister of Burtersett (Lab): My Lords, the Minister referred to the resettlement scheme, but we heard the other day that that is suspended, and it is not at all clear when it will start again. I have a simple question. The noble Lord, Lord Kerr, said that as it is accepted that there is an urgent humanitarian case, it would be good if the Government did something about it. I still do not understand why we are not doing something about it. Why are we not acting like, say, Germany?

2.15 pm

Baroness Williams of Trafford (Con): My Lords, I do not think that we, as a country, have been backward in coming forward to other countries that need our help. We are working closely with Greece. As I said, we have given it money to deal with some of the most vulnerable people on its islands, and we will continue to do that.

Lord Paddick (LD): My Lords, I am grateful to the Minister, but what I heard in the first question from the noble Lord, Lord Kerr, was about taking refugees from the camp in Lesbos. She talked exclusively about unaccompanied children. Germany had initially agreed to take 400 unaccompanied children, but has now changed that decision and will take in 1,553 refugees from Lesbos, making up the difference in the numbers with adults. Can the Minister clarify that the Government's position on not taking adult refugees from anywhere in Europe has not changed despite the disaster in Lesbos?

Baroness Williams of Trafford (Con): What I said was that we did not participate in the EU relocation scheme; I am not sure whether we ever have. I am saying that we will absolutely meet our obligations under Dublin, and if a request comes from the UNHCR for us to take displaced people from Greece who are eligible to come under Dublin, we will of course consider that.

Lord Kennedy of Southwark (Lab Co-op): My Lords, the Minister will correct me if I am wrong, but I understand her position to be that the amendment we are discussing is not necessary and could make the situation worse. Apparently the Home Office supports the aims of the amendment but it is not going to act, because there are measures already in place to deal with this question, and it does not want any children to end up undocumented. Maybe I am wrong, but I am sure that if I am, the Minister will correct me. If I am correct, is she giving a cast-iron assurance that the Home Office will not let any of those children become undocumented, and that in the period ahead it will not take decisions that undermine what she has said to us today?

Baroness Williams of Trafford (Con): What I am saying is that the Home Office, in conjunction with other departments, will ensure that we can identify every child, or indeed adult, in that vulnerable category and that they are assisted where possible. As I said the other day, the EU settlement scheme will not close and reasonable grounds for late applications will not end, so if any people—either adults or children—are identified in future as coming into the category that noble Lords have spoken about, they will be documented.

The Deputy Chairman of Committees (Lord Bates) (Con): I now call the noble Lord, Lord Dubs, to respond to the debate on his amendment.

Lord Dubs (Lab) [V]: My Lords, so many things have been raised in the debate that I shall be hard put to it to spend only a short time dealing with them. First, I am still concerned, because the Minister said that although she agreed with the sentiment, she thought Amendment 56 was unnecessary and might be counter-productive. I am not convinced that, next June, we will not see a large number of children who, as the noble Lord, Lord Kerr, said, have fallen through the crack and are undocumented, and nothing much will be done for them. That is the concern. Short of repeating the point in this debate, we will be forced to keep asking Parliamentary Questions to find out whether all those children have been identified and had their status granted.

The Minister did not talk about the difference between pre-settled and settled status, but the thrust of the debate was that we must give people settled status otherwise they are still left in limbo and a state of uncertainty.

I would like to feel that the Home Office will redouble its efforts to make sure that the amendment is unnecessary, but I am bound to say that I am not that hopeful. I fear that we will have to go on pressing the Government as to where we have got. I find that a bit disappointing, despite the fact that the Minister's sentiments were very much in support of the aim of the amendment.

Turning now to some of the specific comments, I am grateful to all noble Lords who contributed to the debate. I particularly welcome the comments on Moria made by the noble Lord, Lord Kerr. I was going to raise this but did not know whether I should at this point. On the other hand, by the time we get to Report, when this issue will come up, another two or three weeks will have gone by. It is such an urgent matter than I can only press the Minister that we can do a bit more than we are doing. We cannot do everything. All we should do is act in concert with other EU countries, even if we are not part of the scheme, and say, "Look, we're going to play our part in helping."

We have done something already, of course—before the fire in Moria—but the Greek Government appealed for help from all countries. We are friendly with the Greek Government; we have got an agreement with them. The least we can do is say that we will take some more children, especially the ones who can reunite with their family here.

I was concerned by the Minister's comment that Dublin III will be operational until the end of December. Of course it will be, but we are worried about what will happen after then. We are concerned that there will be no safeguards unless the Government act on the amendment that we discussed the other day, which is to say that we will negotiate to continue the arrangement long after we have left the EU. I fear that that is not the Government's position; I would like to feel that it were. There is a real gap here in what the Government are doing, and I am disappointed. We will come to the

end of December and there will be children with relatives and family here who will no longer have the right to come here.

Having said that, I am grateful to the Minister and the other noble Lords who contributed to the debate on this amendment. We will have to watch and see. If the Government are as good as the Minister's word—that is a big statement—maybe it will all get sorted by June next year. I would like to think so, but at the moment I am still doubtful.

I beg leave to withdraw the amendment.

Amendment 56 withdrawn.

Amendments 57 to 61 not moved.

The Deputy Chairman of Committees (Lord Bates) (Con): We now come to the group beginning with Amendment 62. I remind noble Lords that anyone wishing to speak after the Minister should email the clerk during the debate. Anyone wishing to press this or any other amendment in the group to a Division should make that clear during the debate.

Amendment 62

Moved by ***Baroness Hamwee***

62: After Clause 4, insert the following new Clause—

"Refugee family reunion

The Secretary of State must make rules under section 3(2) of the Immigration Act 1971 to allow any EEA or Swiss citizen who has exercised a right brought to an end by section 1 and Schedule 1 and who has been recognised as a refugee in the United Kingdom to sponsor their—

(a) children under the age of 25 who were either under the age of 18, or unmarried, at the time the person granted asylum left the country of their habitual residence in order to seek asylum;

(b) parents; or

(c) siblings under the age of 25 who were either under the age of 18, or unmarried, at the time the person granted asylum left the country of their habitual residence in order to seek asylum;

to join them in the United Kingdom."

Member's explanatory statement

This new Clause is intended to probe the need to expand family reunion rules.

Baroness Hamwee (LD) [V]: My Lords, Amendment 62 is grouped with Amendments 64 and 79, which I very much support.

On a previous day, we debated Amendment 48, a "Dubs amendment"—the noble Lord, Lord Dubs, is becoming a noun; I hope that he will forgive me for using his name in this way—which was also about refugee family reunion, with a focus on unaccompanied asylum-seeking children. My Amendment 62 is different. The starting point is that someone of any age, including a child, who has refugee status in the UK could sponsor certain family members to join him or her. As with other amendments that we have debated, the issue is very much wider than EEA and Swiss citizens, but I cannot let the Bill go by without making points about this situation, too.

I believe that this is a very modest ask to test the water, as I have done previously and hope to do again if we ever get back to Private Members' Bills, because I have one on this subject in the pipeline. The amendment would allow a refugee to sponsor his or her

"children under the age of 25 who were either under the age of 18, or unmarried, at the time"

the sponsor left the country. The "unmarried" point is important. One hears alarming stories about the treatment of young women in refugee camps. They have an even more precarious existence than others, as well as precarious experiences on their journey. The amendment would also allow the sponsorship of parents or siblings who came in the categories I have just mentioned.

It is often suggested that families in difficult parts of the world send a son off to try to reach the UK with a view to the family seamlessly following for economic reasons. It is true that children in this situation do sometimes leave with a parent's agreement, but all too often it is about seeking asylum which is a necessity. This provision would not kick in unless the sponsor was recognised as a refugee. I hope that that reassures noble Lords.

I dare say that someone might argue that such a provision would endanger that sponsor, who might be a child, because of the danger of getting to the UK. As always, the answer is to create safe and legal routes, as this amendment would do for those who are sponsored. It would also help with the recovery and integration of refugees in this country. I hope that it is not necessary to explain to the Committee the importance of families being together. They belong together.

In January of this year, other noble Lords may have received, as I did, emails from a primary school where children had read a book about a boy refugee trying to be reunited with his family. This was as the Government were repealing Section 17 of the 2018 EU withdrawal Act. At the time, I quoted a child who said:

"I thought my country was better than this."—[*Official Report*, 15/1/20; col. 755.]

Another child castigated us. He said:

"You're all leaders. You're all meant to lead by example, yet you've made us feel so ashamed that we are prevented from helping these children. What if you were in their position? You'd want to be brought to safety, wouldn't you?"

Well, I know the answer to that.

Another child said:

"There's no war in the UK and if children have family here, they should have the right to go to them. I think it must be very scary to be alone, not speaking the same language as people around you, in a big new country surrounded by new people. These children don't know what is going to happen to them. Knowing they were able to go to a relation in this country would be a relief for them and we would know we've helped."

Finally by way of example, I will quote a young refugee assisted by the Red Cross:

"I was so little when I left my home and my family. I left but my family unfortunately did not have the chance to leave with me. I wish they were here with me. We're forced to leave. We leave as children and we still need our parents' figures in our lives. I worry about my brothers because I know they will be in danger. I worry about my younger sister, who's 14. I want to get her out of there. It is so important that we are all together again."

As I said, there are three amendments in this group. The fact that noble Lords from around the House are showing concern for refugees in different situations—

[Baroness Hamwee]
and this is not the whole of it—indicates how widely shared the view is that we as a country should be doing more.

I beg to move.

2.30 pm

The Earl of Dundee (Con) [V]: My Lords, I support Amendment 62—spoken to in a very moving way by the noble Baroness, Lady Hamwee—which seeks to expand family reunion rules. I also support Amendment 79, in the name of the noble Baroness, Lady Bennett, which ensures that family reunification should not be restricted by any lack of income or assets affecting relevant parties.

Amendment 64, in my name, allows visas to be issued on humanitarian grounds. Three conditions are stipulated: the person needs medical treatment, is an orphaned child, or is a child who is a dependant of a person in the United Kingdom. These conditions are covered in Section 3. However, Section 4 enables the Secretary of State to add to them if required.

As outlined, therefore, Amendment 64 does not address family reunion. Instead, it deals with people who need to come to the United Kingdom for medical attention, orphaned children, and those who do not qualify for family reunion but who are dependent upon another person, or people, in the United Kingdom. Post Brexit, this amendment may thus prove useful for the continuity of the United Kingdom's excellent record of sustained high standards of humanitarian good practice, such as receiving here for emergency surgery the Nobel Prize laureate Malala Yousafzai, after she had been shot in the head by Islamist terrorists, and, during the recent lockdown—and for this my noble friend the Minister and her government colleagues deserve a great deal of credit—the relocation to the United Kingdom of dozens of unaccompanied minors from Moria refugee camp in Greece when it was recently destroyed by arson.

Secondly, the measures proposed may also help many to avoid become prey to human smugglers and traffickers. An absence of humanitarian visas, which the amendment seeks to redress, is also an advantage to human smugglers and traffickers. For these reasons, I hope that the Minister can accept Amendment 64.

Baroness Bennett of Manor Castle (GP) [V]: My Lords, I rise to support Amendment 62 in the name of the noble Baroness, Lady Hamwee, which I was delighted to sign. I also wish to express my support for Amendment 64, which the noble Earl has so ably presented, and to speak to my own Amendment 79. The first two refer to people who need refuge; mine refers to a different group and I will get to that in a second.

As I was listening to the powerful presentations from the noble Baroness, Lady Hamwee, and the noble Earl, I was thinking back to January 2016 when I was at a memorial service for a 15 year-old Afghan boy. His name was Masud, and he died in the back of lorry trying to get to the UK to rejoin his brother. This relates to the discussion we were having before about the situation on Lesbos. We have to provide safe, legal, orderly routes for people to reach the UK, and to achieve the refuge they should be entitled to.

I note my position as the co-chair of the All-Party Parliamentary Group on Hong Kong and identify what may well be a rising issue. The Government have stepped forward and said that they want to help people who need to leave Hong Kong because of what is happening there with regard to human rights. I very much hope that we will see action on providing orderly routes for people to be able to do that, and for people all around the world.

I mostly want to speak on Amendment 79. As I said, this does not relate to refugees. This relates to a situation involving those generally known as Skype children, the numbers of whom are, of course, likely to be significantly enhanced. At the moment, for non-EU and EAA citizens who are the spousal partner of a British citizen, the British citizen has to have an income of £18,600 a year to bring them to the UK—more with children—and at the end of the transition period this Bill will extend that to many more people and many more children.

This is a more limited amendment than Amendment 23, which we debated last week, which addressed couples being able to stay together as well as children. While I prefer Amendment 23, I am hoping that the Conservative Government might be more prepared to consider amending the legislation specifically so that it is not tearing children out of their parents' arms. It is, at the moment, not using the wisdom of Solomon but actually delivering the verdict of Solomon and forcing parents to let their children go to be separated from them for years. As we all know from the situation with Covid-19, yes, you may be able to keep in contact through a screen, but it is certainly not the same thing.

I note that in 2018 the Children's Commissioner for England commissioned a report showing that up to 15,000 British children were already growing up in this situation. This is without adding in people affected by Brexit. Many children were reportedly suffering from significant stress and anxiety from the separation.

So have the Government made an estimate of the number of children likely to be affected annually by the minimum income requirement once the immigration Act, as it will be, comes into effect? The research by the Children's Commissioner found that Britain had the least family-friendly reunification policies of 38 developed countries, largely because of that minimum income requirement. That is of course £18,600 a year, which was then 138% of the minimum wage. It will not be quite so bad now. The Children's Commissioner, Anne Longfield, said at the time:

> "There is a wealth of evidence which indicates that children are far more likely to thrive when they are raised by parents in a warm, stable and loving family environment."

There is evidence, she said, that this affects

> "their well-being and development. It is also likely to have an impact on their educational attainment and outcomes."

As one of the authors of the report commissioned by the Children's Commissioner pointed out, the great majority of children affected by this are British citizens. They are being forced to grow up effectively in single-parent families, when their parents want to be together. So I hope that the Government will reflect on the comparison with Solomon and think about accepting this amendment.

Lord Dubs (Lab) [V]: My Lords, I wish to speak to Amendment 64 to which I have added my name, which has already been moved by the noble Earl, Lord Dundee. The concept here is a very simple one because, as I understand it, we are already doing it in part. The Vulnerable Persons Resettlement Scheme, for example, which takes some Syrian refugees from Jordan, Lebanon and Turkey, already seems to be giving effect to a proposal similar to that in this amendment. The question is: why can we not apply that to people in Europe? That is the purpose of this amendment. It seems to be a very simple point, and it would also take away some of the pressure.

At the moment, if we are taking children from an EU country, there is quite a complicated bureaucratic procedure; they have to apply and then they have to be registered before we accept them. Would it not be easier if we had a humanitarian visa, so that it could be granted to children in that category and they could come straight here without any bureaucratic toing and froing? The concept is a simple one.

I appreciate that the idea of a humanitarian visa, generally, has been floated for a long time. I do not know whether it has the support of the UNHCR—I believe it does—but of course the scheme I referred to, the Vulnerable Persons Resettlement Scheme from that region, is based on the identification by UNHCR of individuals who are vulnerable, so the same arrangement could apply for the granting of a humanitarian visa. It seems to be a fairly straightforward proposal and one that would add to the other measures to provide a legal and safe way for people in desperate need to come to this country.

Lord Bruce of Bennachie (LD) [V]: My Lords, I commend those noble Lords who have followed this Bill in detail and identified so many anomalies and injustices that may arise with the ending of free movement. I have intervened to give them support and to identify amendments in which I have a particular interest.

My brief intervention here is in support of Amendment 64 which, like a number of others, highlights the hardship and injustice that may arise not by deliberate intent but because, when a freedom that has been available for so long is terminated, something that is currently not an issue becomes one.

In Scotland, we have leading centres of medical excellence. In my home region, in Aberdeen, we have the oldest teaching hospital in the English-speaking world, which has pioneered a number of innovations including the MRI scanner. Medical centres of renown exist in Dundee, Edinburgh and Glasgow.

Under the present rules, treatment can be provided to EEA nationals without recourse to a visa. It would surely be inhumane if, under the terms of this amendment, a visa were to be denied in future. Similarly, it is surely right on compassionate grounds if an orphaned child can best be placed in foster care in the UK—for example, where a sibling is already placed or some other particular circumstances apply. If the child is the dependant of someone living in the UK who has the right to remain, it is surely absolutely right that they can be united with them in the UK. This should be sufficient grounds for the automatic right to a visa.

We have seen cases in which UK citizens have availed themselves of medical treatment elsewhere in the EU, and previous contributions have discussed treatment being provided to people from elsewhere, so it is to be hoped that accepting this amendment would help to ensure that EU countries provide similar reciprocal arrangements.

So much will change next year, sadly, in my view, to the detriment of UK citizens in most cases, and also inflicting potential hardship on our fellow EU citizens whose access to the UK has not been restricted hitherto. This amendment is a simple example of how we can modify our visa arrangements post Brexit on compassionate and humanitarian grounds. I hope it will be accepted in that spirit.

Lord Rosser (Lab): My Lords, in Committee in the Commons, the Government stated that they were

"committed to the principle of family reunion and supporting vulnerable children"

and that they

"recognise that families can become separated because of … conflict and persecution",

including through

"the speed and manner in which people are often forced to flee their country." —[*Official Report*, Commons, 30/6/20; col. 263.]

Eligibility for refugee family reunion is covered in the UK's Immigration Rules, which provide that refugees in the UK can be joined, via family reunion, by their spouse or partner and their dependent children under the age of 18.

Amendment 62 increases the family members whom EEA and Swiss nationals, who have exercised a right ended by Clause 1 of this Bill and are refugees in the UK, are allowed to sponsor to join them. In reality, the existing UK policy leaves some of the most vulnerable children separated from their parents at a time when they need their families more than ever—an issue that Amendment 62 seeks to address.

Amendment 64, to which my noble friend Lord Dubs's name is attached, seeks to remedy this by requiring the Secretary of State to make provision for a visa to enter or remain in the UK on humanitarian grounds. This would apply to an EEA or Swiss national—that is done to keep the amendment in scope of the Bill—who requires medical treatment in the UK that is not available where they are resident; who is an orphan child, and a foster family or other foster care is available to the child in the UK and leave to enter or remain in the UK would be in the child's best interests; or who is a dependent child of someone who has been granted leave to enter or remain in the UK. In their reply, perhaps the Government could say what they estimate would be the number of people entering the UK each year under the terms of such a humanitarian visa, compared with the latest annual net migration figure, for example.

The third amendment in this group provides that a person should be granted leave to enter or remain in the UK if they are an EEA or Swiss national and either have a child with a British citizen or person who has leave to remain in the UK, or are a child of a British citizen or person who has leave to remain in the UK.

[Lord Rosser]

I conclude by saying only that if the Government are

"committed to the principle of family reunion and supporting vulnerable children",—[*Official Report*, Commons, 30/6/20; col. 263.]

as they said in the Commons when this Bill was being discussed, surely they can accept one or more of the amendments in this group.

2.45 pm

Baroness Williams of Trafford (Con): My Lords, I thank the noble Baroness, Lady Hamwee, for her amendment and my noble friend Lord Dundee, the noble Lord, Lord Dubs, and the noble Baroness, Lady Bennett of Manor Castle. I turn first to Amendment 62 from the noble Baroness, Lady Hamwee. I note that she has raised this amendment to probe the need to expand the UK's refugee family reunion rules. I will address each part of the amendment in turn.

Paragraph (a) of the proposed new clause seeks to allow refugees to reunite with their dependent children under the age of 25, as long as they were under 18 or unmarried at the time their parents left their country. The refugee family reunion guidance is clear that where a family reunion application does not meet the requirements of the Immigration Rules, caseworkers must consider whether there are any exceptional circumstances or compassionate factors that may justify a grant of leave outside the Immigration Rules. To this end, particular reference is given in the guidance to the example of children over 18 who are not leading an independent life and would otherwise be left alone in a dangerous situation. I can confirm that this discretion is used to allow dependent adult children to reunite with their parents in the UK where appropriate.

Paragraph (b) of the proposed new clause relates to refugees sponsoring parents. The noble Baroness will know that the Government have been very clear on their established position on this issue, as we are very concerned that allowing children to sponsor their parents would lead to more children being encouraged—even forced—to leave their families and risk dangerous journeys to the UK. However, discretion can be applied where a caseworker feels that a refusal of entry clearance would breach Article 8 of the ECHR or result in unjustifiably harsh consequences for the applicant or their family. Furthermore, Appendix FM of the Immigration Rules already allows refugees to sponsor adult dependent relatives living overseas to join them where, due to age, illness or disability, that person requires long-term personal care that can be provided only by relatives in the UK.

Paragraph (c) of the proposed new clause relates to refugees sponsoring dependent siblings under the age of 25, as long as they were under 18 or unmarried at the time their sibling left their country. I draw noble Lords' attention to paragraph 319X of the Immigration Rules, which allows extended family, including siblings, to sponsor children to come here where there are serious and compelling circumstances. Again, consideration will also be given to any factors that might warrant a grant of leave outside the rules, where the rules are not met.

I hope this reassures the noble Baroness that there are vehicles within the existing policy framework to reunite the family members her amendment seeks to cover. An expansion of the policy could significantly increase the numbers who could qualify to come here from not just conflict regions but any country from which someone is granted protection. This would mean extended family members who themselves do not need protection being able to come here, which risks reducing our capacity to assist the most vulnerable refugees.

On numbers, I highlight that the UK has now issued over 29,000 family reunion visas in only the last five years, with more than half of those issued to children—a substantial number that should not be underestimated.

I agree with the intention of compassion and humanity that motivates Amendment 64, proposed by my noble friend Lord Dundee. However, we do not support this amendment, which seeks to create a humanitarian visa for EEA and Swiss nationals. It is unclear to me and the Government why those citizens have humanitarian needs that cannot be addressed by their own European country.

The Government have an excellent humanitarian record in assisting vulnerable people, including children. The UK is one of the world's leading refugee resettlement states, resettling more refugees than any other country in Europe, and is in the top five countries worldwide. Since 2015 we have resettled more than 25,000 refugees, around half of whom have been children.

Once we have delivered our current commitments under the vulnerable persons resettlement scheme, we will consolidate our main schemes into a new global UK resettlement scheme. Our priority will be to continue to identify and resettle vulnerable refugees in need of protection, as identified and referred by the UNHCR. The focus of our humanitarian record is on those most in need, and I suggest that today's amendment does not cover those most in need.

I turn to each proposed condition of the humanitarian visa in detail. Overall, it is unclear why, regarding the condition set out in subsection 3(a) of the proposed new clause, the UK should pick up healthcare provision for EEA and Swiss citizens, whether they are residing in their country of nationality or not, as these countries have excellent healthcare systems. However, our current discretionary leave policy allows us to grant leave to remain to individuals who do not qualify for leave to remain under the Immigration Rules but where there are exceptional or compassionate reasons for allowing them to remain in the UK, including on medical grounds and ill health.

The discretionary leave policy can, for example, address the needs of those who face a real risk of being exposed to a serious, rapid and irreversible decline in their state of health as a result of the absence of appropriate medical treatment in their home country. The policy also allows us to balance this care, and our international obligations under the ECHR, with the need to protect the finite resources of the NHS. The threshold for a person to be considered for discretionary leave on the basis of their medical condition is very clearly set out in our policy on medical claims and is intentionally high for this reason.

Furthermore, we are already dedicated to ensuring that vulnerable groups can access the NHS without charge. There are several groups applying for leave to remain in the UK who are exempt from the requirement to pay the immigration health charge, including asylum claimants and victims of modern slavery who apply for discretionary leave to remain. Those who are exempt from paying the IHC, or for whom the requirement is waived, are entitled to use the NHS generally without charge.

On the condition set out in proposed new subsection 3(b), the Government are committed to supporting vulnerable children. This amendment fails to recognise the safe and legal routes in the current immigration system for reuniting families, including the previously mentioned refugee family reunion rules, as well as Part 8 and Appendix FM of the Immigration Rules, all of which will remain in place at the end of the transition period.

The proposed amendment would also require the Government to create a new visa route for orphaned children who are EEA or Swiss nationals to come to the UK to be placed in local authority foster care where it is in their best interests. It is unclear why an orphaned child who is German, Italian or Greek, for example, should come to the UK on humanitarian grounds and be placed in local authority care here. These are safe European countries, and it is not appropriate for the UK to take children out of care in their own home countries and bring them here. Local authorities in the UK are already facing significant pressures, currently caring for over 5,000 unaccompanied asylum-seeking children, which is an increase of 146% since 2014.

On the condition set out in proposed new subsection 3(c), child dependants of those with leave in the UK are very well catered for in the Immigration Rules, which means that there is no need for primary legislation to create provision that already exists.

Turning to Amendment 79, I appreciate the noble Baroness's intent behind the amendment, which seeks to create a means whereby, in the future, EEA and Swiss citizens will be able to join a spouse, partner, parent or a child in the UK who is either a British citizen or holds valid leave here, but without being subject to the current and established financial requirements for family migration.

There are a number of additional factors that I would like to turn to, which are also reasons for objecting to this amendment. I remind noble Lords that the minimum income requirement is based on in-depth analysis and advice from the independent Migration Advisory Committee. It did not find any clear case for differentiation in the level of the minimum income requirement between UK countries and regions. A single national threshold provides clarity and simplicity. Data also show that the gross median earnings in 2019 exceeded the minimum income requirement in every country and region of the UK. So it is true to say that the minimum income requirement is set at a suitable and consistent level and promotes financial independence, thereby avoiding burdens on the taxpayer and ensuring that families can participate sufficiently in everyday life to facilitate integration into British society.

In all family cases, the decision-maker will consider whether the Immigration Rules are otherwise met and, if not, will go on to consider whether there are exceptional circumstances that would render refusal a breach of Article 8 of the ECHR because it would result in unjustifiably harsh consequences for the applicant or their family. Each application is considered on its merits and on a case-by-case basis, taking into account the individual circumstances. The rules also give direct effect to the Secretary of State's statutory duty to have regard, as a primary consideration, to a child's best interests in making an immigration decision affecting them. In the future, British citizens and settled persons who want to be joined by family members who are EEA or Swiss citizens will benefit from these considerations without the need for Amendment 79.

Amendment 79 undermines the sound basis on which family migration to this country has been placed in recent years. It would circumvent the need for family migration to be on a basis whereby families are financially independent and able to contribute to the UK. It is for this reason that the income requirement was set out in the Immigration Rules. The Supreme Court has upheld this requirement as lawful and judged that it is not discriminatory. The amendment therefore seeks to contradict this ruling. There is no justifiable reason to avoid this requirement in the future by giving preferential treatment to family members based solely on their nationality. It is also unlikely to be lawful to do so.

The noble Baroness, Lady Bennett, asked if I had figures on the numbers who are affected, or who are projected to be affected. I do not have them on me. If we have them, I will provide them for her.

I hope that, on that basis, noble Lords are happy not to press their amendments.

The Deputy Chairman of Committees (Lord Bates) (Con): I have received one request to speak after the Minister from the noble Lord, Lord Green of Deddington.

Lord Green of Deddington (CB) [V]: My Lords, I do not always agree with the Home Office, but I do commend the answers that the Minister has just given on these three amendments.

I want to make some brief comments on Amendment 79. As the Minister just pointed out, the present income threshold for a spousal visa is designed to ensure that those coming to the UK for family reunion have enough resources to play a full part in British life and do not become a burden on the taxpayer. That is surely a sensible approach. As she mentioned, this has been to the Supreme Court, which ruled the policy to be lawful. Indeed, far from removing the threshold, there are, in certain cases, strong arguments for raising it.

The Migration Advisory Committee has said that, on average, for the family income to cover the cost of all public services, a higher threshold is required: namely, £25,700, rather than the current level of £18,600—a difference of £7,100. Even that threshold would not be enough, it says, for a non-EU household to make a net contribution to public finances. For them, the figure would be £38,000 a year. We must have in mind the impact of changes to these rules on the taxpayer and the reaction that they may have to that.

[Lord Green of Deddington]

Finally, it is perhaps important to note that a reduction in the threshold would run entirely contrary to the Government's 2017 election manifesto, which promised to raise the level of the threshold. That, of course, has still not been done.

Baroness Williams of Trafford (Con): I thank the noble Lord for his comments. I pretty much agree with him on every point.

On the higher threshold, the MAC will not be passive in commenting on the various aspects of the new immigration system, and I am sure that the threshold will be one of them.

3 pm

Baroness Hamwee (LD) [V]: My Lords, on the minimum income requirement, what is lawful is still not necessarily the system that many people want, including British citizens who, to their surprise, are affected by the rules. The Minister said that they were clear, but what counts towards assessing whether an income is £18,600 is a problem and has been for some time. It has also been changed from time to time, and the income of the person sponsored does not count. I do not have up-to-date figures, but it puts this arrangement out of reach for about half the wage earners in this country.

However, we are not here to debate the minimum income requirement, so I will go back to the family reunion point—it is all intertwined, of course. My noble friend Lord Bruce said he had been struck by how something that was not a problem can become one. Here, we are seeking to address something that has been a problem for some time and which will become a bigger problem. I am of course aware that Appendix FM and paragraph 319X of the Immigration Rules deal with exceptional circumstances. Sadly, the situations we are debating are not exceptional. To exercise discretion outside of the rules is an unsatisfactory position when we could have rules. The Minister talked about dependents being left alone. More often they are left with a single parent.

The organisations on the ground are concerned about this. This is not something manufactured in my head. It is an issue that we will have to go on pursuing. I thought that the humanitarian case to which the Minister subscribed was undermined at the end by her referring to numbers. Since the numbers are never going to be overwhelming, I would prefer to stick to the humanitarian case. However, I beg leave to withdraw Amendment 62.

Amendment 62 withdrawn.

The Deputy Chairman of Committees (Lord Duncan of Springbank) (Con): We now come to the group beginning with Amendment 63. I remind noble Lords that anyone wishing to speak after the Minister should email the clerk during the debate. Anyone wishing to press this or anything else in the group to a Division should make this clear in debate.

Amendment 63

Moved by ***Lord Rosser***

63: After Clause 4, insert the following new Clause—

"Duty to raise awareness of citizenship rights

(1) The Secretary of State must take steps to raise awareness of rights under the British Nationality Act 1981 to register as a British citizen to persons to whom subsection (2) applies.

(2) This section applies to any person who has lost rights under section 1 and Schedule 1.

(3) Within six months of the day on which this Act is passed, the Secretary of State must publish a report detailing the steps taken to raise awareness of rights under subsection (1), and lay it before Parliament."

Lord Rosser (Lab): Amendment 63 would lay a duty on the Secretary of State to raise awareness of people's rights to register as a British citizen under the British Nationality Act 1981, with the people concerned being those who lose rights under Clause 1 and Schedule 1 of the Bill. The amendment would also require the Secretary of State to publish and lay before Parliament a report within six months of this Bill becoming an Act, detailing the action taken to raise awareness of rights to register as a British citizen.

As I understand it, before the 1981 Act anyone born in the UK was born British. The 1981 Act ended that and laid down who is and who is not a British citizen, and who is entitled to citizenship. Someone born in the UK now is only a British citizen if one of their parents is a British citizen or settled in the UK. Apart from the Home Secretary having a general power to register any child as a British citizen, all registration under the British Nationality Act 1981 is by entitlement. A child or an adult who satisfies the criteria for registration is entitled to British citizenship. The 1981 Act does not give the Home Secretary the decision of whether someone is entitled to British citizenship. This is different from naturalisation as a British citizen, which is only at the discretion of the Home Secretary, and only adults can be naturalised.

The EU settlement scheme, which provides for pre-settled and settled status, raises an issue. Some of those about to lose EU free movement rights in the UK will have rights to register as British citizens that they have not yet exercised, and they would quite probably wish to do so as people of EEA or Swiss nationality or parentage in the UK if the alternative was settled status. Citizenship means much more than settled status, and there being no available evidence of citizenship can have significant adverse consequences if changes are subsequently made to immigration policies, as the Windrush generation have found out.

In the shadow of the Windrush scandal, the Government should not be casual in their attitude to people's right of access to citizenship. They should be working proactively to ensure that those, including children, who have the right to register as British citizens, with the same rights as all of us, are aware of that right and can access it. With the end of free movement and the focus on the EU settlement scheme, there is a risk of those who have the right to access British citizenship and register as British citizens ending up with at best an immigration status. This amendment seeks to minimise the risk of this happening.

In their response, can the Government update the Committee on what work is being done by the Home Secretary and the Home Office to proactively raise awareness and encourage and assist those who have

the right to be British citizens to enjoy those rights? If the answer is that no such work is being undertaken on this citizenship issue, can the Government explain why not? I beg to move.

Baroness Lister of Burtersett (Lab): My Lords, I shall speak to Amendment 67 in my name and those of other noble Lords who will be speaking. I am grateful for their support. I express support for Amendment 63, moved so well by my noble friend Lord Rosser. Once again, I am grateful to the Project for the Registration of Children as British Citizens, of which I am a patron, and to Amnesty International UK for its briefing.

Amendment 67 would place a duty on the Secretary of State to encourage, promote and facilitate awareness and the exercising of rights to British citizenship among EEA and Swiss nationals. It would also introduce a positive duty to confirm information known to the Home Office that is relevant to establishing a person's right to citizenship. I am told that at present such information is all too often not forthcoming—a particular problem for many looked-after children—but there appears to be a greater readiness to check and act on such information when it confirms that there is no entitlement to citizenship.

The intention of the amendment is to shift the Home Office's mindset, in the spirit of Wendy Williams's Windrush report. That mindset resulted in the active discouragement of members of the Windrush generation from exercising their rights to British citizenship. As we have heard, there are real fears that the lessons of that review are not being learned when it comes to children of EEA and Swiss citizens who were born in the UK or who have grown up here from an early age. Research by the European Children's Rights Unit, funded by the Home Office, indicates that Roma children, who are an especially vulnerable group, may be particularly at risk.

More generally, PRCBC gives the example of Matteo, who was born in the UK to Italian parents. He has lived here all his life apart from occasional visits to Italy and a gap year in continental Europe. When he became an adult, he discovered to his great distress that he was not regarded as a British citizen when he was refused inclusion on the electoral register for the general election and was twice refused a British passport. Before contacting PRCBC, he had been given poor legal advice that he should apply for settled status under the EU settlement scheme and be naturalised as a British citizen at a future date. Having established what his situation was, PRCBC was able to help him register his entitlement to British citizenship under the 1981 Act. No one had previously advised him of this right, and he had suffered serious mental distress as a result. A young man in this situation should not have to rely on the chance of finding his way into an organisation like that. How many are not finding their way to such organisations?

Can the Minister explain what exactly the Home Office is doing to proactively encourage the exercise of the right to register citizenship, both directly and through local authorities, to ensure that children and young people such as Matteo are not missing out on their chance of registering as citizens? What steps is it now taking to ensure that no one who is entitled to register as a British citizen is wrongly channelled through the EUSS as an immigrant without being informed of their existing right to register as a citizen? Are any specific steps being taken to ensure that Roma children have the information and support they need? Also, can she give us some idea of the number of children overall likely to be affected?

These are important questions. The right to British citizenship of an unknown number of children is at stake. I and others emphasised the importance of citizenship in moving an earlier amendment, and there was a lot of support in the Committee for citizenship's importance. The answer to these questions will give us some idea of the importance the Home Office attaches to it, and how far it is genuinely willing to shift its mindset in the wake of the Windrush scandal and the *Lessons Learned* report on it. In that report, Wendy Williams wrote of the need for "deep cultural reform". The response to these amendments will serve as an indicator of whether the Home Office is genuinely committed to such reform.

The Earl of Dundee (Con) [V]: My Lords, I support the amendments of the noble Baroness, Lady Lister, on protecting rights to British citizenship. We have already debated her first one, Amendment 68. This urges that applicants should not be disadvantaged just because registration costs might become too much for them to afford. We are now considering her Amendment 67, which advises that our system should set out to be proactive, helpful and encouraging towards applicants. Correspondingly, Amendment 63, tabled by the noble Lord, Lord Rosser, correctly argues that in the first place, steps should be taken to raise awareness of available British citizenship rights under the British Nationality Act 1981. I hope the Minister is able to endorse these recommendations.

Lord Alton of Liverpool (CB): My Lords, Amendment 67, to which I am a signatory, returns to the issue of citizenship. It is a pleasure to follow both the noble Earl, Lord Dundee, and the noble Baroness, Lady Lister. I was particularly pleased that she referenced the position of the Roma, an issue I raised earlier this week in our previous debates. I hope the Minister will be able to answer the question put to her by the noble Baroness. I also strongly support what the noble Lord, Lord Rosser, said in the context of Amendment 63, but let me add in parenthesis that I think it unfortunate that citizenship is so often viewed through the lens of immigration policy.

Amendment 67 was originally coupled with Amendment 68, which focused on the issue of citizenship fees, as referred to by the noble Earl a moment ago, and which we debated last week. At the conclusion of that debate, the Minister said the Government intended to appeal the decision of the High Court in the case, Project for the Registration of Children as British Citizens v the Secretary of State for the Home Department—a case in which, as she knows, I provided a witness statement.

3.15 pm

On 10 September, following the discussion we had in Committee, I tabled a Question asking the Government what estimated legal and administrative costs the Home

[Lord Alton of Liverpool]
Office had met in that case thus far, and what they estimated such costs would be of any appeal against the judgment. The Question is due for answer on 24 September, but it would help the Committee greatly if those figures could be given today. Not only would the figures enable us to look at them alongside the cost of providing citizenship with charge to groups such as children in care; they would remind us of the lengths to which the Government are going to preserve the income generated above the administrative costs involved. We should be able to weigh one against the other, as I know the noble Baroness would. I would be grateful, therefore, if the Minister would also ask the Home Secretary to consider meeting the movers of Amendments 67 and 68 before embarking on yet another costly legal action, which seeks to perpetuate arrangements that Sajid Javid rightly identified as prohibitively expensive.

This brings me to the main question in Amendment 67: what price do we place on citizenship, or, as this amendment spells out,

"the duty of the Secretary of State to encourage, promote and facilitate awareness … of rights to British citizenship"?

If I have any quibble about the wording, it is that I would rather it went further and added the words, "responsibilities, duties and obligations" of citizenship to the word "rights".

In thinking about this amendment, I reflected on my 20 years as director of the Foundation for Citizenship at Liverpool John Moores University, where I held a chair and am an Honorary Fellow, and on the central importance of promoting active citizenship and full participation in society. The city of Liverpool has had to wrestle with a painful history and all the tensions and challenges generated by social inequality. But it has refused to become a prisoner of its past. When it describes itself as

"the whole world in one city,"

it does so with a confident proclamation of the respect it has for diversity and the enrichment which different cultures have brought to its table. But as well as a respect for difference, its citizens also overwhelmingly cherish our British values of democracy, the rule of law and human rights, and they are not ashamed of the patriotic stories of sacrifice that have enabled those characteristics to flourish.

I want people to be proud of being British citizens and am alarmed by alienation, stigmatisation and ghettoisation, which can lead to people following ideologies that threaten our way of life. Parts of Britain feel completely abandoned by the metropolitan elites.

We need a rounded view of citizenship in which we have a respect for customs, laws and institutions that serve the common good and promote social solidarity. In promoting the centrality of the rule of law, we need to share our stories and histories and memorialise the lives which paid for our freedoms and liberties. We need to cultivate a reverence for the generous impulses and altruism which motivate so many who contribute so positively to our society.

The Jewish sage, Hillel, was right when he said,

"If I am not for myself, who will be? But if I am only for myself, what am I?"

Hillel's fine balance must always be struck. So, I support amendment 67. Without a vibrant sense of citizenship, people living in our midst will not believe they fully belong. They will not share our rights, nor will they fully enter into the responsibilities which are the key to creating a good society.

When she comes to reply, I hope the Minister will be able to answer the question I have put to her about the costs of appealing the High Court decision on an easing of some of the costs involved in securing the right to become a British citizen.

Baroness Primarolo (Lab) [V]: My Lords, I shall speak in support of Amendments 67 and 63. I support the comments made by my noble friends Lord Rosser and Lady Lister—she posed excellent questions—and I am pleased to follow the contribution of the noble Lord, Lord Alton. Much has been said and I shall make only a few comments.

My first point concerns the crucial question of citizenship, which is of great importance to children. Significantly, it is a matter of identity, belonging and security, including, I regret to say, being free from the Home Office's immigration powers and controls.

Many children born in the United Kingdom or with lengthy residence here have a right in law, under the British Nationality Act 1981, to register as British citizens—they are British citizens—but, as my noble friend Lord Rosser pointed out, the provisions in Clause 1 and Schedule 1 are in danger of undermining that right. These children include those born in the United Kingdom to European and Swiss citizens, stateless children born in the UK and looked-after children.

I looked at the debates on the British Nationality Bill to see what the clear intention of Parliament was. I would not recommend it as bedtime reading, but it clearly conveys the right to citizenship. It says that it is a right and that it should be given to individuals as specified, according to the intention of Parliament in debating that Bill.

Registering this right has become extremely important, particularly for children. Perhaps in the past much less emphasis was placed on the importance of registering, but, as the debates on this Bill have demonstrated, the hostile environment that has developed over the years means that thousands of children and young people are not being informed by the Government of their right to British citizenship. We know that citizenship means that a child or young adult obtains all the advantages that come with it, including the right to remain in Britain, freedom from immigration controls, and access to student loans, employment, health services and social security. Those are all rights that, tragically, we saw being denied to people in the Windrush scandal, and another generation could be at risk from the actions being taken here. Intentional or not, the outcome is the same.

Many children who were born in the United Kingdom or who have lived here from an early age do not have British citizenship or leave to remain. Currently, at worst, a child or young adult who is not registered is at risk of being removed. As many as 120,000 children, 65,000 of whom were born here, could be affected by this question of citizenship.

However, it is not just children who are not aware of their right. Similarly, parents, foster parents and corporate parents, such as social services, often do not know that these children are in fact entitled to British citizenship. That is not really surprising, given, I regret to say, that the Government do not systematically publicise the right to citizenship and encourage people to register.

As my noble friend Lord Rosser said, the Act does not give the Home Office the power to decide whether someone is entitled to citizenship. It is not a gift; it is a right in law. The role of the Home Office is simply to recognise the child's legal right and register their citizenship. We do not need confusion around this matter. We do not need young people to be unaware of their rights. We need to ensure that the enormous danger of yet another generation being denied their right to British citizenship does not arise, and the amendment provides a way of doing that.

We cannot allow people to be denied their rights because of incompetent administration, a lack of knowledge of procedures or sometimes, I regret to say, callous responses from the Home Office. Amendments 63 and 67 seek to place a duty on the Secretary of State to raise awareness of people's rights and ensure that they are able to achieve those rights, giving them security here as British citizens.

I know that the Minister is sympathetic to many of these arguments. I hope that when she responds she will answer the questions posed by my noble friends and that she will also explain to the Committee how, once and for all, this Government will make sure that those who are entitled can become British citizens without barriers or preventions deterring them from achieving those rights. I look forward to her response.

Lord Greaves (LD): My Lords, it is a pleasure to follow the noble Baroness, Lady Primarolo, and particularly her last sentence. It should be written down and put on a banner strung from the balcony here—although, if we did that, we would probably be investigated for terrorism.

I think it was the noble Baroness, Lady Lister, who said that it is necessary to shift the mindset of the Home Office. If it was not her, she should have said it and we should all agree to it. She also thanked all the people who had put their names down to speak in support of the amendment. I always admonish people when they say that, as they should wait to hear what is said before doing so. However, in this case I completely support those who have introduced both amendments, particularly the noble Baroness, Lady Lister.

I am no expert in these areas. Every time I get involved in a citizenship or immigration case, as I do from time to time—either in the past as a councillor or, nowadays, as a Member of the House of Lords, or just as someone people know—I become ever more appalled by the hoops and obstacles that many people have to go through. Not everybody has to do that; some people sail through the system quite easily. That is not always because they are the sorts of people who can cope with systems, bureaucracies, organisations, administrations and so on. It seems random. Some people who seem to be in a similar position to others have enormous difficulty, but others less so.

One problem with the mindset in the Home Office is that, once it has said no or has raised serious obstacles, it does not like to admit that it was wrong. I have found that to be so throughout the culture of the organisation. It might apply to only a minority of people—I do not know—but once people are in difficulty, they just seem to get further and further into the morass.

The costs of achieving citizenship are ridiculous. We should encourage people, not try to rip them off. There is a high degree of bureaucracy involving the provision of documents. If something is slightly wrong with those documents, more obstacles are put forward, whereas very often common sense should dictate that they suffice. For people who want to be naturalised, there is also the utterly ludicrous testing of knowledge of British life, although it would not apply to people who are exercising a right.

3.30 pm

One of the cases I was involved in, not so recently now, was that of a young man who lives in Colne. It got a lot of publicity so I can talk about it. His mother was not a British citizen; she was an Australian citizen and was not married to his father. This situation has since been sorted out, but he was old enough for it not to apply to him. Having got a provisional licence a few years ago, with no problem, he applied for a driving licence because he required one for his job. However, now there is all the cross-checking between the Home Office and the Department for Transport. He was issued with the licence but sometime later he got a letter, not from the Department for Transport but from the Home Office.

The first page had two or three paragraphs explaining why he was not entitled to a driving licence. This was all about the fact that he was not actually a British citizen and not entitled to live in this country. This was shocking enough, but he turned the page over and the first paragraph was headed, "What should I do now?". It said, "You should take immediate steps to leave the country". This is a lad who was born locally, had lived in Colne all his life, been to school, had a job and so on. He was lucky. He was clearly a Lancashire lad. He clearly had a white skin, and had parents who originally lived in the area, as had their parents. He got support from all parts of the political spectrum; from the *Daily Mail* to people like me and beyond. It was sorted out but that took several weeks.

What I objected to most was the abrupt and rude way in which a letter to somebody telling them they were not entitled to a driving licence suddenly went on to tell them to get out. Where he was supposed to go, nobody quite knew. That is the sort of attitude and mindset that requires to be shifted. Clearly, the whole process should be a lot easier for people who have been born in and grown up in this country, and who have a right to be British citizens.

Then there are the people who come to live here and decide that they wish to be naturalised as British citizens. Not everybody will; some would like to but do not want to lose their original citizenship, if they come from a country that does not allow joint citizenship. If they want to be British citizens, having come here and contributed to society—paid their taxes, gone to work, raised a family and all the rest of it—we should

[LORD GREAVES]
be welcoming them. We should not have procedures that consist of all these obstacles. We should have procedures that encourage and welcome.

Subsection (1) of the proposed new clause in the noble Baroness's Amendment 67:

"It is the duty of the Secretary of State"

I repeat, the duty—

"to encourage, promote and facilitate awareness and exercise of rights to British citizenship",

should therefore not have to be put in legislation. It should be obvious. Right across the political spectrum, we say to people all the time: "Integrate, take part, get registered, vote, stand for the council, join in, try and understand British ways of living, try and get on with your neighbours, get to know your neighbours, make friends", and all the rest of it.

I live in a part of the country where, a few years ago, the issue of separate communities was talked about. It is still a problem. There is not enough integration. There are many efforts, but not enough, to get people from different communities to get to know those from other communities. They go to school together and are in the same classes. They go to work together and, after work, they go home into their own communities. We ought to be working to break this down. One way in which people who have come to live here from other countries can do this is by becoming British citizens. We should be cheering and welcoming it, not putting up the obstacles which the mindset of the Home Office does.

Lord Judd (Lab) [V]: My Lords, I thank the noble Lord, Lord Greaves, for his characteristically forceful speech, particularly the striking and moving anecdote about the young man who lost his driving licence. I fear that that kind of experience is not unique and is repeated too often, in too many ways.

I put on record my strongest possible appreciation and support for these two amendments. They are vital. I also want to say how cheered I have been by the strength of argument and emotion with which my noble friend Lord Rosser introduced the debate, and by the way that my noble friend Lady Lister backed him up with her commitment. As the noble Lord, Lord Greaves, has just pointed out, the first bit of the Member's explanatory statement for this amendment says that it

"is to probe the case for a statutory duty to encourage, promote and facilitate".

These are key words. The statement runs on to say that it is to ensure the Secretary of State

"does not exercise certain of her powers and responsibilities in any way that may impede the exercise of those rights".

That hardly needs to be said; at the same time, it needs to be underlined because one cannot be altogether certain on that front.

Rights are rights but there are too many indications of considerable numbers of people—young people and children, in particular—who are not really yet switched on to what their rights are and what is necessary to register them under the new arrangements. There may be a host of reasons why they are not acutely aware of what they must do, but that problem exists with a considerable number of people. I would like to feel that we had a Home Office with political leadership that supports civil servants in saying that their job is to ensure that everyone with a right is going to be able to register to continue the fulfilment of those rights. That is the kind of commitment and drive we need from Ministers and civil servants.

In the context of a Select Committee to which I belonged at the time, I was one of those who had the good fortune to attend a couple of briefings, and I also went to the Home Office to be briefed by civil servants on the arrangements that they were making under the necessary processes following the removal of European Union citizenship in Britain. I was impressed then, because there seemed to be a real commitment by the team working on this issue to tackle the situation effectively. Now, however, I have the feeling that there is not so much inertia but more a sense that our job is to provide the facilities and make them as accessible as possible. We have to be more proactive than that, but that is not going to happen on the scale and with the thoroughness that it should unless leadership comes from the top.

I thank my noble friends Lord Rosser and Lady Lister, and all the others who have spoken so effectively and convincingly on this issue. I cannot believe that the Minister, being the sort of person she is and on hearing these arguments, will not find a way in which she can convincingly respond to them.

Baroness Bennett of Manor Castle (GP) [V]: My Lords, I offer the Green group's support to Amendments 63 and 67. We have already heard many powerful speeches, so I will be brief.

I want to address Amendment 67 in particular, because it has full cross-party support, in so far as that can be expressed by the procedures of your Lordships' House. I note that Members from the three largest parties and the Cross Benches have signed it. It struck me in looking at this that perhaps I might make representations about our procedures to show the full breadth of cross-party support in our multiparty age; there might need to be the possibility of more signatures to be available on the Order Paper, but that is something for another time.

I want to focus on some of the words of the noble Baroness, Lady Lister. She spoke about the imbalance between the Home Office's actions: its clear desire to enforce action against people who it perceives not to be British citizens and not to have the right to be here versus its extreme inaction in informing and educating people about their rights and making sure that they are not excluded from those rights. As many noble Lords have noted, there is not much use in having rights if you do not know about them; that is effectively being denied your rights. I was reflecting on that and thinking that, effectively, the Home Office is defying the will of Parliament in defying the rights that Parliament has granted to people, by failing to inform them. That is not what should be happening, but it clearly is. That is why I think it is really important to support both these amendments, which work in much the same ways, and will push to see them in the Bill.

We saw with the Windrush scandal, which one just cannot avoid referring to in this context, that the

Home Office denied people their personal rights. It denied them their life in some cases—the actions taken by the Home Office were deadly.

I also note the comments of the noble Lord, Lord Alton of Liverpool, that all too often these issues are mixed up with immigration, but they are absolutely distinct. We are talking about British people being able to live in their own country and exercise the rights that they enjoy. I commend both these amendments to your Lordships' House.

Baroness Hamwee (LD) [V]: My Lords, I have added my name to Amendment 67 on behalf of the Liberal Democrat Benches, because we have all heard too many stories of individuals who did not realise the significance of their rights. Many speakers have stressed the term "rights", including the noble Baronesses, Lady Primarolo and Lady Bennett, and the noble Lord, Lord Judd, and referred to people who did not know their rights until the crunch point when they encountered the difficulties of proving those rights.

3.45 pm

Less tangible is what other noble Lords have referred to: citizenship being about bringing belonging, not just being about arriving—or, in many cases, not about arriving at all, because most people with rights to citizenship are born here. This is not about immigration but about nationality, as the noble Baroness, Lady Bennett, and the noble Lord, Lord Alton, have both stressed.

Last week, my noble friend Lady Ludford and the noble Lord, Lord Kennedy, both talked about the atmosphere of palpable excitement and anticipation, and then the sense of achievement, when they have officiated at citizenship ceremonies. I witnessed that, probably from the back of the same council chamber where my noble friend officiated, sitting with the husband of a friend who was becoming British—although I made her go back afterwards to arrange with the registrar to correct the certificate, since the omission of an umlaut had previously caused quite enough difficulties. The converse of belonging for the individual is that the state wants people living here to feel that they belong, to have all the rights that go with citizenship and to be able to be good citizens.

Windrush has been mentioned. Subsection (2)(c) raises the spectre of the destruction of records—the amendment seeks to quash it before it can be raised properly—which in the case of Windrush happened simply so that the building could be vacated. Duties to encourage, to promote, to facilitate awareness and to exercise the right of citizenship are all things that we support.

Baroness Williams of Trafford (Con): My Lords, I thank all noble Lords who have partaken in this debate. I do not disagree that people should have their rights communicated to them and generally should feel part of the communities in which they live, as the noble Lord, Lord Greaves, says.

At this stage, it is worth decoupling two distinct matters: one is the end of the transition period and the other is the consideration of whether someone is British or should become so. However, I do not think the latter is at issue. For the former, which is the subject of this Bill, we have made extensive arrangements to ensure that the rights enjoyed by those who have resided here under free movement can continue until the end of this year.

British citizenship, as noble Lords have said, is determined by the British Nationality Act 1981, which sets out how someone may already be British—for example, through their birth here—and, for those who are not, the means by which a person may seek to become so. This might be through naturalisation or registration, depending on the individual's circumstances and connections. Any applications submitted will utilise information that we already hold on an individual as far as possible, although there may always be circumstances in which further information may be needed. We treat all applications to become British equally, regardless of the nationality that the applicant may currently hold. The important consideration is whether they meet the requirements set out in statute. Equally, our guidance on the application process is published and available to all.

Last year we received nearly 175,000 nationality applications, which indicates that people generally are aware of the application process, the benefits of becoming British and what it might mean to individuals when they are ready to apply. That does not mean that we cannot consider alternative approaches. Noble Lords will remember, and a noble Lord referred to the fact, that the Home Secretary announced on 21 July in a Statement that alongside the *Windrush Lessons Learned Review*, she proposed—along with evaluating changes to immigration and nationality laws to ensure that they are fit for purpose for today's world—to make sure that the changes were now communicated effectively where they had not previously been so. Many of the speeches touched upon that aspect of things.

While there has not been a suggestion by noble Lords that it is a change of law per se that is of concern to them—I absolutely get where noble Lords are coming from—but perhaps more general awareness for a group who may have previously not considered becoming British, I am happy to put on record that I will ask the Home Secretary whether raising awareness of citizenship more generally could form part of that ongoing process and to consider ways how that might be achieved. I will also pass on the request from the noble Lord, Lord Alton, to meet the Home Secretary, but any change should be for all people potentially affected, not only those who would lose freedom of movement rights—I do not think he was suggesting otherwise. He also asked how much the legal cost of court appeals had been. He will not be surprised that I cannot recall that off the top of my head, but I do not disagree with the general principle that an awful lot of money on all sorts of sides is spent on court cases. I hope that with those undertakings, the noble Lord, Lord Rosser, will feel able to withdraw his amendment.

Lord Rosser (Lab): I thank the Minister for her reply. I understand from what she said that she has undertaken to discuss the issue of further raising awareness with the Home Secretary. I also thank all noble Lords who spoke in support of the amendments in this group.

[Lord Rosser]

I think I am right in saying that the Minister did not respond to the question as to what the numbers are of those who are still entitled to British citizenship under the British Nationality Act 1981 but have yet to apply. If we are not aware of the number, that in itself is a real case. I know that the Minister has undertaken to look at this matter further, but it makes the real case for making sure that we raise awareness as much as possible to people who might be in that situation to urge them to consider exercising their right to British citizenship. Surely we need to ensure that all those entitled to register for British citizenship either have it confirmed that that is already their status or are advised that they can register for that citizenship to which they are entitled under the 1981 Act.

We are, after all, talking about an entitlement—a right—to British citizenship, as I know the Minister has recognised. Surely, as people who are proud to be British, we should actively want to ensure that all those who have that entitlement are made aware of it and encouraged to exercise it, with the key responsibility for doing so and facilitating that entitlement to citizenship resting clearly with the Secretary of State and the Government. I hope very much that the discussions that I believe the Minister has said that she will have with the Home Secretary will lead to further very strenuous efforts to raise awareness of this right. Indeed, I hope that the Government will go further, as proposed in Amendment 67, to encourage people to exercise their entitlement and to do their utmost to facilitate matters so that the entitlement can be exercised with ease. In the light of that, I beg leave to withdraw the amendment.

Amendment 63 withdrawn.

Amendments 64 to 76 not moved.

The Deputy Chairman of Committees (Lord Duncan of Springbank) (Con): That brings us on to the group beginning with Amendment 77. I remind noble Lords that anyone wishing to speak after the Minister should email the clerk during the debate. Anyone wishing to press this or anything else in this group to a Division should make that clear in the debate.

Amendment 77

Moved by ***Lord Hodgson of Astley Abbotts***

77: After Clause 4, insert the following new Clause—

"Charter for EU Immigration and Demographic Change

(1) The Secretary of State must prepare a document, to be known as the Charter for EU Immigration and Demographic Change, explaining the formulation of the policies of Her Majesty's Government relating to immigration from the European Union.

(2) The Charter must, in particular, set out—

(a) the Government's demographic objectives in relation to such immigration, and

(b) the means by which such objectives will be attained.

(3) The Government must lay the Charter before Parliament within one year of the commencement of this Act."

Lord Hodgson of Astley Abbotts (Con): My Lords, I will also speak to Amendment 78, which forms part of this group. I do not often quote Lenin, but he is supposed to have said, "There are decades where nothing happens; and there are weeks where decades happen." Our present era is one of the latter. It presents challenges and opportunities to the people in this country and across the world, and a challenge for Governments in managing these changes in a way that enhances our overall quality of life while balancing the inevitable tension between preservation and progress. However, politicians of all persuasions find it hard to address these mega-issues, which have a 10, 20 or even 30-year timescale. Inevitably, and quite properly, they have their eyes fixed on the five-year electoral cycle. Given this, it is perhaps unsurprising that, for many politicians, the long grass is an effective way out.

Many Members of your Lordships' House will be aware of my long-standing interest in demography and the impact of demographic change. The results of increases or decreases in population—I am glad to see the noble Baroness, Lady Ludford, in her place, because she referred to the dangers of decreases in her speech when I was not here last Wednesday; she was quite right about that—are inexorable in their effect and are of extreme importance to the settled population of this country. When I refer to the "settled population" I mean every person legally entitled to be in this country, irrespective of race, colour or creed, or whether they have lived here for five months or 500 years. The views of the settled population on the issue of population growth could not be clearer. Recent polling found that 64% of us think that the UK is too crowded and 74% felt that the Government should have policies to address this challenge.

Nevertheless, there remains an influential minority, particularly among the commentariat, who agree that this is all too difficult and what will be will be. On the right, the argument is that the market will decide. On the left, the brotherhood of man means that we should keep our arms and our borders open. However, I am afraid that these arguments would not be supported by the overwhelming majority of this country. For many, a perpetually growing population in a relatively small island has not obviously resulted in an improvement in their prosperity or their way of life.

A couple of figures help set the matter in context. In the late 1990s, when the Blair Government decided to encourage large-scale immigration, the population of the United Kingdom was 58.1 million. Today, it is 66.4 million—an increase of more than 8 million. The ONS mid-projection for 25 years from now is 72 million —another 6 million increase. Therefore, over half a century our population will have increased 14 million, or 24%—a particularly significant figure in a country with some very densely populated regions.

Even reciting these figures gives critics the chance to allege a little Englander mentality, with machine guns on the white cliffs of Dover. That is not so: I absolutely recognise that new arrivals bring an economic and cultural dynamic from which our society has benefited greatly. This is an argument about scale, the wider impact of population growth and responding to the concerns of the people of this country in a way that builds trust in government.

Most of the arguments in favour of the demographic policies followed to date have been economic ones. Total GDP is often waved about by politicians as some

sort of totemic symbol of success. Like many, I find that argument unappealing. GDP per head would surely be a more accurate measurement, and since economic gains are often not fairly shared, median GDP per head would be even better. We can argue about these and many other economic factors and we have done so at great length in this House over the years. What is unarguable is that no one is weighing in the scale the long-term non-economic challenges for our environment, our ecology and our society.

According to the latest ONS figures, released a couple of weeks ago, our population is currently growing by an average of 1,172 per day—428,000 per year. We live 2.3 people per dwelling. So on that metric, the inevitable maths show that we need to build 509 dwellings every day, 21 an hour, one every three minutes. By 2040, we seem likely to have built over an area the size of Bedfordshire—this after a decade in which Danny Dorling, professor of geography at Oxford University, has said:

"In absolute terms this is very likely to be the largest increase in the number of square miles that have been tarmacked or paved over in any decade in British history".

4 pm

The ecological challenge is no less severe. It is not just that the Environment Agency believes we will run short of water within 20 years. The Environmental Audit Committee believes that 25% of our agricultural land suffers from acute soil degradation. The impact on our native species is no less dramatic. We have seen a 75% decline in the number of our farmland birds in the last 40 years. Earlier today, the House discussed a Question tabled by the noble Lord, Lord Teverson, about the report from the RSPB giving further details of the collapse in bird populations. The effect on pollinators—on bees and bumblebees—has been equally severe.

For those Members of the House who are inclined to accept this development with equanimity, I gently remind them of the phrase, "every third bite"—one third of the food that we eat depends on pollination for its production.

As for the societal impact, in an article in the *Times*, David Aaronovitch wrote:

"I have a regular correspondent—let us call him Igor—who writes to me from Offa's Dyke to complain about the modern world … Running through Igor's protestations is a sense of bewilderment. And in this he captures what I now feel. What many of us are feeling and expressing. How could they? Why would they? Why didn't we know?"

And these are only a handful of the non-economic issues that need to be properly considered and weighed. I hope the House will accept that collectively they are more important than, to quote Solzhenitsyn,

"the mould grown on the rock of economics".

My amendments seek to achieve this balanced consideration. I have used as a template the example of the excellent Office for Budget Responsibility, which has the necessary level of independence and has achieved a high degree of public confidence in a relatively short time. Amendment 77 creates a charter for EU immigration and demographic change, which requires the Government to set out both their demographic objectives and the means of their achievement.

Amendment 78 establishes a body, the office for EU immigration and demographic change, to assess whether these objectives have been achieved. The office must report at least annually and under subsection 4(a) must include assessments of the environmental, ecological and societal impacts. Importantly, under subsection 5(b) the office is not empowered to,

"consider the impact of any alternative policies".

This is to provide the reassurance that the office will not become a mouthpiece for one particular side of the argument.

No doubt some will ask, "Why does this only cover the EU?" Well, I am afraid that the scope of the Bill rules out wider considerations, but I see this as a first step. I freely admit that I would like the remit of this new body eventually to be extended to assess all aspects of the demographic challenges that this country faces.

To conclude, I hope the Minister will see that this is a way to lance the boil of an issue which has divided and disfigured our society for too long. I hope the House will agree that now is the time for the issue to be considered and addressed fairly and squarely. This is a new road and I accept fully that it will not be an easy one. In his book *The New World Order* Henry Kissinger wrote:

"To undertake a journey on a road never before travelled requires character and courage: character because the choice is not obvious; courage because the road will be lonely at first."

I hope that the Government, and indeed the Opposition parties, will on this occasion show the necessary character and courage. I beg to move.

Lord Horam (Con): My Lords, I am delighted that my noble friend was able to get these amendments tabled. I think we should pay tribute to the wisdom of the clerks on this issue in extending it as far as they have. This is the right way to approach immigration policy—from the point of view of demography and population growth. We should assess the optimum level of population for a country such as the UK and, once that has been settled, we should decide what our policy is on immigration.

My noble friend has set out this subject with great clarity in his pamphlet *Overcrowded Islands*, produced with the help of Civitas, the Institute for the Study of Civil Society—an entirely appropriate body, if I may say so, for this question. It is well researched, cogently written, beautifully illustrated and I urge noble Lords to read it if they get an opportunity. I may say in passing that it is far better than most government White Papers in this area, which are rather turgid by comparison. They could well take a leaf out of his pamphlet.

My noble friend has covered the ground very well in his remarks this evening, so I will confine myself to two points, remembering the advice of Lloyd George to Harold Macmillan after his maiden speech that a good speech should make no more than two points, and if the audience remembers even one of them you have done well.

My first point is that, despite being an economist myself, I wholly agree with my noble friend's sentiments about the role of economics. It is entirely the wrong

[Lord Horam]
way to approach immigration through the prism of economic policy. Business and many commentators and, sadly, the Government, do this in spades. The Government's main adviser in this area is the Migration Advisory Council and they invoke it at every turn. However, the fact is that the MAC is composed almost entirely of academic economists specialising in manpower issues.

The MAC does a good job within its narrow remit, under a lot of pressure from business interests. I have met the new chairman of the MAC, Professor Brian Bell, and he is an impressive man. But, as my noble friend said, immigration involves much broader issues than simply economic policy. There is the question of democracy and population. There are environmental issues. Quoted in my noble friend's pamphlet is a certain Boris Johnson, who said in an article in 2007:

"Do we want the south-east of Britain to resemble a giant suburbia?"

Frankly, he seems to be going the right way about that at the moment, judging by his housing policy. He seems to have forgotten all about his excellent sentiments of 2007. However, that is another matter.

There are ecological issues as well as environmental issues. There is the quality of life issue. Do we want all the good things about Britain to be perpetually unavailable because of overcrowding? There is the question of social cohesion. There is even a moral dimension—I have attached great importance to this. What right has Britain, a rich, developed country, to scour the world for talent from poorer developing countries that need it more than we do? All these issues should be addressed and the sort of unit that my noble friend envisages has the right approach to do that.

Again, speaking as an economist, I should say also that the assumptions underlying the usual economic argument that large-scale immigration is essential for business are simply wrong. Large-scale immigration damages economic growth. The simple point is that growth depends on increasing productivity. Productivity comes from increasing capital assets per person. When a person comes to this country, they occasionally bring significant capital assets but usually do not, and therefore productivity decreases and economic growth is damaged. It is no surprise to me that the large-scale immigration we have had over the last 10 or 20 years has been accompanied by very poor levels of productivity in this country. It is a major problem and the two are not unconnected.

Those are the simple economics. In addition, allowing business to recruit immigrants on a large scale reduces the incentive to train people who are already here. That is one reason why technical education and apprenticeships have been so poor in this country. We have supported higher education too much and further education too little. Arguing that we need immigration for economic reasons leaves out all those other subjects that are so important. In my view, it is also bad economics and bad business.

My noble friend mentioned the views of the people. My final point is that it is about time that we listened to the views of the people. They have been saying consistently and for years that they do not want any more immigration. They have been ignored. This is one of the issues that led to Brexit. Now we have Brexit, and still the people's views are ignored. Especially in a Covid-haunted situation, where jobs are scarce, I cannot imagine what the political explosion will be. The only sensible way out of this is to put a cap on immigration at a reasonable level, decided with the help of a body such as that proposed by my noble friend.

I appreciate, in addressing the Minister, that these are large issues that his brief may not cover to the extent which we would like. But he is from the north of England, as I am from the north of England, and I am sure he is well aware of opinion on matters of this kind in the north of England. I hope that he will convey to his colleagues in government the importance and urgency of understanding these issues.

Viscount Craigavon (CB) [V]: My Lords, I am grateful to be able to express my support for these amendments in the name of the noble Lord, Lord Hodgson of Astley Abbotts. I particularly support the tour d'horizon of his opening speech.

I accept that these amendments are trying to sow the seeds of defining a wider principle than is focused on in the Bill, which is just on the EU. In my opinion, the two key words in these amendments are "demographic objectives." As has been said, these will be defined by the Government and assessed by this new body, the office for demographic change. That office will focus exclusively on the agenda as put forward by the Government; it will not range freely wherever the current fashion happens to take it. However, it will focus on the current demographic objectives, while maybe revealing any shortcomings in them in practice.

Debate on this Bill has highlighted the need for a more systematic and dispassionate examination of this issue. There is, more than ever, a need for the public to have confidence in the statistics and aims on immigration to which the Government aspire. In the longer term, it is important that the department has some independent touchstone by which the public and Parliament can begin to assess the success or otherwise of what is being done in their name. The independence of the Treasury model gives some guidance as to how that might be achieved.

As a strong supporter of Brexit, and to the extent that we are no longer basing ourselves on the EU framework, I believe that we are now in a position to develop our own independent structures on immigration. Developing this new purported office or organisation to shadow how the department is framing its demographic objectives would be a vital process. This new office would not be an organisation that can range at will on the subject of immigration. Just to emphasise that, it is correctly restrained by the last line of Amendment 78, that it is not allowed to go wherever it wants and that it

"may not consider the impact of any alternative policies"—

that is, alternative to the Government's.

Finally, following the stresses expected over the next few months, I would hope that the department and the Government could put this issue on their agenda for the future.

Baroness Neville-Rolfe (Con): My Lords, I rise to offer my support to my noble friend Lord Hodgson of Astley Abbotts in his quest for a mechanism to inject a careful, objective study of demographic change into government work, particularly on immigration. I start by congratulating my noble friend on his excellent and thoughtful report for Civitas, *Overcrowded Islands?* This report is full of facts and perspectives that make the case for the action that we are discussing. I wish to highlight three very different points from the report, which I think make the case for today's amendments.

First, our population continues to grow fast—on average by just under 1,100 people a day. Only 316 of these are from natural increase, while 202 represent net immigration from Europe, the subject of this Bill, and 679 are from net immigration from outside Europe, which is partly balanced by 134 departing Brits. This growth is unbalanced, with more in the south-east, and by the mid-century the UK will overtake Germany in having the largest population in Europe and the most dense. The numbers I cited are also an underestimate of migration, given the weakness of official statistics—a consistent problem since at least the 1990s, when I worked on home affairs at Downing Street. For example, national insurance card numbers suggest that the migrant figures are significantly higher than those that I have just mentioned.

4.15 pm

My second point is that there is growing evidence that widespread immigration is an important factor in our persistently poor productivity growth. That makes sense to me as a businesswoman: if low-cost labour is available, you invest less in capital.

Thirdly, as my noble friend has already said, to house the growth in population we are likely to have to build an area over the size of Bedfordshire by 2041, which will lead to a further increase in the rate of species loss and possibly a shortage of water. Indeed, the species loss we are already suffering was highlighted this week by the UN and the RSPB, as was discussed by the noble Lord, Lord Teverson, and my noble friend Lord Goldsmith of Richmond Park at Questions earlier today. I am sure that those who care about the environment, as I do, also have an interest in proper demographic work.

Demographic changes have for many decades been a matter of contention. I am afraid that Ministers have sometimes misled the public on the facts. It would be clearer what the Government's intentions were if there was a regular and reliable source of statistics and forecasts on demographic change. As discussed on earlier amendments, the new system leaves a great deal to employers, whose needs may change, which makes it impossible to plan properly for the additional houses, schools, GP surgeries, hospitals and transport infrastructure that we need. That planning takes many years, as we know so well from our debates on housing and the railways.

My noble friend Lord Hodgson, encouraged by several of us, has tried to secure a Lords committee to look at these demographic and immigration issues. That was an excellent idea and just the sort of thing that this House is really good at. Sadly, the House authorities have not yet seen the light.

Amendment 77 proposes a charter and Amendment 78 a new independent office for immigration and demographic change. Another approach would be to give this duty to the ONS or the Office for Budget Responsibility, both of which are full of quantitative experts, although perhaps less dynamic in their thinking than a new body might be. There should also be ministerial overview, which I know works well in areas as diverse as international property, Companies House and the Environment Agency. It allows regular reports to be made to Parliament and questions to be asked, so that we have more transparency.

We are entering a new era, and the UK will be more dependent on our own expertise in planning for the future across the economy and in statistics—and, indeed, in crafting their collection, analysis and presentation. The Government should listen carefully to my noble friend Lord Hodgson.

Baroness Greengross (CB) [V]: My Lords, I will start by highlighting how immigration is enriching our society. I am totally committed to the cultural and racial diversity that it has made possible. These amendments require the Government to prepare a charter setting out the objectives for EU immigration and to establish an office for demographic change which would examine and report on the impact of the Government's demographic objectives in relation to immigration. I strongly support these objectives and congratulate the noble Lord, Lord Hodgson, on his extremely important report. The report highlights that the population of the UK has grown by 6.6 million since 2001 and is estimated to grow by another 5.6 million by 2041. Our population is growing by 1,100 people every day and 61% of new migrants are from nations outside the EU.

As chief executive of the International Longevity Centre UK, I contributed to the noble Lord's Civitas report and highlighted that by 2030 the number of older people in Britain is set to increase by half. The UK faces a situation where there are increased numbers of older workers crowded out of employment due to population increases. There are currently 1 million unemployed people over the age of 50 in the UK. Some 41% of people over 50 have at some stage been unemployed for over 12 months, which is a higher figure than for any other age group. The Government have a strategy to ensure that people can enjoy at least five extra healthy, independent years of life by 2035. Current population growth in the UK puts this strategy at risk, as older people have reduced opportunities for work and income—plus it puts a greater strain on the NHS, as we know, and the other government services required to deliver this strategy.

I spoke at Second Reading of the impact on the social care sector which, like the NHS, relies on immigration to fill vacancies. There are 122,000 vacancies in social care at any one time. Part of developing sustainable demographic objectives for the UK should include having a health and social care system that is not reliant on the immigration system alone in order to function.

These amendments are an opportunity for the UK to set demographic objectives that ensure greater sustainability and maintain a quality of life for the people of the United Kingdom, whatever their age.

Lord Green of Deddington (CB) [V]: My Lords, Amendments 77 and 78 contain an interesting and potentially very valuable idea. I pay tribute to the original thinking that the noble Lord, Lord Hodgson, brings to so many of his contributions to this House. I warmly endorse the arguments that he made, ably supported by the noble Lord, Lord Horam, and the noble Baroness, Lady Neville-Rolfe. I particularly welcome the wider perspective that these amendments bring to the issues surrounding immigration. The detail is always important, but so is the wider perspective, especially when very significant changes are being proposed.

As noble Lords may be aware, I have been closely involved in immigration policy matters for nearly 20 years. I think I am now on my 10th Home Secretary and my 16th Minister of Immigration. An office for immigration and demographic change, which the noble Lord proposes, would bring together the study of the key elements that cross the boundaries of so many Whitehall departments, most of which have departmental interests in higher immigration, rather than lower.

As the noble Lord mentioned, we already have the OBR, which provides a wider framework for economic policy. The Migration Advisory Committee is focused on immigration but, as has been remarked on a number of times in these debates, it comprises mainly economists and is largely focused on economics. It does not, nor is it asked to, take the longer view of the wider impacts that the noble Lord, Lord Hodgson, is advocating. The reality is that nobody in government is pulling together the demographic, economic, social and, perhaps, climatic elements that set the frame for the whole future development of our society.

Demography has its own uncertainties, of course. Death rates are fairly stable, but birth rates can change quite rapidly, especially for different groups in our society. But immigration has been, for some years, the key variable. Before the full impact of the Covid crisis became clear, immigration remained close to its highest level in our history. It is now the major factor in our demographic future. For the time being, the Covid crisis has distorted the impact of immigration but, if it were allowed to continue at recent levels, it would have huge consequences for education, health, housing and pensions. Nobody is considering that in an organised way. We need close and co-ordinated consideration of all these aspects, and where it is all leading to. We need to decide whether this is where we want to go and, whatever we decide, how best we can prepare for such a future.

So I commend the noble Lord's valuable contribution to the immigration debate, and I support his amendments.

Baroness Ludford (LD): My Lords, I concede that these amendments have a sincere purpose, but I am not sure that they really work. In Amendment 77, the noble Lord, Lord Hodgson, proposes that the Government issue a charter for EU immigration and demographic change, explaining the formulation of their policies on immigration. But the Government can already do this in other ways; indeed, they issued their White Paper on a points-based system a few months ago. The proposed charter would be laid before Parliament, but there is no description of what Parliament would then do. Would it approve, endorse or reject? I also query why the charter would set out demographic objectives only in relation to immigration when other factors are mentioned elsewhere in the two amendments. Of course, the other major factor in demographic change is the birth rate.

Amendment 78 aims to set up a new quango called the office of EU immigration and demographic change. Again, I am not sure why the Government cannot do this work, because it is the Government who issue the charter. It is proposed that the office should report on the impact of the Government's demographic objectives for EU immigration, but it would be barred from considering the impact of any alternative policies. The noble Lord sought to explain, or justify, that constraint, but it seems to take away something—critiquing the Government's policy and suggesting alternatives—which could be valuable. Again, no role is specified for Parliament as regards reports from this new office. I cannot in all honesty see the added value of such a body to the duo that we already have—the Migration Advisory Committee and, as the noble Lord, Lord Hodgson, mentioned, the Office for National Statistics, which already does population projections. I had a quick look and saw that it did one in October 2019; I do not know when the next one is due. And then there are surely academics on whose work either the MAC or the ONS could draw.

So I will not make the point that these amendments relate to immigration only from the EU, since such an objection would be disingenuous, given that I recognise the constraint imposed by the scope of the Bill. We have been a round that circuit several times in the last few days. I can do no more than say that these amendments, while interesting, do not really fly, for the reasons that I have given.

4.30 pm

Lord Kennedy of Southwark (Lab Co-op): My Lords, Amendment 77, moved by the noble Lord, Lord Hodgson of Astley Abbotts, and Amendment 78, also in his name, seek to add two new clauses to the Bill. Amendment 77 would require the Secretary of State to publish a document, to be called the

"Charter for EU Immigration and Demographic Change",

which would explain the policies of the Government and their formulation with respect to immigration from the EU.

I am afraid that when the noble Lord started quoting Lenin, he lost me. I take the view that this amendment is not necessary. The Government have already set out their position with respect to immigration, and he can either agree or disagree with it. I am not persuaded of the benefit or the necessity of the amendment. As I am not supporting Amendment 77, it should be no surprise that I am not supporting Amendment 78 either. It is not necessary and just adds to the cost to the taxpayer.

The case just has not been made for these amendments. We have discussed many amendments during our four days in Committee, and there are many others which we should support: the amendments moved by my noble friend Lord Dubs today and on Monday; those moved by the noble Baroness, Lady Hamwee, on providing physical documentary proof; and those of

the noble Earl, Lord Clancarty, on the problems of freelancers working here and in the European Union. These issues need to be addressed in the Bill.

The noble Lord, Lord Hodgson, mentioned "trust" in government. I think it is fair to say that the Government have a trust problem. A little bit of advice to the Benches opposite: it is going to get worse and worse, because your communications are dreadful. Not everything can be run out of No. 10—you need motivated civil servants and effective Ministers running departments to deliver the policies of the Government, with the freedom to act and get on with the job without being second-guessed all the time.

There are a number of boils that need lancing; it is quite a long list actually, but I will not go through them all. I think there is an issue with the influence of think tanks on the Government. I am a treasurer of a think tank, the Fabian Society, and it is very clear who funds it. Civitas, however, is one of the opaquest organisations in terms of funding, of who funds who. Maybe the noble Lord can tell us who funds Civitas and who paid for the report—we do not know. We had similar problems with Policy Exchange, the Adam Smith Institute, the Centre for Policy Studies, the Institute of Economic Affairs and the TaxPayers' Alliance. We do not know who funds these bodies, so it would be interesting to find out.

Does the Minister believe that we live in an overcrowded island? I think that was the challenge posed by the noble Lord, Lord Horam. It would be good to get a response from the Minister on that—yes or no?

There are many other issues. We can talk about industrial productivity, and I would suggest we look at Germany. Germany has much better industrial relations and does great work with its Mittelstand, its small family-owned companies. We have a lot to learn from what goes on in Germany. We also have a housing crisis. I go on about the housing crisis all the time, but I cannot get the Government to talk about social housing; we always talk about affordable housing. Those are issues we need to deal with.

Sadly, although I like the noble Lord very much, I am not with him today on these amendments.

Lord Parkinson of Whitley Bay (Con): My Lords, I thank my noble friend Lord Hodgson of Astley Abbotts for tabling these amendments, and all noble Lords who have participated in what has been a very interesting and wide-ranging debate. As the noble Viscount, Lord Craigavon, said, it has been a veritable tour d'horizon, taking in Lenin, Solzhenitsyn, Kissinger and the tips of the noble Lord, Lord Kennedy, on good governance. I am slightly surprised, given the environmental and ecological elements of the amendments, not to have heard from either of the noble Lords from the Green Party, but those have been well covered by other noble Lords.

It is self-evident that immigration has an impact on the demography of a nation, and very clear that ending free movement will therefore mean a demographic change for the UK. The current automatic preference for EEA citizens will cease and, as we deliver a new immigration system that works in the interests of the whole of the UK, it is right that the impacts of immigration arrangements on all aspects of UK life are monitored and reviewed regularly.

In tabling these amendments my noble friend is therefore shining a light on the need for objective, transparent and independent scrutiny of a very important issue, one which does not always get the attention it deserves, as he and my noble friend Lord Horam mentioned. In answer to the question of the noble Lord, Lord Kennedy of Southwark, it was a topic that I touched on in my first speech in your Lordships' House. I refer him back to that for my views.

I could not agree more with my noble friend, and the Government are clear that we will introduce new arrangements in a phased way, monitor any pressures in key sectors and keep labour market data under careful scrutiny. As I have said previously in Committee, that is particularly important when the changes are as significant as the ones we will introduce with our new points-based immigration system.

I can assure noble Lords that the Government have not made decisions in isolation. We have engaged extensively, even during the current pandemic, to build awareness and promote understanding of the new system, ensuring that those affected by the changes are fully aware of what it means for them and understand how it will operate. We have established a series of advisory groups, designed to bring together a wide range of views, to provide critical challenge to our proposals. We have also sought to go beyond the expected impact of the future immigration system in the Bill's published impact assessment.

However, we recognise that we need to go further than predictions and estimates, or, as my noble friend Lady Neville-Rolfe mentioned, the published statistics. We need to assess the realities once the system is operating and understand the experiences of those who are using the system, including individual people, employers and educational institutions. However, while the Government are absolutely committed to understanding the impact of those changes, I am afraid I diverge from my noble friend's view as I do not believe we need a whole new body and process to do that.

The Government have outlined their proposals in two published policy statements, making clear their intention to take back full control of our borders by ending free movement and introducing a single global immigration system, transforming the way in which people from all over the world come to the UK to work, study, visit or join their family. I do not believe the charter proposed in Amendment 77 would make our immigration objectives any clearer.

Furthermore, in terms of holding the Government to account for the impact of their immigration policies, the Migration Advisory Committee is widely recognised for its expertise and impartiality. I acknowledge the points some noble Lords have made about the MAC's expertise being focused solely on economics but, again, I must disagree. One of the strengths of the MAC is that it does not represent any one sector or industry; it looks at these things as a whole.

The Migration Advisory Committee is well used to running large-scale consultations. It accumulates evidence from many employers, businesses and sectors to produce carefully considered conclusions which apply to the best interests of the whole United Kingdom. This will not change under the future system. I re-emphasise to

[Lord Parkinson of Whitley Bay]
noble Lords who have made these points that this Government have expanded the remit of the Migration Advisory Committee. It is no longer constrained to specific government commissions. It now has licence to consider and comment on any aspect of immigration policy, both reactively monitoring trends in the UK labour market and proactively advising the Government about changes to the migration system that it thinks might be necessary.

It would therefore be well within the MAC's remit to look at the wider view, as the noble Lord, Lord Green of Deddington, put it: the environmental, ecological and societal impacts, as proposed by Amendment 78, as well as economic impacts. To that end, we have asked the MAC to start producing annual reports which cover not only issues such as its budget or staffing but commentary on the operation of the immigration system as a whole. The committee has accepted this challenge and we can look forward to the first such report later this year.

Finally, given the scope of the Bill, these amendments relate only to EU migration. Ending free movement from the EU is our opportunity to introduce a firmer and, more importantly, fairer system, one which applies to EEA and non-EEA citizens alike. Introducing a charter or body which looked only at EU migration would not reflect that system and would run counter to the Government's intentions. For these reasons, I hope my noble friend will see fit to withdraw his amendments.

The Deputy Chairman of Committees (Baroness McIntosh of Hudnall) (Lab): My Lords, I have two requests to speak after the Minister from the noble Baroness, Lady Bennett of Manor Castle, and the noble Lord, Lord Kennedy of Southwark.

Baroness Bennett of Manor Castle (GP) [V]: My Lords, the Minister had clearly not been informed that I was already waiting to ask a question, so I hope this does not come as too much of a shock to him. However, in the interests of clarity in this debate, I am sure he will agree to note the fact that the human ecological footprint is a product of a number of people in an area or nation, or on the globe, multiplied by their consumption level. I am sure he will know that the people of the UK collectively consume our share of three planets' resources each year, but we have only one planet. Even if we had half the number of people in the UK that we have now, we would greatly exceed the planetary limits.

Can the Minister confirm the Government's understanding of the essential environmental approach in areas ranging from the climate emergency—noting our special responsibilities as COP26 chair—to the nature crisis and water concerns that we discussed earlier in Oral Questions? The key approach is transforming our currently wasteful, destructive treatment of the planet as a mine and dumping ground, which has produced a miserable, insecure and vulnerable society—as exposed by Covid-19—that exceeds a significant number of planetary boundaries.

Lord Parkinson of Whitley Bay (Con): It is not a shock but a pleasure to hear from the noble Baroness, and a particular pleasure to agree with what she says about it being not just the level of consumption but the overall number of people that has an ecological impact. That is why I am pleased to be part of a Government who are pursuing our world-leading target of achieving net zero.

Lord Kennedy of Southwark (Lab Co-op): My Lords, I thank the Minister for referring me to his personal views about the overcrowding question. I will look at them but I am also conscious that he was asked a question by the noble Lord, Lord Horam, his noble friend on the Conservative Benches. The Minister is sitting there, and the question was posed to him, as a member of Her Majesty's Government. We would like to know the Government's position in respect of whether we live on an overcrowded island—not his personal view, the view of Her Majesty's Government.

Lord Parkinson of Whitley Bay (Con): My Lords, this Government are introducing an immigration system that will allow us to have full control over our borders for the first time, so that elected Governments can respond to the views of the people and achieve the level that they say they want to see. I hope all democrats would welcome that.

The Deputy Chairman of Committees (Baroness McIntosh of Hudnall) (Lab): My Lords, I have received no further requests to speak after the Minister, so I call the noble Lord, Lord Hodgson of Astley Abbotts.

Lord Hodgson of Astley Abbotts (Con): I thank all who participated in this debate. This was the first time we have taken the car out on the track and I think we got around without a wheel coming off. I am particularly grateful to my noble friends Lord Horam and Lady Neville-Rolfe on the economics, the importance of productivity and the problem of crowding out and to the noble Baroness, Lady Greengross. When I was preparing my pamphlet, I went to see a captain of industry about employing older people. He said "Of course, we are very keen to employ older people", and I said "Well, let us look at your human resources booklet". It did not have a person over 30 in it. The way our society looks at people is unfair.

Of course, the noble Lord, Lord Green, has forgotten more about immigration than I will ever know. To the noble Baroness, Lady Bennett, I say—without wishing to flog my pamphlet—that there is a map of the ecological footprint of London in it, on which you can see the numbers she referred to. I thought I got half—no, a quarter—of a loaf out of the noble Baroness, Lady Ludford. It was a principled refusal but the car needed a bit of tinkering to get her to come onside.

To the noble Lord, Lord Kennedy, I say that we had a classic knockabout. We were all biffed about. I will make one serious point, which is meant to be gentle. If the Labour Party does not get its act together and its policy clear on the issues of people coming to this country, it will not regain the red-wall seats that went blue. People outside the M25 feel passionately about this. How you tackle it is up to his party but just saying "Never mind; it will all be alright" does not, to be honest, sound like a good political strategy.

4.45 pm

I say to my noble friend the Minister that we pray in aid the MAC, which does not know anything about birds, ecology or anything like that but focuses on numbers, as does the ONS—quite rightly, too. We always come back to the fact that the papers go on about immigration. We are trying to lift the argument to talk about more than just numbers. What happens when people get here? What happens to the countryside and our society? We always get back down into the weeds of the numbers.

Finally, on "taking back control", in the last three years non-EU immigration has gone from 479 to 866 a day. Is that what taking back control is? We have virtually doubled an area of immigration over which the country has always had control. However, this is the first go around the track and I look forward to producing a sleeker car in due course. In the meantime, I beg leave to withdraw the amendment.

Amendment 77 withdrawn.

Amendments 78 and 79 not moved.

The Deputy Chairman of Committees (Baroness McIntosh of Hudnall) (Lab): My Lords, we now come to the group consisting of Amendment 80. I remind noble Lords that anyone wishing to speak after the Minister should email the Clerk during the debate, and anyone wishing to press this amendment to a Division should make that clear in the debate.

Amendment 80

Moved by ***Baroness Hamwee***

80: After Clause 4, insert the following new Clause—

"Protections under the European Union (Withdrawal Agreement) Act 2020

At least three months before the commencement of Part 1 for any purpose, the Secretary of State must publish drafts of such statutory instruments as are proposed to be laid under the powers contained in the European Union (Withdrawal Agreement) Act 2020 to protect the rights of EEA citizens and their family members' rights of residence, entry and exit until 30 June 2021."

Member's explanatory statement

This amendment aims to clarify the rights that would be available to EEA citizens during the 'grace period' under the European Union (Withdrawal Agreement) Act.

Baroness Hamwee (LD) [V]: To follow the previous speech, this may be the first time we are taking this particular car round the track but I do not think it will be the last, because this amendment is aiming

"to clarify the rights … available to EEA citizens during the 'grace period' under"

the recently published SI. It is about the period to the end of June 2021. I say it aims to clarify the issues but it is more about putting some issues on the table. The Minister will be able to say that the amendment is not necessary because we have already done it. I thank her or possibly him—I am peering at a computer screen—for that and for what I saw being called the "bounty" of the recently published draft SIs. I think that was a reference to their length and complexity.

The instrument in question is the draft citizens' rights (application deadline and temporary protection) (EU exit) regulations 2020. However, I am afraid that the debate now will not be the end of it. After this debate, as well as before it, stakeholders will be grappling with the detail of it and the other published SIs. I do not regard myself as having the knowledge required to appreciate the significance of the modifications to all the provisions listed across the 14 pages of this instrument.

My first question is about the status of the draft, which has been referred to throughout as an "illustrative draft". What does illustrative mean? Is this simply because draft statutory instruments have a formal status, while this publication has not reached that status?

Exactly who is protected by the grace period provisions? Is it only those exercising treaty rights by the end of 2020, while, for instance, people who are self-sufficient and without comprehensive sickness insurance—what might better be called in this country private health insurance—are not covered? When the 2020 withdrawal Act was going through Parliament, there were clear assurances that everyone eligible for status via the EU settled status scheme would be protected during the grace period. The Minister will appreciate the importance of the issue: protection is not to be withdrawn from those currently eligible otherwise than through treaty rights who have not applied by the end of the year. In previous debates, I raised the importance of information being not just available but actively provided to those who are affected, in the context of who will be applying after next June. If this SI is to restrict applications, the matter is really very urgent.

The Minister, Kevin Foster, said that the regulations would be

"debated and made in good time prior to their entry into force at the end of the transition period."—[*Official Report*, Commons, Immigration and Social Security Co-ordination (EU Withdrawal) Bill Committee, 16/6/20; col. 191.]

I am sure noble Lords will understand that what is "in good time" for the Home Office could be very last minute for the individuals affected.

Will the Minister comment on one of the draft illustrative regulations? Regulation 7 in Schedule 1 to the 2016 regulations, which this modifies, acknowledges the discretion of member states

"acting within parameters set by the EU Treaties"

in taking a decision conducive to the public good. This discretion will become:

"acting within parameters set by the law, to define its own standards of public policy and public security, for purposes tailored to its individual context from time to time."

I will not go down the route of saying that this is quite topical, given both the political and politico-legal debate that is going on, but I am sure the Minister will understand that there is a worry about moving the goalposts.

Will the Minister agree to meet parliamentarians if necessary—I understand there is a similar concern in the Commons—and for officials to be able to meet stakeholders, and the legal experts who are advising them, who are considering this draft and the other draft published at the same time? They are concerned, and they need the time. I ask that knowing that there is

[Baroness Hamwee]
the opportunity for the Government to withdraw a published draft and reissue it, but it is always much easier, because of how human beings behave—they do not like to be thought to be backing down, and so on—to have the conversations before the final form is published, when it will be that much more difficult to withdraw.

My amendment provides the opportunity to make those requests for what I am sure could be productive discussions with people who are not in the Chamber at the moment and who will have other points they could usefully make. I beg to move.

Lord Rosser (Lab): We had a short debate on this issue when we debated Amendment 52, and I raised one or two questions about the draft SI, which, as the noble Baroness, Lady Hamwee, said, is called the Citizens' Rights (Application Deadline and Temporary Protection) (EU Exit) Regulations 2020. One of the questions I raised, to which I do not think I had an answer, related to Regulation 13, which states:

"Where any question arises as to whether a person is or was lawfully resident in the United Kingdom at a particular point in time … it is for the individual in question to prove that they were".

I asked in what situation the Government expect that people would have to prove their ongoing status; how they envisage people will do this, in the sense of what documentation they might need, for example; and, crucially, what support there would be for a person who found themselves in this situation and who might well in fact be perfectly lawfully resident in the United Kingdom.

I share the view that the noble Baroness, Lady Hamwee, expressed, that we need an opportunity for discussion of the provisions of the draft SI, and that it is a fairly complex process. At this stage, I have two further questions. First, are there any EEA citizens, and their families, resident in the UK by the end of the transition period whose full existing rights are not going to be protected during the grace period through secondary legislation made under the European Union (Withdrawal Agreement) Act 2020? Secondly, will the Minister spell out precisely whose full existing rights are protected by the draft SI?

Lord Parkinson of Whitley Bay (Con): My Lords, I thank the noble Baroness, Lady Hamwee, for speaking to her Amendment 80. Its purpose, as she said, is to require the Government to publish draft statutory instruments protecting the rights of EEA citizens who are eligible to apply to the EU settlement scheme but have not done so by the end of the transition period. It concerns, as she said, the statutory instrument that will be made under Section 7 of the EU (Withdrawal Agreement) Act 2020. As noble Lords are aware, and as the noble Baroness mentioned, my noble friend Lady Williams of Trafford wrote to all noble Lords on 4 September, sharing a copy of this draft statutory instrument together with a copy of the draft regulations to be made under Clause 4 of this Bill.

The noble Baroness, Lady Hamwee, asked about the nature of the use of the word "illustrative". My understanding is that it is used to differentiate from "Draft" with a capital D, which has a formal meaning—so yes, they are illustrative. In making these draft documents available, the Government's intention is to support your Lordships' House in its consideration of the Bill. They are also made available to Members in another place and published in the Libraries of both Houses.

The instrument will set the deadline for applications to the EU settlement scheme as 30 June 2021. It will also save relevant existing rights, in relation to residency and access to benefits and services for EEA citizens and their eligible family members who make an application by 30 June 2021, until it is finally determined. This includes pending the outcome of an appeal against any decision to refuse status under the EU settlement scheme. This means that if somebody has not yet applied or been granted status under the EU settlement scheme by the end of the transition period, they can continue to work and live in the UK as they do now, provided they apply by 30 June 2021. The Government will shortly lay this statutory instrument, which will be subject to debate and approval by Parliament and will need to come into force at the end of the transition period.

The noble Baroness, Lady Hamwee, asked about CSI. The grace period statutory instrument does not change the eligibility criteria for the EU settlement scheme and those criteria do not include CSI. I can confirm that the Government are not changing the requirements for applications to the EU settlement scheme. The grace period SI maintains CSI as a requirement for lawful residence during the grace period for a student or self-sufficient person under the saved EEA regulations, as is consistent with EU law.

The noble Baroness asked a question on a specific draft statutory instrument. In the interests of brevity and accuracy, I shall write to her about that, as I will on any other questions I have not covered. I am certainly happy to give an undertaking to meet parliamentarians and those who are interested in this issue, so that we can look at it further.

The noble Lord, Lord Rosser, asked what documentation people might need. During the grace period, EEA citizens will be able to give evidence of their rights to work and rent property by showing their passport or identity card. If EEA citizens apply for benefits during the grace period, they may need to demonstrate that they were also lawfully resident under the EEA regulations at the end of the transition period, for example that they were employed, which they might demonstrate by providing a wage slip or a letter from their employer. That is a requirement that they must meet now.

As I said, I am happy to write with further answers on the questions that I have not covered but I hope that this gives the noble Baroness the reassurance that she needs to withdraw her amendment.

5 pm

The Deputy Chairman of Committees (Lord Bates) (Con): I have received no requests to speak after the Minister so I call the noble Baroness, Lady Hamwee, to respond to the debate on her amendment.

Baroness Hamwee (LD) [V]: My Lords, I am grateful for that response. Of course, when one is dealing with something so technical, it is difficult to know

whether one has thought of the right questions. I am therefore particularly grateful for the Minister's offer of a meeting.

The noble Lord, Lord Rosser, mentioned Regulation 13. He asked what support would be given to people who need to prove their position. I marked that and, immediately afterwards, marked the comment at the end of the Explanatory Note that there is no full impact assessment for the instrument

"as no, or no significant, impact on the private, voluntary or public sector is foreseen."

That made me think of the support that has had to be given to the voluntary sector in particular and the work for others in rolling out and attracting applications for the settled status scheme.

As I said, however, I thank the Minister. I suspect that this is not the end of our discussions on what I hope will not be set in stone until its impact is fully understood by everyone involved and until everyone is satisfied that it is a proper way to approach the matter.

I beg leave to withdraw the amendment.

Amendment 80 withdrawn.

The Deputy Chairman of Committees (Lord Bates) (Con): We now come to the group consisting of Amendment 81. I remind noble Lords that anyone wishing to speak after the Minister should email the clerk during the debate. Anyone wishing to press the amendment to a Division should make that clear in the debate.

Amendment 81

Moved by ***Lord Morrow***

81: After Clause 4, insert the following new Clause—

"Requirements before making and amending immigration rules

Prior to making any regulations under subsection 4(1) to amend or create immigration rules the Secretary of State must lay a report before each House of Parliament assessing the impact of the regulations on victims of modern slavery."

Member's explanatory statement

This amendment would require the Government to publish an assessment of the impact of changes to the Immigration Rules arising from this Bill on victims of modern slavery.

Lord Morrow (DUP) [V]: My Lords, I tabled Amendment 81 because I have real concerns about the proposed arrangements with respect to the end of free movement as they relate to victims of modern slavery. As I stated during the first day of this Committee's proceedings,

"it is politically unthinkable that we should now stand by and allow an erosion in the rights of victims of modern slavery in this country."

However, I fear that we are in danger of doing precisely that.

By way of introduction, I should perhaps anticipate the Minister. He made this point in relation to Amendment 7 and might make it again; I hope that my presumption is wrong. He stated that

"the system of identification and support for victims of modern slavery and the legal framework around it go far beyond the scope of the Bill we are debating. Indeed, the most commonly represented nationality among those referred to the national referral mechanism in 2019 was British. It is important to see this as distinct from an immigration issue alone."—[*Official Report*, 7/9/20; cols. 618-21.]

It is certainly important for us to recognise the reality of internal trafficking. However, this must not be allowed to obscure the fact that by far the largest number of trafficked persons in the UK are foreign nationals, for whom immigration status is of huge importance. It can be a source of vulnerability that leads them to be exploited; it can affect their rights to services and support; and it can affect the way in which they are dealt with by professionals and the general public. Immigration policy will therefore be of central importance to addressing human trafficking successfully. In this context, I make no apology for my amendment.

Amendment 81 would require that, before making and amending the Immigration Rules to establish the system that will take the place of free movement,

"under subsection 4(1) … the Secretary of State must lay a report before each House of Parliament assessing the impact of the regulations on victims of modern slavery."

In considering the importance of this provision, we should recall that when the Government announced in February their intention to replace the rights associated with free movement for EEA nationals—including EEA nationals who are victims of modern slavery—with a points-based system, the Independent Anti-slavery Commissioner, Dame Sara Thornton, responded with a warning:

"traffickers will seek every opportunity to abuse new immigration policies and so the protection of vulnerable people needs to be front and centre of the debate."

The purpose of Amendment 81, which mandates that there should be an assessment of the impact of the new Immigration Rules specifically on victims of modern slavery, is to give effect to the anti-slavery commissioner's important recommendation that the protection of vulnerable people needs to be at the front and centre of the debate.

One area of concern is what will happen under the new Immigration Rules to a victim of modern slavery who is not British once they have been confirmed as a victim by the national referral mechanism. Under Section 18 of Northern Ireland's human trafficking and exploitation Act, victims are guaranteed "assistance and support" and, under subsection (9), the Department of Justice in Northern Ireland is able to continue providing support after a positive conclusive grounds decision where it deems it necessary. However, the Northern Ireland Executive have no power to grant immigration leave to victims to enable them to remain in the UK even if they deem that support necessary.

At the moment, many victims who are EEA nationals, including confirmed victims of modern slavery, are able to stay in Northern Ireland and the wider UK under free movement rights, thus enabling them to access regular benefits and statutory services, to work and to study, and potentially to receive additional trafficking support from our Department of Justice on a discretionary basis as they continue their recovery. However, once free movement comes to an end, EEA nationals newly arriving in the UK will no longer have the right to live and work in any part of the UK, including Northern Ireland, unless they have relevant

[Lord Morrow]

skills and are sponsored by an employer to get a highly skilled worker visa, which is unlikely to be the case for victims of slavery. Nor will they have recourse to public funds to access benefits and services that will help them in their recovery beyond the immediate crisis period of the NRM.

At Second Reading, I mentioned the Centre for Social Justice's timely report, *It Still Happens Here: Fighting UK Slavery in the 2020s*, which was published in July. It states:

"For many, having no recourse to public funds poses further barriers to moving people on safely, putting victims at risk of homelessness and destitution, and making it more likely that they will fall back into exploitation and trafficking."

Rather than responding to this key finding by extending access to recourse to public funds, it seems that we are about to remove the key provision from some victims of human trafficking that is central to victim recovery. Providing victims with secure immigration status and recourse to public funds is not simply a means to support their recovery; rather, it is also a vital measure to prevent them being retrafficked in the future.

The only option for a victim who arrives in the UK after 1 January to secure the right to remain in the UK and to access publicly funded benefits and services will be to apply for discretionary leave to remain, known as DLR, since EEA nationals are unlikely to be granted asylum. But, unlike victims from other countries, EEA nationals are not currently automatically considered for DLR. They have to make their own applications.

There are two significant additional problems with DLR. First, applying takes time, during which confirmed victims are vulnerable to destitution and re-trafficking. Secondly, to date only a very small proportion of confirmed victims of modern slavery have been granted DLR, with the attached access to public funds and support needed for their recovery, because it is available only in limited and defined circumstances. Deciding to depend on DLR in this knowledge, therefore, would be tantamount to voting to erode support for confirmed victims of modern slavery.

I am not opposed to the end of free movement. We have to give effect to that in order to honour the outcome of the referendum. However, it absolutely does not follow that we have to create a situation in which a significant proportion of trafficking victims have uncertain immigration status and will lose recourse to public funds. I can only assume that the failure to put in place clear and accessible alternative routes for EEA nationals to remain in the UK with public funds for a period of recovery beyond the NRM results from the absence of any formal requirement to assess the impact of the wide-reaching changes to free movement on this specific and particularly vulnerable group.

We must ensure that any future changes to the DLR system serve to make it more accessible for EEA nationals, and that the full impact on victims of modern slavery is assessed, which is why I introduced Amendment 81. As well as seeking to assess the impact of immigration rules on victims after they have escaped their exploitation, it seeks to provide an opportunity for scrutiny of how immigration rules may protect people, or inadvertently put them at risk of trafficking.

In this context, I raise the issue of temporary migration routes such as the seasonal workers pilot scheme, which has been running since last year. A report published last year by the International Organization for Migration, *Migrants and their Vulnerability to Human Trafficking, Modern Slavery and Forced Labour*, found:

"Restrictive immigration policies (such as restrictions applied to certain visas or arbitrary changes to asylum procedures for nationals from certain countries) and weak migration governance structures are frequently noted as major causes of vulnerability to modern slavery, especially when combined with low-wage migration."

Elsewhere, the report says that

"migrants whose visas are tied to a specific employer are also at higher risk of exploitation."

Experts in labour exploitation, such as Focus on Labour Exploitation, have cautioned that temporary migration schemes are

"well-recognised to increase the risks of abuse and exploitation of workers".

In July the Government published a document called *UK Points-Based Immigration System: Further Details Statement*, which includes the following text:

"As we replace freedom of movement with the Points-Based System, we remain committed to protecting individuals from modern slavery and exploitation by criminal traffickers and unscrupulous employers."

I welcome the Government's statement, but sadly it reads as pure assertion. It does not demonstrate any kind of means to secure this end. I very much hope that the Minister will appreciate how, in the context of the proposed removal of a route to protection from re-trafficking offered by remaining in the UK and having recourse to public funds, and without a guarantee of a safe route for migration for EEA nationals who do not qualify for the skilled worker scheme, this assertion, divorced from any delivery mechanism, is vulnerable to seeming profoundly disingenuous.

5.15 pm

Amendment 81 is of central importance to delivering on the recommendation of the Anti-Slavery Commissioner. In the first instance, its presence would help to protect against regulations being passed that make the situation facing EEA nationals who are victims of human trafficking even worse than it will already be from 1 January 2021, compared with how it is today. In the second instance, I very much hope that knowledge of its presence would create an incentive for the Government proactively to develop immigration rules that positively help victims of human trafficking and will prevent trafficking and exploitation occurring in the first place.

The only other way to avoid this dilemma, which would have the added attraction of improving the rights not only of victims of modern slavery who are EEA nationals, but of victims of modern slavery from Britain and all other parts of the world, would be for the Government to recognise that, as I said on 7 September, the Bill sponsored by the former Conservative Party leader Iain Duncan Smith and the noble Lord, Lord McColl, is a Bill whose time has come. Putting into domestic law the right of victims of modern slavery to access support and benefits for a period of recovery in the UK during and after the NRM would demonstrate that, rather than Brexit being allowed to

become an opportunity for the erosion of the rights of the most vulnerable, it is about using our sovereignty to enhance their rights and renew our identity as a country that has, since the great Wilberforce, led the way in combating slavery. It would thus, in many ways, make impact assessments under Amendment 81 unnecessary. Were the Minister to give an assurance of support for that Bill, I would be happy to set my amendment to one side. I look forward to his response, and to hearing what others contribute to the debate.

Lord McCrea of Magherafelt and Cookstown (DUP) [V]: My Lords, I am pleased to support Amendment 81 in the name of my noble friend Lord Morrow. During our consideration of the Bill we have heard a great deal about the impact of the shape of immigration rules on confirmed victims of modern slavery. I share the concerns articulated by other noble Lords about not permitting the changes to the immigration system to leave victims with fewer rights to remain, or more restricted access to services and support than is currently available.

This country has a proud history of providing asylum, refuge and protection to vulnerable people, and ending freedom of movement is not meant to pull the rug out from underneath vulnerable victims of modern slavery. That is not what the public voted for, and I urge the Minister to reflect urgently with colleagues on what can be put in place before the end of the year to ensure that rights to remain in the UK for a minimum of 12 months to receive support beyond the NRM, including the opportunity to engage in work and study, will be made available to victims of modern slavery from EEA countries.

In the specific context of Amendment 81, in July the Government published a 130-page document called *UK Points-Based Immigration System: Further Details Statement*. Paragraph 3 on page 11, under the heading "Principles of the Points-Based System", says:

"As we replace freedom of movement with the Points-Based System, we remain committed to protecting individuals from modern slavery and exploitation by criminal traffickers and unscrupulous employers."

That is a noble commitment, but it rings rather hollow in the absence of a delivery mechanism, which is why Amendment 81 is, as I will argue, of such strategic importance.

The need for a delivery mechanism is highlighted by the implication of the 2018 figures from Northern Ireland's Department of Agriculture, Environment and Rural Affairs, which show that one-fifth of agricultural workers in the Province are from countries outside the UK and Ireland, and most come from the EU. Some 15% of the agriculture businesses surveyed employ seasonal migrant workers. Agriculture is, unfortunately, already well known to be a risk sector for human trafficking, and the combination of a change to the rules around recruiting migrant workers with those existing risks cannot be ignored.

A report published by the International Organization for Migration last year, *Migrants and their Vulnerability to Human Trafficking, Modern Slavery and Forced Labour*, found that:

"Restrictive immigration policies (such as restrictions applied to certain visas or arbitrary changes to asylum procedures for nationals from certain countries) and weak migration governance structures are frequently noted as major causes of vulnerability to modern slavery, especially when combined with low-wage migration",

and that,

"migrants whose visas are tied to a specific employer are also at higher risk of exploitation".

In this context, it comes as no surprise to me that the noble Lord, Lord Morrow, who has huge experience in dealing with modern slavery issues, having developed, introduced and successfully taken through Stormont what is now known as the human trafficking and exploitation Act, has brought forward the amendment to provide the requisite delivery mechanism. I very much hope that the Government will accept it.

I urge the Government, further to this debate and that on Amendment 7, to prevent the integrity of the Brexit protocols being tarnished by allowing 1 January 2021 to become a day on which the rights of victims of modern slavery and some of the most vulnerable members of our society are eroded. The best way in which to get ahead of the game and demonstrate that, far from being about a race to the bottom, Brexit is about using our sovereignty to generate better laws, would be to adopt the Modern Slavery (Victim Support) Bill in the name of the noble Lord, Lord McColl, and the right honourable Sir Iain Duncan Smith. I urge the Government to adopt not merely the amendment but that Bill without delay.

Lord Alton of Liverpool (CB): My Lords, I am pleased to speak in support of the amendment in the name of the noble Lord, Lord Morrow, who has done such heroic work, both here and in the Northern Ireland Assembly, in championing the rights of people who are being trafficked. I endorse everything that the noble Lord, Lord McCrea of Magherafelt and Cookstown, has said.

I should declare that I am a trustee of the anti-trafficking charity the Arise Foundation, which focuses on prevention of trafficking in source countries and has seen a huge increase in vulnerability, due to lack of available work during the Covid pandemic. When ready for publication, I suspect that we will see a substantial increase in trafficking numbers. Has the Minister seen any harbingers or indicators of that?

Undoubtedly, from the reports being received by Arise, Covid has had a devastating effect on heightening vulnerability in source countries, making it more likely that people will be at risk of making unsafe journeys. That is even more reason to incorporate the amendment. I also remind the Minister of the remarks I read into Hansard last week from the former independent commissioner on human trafficking, Kevin Hyland.

I am greatly concerned that, as things stand, when proposed changes to immigration law come into effect on 1 January 2021, they will diminish the rights of victims of modern slavery, and the amendment would help to prevent that from happening. Whereas today EEA nationals who are victims of modern slavery are able to remain in the UK, accessing a variety of publicly funded benefits and employment opportunities to help them recover, they will lose this in the same way as EEA nationals who are not victims of modern slavery. Nothing comparable is being put in its place. Their only hope is to apply for discretionary leave to

[Lord Alton of Liverpool]
remain, but we know that in practice very few victims receive such grants of leave—about 12%. Perhaps the noble Baroness can confirm that.

Then I see from reading the Government's response to Amendment 7 that, although they have committed not to, in effect, directly knock out rights from the EU anti-trafficking directive that are part of EU retained law, they cannot tell us whether all the rights currently available to victims will be part of EU retained law. The Government have a chance again to do that this evening. Unless they do so, this will continue to engender fear that 1 January 2021 will usher in the end of some effective rights of victims of modern slavery.

That would be particularly tragic for the Government because they can take great credit for passing the Modern Slavery Act 2015. I was happy to have been a participant in those proceedings. Of course, that legislation came forward only because of the work of the then Home Secretary, Theresa May. It is a permanent and lasting legacy and achievement of hers and of both Houses, working with one another across the political divide. I would be deeply saddened if I thought that anything we were doing now would in any way diminish the importance and effectiveness of that legislation.

As the noble Lord, Lord McCrea, has said, one of the arguments advanced by those in favour of leaving the European Union, was that the UK would now have the option of not merely maintaining EU standards but going beyond them. Here is an opportunity to test that proposition. The Government could and should go further by urgently adopting the Modern Slavery (Victim Support) Bill sponsored by the noble Lord, Lord McColl of Dulwich, and the former Conservative Party leader, Iain Duncan Smith.

In the time available to me, however, I want particularly to comment on the value of the amendment from the perspective of preventing human trafficking. I should like to pursue a point raised by the noble Lord, Lord Morrow, about ensuring that the arrangements not only for the skilled worker visa but other migration routes will clearly set out how the Government intend to prevent human trafficking and exploitation and contain appropriate safeguards to avoid those routes being manipulated by traffickers.

I welcome the Government's inclusion of protecting people from modern slavery in the three guiding principles for the points-based system set out in the further details statement published in July. The fact that the whole approach to immigration is underpinned by three foundational principles, and that one of those principles is concerned with combating trafficking, suggests that combating trafficking is important. But where is the delivery mechanism? That was a point made effectively by the two noble Lords who preceded me. I commend the amendment to the Minister as an example of the sort of mechanism that needs to be put in place in order to fulfil the aspirations of that principle.

Of course, not all migrant workers are vulnerable to modern slavery—a point made by the Minister rightly made from the Dispatch Box. Indeed, those who are the most highly paid are unlikely to be caught in exploitation; but even for skilled and well paid migrants it is important that checks and processes are put in place to ensure that those recruiting people from overseas are reputable, subject to scrutiny and abide by all labour regulations. The noble Baroness rightly reinforced that in our earlier debates.

Most at risk, though, are likely to be those who fall outside the skilled worker points-based programme—those who will participate in other temporary migration routes such as youth mobility schemes or seasonal worker schemes or those who may be recruited to work illegally spring to mind. The Government's policy statement about the points-based system in February said:

> "We will not introduce a general low-skilled or temporary work route. We need to shift the focus of our economy away from a reliance on cheap labour from Europe and instead concentrate on investment in technology and automation. Employers will need to adjust."

I am very concerned that some of the ways in which unscrupulous employers will adjust will include the exploitation of undocumented workers and it is worrying that that the Government do not seem to have taken account of that risk. I look forward to hearing what the noble Baroness says on that in her reply.

I support the amendment because it will mean that, as the building blocks of the new immigration system are put in place through regulations under Clause 4, the Government will be required to assess the impact of that system on victims of modern slavery, and I hope, the way in which the system can prevent modern slavery from happening at all.

I was struck by research published in 2019 by the European Union Agency for Fundamental Rights, which looked at labour exploitation of adult migrants in eight European Union states and found that

> "vulnerability linked to residence status is the most important risk factor causing or contributing to labour exploitation".

5.30 pm

In 2017 the Labour Exploitation Advisory Group warned that an approach to immigration targeted at reducing low-wage or low-skilled migration presents

> "a key risk as, in low-skilled sections of the labour market where demand for cheap and temporary labour is greatest, migrant workers are already highly vulnerable to abuse. Demand for labour in these sectors is unlikely to decrease, meaning that positions may be filled by undocumented workers or those working in breach of visa conditions, who are at even greater risk of severe exploitation due to insecure status."

I urge the Government to look again at the need for a safe and approved route for migrant labour to enter low-wage sectors. However, in doing so, the Government must consider how the structure of those schemes would facilitate or prevent modern day slavery.

Noble Lords will recall our many debates during and following the passage of the Modern Slavery Act regarding the risks of trafficking and exploitation of domestic migrant workers resulting from restrictions within the special overseas domestic worker visa. It was an issue on which—as I think the noble Lord, Lord Bates, who is on the Woolsack today, will recall—I divided the House. The risks that I and others identified included the inability of a worker to change their employer. We must take care that these harmful restrictions that have already been identified in relation to one sector are not replicated in the new immigration routes

and system that will be formed through regulations made under Clause 4. Amendment 81 will help in that process.

The Government have already made a commitment to ensure that the points-based immigration system will protect individuals from modern slavery and exploitation. I commend them for that, but they must do more than make statements of aspiration in policy papers. They must make sure that rules, infrastructure and processes surrounding all migration routes will act to prevent modern slavery.

Amendment 81 provides a means for assessing whether each facet of the new immigration system meets this commitment to prevent trafficking and, crucially, allows Parliament to scrutinise the assessment. It will ensure that the risks to the most vulnerable of all workers are considered at the outset of developing new immigration policies and provides a way for the Government to put flesh on the bones of their July policy statement commitment to protecting individuals from modern slavery. For all those reasons, I commend Amendment 81 to the Committee.

Lord McColl of Dulwich (Con) [V]: My Lords, I speak in support of Amendment 81 in the name of the noble Lord, Lord Morrow. The noble Lord is to be commended for the work he did in the Northern Ireland Assembly to bring about new legislation on human trafficking and modern slavery. In particular, I greatly admire his determination that his legislation should include measures to protect and support victims, something that is sadly lacking in our Modern Slavery Act for victims in England and Wales.

I support Amendment 81 to ensure that any future changes that are made to the Immigration Rules using the powers in Clause 4 should be assessed for their impact on victims of modern slavery, in large part because it appears to me that, thus far, there has been insufficient consideration of the impact of the changes to the immigration system on victims of modern slavery.

As I said on Day 1 in Committee, any changes as part of the Brexit process that result in victims of modern slavery having fewer protections than they had prior to 1 January 2021

"would damage the integrity of the Brexit project in a way that is unthinkable."—[*Official Report*, 7/9/20; col. 615.]

In introducing this important amendment, the noble Lord, Lord Morrow, spoke very movingly of how changes to free movement could lead to more exploitation for potential victims of trafficking, unless the Government are proactive in addressing this issue. It is indeed ironic that the current proposal means that a significant portion of EEA nationals who are victims of modern slavery would lose access to the very thing that, as recently as July this year, the Centre for Social Justice pointed out is of central importance to victims' recovery, namely recourse to public funds.

In approaching Amendment 81 and the concern about the erosion of the rights of victims of trafficking on 1 January 2021, it is important to pick up the issue by reflecting on the Minister's response to my Amendment 7, which addressed concern about the loss of rights on 1 January 2021. That response will help us to see the true significance of Amendment 81, for reasons that I shall explain.

In his response to that amendment, the Minister made it plain that the Government are unable to say precisely which directly effective rights under the anti-trafficking directive will be retained as part of domestic law and which will be lost on 1 January. On reading *Hansard*, I now recognise—contrary to what I said in response at the time—that this means it is still entirely possible that on 1 January there will be a reduction in the number of directly effective rights available to confirmed victims of human trafficking in the United Kingdom. I find it disturbing that the Government should acknowledge the fact that, in some respects, the rights of victims may be lost in such a way when we could use our sovereignty to ensure that there is no loss of rights.

Amendment 81 would help us to avoid such a situation in future by requiring the Government to make a specific assessment of the impact on victims of modern slavery of any further changes to the Immigration Rules. This will simply provide a check on the development of future regulations that might make the present situation worse. Knowledge that any such regulations will be checked against this standard—namely that they should not undermine the rights of victims of trafficking—creates a positive incentive proactively to develop legislation in favour of the best interests of victims of human trafficking. Indeed, subjecting ourselves to this discipline would give particular legitimacy to efforts to develop regulations that will offset some of the negative consequences of what will otherwise happen to victims of modern slavery on 1 January 2021.

In the absence of Amendment 81, it is as yet unclear what immigration status will be available to victims of modern slavery from the EEA and what access they will have to benefits, housing and other support services once they have exited the NRM. Unless they are among the lucky few to be granted discretionary leave, it seems likely that they will no longer have the access to these services that they have today. In 2015, just 12% of victims were given this special discretionary leave to remain. Unfortunately, despite submitting a Written Question in March, I have been unable to obtain up-to-date statistics from the Home Office.

I have also been advised that in the next few months there is something of an impossible choice for victims of modern slavery as to whether to apply for pre-settled status, which may in the long run provide greater support but in the short term does not give full access to benefits and other services and can prevent them being able to apply for special discretionary leave. It is these sorts of negative consequences that Amendment 81 seeks to avoid, which is why it has my support.

Rather than viewing the present situation as a great problem, we should see it as an opportunity. I encourage us to look beyond merely identifying risks and seek to set a bold new direction for supporting victims of modern slavery. The Government have the opportunity to inaugurate the post-Brexit era by asking Parliament to use its sovereignty to create a legal framework whereby we reject the possibility of victims having lesser legal protections than they do today—and indeed the notion that we should simply ensure that the legal rights of victims under Brexit are identical to the legal

[LORD MCCOLL OF DULWICH]
rights under the EU—and to enhance the rights of confirmed victims by adopting the Modern Slavery (Victim Support) Bill that I sponsored with the right honourable Sir Iain Duncan Smith.

This Bill, which amends the Modern Slavery Act, is particularly important in the context of England and Wales, for which there is no statutory obligation in the Act to provide support for victims. Among other things, it is developed to prevent retrafficking and to foster an environment that makes it easier for victims to give evidence in court, in the interests of increasing convictions. The Bill offers all confirmed victims in England and Wales a minimum of 12 months' support to help them rebuild their lives.

This would demonstrate that Brexit is something with a moral purpose, something of which we can be proud and that enables us to shape the future and lead the world, in line with previous expressions of our sovereignty in abolishing the transatlantic slave trade in 1807 and slavery itself in 1833—achievements that have been generative of modern British identity.

Rather than viewing the present situation as a great problem, we should see it as an opportunity. I encourage us to look beyond merely identifying risks and seek to set a bold new direction for supporting victims of modern slavery. The Government have the opportunity to inaugurate the post-Brexit era by asking Parliament to use its sovereignty to create a legal framework whereby we reject the possibility of victims having lesser legal protections than they do today—and indeed the notion that we should simply ensure that the legal rights of victims under Brexit are identical to the legal rights under the EU—and to enhance the rights of confirmed victims by adopting the Modern Slavery (Victim Support) Bill.

My Bill passed very quickly through this House in the last Parliament with the help of the noble Lord, Lord Kennedy, who was a tremendous support. There is no reason why it should not do so again and pass through the Commons, if the Government seize this strategic opportunity that now presents itself. I hope that at the very least, the Government might agree to meet me and Sir Iain to discuss the Bill's merits in the context of what will otherwise happen to victims of modern slavery on 1 January.

Lord Randall of Uxbridge (Con) [V]: My Lords, I first repeat my interest in the register as a vice-chairman of trustees of the Human Trafficking Foundation. I support Amendment 81 and commend the noble Lord, Lord Morrow, on bringing it forward and on his work on anti-trafficking and modern slavery, as we have heard. I think I read somewhere that it was hearing of the plight of a Romanian woman that set the noble Lord out on this admirable path. Similarly, every time I meet victims or survivors, it just makes me want to do more to help their lot; I believe that is not an uncommon experience. I also commend the noble Lords, Lord McCrea of Magherafelt and Cookstown and Lord Alton of Liverpool, and my noble friend Lord McColl of Dulwich on their speeches. I particularly congratulate my noble friend Lord McColl and commend his excellent Private Member's Modern Slavery (Victim Support) Bill, which we have heard about. I hope the Government can find time for his Bill or, even better, absorb it into a government Bill.

5.45 pm

I am delighted to support Amendment 81, as it is an opportunity to raise again how different the position of EEA nationals will be after 1 January 2021 and to clarify Her Majesty's Government's position. In this context, as freedom of movement is replaced with a points-based system, the Government rather unfortunately and naively assert that

"we remain committed to protecting individuals from modern slavery and exploitation by criminal traffickers and unscrupulous employers"—

a noble thing to say. But the Government must explain what actions they will take to give expression to this commitment and thereby ensure that the ending of free movement and the consequential change in immigration status for confirmed victims of modern slavery who are EEA nationals does not lead to increased exploitation. I hope the Government can state clearly that there will be an automatic consideration of discretionary leave to remain for EEA nationals who are confirmed victims of modern slavery.

Sadly, despite our taking back control of our borders and the excellent work of our law enforcement agencies, there will still be good numbers of poor unfortunates trafficked and forced into modern slavery. This amendment asks Her Majesty's Government only for an assessment of the impact. Perhaps my noble friend might like to consider that William Wilberforce lived for a time in Uxbridge. I am sure that the current MP for that place, my home town, will be keen to ensure that this Government do not ignore the potential for improving the lot of the victims of modern slavery. Let us at least ensure that they will not be forced back to face their traffickers and suffer the same fate again.

Baroness Hamwee (LD) [V]: My Lords, one noble Lord said that the Private Member's Bill from the noble Lord, Lord McColl, is one whose time has come; I think it came quite some while ago.

During the debate on the first amendment today we talked about humanity, and this is a matter of humanity as well. It is about practice as well as law. Some victims will be desperate to get back home, which is a problem for prosecutors. Others will want to stay. Others will need quite a while to sort out what they want to do, and they will need to assess their status. That is only one situation of many and only one example of how immigration and slavery issues coincide.

I do not want to take up the Committee's time by repeating what so many noble Lords, who have all spent a great deal of time considering modern slavery and doing their very best to fight it in all sorts of ways, have said. The Minister will tell us whether it is necessary, technically and otherwise. I take the view that the problems of slavery should be a consideration across the whole of the legislative front. The 2015 Act needs to be kept under constant review, because as the weeks go by, we learn more about the abhorrent situation and the plight of individuals caught up in it.

Lord Kennedy of Southwark (Lab Co-op): My Lords, I fully support Amendment 81 in the name of the noble Lord, Lord Morrow. Like others, I pay tribute to him for his work in the Northern Ireland Assembly, and in your Lordships' House, combating the evil of modern slavery and human trafficking.

The noble Lord made a very compelling case for the Government to agree to his amendment today, and I do hope the Minister will be able to give us some hope that the Government will meet the issue that the noble Lord addressed the House on. I equally agree with the comments of the noble Lord, Lord McCrea of Magherafelt and Cookstown, and again commend the work he has done on combating modern slavery.

The new clause, as we have heard, seeks to ensure that proper consideration is given to the impact of the new regulations on the victims of modern slavery and human trafficking. It is most important that we consider the effect on victims that these changes will make. That is really very important. As the noble Lord, Lord Alton, said, rules, regulations, processes and overdue immigration procedures must work to prevent modern slavery and human trafficking and, obviously, not weaken the position at present.

The noble Lord, Lord McColl of Dulwich, again referred to the anti-trafficking directive, and the risk of what is going to be lost on 1 January. I do hope the Minister will address that. It is a huge concern, for many noble Lords, that at any point next year we will find ourselves with weaker provisions and weaker laws that will benefit only criminals and criminal gangs, and really harm victims.

Finally, I want to pay tribute to the noble Lord, Lord McColl of Dulwich, for all his work. It is high time that the Government stood up and backed the noble Lord. His Private Member's Bill is absolutely right: all he is asking for is that England and Wales have the same provisions that endure in Northern Ireland and Scotland. The Bill sailed through this House, but then what happened to it? It crashed on the rocks in the other place. The Government did nothing to support it last time, and it is wrong. The Government really should stand up now and back the noble Lord on his Bill.

Baroness Williams of Trafford (Con): My Lords, I will start by assuring the noble Lord, Lord Morrow, that I am not going to trot out the line that he suspects I am. Moreover, I will actually thank him for his contribution to this incredibly important debate, and for his continued commitment to the really important objective of ensuring the impacts on victims of modern slavery are considered in changes to the Immigration Rules following this Bill.

The noble Baroness, Lady Hamwee, said an interesting thing just before she closed, which is that we should consider modern-day slavery across legislation. I think it is absolutely crucial that we consider it across government, because it affects and infects almost every aspect of modern-day life. Noble Lords mentioned William Wilberforce, who is actually one of my heroes. It is over 200 years since we abolished slavery, and yet we have the terrible blight of modern-day slavery in our society. We are committed to tackling this terrible crime. We are now identifying more victims of modern-day slavery and doing more to bring perpetrators to justice than ever before. I will just say to the noble Lords, Lord McColl and Lord Kennedy, that there is going to be no diminution in directly affected rights.

We will replace freedom of movement with a points-based system. We remain committed to protecting individuals from modern slavery and exploitation by criminal traffickers and unscrupulous employers. I will not answer the question put by the noble Lord, Lord Alton, because I cannot. Has there been an increase in trafficking during Covid? I think we can all safely say is that there has been an increase in a lot of behind the scenes-type activity that is unpalatable to us all, including things such as domestic violence. I am sure that will reveal itself as time goes on.

We are definitely committed to considering the impact of our policies on vulnerable people, including by fulfilling our public sector equality duties under Section 149 of the Equality Act 2010. As the noble Lord, Lord McCrea of Magherafelt and Cookstown, said, on 13 July we published an equalities impact assessment on the points-based system, which considers the impact of our policy on protected characteristics. To answer the noble Lord, Lord Morrow, I can send that to him if he wishes. We will continue to iterate this document. Our work ensures that we keep at the forefront of our minds the potential consequences of our policies on those who may be susceptible to exploitation.

Across the board, it is crucial that we understand the groups and communities affected by our policies. As the Home Secretary highlighted in her Statement to the House on Wendy Williams's *Windrush Lessons Learned Review* on 21 July, she has set out clear expectations that she expects officials to engage with community organisations, civil society and the public and to provide evidence in all advice to Ministers. To answer the noble Lord, Lord McColl, who asked if I would meet him: of course I will meet him to discuss his Private Member's Bill.

Through the Home Office's advisory groups, we have undertaken engagement with organisations on the design and development of the future immigration system, including those representing potentially vulnerable individuals. These groups, which include experts on modern slavery, including the Independent Anti-Slavery Commissioner, have been fundamental in helping us to shape our policies and to design the future system. I understand that the Home Secretary has asked officials to facilitate a dedicated session with members of the Vulnerability Advisory Group and experts from the modern slavery sector, to better understand the possible impacts of the new immigration system on potential victims of modern slavery.

The noble Lords, Lord Morrow and Lord Alton, asked me about the seasonal workers pilot. A key objective of the pilot is to ensure that migrant workers are adequately protected against modern slavery and other labour abuses. It requires operators to ensure that all workers have a safe working environment—I think he alluded to that—that they are treated fairly, paid properly including time off and breaks; that they are housed in safe, hygienic accommodation; that their passport is never withheld from them; and that robust systems are in place for the reporting of concerns and

[Baroness Williams of Trafford]
rapid action. The operators of the scheme are and must remain licensed by the Gangmasters and Labour Abuse Authority.

In addition, the Home Office and Defra also monitor the scheme closely to ensure that operators adhere to the stringent requirements set out for ensuring the safety and well-being of seasonal workers. We work with the sector, including the Gangmasters and Labour Abuse Authority, to achieve these aims. Should either of the selected operators fall short in their duties as a sponsor, action will be taken, up to and including the revocation of their sponsor licence. Other criminal sanctions will be considered as well, as appropriate.

The noble Lord, Lord Morrow, asked me what the Government were doing to ensure that EU exit does not adversely affect efforts to tackle modern slavery. We already exceed our international obligations to victims under the Council of Europe Convention on Action Against Trafficking in Human Beings, which will not be affected by EU exit. We will continue our work with European partners to eradicate modern slavery, no matter what shape our relationship with the EU takes. This is an international problem, not just a UK problem, and it is in everyone's interest that we reach an agreement that equips operational partners on both sides with those capabilities that help protect citizens and bring criminals to justice.

Finally, the noble Lord, Lord McColl, questioned pre-settled status in terms of the right to benefits. Pre-settled status maintains the right to benefits, and a person would not need discretionary leave to remain under the modern slavery provisions because they would have five years' leave to remain.

I hope that those explanations satisfy noble Lords and that the noble Lord will be happy to withdraw his amendment.

6 pm

The Deputy Chairman of Committees (Baroness McIntosh of Hudnall) (Lab): My Lords, I have no requests to speak after the Minister, so I now call the noble Lord, Lord Morrow.

Lord Morrow (DUP) [V]: My Lords, I am very grateful to all those who have taken part in this debate. I am also grateful to the Minister. I have listened very carefully to all that she has said but I am afraid that I remain very concerned on two fronts: first, the absence of a discipline to ensure that, going forward, the Immigration Rules will be forged out of regard for the need both to minimise opportunities for people trafficking and to help those who have been trafficked to enjoy a full recovery; and, secondly, that at the moment there is a real risk that victims of modern slavery will experience an erosion of their effective rights from 1 January. I do not believe that this is a satisfactory state of affairs.

However, as I said, I listened carefully to what the Minister said but will go away and study her comments more carefully before deciding how best to proceed on this issue. For the moment, therefore, I beg leave to withdraw the amendment.

Amendment 81 withdrawn.

Amendment 82 not moved.

The Deputy Chairman of Committees (Baroness McIntosh of Hudnall) (Lab): We now come to the group consisting of Amendment 82A. I remind noble Lords that anyone wishing to speak after the Minister should email the clerk during the debate and that anyone wishing to press this amendment to a Division should make that clear in the debate.

Amendment 82A

Moved by ***Baroness Hamwee***

82A: After Clause 4, insert the following new Clause—

"Family life

(1) This section applies when a court or tribunal is required to determine whether a decision made under the Immigration Acts in respect of a relevant person—

(a) breaches a person's right to respect for private and family life under Article 8; and

(b) as a result would be unlawful under section 6 of the Human Rights Act 1998.

(2) In subsection (1) a "relevant person" is—

(a) any person who, immediately before the commencement of Schedule 1, was—

(i) residing in the United Kingdom in accordance with the Immigration (European Economic Area) Regulations 2016;

(ii) residing in the United Kingdom in accordance with a right conferred by or under any of the other enactments which is repealed by Schedule 1;

(iii) otherwise residing in the United Kingdom in accordance with any right derived from European Union law which continues, or immediately before the commencement of Schedule 1 continued, by virtue of section 4 of the European Union (Withdrawal) Act 2018 to be recognised and available in the United Kingdom; and

(b) any other person within the scope of regulations under sections 4(1) and (4).

(3) In a case to which this section applies, section 117C of the Nationality, Immigration and Asylum Act 2002 shall be read subject to the following modifications.

(4) Section 117C(5) shall be read as if the words "and the effect of C's deportation on the partner or child would be unduly harsh" were replaced with "and either—

(a) the effect of C's deportation on the partner would be unduly harsh; or

(b) it would be unreasonable for the child to leave the UK or to remain in the UK without C."

(5) Section 117C(6) shall be read as if—

(a) the word "("C")" were inserted after "foreign criminal" and

(b) the words "there are very compelling circumstances, over and above those described in Exceptions 1 and 2" were replaced with "either—

(i) C has a genuine and subsisting parental relationship with a qualifying child and it would be unreasonable for the child to leave the UK or to remain in the UK without C; or

(ii) there are very compelling circumstances, over and above those described in exceptions 1 and 2""

Member's explanatory statement

This new Clause modifies the threshold for deportation of EEA nationals and family members who are parents of "qualifying children" – children who are British or have lived in the UK for 7 years or more.

Baroness Hamwee (LD) [V]: My Lords, EEA nationals and their family members will of course be made subject to the system of immigration control when free movement ends. That will affect those who face removal from the UK on the basis of their character or conduct, including any criminal record. The tests for the deportation of EEA nationals and their family members are currently more stringent than those for the deportation of third-country family members of British nationals and settled persons.

Those who have not raised protection claims and meet the deportation criteria, and who want to remain in the UK on family life or private life grounds, must satisfy one of two exceptions. Either they must prove that they have

"a genuine and subsisting relationship with a qualifying partner or a genuine and subsisting parental relationship with a qualifying child"

who would experience the deportation as "unduly harsh". Those sentenced to four years or more must show very compelling circumstances—a higher threshold than that.

The Home Office interprets "unduly harsh" as excessively cruel. In the case of KO, the Supreme Court found that, to meet the test, mothers and fathers facing deportation must demonstrate that separation from their children would involve

"a degree of harshness going beyond what would necessarily be involved for any child faced with the deportation of a parent."

In the subsequent cases of PG and KF, the courts held that most children who have a parent facing deportation would be likely to suffer significant psychological trauma, so that to succeed in their appeal the parent would have to show a risk of harm beyond what would normally be expected. The court in the case of PG expressed great sympathy for the children but said that distress to innocent children is insufficient to prevent deportation.

That means, in effect, that the courts are obliged to accept that harshness or cruelty caused to a child is acceptable—or, at any rate, has to be accepted—even where the long-term harm and trauma caused to the child, their family and the community may be detrimental to society at large and therefore not in the public interest.

Unlike a criminal sentence when a parent is sentenced to imprisonment, deportation can effectively end a child's family life with a parent for the whole of their childhood. The permanent ending of family life can have a long-term negative impact. I do not need to describe that in detail to noble Lords. The partner left in the UK effectively becomes a single parent with all the struggles that involves. Perhaps it is a rhetorical question, but how can this be reconciled with the duty under Section 55 of the Borders, Citizenship and Immigration Act 2009 to have

"regard to the need to safeguard and promote the welfare of children who are in the United Kingdom"?

Despite the Home Office's statutory duty to safeguard and promote the welfare of children and have children's best interests as a primary consideration, the Home Office does not record the number of families it separates through deportation. We have had plenty of debates in this House about the importance of data. In 2018, Stephen Shaw, whose reviews have been so powerful, said:

"I find the policy of removing individuals brought up here from infancy to be deeply troubling. For low risk offenders it seems entirely disproportionate to tear them away from their lives, families and friends in the UK and send them to countries where they may not speak the language or have any ties."

For those who have committed serious crimes, there is a further question of whether it is right to send high-risk offenders to another country when their offending follows an upbringing in the UK. As I have said, judges have expressed sympathy with appellants in deportation appeals and have expressed surprise at the effect of the legislation. As Lord Justice Baker remarked in the case of KF:

"For those lawyers, like my Lord and myself, who have spent many years practising in the family jurisdiction, this is not a comfortable interpretation to apply. But that is what Parliament has decided."

I am putting this to Parliament again by proposing the modifications to the Nationality, Immigration and Asylum Act 2002 set out in Amendment 82A. I beg to move.

Baroness Bennett of Manor Castle (GP) [V]: My Lords, I intervene to support Amendment 82A in the name of the noble Baroness, Lady Hamwee. She has set out a very clear case, so I will be brief.

I have lost count of how many times we have heard Ministers say, "We want to treat everyone the same way; we want a global system." As the noble Baroness set out, this amendment seeks to correct a discrimination in how the law was being applied. Many times, when I have risen to speak in this Committee, it has been because of concern about family life, the impacts of decisions on children and the separation of families. As the noble Baroness, Lady Hamwee, just set out, that is what we are looking at here, as well as a situation in which people who are clearly a product of British society—and should be our responsibility—being dumped on other nations, which may have far fewer resources than we have to deal with them. To expect other nations to pick up the results of our choices and decisions is utterly unreasonable.

It is chiefly those innocent children, spouses and partners I am concerned about—lives being torn apart. I refer the Minister to the Children's Commissioner's quotes I referred to in the Skype family amendment. This has massive impacts on well-being, health, mental health and educational attainment.

The last time I spoke, I talked about the judgment of Solomon. It is a question of applying the judgment of Solomon or applying his wisdom to make a choice that is best for individuals or society. I therefore commend Amendment 82A to the House.

This is my last contribution on the Bill in Committee, so I pay tribute to the relatively small number of Members of your Lordships' House who have done an enormous amount of work and clearly have a massive amount of expertise in all these areas. I have learned a great deal from listening to that. I appreciate that, and I hope the Government will listen to nearly all the amendments presented here, which have been trying to make the Bill more humane, fair and respectful of human rights.

Lord Rosser (Lab): The mover of the resolution, the noble Baroness, Lady Hamwee, has explained the background to this amendment and what has prompted it. As has been said, Section 117C of the Nationality, Immigration and Asylum Act 2002 provides an exemption against deportation where it would be "unduly harsh" on that person's partner or child. As the noble Baroness, Lady Hamwee, explained, the amendment seeks to give what I would interpret as more specific and relevant weight to the impact on a child of the deportation of somebody who may be a foreign criminal with a genuine and subsisting parental relationship with that British child, or other qualifying child, when considering an exemption.

I await with interest the Government's response, during which I hope it may be possible for the Government to provide information on the number of such exemptions against deportation given under Section 117C of the 2002 Act in each of the last three years for which figures are available. Also, what estimate, if any, have the Government made of the increase, if any, in the number of such exemptions per year that would result from the change provided for in this amendment becoming applicable—a change which, frankly, in the light of some of the legal cases to which the noble Baroness, Lady Hamwee, referred, would seem quite reasonable?

Baroness Williams of Trafford (Con): My Lords, next time I stand here, I will bring a series of numbers because the noble Lord, Lord Rosser, and others have foxed me on numbers this afternoon. However, but I will get for him, if I can, the number of exemptions under Article 8. I thank the noble Baronesses for bringing forward Amendment 82A on family life.

The Article 8 ECHR

"right to respect for family and private life"

is a qualified right, which can be circumscribed where lawful, necessary and proportionate in the interest of a number of factors, including national security, public safety, the prevention of disorder or crime and the protection of the rights and freedoms of others. Section 117C of the Nationality, Immigration and Asylum Act 2002 provides that when assessing whether deportation breaches Article 8 of the ECHR, the deportation of a foreign national offender is in the public interest, unless certain exceptions apply. These amendments seek to alter these exceptions and diminish the importance placed on the public interest in deporting the most serious offenders.

The proposed new clause amends the exception at Section 117C(5) for foreign national offenders—or FNOs—who have been sentenced to less than four years of imprisonment and have a genuine and subsisting relationship with a qualifying partner or child so that their deportation would not be in the public interest if it would be unreasonable for the child to leave the UK or to remain in the UK without the foreign national offender. That would be in addition to the existing exception which applies where the effect of the deportation on the partner or child would be unduly harsh.

6.15 pm

This clause also amends the exception, at Section 117C(6), for FNOs who have been sentenced to more than four years of imprisonment, so that their deportation would not be in the public interest where they have a genuine and subsisting parental relationship with a qualifying child and it would be unreasonable for the child to leave the UK or to remain in the UK without the FNO. This would be in addition to the current exception which requires that there are very compelling circumstances over and above the exceptions for FNOs sentenced to less than four years.

When considering whether the effect on a child of deporting a foreign criminal is unduly harsh, consideration may already be given to whether it is reasonable to expect the child to leave the UK, taking account of the child's nationality and length of residence in the UK, or whether it is reasonable to expect the child to remain in the UK, separated from one parent. It is obviously a higher threshold than in non-criminal cases because of the greater public interest in deporting serious or persistent foreign criminals. Parliament has expressly required a particularly high threshold when assessing whether the deportation of those sentenced to at least four years' imprisonment is in the public interest. That reflects Parliament's—and I would say the wider public's—view that the more serious the offence committed by a foreign criminal, the greater the public interest in their deportation as explicitly set out in the 2002 Act.

The best interests of any child affected by the foreign criminal's deportation, the nationalities and immigration status of family members and the nature and strength of the foreign criminal's family relationships are all factors relevant to the Article 8 proportionality assessment when determining whether there are very compelling circumstances. Section 117C already strikes a good balance between protecting affected partners and children and the public interest in removing FNOs. The courts have upheld the lawfulness of the family life considerations to be taken into account in relation to deportation, agreeing that they are consistent with the requirements of Article 8.

This clause would not apply to all FNOs but only to those residing under EU free movement rights immediately before they were revoked. This would mean applying Section 117C differently to EEA and non-EEA citizens. It is right that, as far as possible, we create parity for all foreign nationals in the UK. Where conduct is committed after the end of the transition period, an EEA citizen protected by the withdrawal agreements or by the UK's domestic implementation of those agreements will be considered for deportation according to the same rules as non-EEA citizens. I hope that with that explanation, the noble Baroness will be happy to withdraw the amendment.

Baroness Hamwee (LD) [V]: The noble Baroness, Lady Bennett, who has certainly done her fair share of work on the Bill, is quite right in saying that this is about correcting discrimination, and I do not think the Minister addressed that point. The noble Lord, Lord Rosser, is also quite right that this is about the impact on children. This is not a hearts and flowers amendment about all criminals.

The Minister said that she would bring the numbers with her for the next debate on these issues. I understand that the Home Office has no numbers on this; I shall

be glad if she writes to correct me if I am wrong, but I was told that it had no data.

The amendment comes from the organisation Bail for Immigration Detainees. It sees how Section 117C operates. Frankly, I would not like to have to apply it—and that has been the view of certain courts, which I have quoted. I am not arguing that it is unlawful, but I am saying that Parliament should take this opportunity to reflect on how thinking about our society develops and changes. The courts may say that it is lawful, but some judges have also said that, in their view, it is not necessarily right as judged by other criteria. The Minister said that this would diminish the weight placed on the public interest, but I think that there is a public interest in the impact of laws on children.

This amendment was about—or is about; I have not withdrawn it yet—treating EEA and non-EEA citizens equally. We have heard about the importance of this throughout the four days of this Committee. I am sorry that the Government have now prayed in aid the fact that the clause can be only about EEA and Swiss citizens, rather than accepting that this would level things up and end a discrimination. However, I think I have no alternative at this moment other than to beg leave to withdraw the amendment.

Amendment 82A withdrawn.

Clause 5: Power to modify retained direct EU legislation relating to social security coordination

Amendment 83 not moved.

The Deputy Chairman of Committees (Baroness McIntosh of Hudnall) (Lab): We come now to the group beginning with Amendment 84. I remind noble Lords that anyone wishing to speak after the Minister should email the clerk during the debate, and anyone wishing to press this or any other amendment in the group to a Division should make that clear during the debate.

Amendment 84

Moved by ***Baroness Ludford (LD)***

84: Clause 5, page 4, line 3, after "(1)" insert "only"

Member's explanatory statement

This amendment would restrict the Secretary of State's power to make regulations to the powers listed in Clause 5(3).

Baroness Ludford (LD): My Lords, in moving Amendment 84, I shall speak to other amendments in this group which attempt to rein in Clause 5 or delete it. Clearly, this group is also linked to the next group of amendments. I am pleased to see the noble Baroness, Lady Stedman-Scott, here; it is nice to have a change of landscape and scenery.

The Delegated Powers Committee in two reports has highlighted the problems of Clause 5, so this debate echoes the one that we had on Clause 4. Clause 5, in the words of the DPRRC, gives Ministers

"almost absolute power to rewrite the Co-ordination Regulations at any time of their choosing"—

that is, the social security co-ordination regulations. Parliament has no power to modify such SIs, only to approve or reject them. Not only did Clause 5(1) and 5(2) confer those very broad powers, but subsequent paragraphs on the purposes of modification place little restraint on Ministers; they give Henry VIII powers, among others.

The Delegated Powers Committee said that the Government's delegated powers memorandum gave

"inadequate justification for a wholesale transfer from Parliament to the Government of power to legislate in a field that could … impact on large numbers of UK citizens resident in EEA members states, and EEA nationals resident in the UK".

The committee said that the memorandum did not explain the need for Ministers to have the Clause 5 power now,

"how the Government might seek to use it … why it includes a power to amend … legislation … not listed in clause 5(2) … why it is not time limited",

and why there is no duty to consult. It recalled its repeated view that for a skeleton Bill, a full explanation of delegated powers is necessary—and in fact, it says this clause is not even a skeleton; I do not know what is less than a skeleton, but it is a nice phrase. In any case, Clause 5 is unnecessary.

Since the UK left the EU on 31 January, the relevant EU regulations pertaining to social security, pensions and healthcare have been retained in UK law by Section 3 of the European Union (Withdrawal) Act 2018. That Act already contains a power in Section 8 to modify retained direct EU law. The Government have in fact already exercised that power and amended the co-ordinating regulations in 2019—I think there are four sets of regulations altogether, which are referred to as fixing regulations. The Government now want powers in this Bill, but if they do not fit within the 2018 Act then they must necessarily not relate to any ability for the law to operate effectively or to any deficiency in EU law. They are not tidying-up powers, and if they were then the Government could use the 2018 Act. It seems inappropriate to have Clause 5 in the Bill and for the Government to be able to legislate under its powers. It is much better for any changes to be brought to Parliament by primary legislation.

Of course the Bill and these powers are not about rights under the withdrawal Act or those protected by the withdrawal Act, who are often referred to as the cohort. Powers regarding the social security, healthcare and pension rights of those people covered by the withdrawal agreement are covered under Section 7A, which was inserted into the 2018 Act by the European Union (Withdrawal Agreement) Act 2020. That is also accompanied by Section 13 of the 2020 Act, which confers the power to make regulations in respect of social security co-ordination rights protected by the withdrawal agreement. We therefore have two sets of powers to regulate: one under the 2018 Act and another under the 2020 Act. Why does the Secretary of State now need a third set of powers to make regulations?

There is bound to be some duplication across these sets of powers, and it looks as if they are designed to bypass the need for primary legislation. In fact, I also recall that a memo attached to the letter from the noble Baroness, Lady Williams, on 4 September, about the illustrative SIs, said that the Government are also planning to implement a future relationship using the powers in Section 179 of the Social Security

[Baroness Ludford]
Administration Act 1992, the primary legislation governing reciprocal agreements for social security benefits between the UK and the rest of the world. That is a third set of delegated powers, so Clause 5 in this Bill would be a fourth set of powers. The Government are getting awfully greedy about powers for Ministers.

I put it to the Minister that if the Government think they need further legislation on social security it needs to go into primary legislation. Indeed, our Delegated Powers Committee suspected that Clause 5 was in the Bill to avoid having to prepare a detailed Bill subject to full parliamentary scrutiny once future arrangements with the EU were concluded. It said that Clause 5 is

"an inappropriate delegation of power."

Hence, we have given notice that we would seek to delete Clause 5 altogether, whereas Amendment 84 would restrict the powers to those described in Section 5(3), while Amendment 85 would delete the power to distinguish between recipients on the basis of their nationality or where they reside.

6.30 pm

There is a range of possibilities for a future arrangement on social security co-ordination, from "skinny" coverage —to borrow the adjective that has been used about a "skinny" FTA—to something much more similar to the present coverage. The draft agreement that the UK Government published in May 2020 was quite limited. They already said that they would stop the export of child benefit, and expect that arrangements regarding disability and unemployment benefits will change and are less likely to be comprehensive in future. They forecast that some benefits would be available for a time-limited period.

Altogether, these would be quite substantial changes. One other that pensioners fear is the possibility of no uprating in pensions for UK citizens resident in EEA countries in future. Certainly, the draft text of the agreement published by the Government in May did not cover cash benefits other than state pensions. It also did not cover healthcare costs for pensioners in EEA countries, where they now get a so-called S1 form, which enables them to get healthcare coverage.

There is a great deal of worry about the powers that the Government want to confer on themselves under the Bill. The other worry is that although the Government say that the Clause 5 powers will not affect the cohort covered by the withdrawal agreement, fears about respect for the withdrawal agreement have been raised in recent days. They have even led to the resignation of one of the law officers today. The prospect is raised of the Government being able to modify, by regulation alone, the vital provisions of the withdrawal agreement on the continued right of pensioners to receive pensions and increases in pensions—the uprating—and their healthcare under the S1 scheme, and to have their pension contributions in different EEA states aggregated so as to be able to benefit fully from all periods in which they paid social security in different countries. The risk would be that they would get penalised for having moved around in their working lives.

All this leads the Liberal Democrat Benches to argue that Parliament needs to be able to consider any changes properly through primary legislation. I think we might hear from others to the same effect. The social security legislation and arrangements are extremely complex. It is possible that, unless there is the kind of scrutiny that primary legislation gives, there could even be an unwitting breach of the withdrawal agreement if inconsistency is not spotted. My noble friend Lady Hamwee raised this earlier and the Committee discussed it on Monday. There is a continuing worry that there will be a "sting in the tail" request for comprehensive sickness insurance—private health insurance—at some stage in the grace period. Until I read *Hansard*, I will not be entirely sure that that worry has been taken away.

All in all, Clause 5 makes us very nervous. I hope that the Minister will be able to tell me that, at the minimum, she accepts the amendments constraining the Clause 5 powers and, preferably, that she totally agrees with me that the clause should be deleted and primary legislation in this important area brought forward instead.

Lord Alton of Liverpool (CB): My Lords, the Committee will be relieved to know that I can be mercifully brief. I agree with the noble Baroness, Lady Ludford, that Clause 5 is not something we should be happy about. It brings to mind the debates in recent weeks on matters such as the medicines Bill, where the same concerns have been raised about the use of things such as skeleton Bills. I do not want this to become a skeleton Parliament. Under the cover of Covid and Brexit, we are seeing the emasculation of many of Parliament's powers, which we should cherish. The noble Baroness is, therefore, right that the overuse of statutory instruments—Ministers taking powers, reputable and decent as individual Ministers may be—is not a safeguard for this House. Ministers change; Parliament changes, but the legislation we pass is almost cast in stone. It is right to raise these concerns about accountability and scrutiny, the need for checks and balances, and why we should cherish the rights and privileges that parliamentarians enjoy. The noble Baroness is right to remind the Minister of what the committees of our own House have said about the overuse of these powers.

Baroness Janke (LD) [V]: My Lords, I will speak in support of Amendments 84 and 85 and of Clause 5 being deleted from the Bill. As other noble Lords have said, the amendments in this group seek to restrain the Government in their objective of transferring wide-scale powers to Ministers to take action that could have a major impact on the lives of UK citizens living in EEA countries and on EEA citizens living in the UK.

Amendment 84 would restrict the Secretary of State's power to make regulations to the powers listed in Clause 5(3). These powers enable the social security co-ordination regulations to be amended and policy to be changed. The social security regulations co-ordinate access to social security for people moving between EEA countries and they are widely accepted and understood across those countries. They ensure clarity about where payments and contributions are made. These payments are essential income to UK citizens living in the EEA and EEA citizens living in the UK. As other noble Lords have said, it is important for all

citizens to have confidence in the continuation of these complex regulations and in the withdrawal agreement itself. The Government's explanation is that the clause allows them to make regulations to implement any new policies regarding co-ordination of social security. The clause is intended to be used to implement new policies, subject to the outcome of future negotiations with the EU. As the Delegated Powers and Regulatory Reform Committee has warned, there has been no adequate justification for the transfer of these powers to Ministers. The Constitution Committee also recommends that Clause 5 be deleted from the Bill and says:

"Any further modification of the Social Security Co-ordination Regulations that might be required could be achieved using the power in section 8 of the European Union (Withdrawal) Act 2018."

Amendment 85 seeks to preclude the power of the Secretary of State to distinguish between recipients of pensions and other benefits on the basis of their nationality or residence in a particular state. This takes no account of other circumstances and would lead to arbitrary and unjust decisions that would have a huge impact on the lives of the people they relate to.

Further, I wish to oppose that Clause 5 stand part of the Bill. If successful, this would see Clause 5 as an inappropriate delegation of power, as recommended by the DPRR Committee in its 46th report. How can it be right or proper that the regulations governing the crucial payment of social security, such as disability benefit and unemployment benefit, to large numbers of people can be radically changed, even to their extreme disadvantage, without consultation, without proper scrutiny and with little accountability? This is a licence to penalise large numbers of citizens arbitrarily without proper justification or democratic safeguards. If this clause goes through, public consideration of changes to the regulations will be so limited that the people affected will have no opportunity to question or make representations as to their impact.

I support these amendments and strongly oppose Clause 5 standing part of the Bill. As the Delegated Powers and Regulatory Reform Committee said:

"We remain of the view, expressed in our earlier Report, that the Government have provided an inadequate justification for a wholesale transfer to Ministers of power to legislate in a field that could have a major impact on large numbers of UK citizens resident in EEA countries, and EEA citizens resident in the UK, who currently rely upon reciprocal arrangements."

I support my noble friend Lady Ludford in saying that such changes should be the subject of primary legislation and not as is suggested in Clause 5.

Baroness Sherlock (Lab) [V]: My Lords, it is good to have a chance to explore the social security part of this Bill at last. I will speak to the Clause 5 stand part amendment, to which I have attached my name, and to my Amendment 91, to which my noble friend Lord Rosser has added his name and which would sunset the powers in Clause 5(1).

There are two minimum steps that Ministers need to take if they want to keep Clause 5 as it stands. First, they must address all the issues raised by the Delegated Powers Committee. Secondly, they must be clear with Parliament about the state of social security co-ordination after transition. The DPRRC's 22nd report highlights matters that Ministers have failed to explain, such as how the Clause 5 powers fits with provisions in the 2018 and 2020 Acts;

"how the Government might seek to use the power; why it includes a power to amend primary legislation and retained direct EU legislation other than the SSC Regulations; why the power is not time limited; why Ministers will have no duty to consult before making regulations."

We have received some very helpful briefings so that we can explore these issues, but we need to get some answers on the record. My understanding of what we have heard is that the Clause 5 power enables government to make policy changes, whereas the power under the withdrawal Act is used to fix deficiencies, and the delegated power in the 2020 Act relates only to ensuring that the provisions of the withdrawal agreement can work. Can the Minister tell the Committee whether that understanding is right? Can she confirm that the Clause 5 power cannot be used to make changes for those people who fall within the scope of the withdrawal agreement?

On the breadth of the powers, I think that the Government's defence is that the powers in Clause 5(1) can be used only to modify retained direct EU legislation as specified in Clause 5(2), and that Clause 5(3) says that the powers in Clause 5(1) can be used for various purposes—but, again, only in relation to the retained EU law specified in Clause 5(2). In any case, they say that the illustrative draft regulations under Clause 5 repeal all the instruments specified in Clause 5(2), so there is nothing for this power to apply to. Is the Minister telling the Committee that it is the Government's intention to repeal all the instruments specified in Clause 5(2)? Are there any circumstances in which those regulations would not be repealed?

In terms of how the Government will use it, my understanding is that the Clause 5 power will be used to repeal provisions not covered by any deal; that is what is suggested by the illustrative draft regulations. We have been told that the power may therefore be used only once. In that case, what is the problem with time-limiting the power, as Amendment 91 proposes? Again, it has been suggested that you need to hold on to it—for example, in case a new state joins the EU, but this seems highly disproportionate. If that were the only issue, I am sure that Ministers could find a much more targeted way to deal with it—and they will have plenty of time to work it out because new states do not just join the EU overnight. So, is there any other reason why the Government need to retain the Clause 5 powers beyond 12 months other than to deal with a new state joining the EU? If it is just that, what other mechanisms did they look at for dealing with that?

6.45 pm

We are told that the Clause 5 powers are designed to be used in relation to HMRC and DWP provisions only. Regulation 4 in the draft illustrative regulations excludes benefits in kind, signalling that this will not cover healthcare. Can the Minister confirm for the record that the power will not be used to make changes in relation to healthcare?

The second issue is what social security will look like after transition. Ministers keep assuring us that the Government's aim is to negotiate a deal, but the

[Baroness Sherlock]
gap between the UK's opening position and that of the EU was really quite big, and the auguries of the deal are not encouraging. If there is no deal in place before the end of the transition period, what are the Government going to do? Are they going to use the Clause 5 powers to repeal everything and then start slowly trying to negotiate a deal with individual states or with the EU?

What will happen on day one to those not covered by the withdrawal agreement? Specifically, will pensions be exportable and uprated? Will any other benefits be exportable, such as unemployment or disability benefits? Will workers have to pay both national insurance contributions and contributions in EU states, including posted workers? On day one, will the UK allow aggregation of residents and contributions in the EU when it comes to claiming UK contributory benefits or the state pension?

So far, Ministers refuse to answer any of these questions, on the grounds that they aim to get a deal. However, they also want total freedom to determine what happens if there is no deal. If the Minister cannot answer these questions, will she explain why, as the Delegated Powers Committee pointed out, it was not even a requirement to consult before making regulations?

If Ministers want delegated powers on this scale, the very least they need to do is to be clear on what they intend to do with them. Social security co-ordination affects a great many people, and Parliament deserves more clarity and control than the Bill currently affords us. I hope the Minister can answer these questions well.

The Parliamentary Under-Secretary of State, Department for Work and Pensions (Baroness Stedman-Scott) (Con): My Lords, I am grateful to those who have spoken to this group of amendments. I also thank Ministers from the Home Office for their stewardship of this clause to date.

The EU social security co-ordination regulations operate in the context of the EU's free movement rules. I will refer to these as the SSC regulations. They set out which member state is responsible for the payment of social security benefits, and require the export of some benefits and the aggregation of social security contributions when claiming benefits and pensions. The rules require equal treatment for citizens across the EU, and they also ensure that individuals pay social security contributions in only one member state at a time.

The Government have repeatedly and transparently set out that as we end free movement, the EU social security co-ordination rules will change to reflect the arrangements we have with countries outside the EU—for example, in relation to the export of UK benefits. It is right that the UK be able to set and negotiate its own rules, in line with well-established UK policy in this area, now we have left the EU and as we prepare for the end of the transition period.

Clause 5(1) of the Bill duly provides the power for an appropriate authority to modify the retained SSC regulations specified in subsection (2). Clause 6 specifies that the power to modify includes the power to amend, revoke or repeal. Subsections (3) and (4) of Clause 5 ensure that supporting incidental or consequential changes made under the power can be appropriately reflected in domestic and retained legislation—for example, to address inoperabilities or inconsistencies which may arise from the modification of the retained SSC regulations. This provides Ministers with the power to ensure the continued operation of domestic social security legislation which refers to, or is related to, the retained SSC regulations.

Subsections (5) and (6) disapply EU-derived rights to ensure that there are no unintended interactions between areas of EU law and new policies, for those not covered by the withdrawal agreement. Subsection (7) defines "appropriate authority" as

"(a) the Secretary of State or the Treasury, (b) a Northern Ireland department, or (c) a Minister of the Crown acting jointly with a Northern Ireland department."

This provision currently confers on a Northern Ireland department the power to make changes in this area so far as they relate to matters within its devolved competence.

Schedule 2 sets out the scope of the power as it relates to a Northern Irish department, providing details on the powers used in relation to devolved competence, joint use with Ministers of the Crown and consultation with the Secretary of State where that is normally required. The Northern Irish Minister for Communities confirmed that a legislative consent Motion will be requested from the Northern Ireland Assembly in respect of Clause 5. My officials are working closely with the Northern Ireland Executive, given the need to bring the LCM discussions to a conclusion—one way or another—by Report.

Schedule 3 provides further detail on the form that regulations will take under the clause. The schedule also provides that any regulations made through the use of the power are subject to the draft affirmative procedure. The noble Baronesses, Lady Sherlock and Lady Ludford, raised issues around the Delegated Powers and Regulatory Reform Committee's criticism of the breadth of and justification for the powers. I have noted the recommendations in the DPRRC's report of 25 August and have heard the House's views.

The power enables the Government to implement policy changes in this specific area, for example, to stop the export to the EU of a UK benefit where that benefit is currently required to be exported under these EU rules. The Government's position is that the powers in other legislation do not provide for this. That is the purpose of this power; it cannot be used to initiate policy changes where these do not arise from the modification of the specified retained SSC regulations. The understanding of the noble Baroness, Lady Sherlock, is correct in that regard.

I note that the DPRRC's recommendation that this clause be removed is unchanged since its report on the previous iteration of the Bill. While the clause is broadly unchanged, the context is very different. First—as acknowledged in that report—we now have a withdrawal agreement with the EU, and nothing in Clause 5 enables the Government to alter the rights guaranteed under that withdrawal agreement. When discussing Clause 5, we are therefore talking about those who move between the UK and the EU once the transition period has ended and not about any current recipients

of UK benefits living in the EU while they continue to live there. There is no time now for a more detailed explanation of what it means to be covered by the withdrawal agreement, but the Government will publish detailed guidance on this question.

Secondly, on 27 February—before the introduction of this Bill—the Government published their future social security co-ordination policy, confirming that they would seek an agreement with the EU in this area, covering co-ordination on the state pension and social security contributions.

Thirdly, on 19 May, before Committee in the other House, the Government published, in full, their proposed legal text for negotiations with the EU in this area. To support the scrutiny of the clause in Committee in this House, we shared—on 4 September—a draft of the regulations illustrating the approach the Government intend to take under Clause 5 in a negotiated outcome with the EU, which remains our objective.

We have set out that the retained SSC regulations would be repealed were they no longer required. The intended policy consequence of this approach is that where provision is not made under a future UK-EU agreement on social security co-ordination—for example, in relation to the export of a particular benefit—that provision would cease. This point is critical: the retained SSC regulations are designed to operate on the basis of reciprocity with the EU and its member states. The Government are seeking a new reciprocal social security agreement with the EU—an agreement similar to those we have with key trading partners outside the EU, where the UK can agree the limits of what we co-ordinate, in line with our national interest. Those negotiations are ongoing.

We need this power to provide the essential legislative framework for the Government to deliver future policy changes from the end of the transition period in this specific area. This needs to be done in the window between the conclusion of negotiations and the end of the transition period and in response to the outcome of those negotiations. The Government's approach has to be viewed in that context.

The noble Lord, Lord Alton, and the noble Baroness, Lady Ludford, talked about avoiding scrutiny. Far from seeking to avoid scrutiny, this approach gives Parliament the opportunity to scrutinise the Government's position during the Clause 5 discussions. As Clause 5 provides the power to make draft affirmative regulations, Parliament will have the opportunity for further debates on the affirmative regulations, based on the outcome of the negotiations. We have consulted the Social Security Advisory Committee on our draft regulations and will continue to engage with it as the regulations are finalised.

I will come back to more detailed points on the scope of this power on the next group of amendments, but my arguments also apply in respect of Amendment 84 in this grouping. In isolation, Amendment 84 unnecessarily inserts the word "only".

The noble Baroness, Lady Sherlock, spoke about Amendment 91, which seeks to time-limit the regulation-making powers under Clause 5 to within one year of the end of the transition period. The amendment would prevent the Government making further changes to the retained SSC regulations beyond 31 December 2021 without new primary legislation. The Government can already make and revise co-ordination arrangements with non-EU countries without a time limit, using secondary delegated legislation under the Social Security Administration Act 1992.

To time-limit the Clause 5 power would require the Government to use primary legislation to make even minor changes to the retained SSC regulations, to the extent that those remained on the statute book once the power had expired, which would not be a good use of parliamentary time. Unlike the position with non-EU countries, all regulations made under Clause 5 are subject to the draft affirmative procedure and require a debate in each House before they can become law. By committing to that, the Government are providing reassurance to Parliament that future use of this power will be open to scrutiny.

On Amendment 85, the noble Baroness said that she sought to remove the power to distinguish between recipients of state pensions and benefits on the basis of nationality or residence in a particular member state. The effect of the amendment would be to restrict the Government's ability to make

"different provision for different categories of person to whom they apply",

for example, on the basis of nationality, immigration status or date of arrival. The social security co-ordination agreement that the UK seeks with the EU is a nationality-blind agreement.

However, there is a possibility of a non-negotiated outcome. The wording in this clause is largely standard wording in social security legislation. The wording makes it clear that there might be different provision for different categories of person, and this includes immigration status or nationality. Making different provision for different categories of person is not new; examples can be found in bilateral agreements the UK has with other countries. For example, the UK has already signed a social security agreement with Ireland, which applies to UK and Irish nationals and their family members in the UK and Ireland.

7 pm

I will end by providing an important clarification in relation to Amendment 85, which I hope will give the House some comfort in terms of how the Government could not use this power. The Government could not use Clause 5 to stop the export of the state pension to the EU for anyone: a UK national, an EU citizen or otherwise. It is stated in the DPRRC's report that the Government could do this for certain nationalities. This is incorrect, as only modifications can be made to the retained SSC regulations. The state pension is payable worldwide under domestic legislation, regardless of the recipient's nationality, and nothing in Clause 5 can be used to change this.

The noble Baroness, Lady Sherlock, asked what we would do if no deal was in place. We are negotiating to secure a deal with the EU based on co-ordination and reciprocity. The rationale for practical reciprocal arrangements covering state pensions and national insurance contributions is clear. If there is no agreement with the EU, the rationale for such arrangements with member states would remain.

[Baroness Stedman-Scott]

The noble Baronesses, Lady Ludford and Lady Sherlock, also raised the issue of healthcare. This power is not being used to make future policy changes to healthcare aspects of the retained SSC regulations. The illustrative regulations make this clear in regulation 4, and the Department for Health and Social Care has made separate secondary legislation in respect of the healthcare provisions. They also have separate primary powers to implement future healthcare arrangements with the EU. Consequential amendments might be needed to some areas of DHSC legislation, an example of which is shown in regulation 5 of the illustrative regulations.

I have spoken at length, but there was a lot of ground to cover. I hope that noble Lords will not press their amendments.

Baroness Ludford (LD): My Lords, the noble Baroness, Lady Stedman-Scott, has shared with us a great deal of dense information. I will make the usual disclaimer that I will need to read *Hansard* to be absolutely sure that I have understood what she said.

One thing about which I was a bit confused was when she said that Clause 5 would not be used to disbar the export of pension for certain nationalities. Then why have that ability in the Bill? She said it was a standard clause in social security co-ordination legislation, but I admit that I was a bit confused about that. It might be my problem: as we are nearing the end of Committee, my brain might be getting a little befuddled.

One cannot but be concerned about those covered by the withdrawal agreement. Until recent days, I would never have imagined that there could be any threat to the rights of people covered by the citizens' rights part of the withdrawal agreement. That confidence has been shaken, I am afraid, and I am sure that the Minister will understand that point. She might protest that there is no intention from her department to do that, but the experience of the last week has been undermining of confidence. So we will need to look at all that very carefully.

The other thing—and I must admit that I saw a reference to it somewhere but have forgotten where—is that healthcare, because it is not covered by the DWP, is subject to separate regulations which I will need to try to track down somewhere. If the Minister can get her officials to draw those to my attention—to add another SI to the ones we are looking at—that would be very kind. The Minister is always very helpful, in various ways. It is a very complicated subject and I will look fully at her remarks.

I remain generally concerned about the scope of the delegation. As the noble Baroness, Lady Sherlock, said, it affects an awful lot of people. Will they be able to aggregate the periods of social security in different states? Can they be assured that their pensions will be not only received but uprated? Will they be able to get healthcare coverage? This is absolutely bread-and-butter basic security for people. It is why it is called "social security". These matters remain of deep concern, but for now I beg leave to withdraw the amendment.

Amendment 84 withdrawn.

Amendment 85 not moved.

The Deputy Chairman of Committees (Baroness Finlay of Llandaff) (CB): We now come to the group beginning with Amendment 86. I remind noble Lords that anyone wishing to speak after the Minister should email the clerk during the debate. Anyone wishing to press this or anything else in this group to a Division should make that clear in debate.

Amendment 86

Moved by ***Baroness Hamwee***

86: Clause 5, page 4, line 8, leave out paragraph (b)

Member's explanatory statement

This amendment is to probe the different purposes that may be required.

Baroness Hamwee (LD) [V]: My Lords, I shall speak also to Amendments 87, 88, 89, 90 and 92. These amendments are parallel to amendments debated on day one in Committee, on Clause 4, and some, of course, are exactly the same. As we heard in the last debate, both the Constitution Committee and the Delegated Powers and Regulatory Reform Committee of your Lordships' House have reported. The chair of the DPRRC, the noble Lord, Lord Blencathra, said that he was "not emollient" whenever it was that we debated Clause 4, and he was right not to be so when dealing with what he called "fundamentally excessive delegated powers". What I regarded, and regard, as too-wide powers, the Minister then called "clear constraints". She relied particularly on what the Government have published already: whether it is in its draft, illustrative or final form is irrelevant.

The noble Baroness, Lady Stedman-Scott, also relied on the fact that "we"—the Government—would do and not do certain things, but "we" will not always be the "we" that the noble Baroness is referring to, and others whom we actually know. I am sure that, were she on the other side of the House, she would be pointing out that Governments change and individuals change, and it is in no way impugning her integrity to say that there should be protection against future changes without the proper involvement of Parliament.

Yet again it has just been suggested that a debate, without Parliament having a power to amend something, is adequate: "adequate parliamentary power". It is not. I must say that I for one got a bit lost on some of the arguments in the last debate. In particular, I did not follow why Amendment 85 was unnecessary. I wonder whether we might have a written explanation of the opposition to it. I could not quite follow whether it was because of what is meant by the term "modify".

The powers will remain and the Government will have them until the Act is amended or repealed. The latter would cause a lot of confusion. It is not only about the here and now; it is about the short, medium and long-term future.

I refer particularly to Clause 5(3)(d), which is the subject of Amendment 89. That says that the regulation-making power includes power

"to provide for a person to exercise a discretion in dealing with any matter."

I do not think that is in Clause 4, so I wonder about the significance of the addition and what the discretion could be about. Would it be a discretion to apply a

restriction or criteria less robustly? I do not think it could mean to apply it more robustly, but I might be wrong in that. I do not think the latter would be lawful. If the Minister is able to clarify that, it would help.

I had intended to quote from the DPRRC report and to comment on the Constitution Committee report a little. It strongly agreed with the DPRRC's conclusions, but we have heard a lot from the report, so I do not think I need to do so. However, I follow my noble friend Lady Ludford, who talked about the uncertainty that recent events have caused people who will be affected by the changes being made and the big changes to their lives. I think she said that these things could happen quickly, and they certainly can, which reinforces my point about the importance of not just relying on what certain Ministers say today because it might not be the case tomorrow.

This morning, I had an email from a British citizen living in Spain. She said:

"With the withdrawal agreement, both EU citizens in the UK and UK citizens residing in the EU at last felt we had secured a relatively good, guaranteed level of protection, even if not completely perfect (and certainly not as good as we had with the UK a member of the EU!). However, if the government can tear up the rule book in this way clearly anything can be changed on a whim and nothing is guaranteed, and I fear that our hard-fought rights could be just as easily removed."

I beg to move.

Baroness Sherlock (Lab) [V]: My Lords, I thank the noble Baroness, Lady Hamwee, for raising these issues. I specified my concerns on delegated powers in relation to social security in my speech on the previous group, so I will not repeat them. However, I asked a number of specific questions in that speech, not all of which the Minister managed to answer. Will she commit to respond to each of them in writing before we get to Report?

The Minister has been generous in allowing us access to her officials, who have provided some excellent briefing, but it has taken me two weeks of work to get my head around the interaction of all these sets of powers and the Government's arguments on the use of delegated powers in relation to the Bill. The Minister will realise that the Committee remains pretty unhappy about this matter, so I encourage her to respond as fully as she can, in writing, both to my points and to those raised by the noble Baroness, Lady Hamwee, and others before we reach Report, so that we can have the best possible debate at that point. I look forward to hearing her reply.

7.15 pm

Baroness Stedman-Scott (Con): My Lords, I thank the noble Baronesses, Lady Hamwee and Lady Ludford, for tabling Amendments 86 to 90 and 92. I sincerely apologise for any effort on my part that allowed the noble Baroness, Lady Hamwee, to get lost in my explanation. That was never the intention. I can confirm to all noble Lords that we will write, as requested. I hope it is clear that, as in the run-up to Committee stage, our door is open for further meetings for clarification.

These amendments seek to probe and limit the consequential powers at subsections (3), (4) and (5) of Clause 5, which are intended to provide the flexibility needed to fully implement, across the statute book, policy changes arising from the outcome of negotiations with the EU. In general, the provisions at subsections (3) and (4) provide the Government with the ability to give full effect across the statute book to policy changes arising from the modification of the retained SSC regulations listed at subsection (2), based on the outcome of negotiations with the EU in this area.

The purpose of these powers will be to ensure that there are no inconsistencies or gaps in provision between domestic social security legislation and retained SSC regulations following modification of the regulations at subsection (2). Such inconsistencies could potentially hamper the operation of domestic social security law where there are references to the regulations at subsection (2). Subsection (4) is not a "new power", as the noble Baroness suggests. Nothing in subsections (3) or (4) enables the Government to do anything that does not arise as a result of changes to the SSC regulations. In particular, changes made under subsection (4) are limited by Clause 5(3)(c).

Wording used in Clause 5(3)(a), (b) and (d), for example, in relation to the use of discretion, as well as making different provision for different categories and purposes, reflects largely common wording in social security and other legislation which ensures that the regulations made under Clause 5(1) can appropriately reflect the different categories and statuses of those affected. I have previously mentioned the withdrawal agreement and the agreement that we have with Ireland on social security. Both are examples of where, for persons in scope of those agreements, we have already made provision for different categories of persons and for different purposes, and may need to do so again under regulations made under Clause 5 through subsection (3).

Subsection (4) simply ensures that any changes directly related to the retained SSC regulations can be fully implemented—for example, where supplementary or transitory provision is required in other legislation arising from the changes to the SSC regulations. The terms used at subsection (3)(c) allow for the making of provisions that arise from the changes to retained SSC regulations and for temporary or time-limited provisions that assist in the implementation of any changes brought about by the outcome of negotiations with the EU, if appropriate. The removal of subsection (4) could result in incomplete or incoherent amendments to domestic legislation or retained EU law not mentioned in subsection (2), potentially affecting the functioning of domestic social security law and a future agreement in this area.

We have shared with the Committee an illustrative draft statutory instrument that would be made under Clause 5. The draft SI includes a section which makes consequential and supplementary amendments of different types and purposes that arise elsewhere in the statute book as a result of the modification of retained SSC regulations. It is important that the Government have the power to make such consequential changes to avoid inconsistencies, gaps and inoperabilities across the statute book.

In my previous comments I gave an example of where the Government could not use this power to stop the export of the state pension. The state pension is payable worldwide under domestic legislation. Therefore,

[Baroness Stedman-Scott]
this power could not be used to such effect. With regard to Amendment 90, subsections (5) and (6) simply ensure that there are no unintended interactions between areas of EU law and new policies for those not covered by the withdrawal agreement. We have been very clear that there will be new policies in this area, which will mean that there will be a change in social security co-ordination entitlements for future cohorts of claimants.

These amendments would restrict the Government's ability to reflect changes and to make appropriate changes across the statute book to ensure the full implementation of any outcome of negotiations with the EU. I think I have confirmed to the noble Baroness, Lady Sherlock, that I will respond to her in writing. To the noble Baroness, Lady Hamwee, on lack of scrutiny, I have set out under the previous group the specific consequences that justify this approach. I say to her also that, on Amendment 89 on the use of discretion, reference to discretion is standard wording in social security legislation and can be found in many Acts of Parliament. On the issue of why Amendment 85 is unnecessary, I will happily write to the noble Baroness, Lady Hamwee.

I hope I have addressed noble Lords' concerns, and I ask the noble Baroness to withdraw her amendment for the reasons outlined.

Baroness Hamwee (LD) [V]: My Lords, it is not the Minister's fault that I was confused in the previous group. I certainly was not accusing her of anything—it is entirely my own fault.

I am interested to hear that Clause 5(3)(d) is standard in social security legislation. It is not something that I am accustomed to in Home Office legislation—this Bill brings the two together—but I may be wrong in that and might not have noticed it before.

The Government have got themselves into a pretty tight timetable on this. That is why they want scope to make changes. I do not doubt the noble Baroness's intentions; she sounded very reassuring. But it is not about being reassuring now, it is about what is possible under the very wide powers, as I and other noble Lords have been pointing out. Clearly, at this moment it is appropriate that I should beg leave to withdraw the amendment, so that is what I will do. However, I say to the noble Baroness—and it is no accusation—that I have not been assured. I beg leave to withdraw the amendment.

Amendment 86 withdrawn.

Amendments 87 to 92 not moved.

Clause 5 agreed.

Schedules 2 and 3 agreed.

Amendment 93 not moved.

Clauses 6 and 7 agreed.

Clause 8: Commencement

Amendment 94 not moved.

The Deputy Chairman of Committees (Baroness Finlay of Llandaff) (CB): We now come to the group consisting of Amendment 95. I remind noble Lords that anyone wishing to speak after the Minister should email the clerk during the debate. Anyone wishing to press this amendment to a Division should make that clear in the debate.

Amendment 95

Moved by ***Baroness Hamwee***

95: Clause 8, page 5, line 34, at end insert—

"( ) The Secretary of State may not appoint a day pursuant to subsection (1) until—

(a) the recommendations of the "Windrush Lessons Learned Review" (HC93 published in March 2020) which may affect EEA and Swiss nationals have been implemented in full in respect of such persons;

(b) the Secretary of State has laid before Parliament a report on their implementation in respect of such persons; and

(c) the report has been debated by both Houses of Parliament."

Member's explanatory statement

This amendment would prevent the Government from ending free movement until it has implemented in full the recommendations of the Windrush Lessons Learned Review so far as they may affect EEA and Swiss nationals.

Baroness Hamwee (LD) [V]: My Lords, Amendment 95 was tabled some time ago. I will not speak for long on this, but I will refer again to the level of anxiety among people affected by the Bill and by other arrangements related to the ending of free movement, exacerbated by the events of the last few days. I have just read out an email I received this morning explaining precisely that.

Windrush has been referred to very often in discussions on the ending of free movement and associated rights, the extent or otherwise of rights following that ending and the risk of things going wrong. I hesitated when I said "Windrush", because that seems disrespectful. It has become a term for a whole number of people who have been so shockingly affected. That is a pretty neutral term, but I know noble Lords will understand who I am referring to, and they are all individuals. I hope anybody listening to or reading this debate will understand that that is not intended to be disrespectful at all.

The *Windrush Lessons Learned Review* has particularly relevant recommendations. A lot are about ways of doing things and attitudes. I made a note about a couple of recommendations, 22 and 23, but at this late hour I will not read them out; I suspect other noble Lords are very familiar with the review's recommendations. To give other noble Lords an opportunity to speak to this amendment, I simply beg to move.

Baroness Lister of Burtersett (Lab): My Lords, I support Amendment 95, to which I was pleased to add my name. Over the course of our four days in Committee, we have heard many warnings of how EEA and Swiss nationals could now become caught in the snare of the hostile/compliant environment. At Second Reading I lamented this fact and that the Bill does nothing to dismantle its institutional architecture, such as the right-to-rent regime.

In light of the Home Secretary's very welcome announcement that she accepted Wendy Williams's recommendation of a full review and evaluation of the hostile/compliant environment, I asked the Minister whether she could assure us that that review has the power to question its basic tenets and institutions.

In her subsequent letter to Peers, she responded to the question but without really answering it, saying that the Government are now addressing and implementing the Windrush review findings. Other than acknowledging the significant failings revealed as members of the Windrush generation were unintentionally caught up in measures intended for so-called illegal migrants—I do not believe anyone is illegal—she left us none the wiser as to how deep the evaluation of the hostile/compliant environment would be able to delve.

Likewise, I did not glean much from a Written Question I tabled after Second Reading. This asked about terms of reference, whether the evaluation would be designed in partnership with external experts—as recommended by Wendy Williams—when it was due to be completed and whether the findings would be made public. The Minister's reply did not answer the questions directly but explained that the evaluation needed to get the balance right between not allowing those without a legal right to be in the country "to exploit the system" and ensuring that the right protections are in place for those whose status should have been assured. Scoping of the work had begun and more information would be available in due course.

7.30 pm

The answer was dated 26 August. Three weeks on, is the Minister able to update us at all, in particular on terms of reference and timescale? Can she confirm that the findings will be published, and can she answer my question about conducting the evaluation in partnership with external experts, as recommended?

I would hope, too, that this would involve experts by experience. Wendy Williams questions whether the Home Office,

"has learned the wider lesson that it should be engaging meaningfully with the communities it serves."

The "true test", she warns, will be

"whether stakeholders, including those considered to represent critical voices, are … invited to participate in developing the department's policies, and also in designing, implementing and evaluating them."

She said that

"the test will also be whether the range of stakeholders, including community groups, consider they have been heard."

Can the Minister assure us that the Home Office has learned this lesson when it comes to its evaluation of the hostile environment? Are officials seeking out a "diverse range of voices," as called for in recommendation 8?

Last week IPPR published a highly pertinent critique of the hostile environment, based on a wide range of sources and original interviews. It notes:

"Our research suggests that the Home Office is in a state of policy paralysis—in principle committed to the objectives of the hostile environment, but increasingly uncomfortable about its practical implications."

I suspect that the Minister could not possibly comment.

The IPPR report concludes that the failings acknowledged by the Government are not simply failures of implementation, as the Government tend to imply, but rather they reflect the core design itself—a design that

"deters people from accessing essential services, targets all those without documentation regardless of their immigration status, and forces people into destitution without any evidence that this affects their immigration decisions."

If this is not acknowledged and addressed in the evaluation, the report warns there is a real risk that it will lead to only,

"superficial changes to Home Office practice, rather than fundamental reform of the underlying legislation and policies."

Instead, it argues that the only way to tackle the injustices created by the hostile environment is through "deep reform".

Until such deep reform has been enacted and we have genuinely learned the lessons of Windrush, we should not be subjecting a whole new group of EEA and Swiss nationals to the brutalities of what the former Home Secretary and Prime Minister billed as a "really hostile environment".

Lord Roberts of Llandudno (LD) [V]: I join in the appeal from the noble Baroness for the Government to look again, as I have many times—and she has as well—at the whole immigration process that we have in this country. To mention recent developments, I would like to know exactly how many of the 13,000 immigrants on the island of Lesbos have been offered a place here in the United Kingdom.

Windrush of course created so much harm and unnecessary suffering, but we still see that the sort of attitude that is there is able to create harm to many people. As I mentioned before in this Chamber, in 2005, 17% of those who were given a hostile decision by the Home Office had the decision overturned on appeal. It is better now, they say—but it is not. Last year, 52% were successful on appeal; that means that 52% of the decisions taken by the Home Office were incorrect. They created hurt and worry and also created for the United Kingdom Government the need to go to appeal, at extensive cost.

So will the Minister and the Government look again so that, as we say in this amendment, the lessons of Windrush will be learned? We should have a thorough-going overhaul, because we are going to see very many new crises in the coming years regarding immigration. Are we going to take the lead in a hospitable way? We are not the best nation in the world for accepting migrants. We are going to see climate change, and so on, create deserts where previously there were productive lands; we have to face that. Now is the time to look at the past and say, "We were wrong," and look at the future and say, "We can do better."

Lord Paddick (LD): My Lords, I support Amendment 95 in the name of my noble friends Lady Hamwee and Lady Ludford and the noble Baroness, Lady Lister of Burtersett.

In her *Windrush Lessons Learned Review*, Wendy Williams described the Windrush scandal as both "foreseeable and avoidable". The Home Office cannot

[LORD PADDICK]
afford another scandal, this time in relation to EEA and Swiss Nationals. Wendy Williams said:

"It is the responsibility of the department to keep track of the impact of the policies and legislation … and to make sure that, where members of the public are affected, particularly where they are at risk, it supports them appropriately."

We heard from noble Lords on Monday about who might be at risk: those in abusive relationships; those who do not have access to IT, such as many Roma people; and those who rely for IT support on organisations that may not be there in years to come. Wendy Williams went on to say that

"it is perhaps unsurprising that the department did not then consider how difficult it might be for people to prove their status, prove when they arrived, or that they had been in the UK continuously some 30, 40 or even 50 years later."

As the noble Baroness, Lady Lister, has said, amendment after amendment in this Committee has criticised the hostile/compliant environment. As the noble Baroness said, Wendy Williams recommended a full review and evaluation of it, assessing whether the measures contained within it were effective and proportionate. She said:

"This review must be carried out scrupulously, designed in partnership with external experts and published in a timely way."

To echo the noble Baroness, where are we with that review now?

We have heard compelling evidence that the EEA and Swiss nationals affected by the ending of free movement have real concerns—reinforced by recent developments over the past week—particularly over having physical proof of immigration status, although the Government say that is not necessary. The Windrush review said:

"The Home Office should take steps to understand the groups and communities that its policies affect through improved engagement, social research, and by involving service users in designing its services",

yet the Government not only seem not to be listening to EEA and Swiss nationals whom this Bill affects but, as a result, appear to have learned nothing from the Windrush review.

When it comes to impact assessments, the report recommends:

"Officials should avoid putting forward options on the binary 'do this or do nothing' basis, but instead should consider a range of options."

Yet the department's approach to matters such as physical proof of immigration status seems to be exactly that—failing to properly consider a "physical proof on request" option, for example.

As my noble friend Lord Roberts of Llandudno has just said, the number of successful appeals against a refusal to grant settled status questions whether the values and culture of the Home Office have changed in the way that Wendy Williams recommended, and whether there is an effective central repository from which lessons and improvements from adverse case decisions can be disseminated.

Windrush really was a scandal. Ensuring that there is no repeat in relation to EEA and Swiss nationals depends on the implementation of the Wendy Williams review recommendations. I support this amendment.

Baroness Sherlock (Lab) [V]: My Lords, I am grateful to noble Lords for raising this important issue. The review highlighted how many of the Windrush generation suffered so much, starting with stress and anxiety and leading too often to loss of livelihood and even separation from home and family. It therefore seems a fitting way to end the Committee stage, because it is a reminder to all of us of the consequences of getting immigration policy wrong.

When the review was first published, the current Home Secretary said she was "shocked" to discover the extent of the insensitive treatment that the Windrush generation and their families suffered. However, it is not good enough to be shocked after the event. We should all have known what was going on, taken responsibility for policy-making and been responsive to the people who were telling us that something was wrong. I think, along with my noble friend Lady Lister, that the decision to spend 10 years prioritising hostility in immigration policy should weigh heavily indeed.

As the noble Lord, Lord Paddick, said, Wendy Williams called the desperate results of the scandal "foreseeable and avoidable". That is a reminder, as the Government push this Bill through, that people will have to live in the world this legislation will help to frame. We should keep that in mind.

I add my voice to the questions asked by my noble friend Lady Lister and others. The Home Secretary accepted all the recommendations of the review, including changing the culture of the Home Office, and gave an early update before the summer. Has the comprehensive improvement plan promised for September been published? Can the Minister give us an update on how many people have now applied to the compensation scheme, and how many have received and accepted a compensation offer? When will we get another update on progress made so far? We all need to learn the lessons of the Windrush review.

Baroness Williams of Trafford (Con): I thank all noble Lords who have spoken to this amendment. I concur with the noble Baroness, Lady Sherlock, that this is a fitting end to Committee, although some of our views on how to prevent another Windrush scandal differ—for example, on the declaratory scheme versus the constitutive scheme for settled status.

Noble Lords have acknowledged that the Home Secretary has made it clear that we accept the review's findings. She updated the other House last month on progress towards implementing its recommendations. In response to the noble Baroness, Lady Sherlock, we will publish a comprehensive improvement plan in September—so, this month. I look forward to updating the House.

As part of our response, we are reviewing every aspect of how the Home Office operates: its leadership, culture, policies and practices, and the way it views and treats all parts of the community it serves. It must be said that while urgent and extensive work is taking place across the Home Office on all the recommendations, fundamental change takes time to deliver. Culture shift is like turning an oil tanker round; I think noble Lords accept that point. To rush for the sake of

making a headline would be the wrong approach. If noble Lords could stand in my shoes, they would see how much the Home Office and the Home Secretary talk about Wendy Williams and the lessons learned. The culture is already starting to change but it is not a quick change. Wendy Williams made that very point: we should not rush, first, to respond to the review or, secondly, implement some of the changes suggested in it.

Delaying the end of free movement until the changes are implemented would prevent us moving to a new skills-based immigration system. That new system means people will be treated equally and fairly, and delaying it would undermine the Government's clear position on ending free movement. Noble Lords will not be surprised to know I cannot accept the amendment.

The noble Baroness, Lady Lister, asked about the evaluation, the terms of reference and whether we had engaged any external experts. The team is actively engaging with internal and external organisations, as well as with staff at all levels. We are engaging with the unions, with support networks and with the department's race board to determine the best way to implement the findings of the review.

Of course, it is fair to say in conclusion that the findings of Wendy Williams' *Windrush Lessons Learned Review* affect all migrants in the UK, not just EEA citizens. The tenet—to use the word used by the noble Baroness, Lady Lister—of her review was a fairness and a humanity within the way that the Home Office operates, and I can totally concur with that.

The noble Baroness, Lady Sherlock, asked me for an update on the compensation scheme. I do not have the facts and figures—another deficiency in facts and figures this afternoon—but I will certainly write to noble Lords on where we are up to. The noble Lord, Lord Roberts of Llandudno, questioned the high number of appeals that are upheld. This is all down to when appeals are lodged, and that can have an impact on appeals granted. With that, I ask the noble Baroness to withdraw the amendment.

7.45 pm

Baroness Hamwee (LD) [V]: My Lords, the comprehensive improvement plan is due this month, and the first day of Report on this Bill is the last day of this month. I had made a note, before the Minister said it, that Wendy Williams herself talked about the importance of not rushing the change, but I think we can look forward to the review before—albeit immediately before—we start on Report. I accept of course that changing a culture, like redirecting an oil tanker, is a long process. Indeed, changing culture is something that should go on and on; it is necessary that it should always be a current issue.

The noble Baroness, Lady Sherlock, talked about the importance of not getting the policy wrong; it is about both policy and practice. The obvious read-across from the experience of the Windrush generation is indeed the documentation, as my noble friend mentioned. Recommendations are good, but they will only be evidenced by actions. As the Minister has just acknowledged, the lessons learned from the unhappy experience of Windrush are transferrable. "Fairness" and "humanity", she said; those are very good last words for today—they are very good words for always. On that note, I beg leave to withdraw the amendment.

The Deputy Chairman of Committees (Baroness Finlay of Llandaff) (CB): My Lords, before we proceed to that point, I have a request to speak from the noble Baroness, Lady Lister of Burtersett.

Baroness Lister of Burtersett (Lab): I am sorry to deter the noble Baroness; I think there was a delay in my request getting from here to there. I thank the Minister for answering most of my questions, but could I just push her a bit further? If the review decided that the only way to address the problems created by the hostile/compliant environment would be to reform the legislation, such as right to rent, is it within its power or terms of reference to be able to recommend that kind of legislative reform?

Baroness Williams of Trafford: I am not being obtuse, but the noble Baroness is talking about hypotheticals. I do not think that that is the case, but perhaps we could speak further about it after Committee.

Amendment 95 withdrawn.

Amendment 96 not moved.

Clause 8 agreed.

Amendment 97 not moved.

Clause 9 agreed.

House resumed.

Bill reported without amendment.

House adjourned at 7.50 pm.

Grand Committee

Wednesday 16 September 2020

2.30 pm

The Grand Committee met in a hybrid proceeding.

Arrangement of Business

Announcement

2.30 pm

The Deputy Chairman of Committees (Lord Lexden) (Con): My Lords, the hybrid Grand Committee will now begin. Some Members are here in person, respecting social distancing, others are participating remotely, but all Members will be treated equally. I must ask Members in the Room to wear a face covering except when seated at their desk, to speak sitting down and to wipe their desk, chair and any other surfaces that they may touch. If the capacity of the Committee Room is exceeded or other safety requirements breached, I will immediately adjourn the Committee.

The time limit for the debate on the first instrument is one hour.

Alternative Dispute Resolution for Consumer Disputes (Extension of Time Limits for Legal Proceedings) (Amendment etc.) (EU Exit) Regulations 2020

Considered in Grand Committee

2.31 pm

Moved by ***Lord Callanan***

That the Grand Committee do consider the Alternative Dispute Resolution for Consumer Disputes (Extension of Time Limits for Legal Proceedings) (Amendment etc.) (EU Exit) Regulations 2020.

The Parliamentary Under-Secretary of State, Department for Business, Energy and Industrial Strategy (Lord Callanan) (Con): My Lords, these regulations were laid before the House on 29 June 2020.

We want a relationship with the EU based on friendly co-operation between sovereign equals and centred on a trading relationship based on free trade agreements like those the EU has concluded with a range of other international partners. We will have a relationship with our European friends inspired by our shared history and values. These regulations form part of the important and necessary programme of work being done to ensure that retained EU legislation continues to work effectively and as intended in the UK immediately after the transition period.

Consumers in the UK enjoy a strong framework of statutory rights which enable them to enter into contracts with traders safe in the knowledge that they are protected by the law. These rights help to maintain a fair balance between consumers and business and, in most cases, help consumers to resolve disputes with traders directly. Where resolution cannot be achieved directly with the business, we know that consumers would prefer to have alternative methods of tackling disputes that do not involve the cost or complexities associated with court action.

Alternative dispute resolution, known as ADR, provides a strong alternative to court action by enabling parties to settle a dispute in a favourable manner with the help of an independent third party. ADR is often quicker and cheaper than legal proceedings and, depending on the type used, can produce binding decisions.

I emphasise that these draft regulations have no impact on our access to, or the quality of, ADR in the UK. They also do not alter wider substantive consumer rights and protections available to UK residents, which also remain unchanged.

The regulations are narrow in scope and primarily concerned with the extension of the time limit for bringing court proceedings. They will amend four pieces of legislation which implement EU ADR directives that will no longer apply to the UK following the end of the transition period. The four pieces of legislation currently provide a short extension to the statutory time limit for bringing court proceedings where a consumer is engaged in non-binding ADR with a trader. These extensions allow the ADR procedure to conclude and provide parties with a conditional eight-week grace period to launch legal proceedings if they are not satisfied with the outcome of the ADR procedure. This ensures that parties do not lose their ability to pursue legal action if the time limit for doing so expires during or just after the completion of the ADR procedure.

It is important to highlight that these extensions to the time limit will continue to apply following the transition period but, as a result of this SI, extensions will apply only where the consumer is resident in the UK and the ADR provider is approved under the UK's ADR regulation. If both conditions are met, the time limits for initiating legal proceedings when engaged in ADR will continue to be extended for UK-resident consumers, irrespective of whether they are interacting with a trader based in the UK or the EU.

The regulations substantively mirror the changes made by the equality exit regulations, which this House has already approved, to Section 140AA of the Equality Act 2010, which provides for extensions of time limits in the case of claims of discrimination relating to consumer disputes. The instrument before the Committee today is designed to ensure that a consistent approach is taken across the statute book to all rules on extensions of time limits deriving from the ADR directive.

These regulations will have no detrimental impact on the majority of disputes involving UK-resident consumers. They also do not otherwise affect the ability of any consumer, whether living in the UK or the EU, to apply to the UK courts or to use ADR as a means of dispute resolution with a trader. Moreover, transitional provisions have been included to ensure that any extensions that have begun before the regulations come into force continue to apply.

My departmental officials have undertaken the appropriate assessment of the regulations' impact on businesses and relevant bodies. This showed that any impact is likely to be negligible because these amendments

[Lord Callanan]
do not bring about a wider policy change or impose any new liabilities or obligations on any relevant business, organisations or persons.

In conclusion, the regulations are a necessary and appropriate use of the powers in the withdrawal Act to ensure that this area of law continues to operate as intended after the transition period. I therefore commend them to the Committee.

2.36 pm

Lord Singh of Wimbledon (CB) [V]: My Lords, the regulations are welcome and necessary to enable consumer rights under EEC regulations to be protected before the end of the transition period. It is important to ensure that EU legislation continues to work effectively in the UK after the end of the transition period.

While 60% of consumer rights disputes are settled directly with the business or supplier concerned, where these are unresolved most consumers would still prefer an alternative to formal litigation. The eight-week grace period after a failure to settle a dispute through an alternative dispute procedure and embarking on legal proceedings is welcome. It will help to ensure that the UK and EU consumers can enter into ADR processes in good faith, without fear of strict time limits to bring a case to court.

This is a sensible approach and a good beginning to protecting consumer rights before the end of the transition period, but there is a long way to go in meeting the challenges of wider consumer protection, covering nearly 100 directives on consumer rights. This will not be helped by the recent souring of relations between us and Europe. The EU consumer protection laws, which we helped to frame over 40 years, enable us to purchase goods and services with confidence and enhance our trade with the EU. We still have a long way to go in our increasingly fraught negotiations with Europe to preserve those rights. There is also a need for more resources to ensure compliance with our new independent standards.

I close with the words of the Chartered Trading Standards Institute:

"Much has been made of maintaining the UK's post-Brexit standards of regulation, but rules without resources for application, advice and enforcement are rendered ineffective and detrimental to the UK economy."

2.39 pm

Lord Mann (Non-Afl): My Lords, over the last 20 years I have represented many thousands of people in what would accurately be described as alternative dispute resolutions, in a range of different ways. I see nothing amiss with this very sensible proposal. However, I want to press the Minister on the current situation and some of the likely ongoing disputes, in view of experiences I have had in recent times.

One problem I have encountered is the return of goods. Some suppliers have been remarkably reticent in acknowledging electronic communication, and consumers visiting their premises to return goods find that those premises are closed—a new scenario that potentially weakens the consumer's position. I wanted to ensure that there is no hidden detriment in any way to those disputes where the goods supplier makes themselves unavailable. This is obviously severely compounded by their ability to do so at the current time.

The second is much more common, and concerns services—for example, airline services—and cancellations of airline and other transport services and comparable bookings due to the current crisis and for no other reason. Again, some airlines and third-party travel agencies have been highly responsive. Others have been highly unresponsive, with huge delays even in acknowledging requests for refunds. It appears that there is a danger in some cases of this potentially going on for many months and becoming protracted. An example would be if one were to cancel a Christmas booking now. There are all sorts of issues regarding what the rules for Christmas will be, whereas the rules for airlines seem much more precise.

As regards the Government's thinking on this, does this legislation have any impact other than pro consumer, with the additional time allowance built in, or would it be accurate to entirely phrase this legislation as an additional time opportunity for consumers seeking redress through alternative dispute resolution without the need to go to court in these difficult times?

2.42 pm

Lord Bhatia (Non-Afl) [V]: My Lords, alternative dispute resolution regulations are being made because of the UK exiting from the EU. This statutory instrument will ensure that ADR continues to work as intended after the end of the transition period in a context in which the EU's ADR can longer apply to the UK. The regulation will give extra time to allow the ADR procedures to conclude, and if it has not been successful, will give the parties an eight-week grace period to commence court proceedings thereafter. This protects the parties, who are not prevented from initiating additional proceedings where the court limit expires during or just after the ADR procedures. The effect of the regulations will protect both UK and EU-based consumers buying goods and services in the EU. It will ultimately mean that UK consumers are protected by the time limit extensions only when working through ADR organisations.

Everything I have said today shows the huge number of consumers and organisations that will be affected by our withdrawal from the EU. The EU is our biggest market, and the withdrawal from the EU is, in many people's minds, the biggest error and self-harm that the Government have imposed on the country. History will record how the politics of our EU exit has harmed the richness of our country. Unemployment and closures of our industries will remain scars for a very long period.

2.44 pm

Lord Kirkhope of Harrogate (Con) [V]: My Lords, I declare my position as a practising lawyer, and I am pleased to contribute to this scrutiny process today. As a former member of the House of Commons Secondary Legislation Scrutiny Committee, I have always been clear that the use of SIs by government is to be

carefully and thoroughly monitored, and the effects of Brexit have resulted in large numbers of instruments coming before us, many of which will be rightly deemed subject to affirmative resolution and worthy of further debate or inquiry. With nearly 300 more instruments on their way, this will place an enormous burden on Parliament, but we must not allow the pressure of numbers to lessen our duties of proper scrutiny. I appreciate that the process does not permit us to reject an instrument, so it is all the more important that any concerns and inquiries about the operation of provisions are raised with our Ministers using the opportunity that occasions such as this afford us.

On the matter before us, most disputes involving consumers and businesses are, thankfully, settled amicably, but there has always been a need to try to find a middle course before resorting to court action, which is inevitably complicated, expensive and necessarily delays the outcome. That is where alternative dispute resolution has been so useful. I am pleased to hear that we are not planning to change the basics of the system through this instrument, although extensions to time limits for bringing court proceedings with eight weeks' grace is of significance. Of course, the basis of ADR comes, as do so many other civil law initiatives, from European Commission directives, to which the UK contributed in a leading way. As a result, in the case of ADR, we have built up a positive cross-border engagement covering consumer rights in a very international environment. This covers the protection of consumer rights everywhere and anywhere in the EU.

There is a complex and interwoven system in the single market, supported by nearly 90 EU directives, which has been greatly to the benefit of consumers here and across the European Union. My first question to my noble friend is therefore: the Government state that this SI changes nothing regarding the protection of UK consumers, but how will we be able to guarantee the protection of consumers' rights when they visit the EU 27 after January next year? Secondly, how will UK consumers avail themselves of the services of agencies and the infrastructure in place across Europe, which is currently their right? Thirdly, we currently enjoy full reciprocal rights with our European neighbours, which includes investigation of breaches of consumer law. How will UK consumers obtain redress from these businesses and traders based in the EU through our UK courts, to which they will have to apply solely in future?

Cross-border ADR will presumably be lost to UK consumers. I have to say to my noble friend that in this field, a statutory instrument such as this is only one half of the post-Brexit story. To ensure ongoing consumer protection, we surely need at least mutual recognition rules within the EU 27. Without that, our UK consumers, whatever the Government may say, will be greatly disadvantaged in the future. Finally, in the time-limited extension provisions in this SI, two important groups appear to be excluded: EU-based consumers transacting business or obtaining goods and services in the UK, and UK-based consumers transacting business or obtaining goods and services in the EU. Can my noble friend offer us all the reassurances that we would like to have on these apparent omissions?

I realise that our opportunity to debate this SI is not based on the matters I have concentrated on, being of major concern to the European SI Committee, which was concerned then about the diminution of rights relating to the time limits before court proceedings and the linked legislation being primary in nature. However, I am nevertheless grateful for this opportunity, and I hope that it will be extended to many more items of secondary legislation from the very long list.

2.49 pm

Baroness Bowles of Berkhamsted (LD) [V]: My Lords, the UK had a tradition of alternative dispute resolution before the EU ADR directive. As has been indicated by the noble Lord, Lord Kirkhope, UK MEPs played a significant part in achieving the passage of the EU legislation. It was not just an extension of the applicable territory that the UK gained through the directive. As I understood it, there was an extension of timing possibilities for factions so that, if ADR was unsuccessful, the matter could still be taken to the courts. That was a useful addition to the law and I am glad that it is being kept, although it appears it is now being reduced, so that it is applicable to UK residents only, as a consequence of Brexit.

UK-based ADR organisations will also no longer be required to act in cross-border disputes, and the UK competent authorities that approve ADR providers will no longer be required to report to the European Commission on the state of ADR activity. I note that result with sadness, for both UK consumers who will—as indicated by the noble Lord, Lord Kirkhope—lose some access, and ADR organisations, which would appear to be losing work. The reciprocal effect will happen, so EU residents will no longer be able to exercise cross-border ADR rights in the UK. I wonder whether this will promote a change in online trading patterns and possibly the reintroduction of liable intermediaries and higher costs, or influence trade to go elsewhere, with less cross-border trade.

Given that statistics have been collected in the past, it would be interesting to know how many ADR claims UK residents have made relating to the remaining EU member states and, conversely, what volume of ADR cases EU residents have pursued in the UK.

Online dispute resolution is also being lost and is not really covered by this instrument. That platform is run by the Commission and I understand that, at the end of the implementation period, access to it will be lost. It is disappointing that there appears to be no UK substitute. I have read that the dispute resolution provisions tend not to have been as widely displayed as they should in the UK, but that is not really an excuse to abandon them, never to be returned. Therefore, can the Minister say whether this is a long-term abandonment or if there are plans for replacement?

Coronavirus has increased the amount of online trading and much of that trend is likely to be permanent, being just an acceleration of a trend that was already under way. It makes sense, in a modern digital world, to have a modern digital way for consumer redress mechanisms. Similarly, as I asked before about statistics, does the Minister have any numbers for the volume of online disputes relating to UK consumers?

2.53 pm

Lord Stevenson of Balmacara (Lab) [V]: My Lords, I thank the Minister for his clear introduction of the SI. All noble Lords have taken his point that the intention is not to change the existing arrangements as they affect UK residents in relation to ADR, but to provide an additional safeguard for the extension of time because of the transition period. However, I am no different from the other speakers in that it raises a wider question about how ADR is conceived and operates in the UK, and what the future might bring.

My first point is directly related to that, because the Minister made a strong plea for ADR as a strong alternative to court proceedings and, therefore, a valuable asset for consumers and consumer rights. That depends on whether the ADR systems in place are active, efficient and serve customers well. Noble Lords will recall that, when the original directive was going through, this side of the House spent a considerable amount of time and effort trying to persuade the Government—unsuccessfully, in the end—that, when the directive is transposed, we ought to take a hard line against industries that are either slow to take up an ADR system or produce one with weak and ineffective operations. It may be wrong to require ombudsman services to be set up, but they seem to be a gold standard in many areas. Where they work well—financial services is a good example—they provide a mechanism that has the confidence of consumers and is effective in getting results for them, so they do not have to go into the aggressive atmosphere of courts.

When he responds, could the Minister give us a tour d'horizon of consumer areas, at the moment? The noble Lord, Lord Mann, mentioned some topical areas where he felt there were some doubts, and many noble Lords will be aware of the situation affecting the vouchers that have been offered by airlines and other transport operators when tickets have been cancelled. My personal experience is that this is patchy at best: some are very good and able to respond within a few days; some have been a nightmare. I am still not certain whether I have a voucher waiting to be delivered to me, even though the company—I shall not name it—keeps putting on its website that significant progress has been made in getting through the backlog and that it is all going well. It is funny that no voucher ever seems to arrive.

My second point is a narrow one about what is happening with legislation. As I understand it, this SI amends primary as well as secondary legislation, in pursuit of what is a not objectionable objective. I noticed, in the instance I was pursuing, two primary legislative issues—one in Scotland and another in Northern Ireland. However, when I looked at the consultation process, I could not see anything reflective of the sort of discussion and debate that one might have expected from legislation that affects devolved Administrations, in particular Scotland and Northern Ireland. The reference in paragraph 10 of the Explanatory Memorandum simply says that the department wrote to the Department for the Economy in Northern Ireland to seek agreement with the Northern Ireland Executive to make the instrument, and the department confirmed its agreement on 10 February.

Why is nothing mentioned about Section 14 of the Prescription and Limitation (Scotland) Act 1973, or am I missing something? There would have been a case for the Minister to be in correspondence with his counterparts in Scotland on this issue, even if it was only a courtesy. Presumably it is legislation that took place before devolution, but I think it is important to keep the niceties going on these issues.

My third point picks up that made by the noble Lord, Lord Singh, about how this works in practice. Consumers are relying on ADR but, in many cases, can do this only if the issue at hand has been subject to work, particularly by trading standards. We all know trading standards is under considerable pressure and has had additional responsibilities placed on it recently, but little additional resources flow its way. Could the Minister reassure us that trading standards is resourced effectively to do this work and will be able to pick up any additional work that results from this directive? I suspect that it will not be significant.

The point of the noble Lord, Lord Kirkhope, about consumers' ability to get redress in the EU is important. I appreciate it is not relevant to the strict wording of this SI, but it will be an issue that people pick up. I cannot be the only person who gets nervous—this point was also made by the noble Baroness, Lady Bowles—when I buy something from a well-known deliverer of books, the name of which starts with "A". I often find that the purchase I have made for my Kindle is delivered from Luxembourg.

I had not thought about the connection but the noble Lord, Lord Kirkhope, and the noble Baroness, Lady Bowles, made it very clear that that will be a problem if I want to exercise my rights in future about anything that might go wrong. Fortuitously, as far as I am aware, nothing has gone wrong so far, but in an imperfect world we cannot always be certain that that will be the case. Could the Minister give us some words about how he thinks this will develop? Clearly, if the noble Lord, Lord Kirkhope, is right, we are seeing a considerable diminution in the ability of UK consumers to exercise their rights when they choose to buy from our closest trading partner—the EU. Is that where this is going? Is there anything the Minister can say that would help us?

3 pm

Lord Callanan (Con): I thank all noble Lords for their valuable contributions to this brief debate.

I reiterate that these regulations are extremely limited in their scope, to only the short-term extensions of the time limit for court proceedings for consumer disputes. They do not remove the ability for any consumer, whether resident in the UK or the EU, to use ADR in the UK or to access our courts. Disputes involving consumers resident in the UK should not be affected, and the transitional provisions avoid disruption in any case where consumers have commenced ADR proceedings before the draft regulations came into force.

These amendments are necessary as a result of the ADR directive ceasing to apply in the UK when we leave the EU and to prevent inconsistency in the statute book given the changes already made by the equality exit regulations. If these amendments are not

made, EU consumers may continue to benefit from the possibility of an extension which might not be available to UK consumers within the arrangements in place in remaining member states.

The Government remain firmly committed to maintaining the high standards from which UK consumers have benefited for many years, and these regulations do not hinder these in the slightest. I reassure the noble Lord, Lord Kirkhope, that our high standards are not and never have been dependent on EU membership. The UK has often led and in most cases goes well beyond the minimum requirements set out by EU consumer law. We also have many excellent consumer advice organisations that guide consumers in pursuing complaints against traders. All of this suggests that for the majority of consumers the current framework works well.

I can also reassure the noble Lords, Lord Mann and Lord Stevenson, that nothing in these regulations has any effect on existing consumer rights, whether the return of faulty goods or refunds for travel or airline tickets. They are all dealt with under separate legislation. It remains the case that many suppliers have offered vouchers for holidays, flights, et cetera, but it is entirely up to consumers whether they choose to accept them. There are separate regulatory and statutory frameworks governing those rights. I reiterate that none of that is affected by this SI.

This legislation is limited purely to the additional time for consumers seeking redress. It allows for short-term extensions to the time limits for court proceedings where that is necessary to give the parties the opportunity to resolve their differences through non-binding ADR. It enables the existing rights to an extension to work effectively after the end of the transition period. We are proud that Britain's consumer protection regime is among the most robust in the world; the UK has a strong history of protecting consumers in its own right. UK consumers will of course continue to enjoy excellent rights after transition.

The noble Lord, Lord Kirkhope, raised the important question of how the Government will guarantee that consumers will be protected when buying from EU-based traders post implementation period. This point was also made by the noble Lord, Lord Stevenson, with his reference to "the big A". The noble Lord raised the important point of how consumers will obtain redress in the UK courts from traders based in the EU following the transition period.

Consumers resident in the EU will continue to be able to resolve disputes with UK businesses directly, will be able to use ADR as long as the ADR provider is available to them, and will retain access to the UK courts. EU-based companies selling their products or services in UK-regulated markets must comply with all UK regulatory requirements. In the regulated sectors, this would include compliance with sectoral rules and requirements around the offer of ADR or other forms of redress to their customers. In future we want a relationship with the EU based on friendly co-operation between sovereign equals, centred on a trading relationship based on free trade agreements like those the EU has concluded with a range of other international partners.

The noble Lord, Lord Stevenson, asked about the scope of ADR. My department has announced its intention to review various areas of the consumer enforcement landscape. We intend to bring forward a package of reform to make it easier and quicker for consumers to use ADR services. On his question about engagement with the devolved bodies, this is a consumer protection measure and is reserved, except for Northern Ireland. That has driven the focus of our engagement. As I said, we want a relationship with the EU based on friendly co-operation.

The noble Baroness, Lady Bowles, asked about statistics. Over 2.5 million disputes have been resolved through ADR in the past six years. BEIS research found that 80% of consumers who used ADR procedures thought their problem would not have been resolved without it. We consider that a success story. We will always closely examine areas of the dispute resolution landscape which are not working for consumers and lay out our proposals for reform.

The draft regulations we are considering today do not dilute consumer rights and protections by any means, and merely form part of a programme of legislation required to ensure that retained EU law is workable and free of deficiencies after the end of the transition period. With that, I commend these draft regulations to the Committee.

Motion agreed.

3.06 pm

Sitting suspended.

Arrangement of Business

Announcement

3.45 pm

The Deputy Chairman of Committees (Baroness Garden of Frognal) (LD): My Lords, the Hybrid Grand Committee will now resume. Some Members are here in person, respecting social distancing, others are participating remotely, but all Members will be treated equally. I must ask Members in the Room to wear a face covering except when seated at their desk, to speak sitting down and to wipe down their desk, chair and other touch points after use. If the capacity of the Committee Room is exceeded, or other safety requirements are breached, I will immediately adjourn the Committee. If there is a Division in the House, the Committee will adjourn for five minutes. The time limit for this debate is one hour, and I ask all members to keep to their time.

European Structural and Investment Funds Common Provisions and Common Provision Rules etc. (Amendment) (EU Exit) (Revocation) Regulations 2020

Considered in Grand Committee

3.45 pm

Moved by ***Lord Callanan***

That the Grand Committee do consider the European Structural and Investment Funds Common Provisions and Common Provision Rules etc. (Amendment) (EU Exit) (Revocation) Regulations 2020.

The Parliamentary Under-Secretary of State, Department for Business, Energy and Industrial Strategy (Lord Callanan) (Con): My Lords, the EU regulations for structural funds and the cohesion fund are designed to reduce social and economic disparities in the EU and are the main funding tools designed to deliver the EU's cohesion policy. They come under the wider family of European structural and investment funds. These EU regulations set out the rules governing these funds and give powers to the member state to ensure the operability of eligible projects.

More than half of EU funding is channelled through the European structural and investment funds. They are jointly managed by the European Commission and the EU member states. BEIS sets the policy and co-ordinates the management of four of these funds across the UK: the European Regional Development Fund, ERDF, which includes European Territorial Co-operation funding—ETC; the European Social Fund—ESF; the European Agricultural Fund for Rural Development—EAFRD; and the European Maritime and Fisheries Fund, or EMFF.

The UK has been allocated about £9.5 billion of funding under structural funds for the 2014-20 period. The funds currently support growth, low carbon, transport, research, innovation, small businesses, employment opportunities and social inclusion. Structural fund programmes are managed and delivered by government organisations designated as managing authorities—MAs—which in essence are delivery bodies for the funds in England and the devolved Administrations and are responsible for drawing up operational programmes. These programmes set out the levels of funding available for certain activities and how the programmes will be run within the parameters set by the EU regulations.

The Department for Business, Energy and Industrial Strategy—BEIS—is the co-ordinating body for ESIFs in the UK. In England, the managing authorities for the European Regional Development Fund and the European Social Fund are, respectively, the Ministry of Housing, Communities and Local Government and the Department for Work and Pensions. The devolved Administrations and Her Majesty's Government of Gibraltar administer ERDF and ESF in their respective areas. The Department for Environment Food and Rural Affairs manages the agricultural funds—EAFRD—in England, and the devolved Administrations in their areas, apart from EMFF which is run across the UK by the Marine Management Organisation, an executive non-departmental public body sponsored by Defra. Gibraltar receives a small allocation of about €10 million—£8.8 million—from the European Regional Development Fund and the European Social Fund for 2014-20 and has agreed operational programmes with the European Commission to implement them. It also takes part in two transnational programmes.

The need for continued regional investment in the event of a no-deal exit and the nature of the projects supported by these funds led to the introduction of legislation so that these funds could operate domestically under a no deal until their planned closure, even though they would cease to be funded by the EU in such circumstances. As the UK subsequently signed the withdrawal agreement, which maintains the EU regulations for European Structural and Investment Funds until programme closure, which could be until 2026, given that programmes run until 2023 and then generally take two to three years to wind up, SI 625 contradicts the intent and purpose of the withdrawal agreement.

This instrument is being laid in order to revoke the aforementioned SI 625/2019, which was made on 18 March 2019. That SI disapplied retained EU law in relation to the European Regional Development Fund, the European Social Fund and the European Territorial Cooperation Fund to ensure that the programmes could continue in a no-deal scenario. Under the withdrawal agreement, these regulations can still apply in the UK, despite the UK not being a member state. Now that the withdrawal agreement has been signed by the UK and made into law through the European Union (Withdrawal Agreement) Act 2020, the original statutory instrument, 625/2019, is therefore no longer required and should be repealed in order not to confuse the statute book.

The EU withdrawal agreement Act 2020 allows the UK to continue to apply EU Regulation 1303/2013, supplementary funds, specific regulations and associated delegated and implementing legislation for the European structural and investment funds through until the end of the current programme. It is proposed that the UK shared prosperity fund will be set up as the domestic successor to the European structural and investment funds for new programmes.

In conclusion, it is therefore necessary to revoke the original no-deal statutory instrument 625/2019 to remove conflict with the provisions of the EU withdrawal Act. The UK will continue to participate in European structural and investment funds programmes until their closure, and delivery continues through the managing authorities and devolved Administrations. Therefore, in order to remove any confusion from the statute book as the no-deal guarantee for funding is now not required, I commend this regulation to the Committee.

3.52 pm

Lord Foulkes of Cumnock (Lab Co-op): My Lords, I welcome the opportunity to speak on these regulations. Particularly as a Scottish Peer—indeed, a former Minister of State for Scotland—I am only too aware of the important role that ESIFs have played in reducing disparities across Scotland over the past four decades. Indeed, under the current 2014-20 programmes, Scotland benefits from more than £780 million of funding through the European Regional Development Fund and the Social Fund, in addition to £1.5 billion through the European Agricultural Fund for Rural Development. Indeed, more than two years ago, I spoke here about the importance of continuing these funds to support communities and regions not just in Scotland but throughout the UK, saying that I was concerned that they would be lost in the Brexit void.

Nevertheless, while I welcome the UK shared prosperity fund as the domestic successor to ESIF for new programmes after 2020, I am concerned that with government cuts, it is in danger of becoming a shared austerity fund rather than a shared prosperity fund. Indeed, we are still no clearer on how the funding will be allocated or when a final decision will be made. The Government have said that they will not confirm

the allocation until after the cross-departmental spending review in the coming months. However, these are challenging times and we need to provide both Scotland and the whole of the UK with clarity on the allocations from this scheme, so will the Minister explain why we are having to wait and how soon after the spending review the Government will make the announcement on this? Will it be by the end of 2020, or will they kick the can down the road into 2021?

Finally, the Explanatory Note says that BEIS originally laid an SI in March 2019, as we know: SI 625. That removed the EU regulations for structural funds from UK law in the event of a no-deal exit. However, as the UK signed the withdrawal agreement, which maintained the EU regulations for ESIF until programme closure, as the Minister said, SI 625 contradicts the intent and purpose of the withdrawal agreement, which is why it is now being revoked. However, is it not ironical that the Government are now considering overriding parts of the withdrawal agreement, so will we have another SI in a few weeks' or months' time? Perhaps the Minister could tell us. No wonder the noble and learned Lord, Lord Keen, could not stand the heat in the kitchen and has left it—going back, no doubt, to make some money at the Bar. Nevertheless, I support the regulations.

3.54 pm

Baroness Bowles of Berkhamsted (LD) [V]: My Lords, I thank the Minister for introducing the instrument. I have no disagreement with the redundancy of the revoked legislation, given that the funding has been agreed and is to be paid out for parts of the programmes that are yet to be completed—at least, that is the agreement, although, given that the UK may go back on the backstop details of the withdrawal agreement, I feel I should point out that one of the Commission's general retaliations for misbehaviour is the retention of structural funds from an erring member state.

Leaving that aside, we are coming to the end of the EU structural funds and, as the noble Lord, Lord Foulkes, said, there is great anxiety about the replacement fund, the UK shared prosperity fund, and how closely it will replicate not just the EU funding but the matching national funding, and the method of calculation and distribution. It has often been a criticism that structural funds were cumbersome and expensive in their distribution mechanisms. I do not dispute that, but wherever I asked questions about it in the UK—that is the sort of thing that MEPs got up to—the answer I got back from the regions was that they preferred to have the funds allocated by the EU, because otherwise they could not guarantee getting the money from a Government of any stripe. That was probably true, and if getting the maximum bang for your buck is applied, as the Treasury has in the past, it does not favour the less developed areas. But that is potentially not how it is to be in the future. I believe I heard the Chancellor say that the methodology of funding more generally was to be looked at as part of levelling up. If that is the case, can the Minister categorically reassure us that the basis of need will be retained as the key feature?

My other question is: how granularly will the areas be looked at? I am very conscious of conflicting pulls here: when large areas are deprived, there can be cumulative effects, but it is also the case that highly deprived pockets within rich regions also suffer exaggerated effects. Can the Minister shed any light on that?

3.57 pm

Lord Flight (Con): My Lords, this statutory instrument revokes legislation laid in 2019 that would have guaranteed structural funding in the event of a no-deal exit. Under Article 138 of the withdrawal agreement, the UK will continue to have access to the ERDF, ESF, EAFRD and EMFF until the end of the current multiannual financial framework, the term 2014-20. Funding cycles typically last up to three years, with closure taking up to another three years, so some ESIF projects will continue expenditure through to December 2023.

The UK will not be pursuing participation in future ESIF programmes, including ETC health, in the MFF 2021-27 period. The UK will participate in ETC peace plus for 2021-27. The UK shared prosperity fund, the UKSPF, will succeed the ESIF for new programmes. BEIS originally laid an SI in March 2019, SI 625, which removed the EU regulations for structural funds from UK law in the event of a no-deal exit. Unreplaced, it would now come into force on the last day of the transition period. BEIS is seeking to revoke that no-deal regulation because it is not compatible with the arrangements set out under Article 138 of the WA.

As already pointed out, the no-deal SI 625 disapplies the regulations for ERDF, the ESF and ETC when it comes into force at the end of the TP, while the WA maintains the same regulations until the programme closure. If SI 625 were kept, it would confuse the statute book. It is currently planned that the UK shared prosperity fund will replace the EU structural funds with funding realigned to match domestic priorities. At a minimum, it will match current levels of funding to each nation from the EU structural funds.

I apologise for reading out the abbreviations for the titles of various bodies, but there is not time to read the whole lot in full.

The Deputy Chairman of Committees (Baroness Garden of Frognal) (LD): The noble Earl, Lord Clancarty, has withdrawn, so I call the noble Lord, Lord Naseby.

4 pm

Lord Naseby (Con): My Lords, my first point has already been made: that the regulations assume that we will not have a no-deal exit. As someone who saw a whole lot of SIs when I was in the other place, as chairman of Ways and Means, I have to say that it was normal with something of the scale of this SI for the Commons to have a look at it first, but the Commons have not considered this SI, so I become as suspicious as my noble colleague opposite about why something different is being done this time. Of course, it may be entirely innocent, but I have my doubts.

On paragraph 2.4 of the Explanatory Memorandum, headed:

"What will it now do?"

and the various funds set out there, is it the UK Government's policy to apply for new projects in the remaining three and a half months of the period 2014-20?

[Lord Naseby]

Or have we put in for all our projects and are just running down in this period? Are there to be any new projects in the remaining three and a half months?

Paragraph 3.1

"Matters of special interest to Parliament"

is followed by a paragraph that refers to

"English Votes for English Laws"

and then by a paragraph:

"The territorial application of this instrument includes Scotland and Northern Ireland."

One asks the question: what happened to Wales, other than that paragraph 3.3 says that the instrument applies to all the UK? Is there something in the Welsh devolution arrangements that precludes it from doing something in relation to this SI?

We then come to what I call the run-off period. With no deal yet agreed and three and a half months left, are we in a position whereby we will not apply for anything else or, if we did, we would be treated rather frostily for doing so?

Is the £9.5 billion referred to in paragraph 7.2, which is a hell of a lot of money, a guaranteed amount, or is there any wriggle room for the EU to get out of that?

That takes one on to left-over projects, of which paragraph 7.4 says

"even though they would cease to be funded by the EU."

One assumes, but we would like confirmation, that all the projects going on now, which at some point the EU will cease to fund, will be picked up by the UK Government.

On "Monitoring & review", I am a passionate believer in monitoring—it is my own little analysis—but, increasingly and rightly, the time limit on reviews has been coming down. It is now almost quite normal to have a three-year review. I hope that in this case we will have a three-year review.

The Deputy Chairman of Committees (Baroness Garden of Frognal): The noble Lord, Lord Liddle, has withdrawn, so I now call the noble Baroness, Lady Ritchie of Downpatrick.

4.03 pm

Baroness Ritchie of Downpatrick (Non-Afl) [V]: My Lords, I thank the Minister for his explanation of this SI, which we have to consider against the background of that other disputatious legislation, the internal market Bill. While I obviously welcome that there will be a progression towards the shared prosperity fund, I want to provide some context and then ask the Minister some questions.

Like the noble Lord, Lord Foulkes, I was a Member of the other place, so I want to ascertain why the other place has not considered this legislation. As a former Minister in the Northern Ireland Executive, I am only too aware of the great benefit that the European Regional Development Fund, the European Maritime and Fisheries fund and the European Social Fund provided to our local communities. In fact, the European Union provided a levelling-up process through financial assistance for fisheries, infrastructure and social development projects in areas where funding would not necessarily have been provided by the national Government, notwithstanding that the UK Government were a net contributor to the EU. As a consequence, regional levelling-up was provided which mitigated against disadvantages and regional imbalances and ensured that projects which brought benefit in construction jobs and new facilities could come to realisation.

What resource has been allocated to the new shared prosperity fund? Will it be centrally resourced and then allocated to the devolved Administrations, or will they set up separate funds to deal with that? Will the shared prosperity fund have more resources than the EU to allocate to projects? Will it still address the deficits in marginalised communities, particularly in isolated, rural and coastal communities? Will it deal with and address those regional imbalances to which we have already referred?

What discussions have taken place with devolved institutions regarding the replacement money through the shared prosperity fund? As I asked earlier, will they receive that money over and above their annual block grant allocations to compensate for the loss of these European funds?

4.06 pm

Baroness Altmann (Con): My Lords, I recognise, as other noble Lords have done, that this SI is necessary to revoke the previous no-deal planning because the withdrawal agreement continues Regulation 1303/2013 and associated legislation with respect to the European social investment fund. The no-deal funding guarantee therefore appears no longer to be required, but as the noble Baroness, Lady Bowles, and the noble Lord, Lord Foulkes, mentioned, if there is a problem with the withdrawal agreement, could the sums agreed under it be withheld? Is there any view in the department on that and could my noble friend comment on it?

It is clear that the ESIF has aimed to reduce social and economic disparities and support communities and regions and has generated over the years many useful projects: national programmes, local initiatives—including on biodiversity, energy efficiency, micro-generation and brain imaging—and help for rural areas that might not have been prioritised in a UK national policy. While I welcome the new UK shared prosperity fund, can my noble friend answer some of the questions already posed by other noble Lords, such as: when will the cross-department spending review happen and how much will be allocated? Will the amounts that the UK has invested be replicated in addition to the amounts that we have received from other EU nations? Will the shared prosperity fund still have as its driver need around the country rather than other priorities?

I am concerned to make sure that we do not lose some of the valuable initiatives that we had as a member of the EU. I know that the Government are committed to ensuring that Britain supports its own projects as required rather than being directed by the EU, and I respect that, but a little more clarity on how the shared prosperity fund might operate would be gratefully received.

4.09 pm

Baroness McIntosh of Pickering (Con) [V]: My Lords, my questions are not dissimilar to those from colleagues, which I am sure will help the Minister a great deal.

Obviously, it seems a little odd that we are considering revoking an instrument when we still have not reached a trading deal, so I do not know whether this instrument before us today is a little premature.

I will ask the Minister a couple of questions. Of the €9.5 billion of funding under the structural funds for the 2014-20 period to which my noble friend referred, how much of that is still left to run and what is the distribution of the amount left between the four nations? Can he assure us today that the cost of administering them up to 2023-25 will be less than these sums of money involved? Presumably, match funding will still apply, and that money will have already been allocated, so no new money will be required.

Specifically on the European agricultural fund for rural development, I understand that €100 billion has been allocated overall to the whole of the EU for the period from 2014 to 2020. As the clue is in the name—this refers to the rural development programme—I place on record how much the north of England, North Yorkshire in particular, has benefited from this fund. However, this raises the question on which we have not yet had clarification: how will the UK shared prosperity fund function? I would like confirmation from the Minister, if possible today, that a significant element of this fund will go towards rural areas and, in particular, that it will carry forward many of the strands set out in the rural development programme, which has benefited the UK so much, not just in the 2014-20 period but overall. As we have learned that the original SI we are revoking aimed to reduce social and economic disparities across the UK, can we be sure that the Government's levelling-up programme will continue to do what this SI has done in the past?

4.12 pm

Baroness Kramer (LD) [V]: My Lords, sparked by the noble Lord, Lord Foulkes, let me say how refreshing it is that we are debating a part of the European withdrawal agreement that the Government intend to uphold—there is a positive note to start on.

Of course it makes sense to repeal SIs that are redundant and potentially confusing, and we support the changes before us today. However, this debate gives me the chance to press the Government with the same kind of questions that the Minister has heard from other speakers. By the end of this year, EU funds will go into a run-off process over the subsequent few years, supporting existing or agreed projects but not investing in new ones. Like everyone else, I am remarkably short on detail for the UK shared prosperity fund that will replace them. Frankly, that seems a little extraordinary, because we are only three months or so from the end of transition. I thought there would be a major consultation on this. Have I missed it? It is possible that I have, but I attempted to find it and, frankly, I could not.

A number of bodies have raised quite a few issues around the UK shared prosperity fund. One of the hopes is that it will be transparent, simple and flexible—you could accuse the European structural funds of not meeting that test—to enable it to respond to local needs. I ask this because centralisation rather than devolution seems to have become a theme of this Government. I would also like to understand what role Parliament will play, particularly compared to the European Parliament, in holding the Government accountable for what happens with these funds. I am afraid I do not understand that either; perhaps the Minister could enlighten me.

Will the objectives that the Government have articulated for this new fund, such as boosting prosperity and tackling inequality, be adjusted as a result of Covid? That matters because of areas that might not have qualified under the original definitions but which are not dependent, for example, on hospitality, the airlines or on public transport. I pick up the point made by my noble friend Lady Bowles that sometimes a small sector or area can be deprived within an area of overall prosperity, but that still matters. Will those areas that might not have made the original list but now, because of Covid, may be very much in need, be looked at as recipients for this fund?

We could better understand the impact on geographies. My understanding—the Minister can correct me—is that however you look at the analysis, it looks as though areas such as Cornwall, for example, which benefited from the cliff-edge approach inherent in the European funds, will be serious losers in every approach that has been discussed for the new fund. Is that right? Perhaps the Minister can help us.

Again, to pick up on issues raised, the Conservative manifesto promised that each nation would receive as much funding as if we had not left the EU. For how long will that be true? Areas are desperate to know how much money will be available, particularly as we go into very rocky economic times.

To pick up a point made by both my noble friend Lady Bowles and the noble Baroness, Lady Altmann, will we continue with the needs-based criteria or shift, as some have suggested, to an outcomes-based criteria? It makes a very big difference to which parts of the country and which kinds of projects receive funding rather than others.

Generally, I join noble Lords in saying that this is a great opportunity for the Minister to tell us much more about this new future—it would be exceedingly useful.

4.16 pm

Lord Stevenson of Balmacara (Lab) [V]: My Lords, as other noble Lords have said, I am grateful to the Minister for his clear and focused introduction, which allowed us to understand better the importance of the SI with regard to clearing up the statute book, but also to point out some of the transitional difficulties that the Government will face as they see the end of these substantial schemes, which, as other noble Lords have said, have had such a huge impact across the country. They are a significant investment, many communities are involved, they connect all parts of the United Kingdom, and it is vital that we get this right. That would be true even if it were not also the case, as the noble Baroness, Lady Kramer, pointed out, that the impact of Covid-19 stresses every aspect of that and will bring it very much to the forefront of our thinking.

The noble Lord, Lord Naseby, went through the Explanatory Memorandum and asked a number of detailed questions. I just wanted to ask one or two

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questions related to consultation. The extent and territorial application of this is clearly a United Kingdom issue, and the Minister has made it clear that these funds are and always have been reserved items. However, there is a tension regarding the local impact; other speakers made points on how the further you go from the centre of Whitehall with this, the easier it is to see the discrepancies and differences that need to be addressed, with funding of this nature coming, as it does, with a focus on trying to level up rather than reinforce existing divisions.

I was therefore intrigued to see in paragraph 4.3 of the Explanatory Memorandum:

"Devolved Administrations were involved in the preparation of this instrument."

Can the Minister indulge us by explaining what that meant? Were they shouted at, engaged, and were there meetings or a discussion? I would really like to know. Contrast that with paragraph 10.1 in particular, which says that there was "no formal consultation"—presumably this was done with ties off, in an informal situation—but:

"Devolved Administrations have all provided consent letters from their ministers to the laying of this SI."

That is a novel way of doing it. I am intrigued by this; it is a new process, which I have never seen before. Perhaps the Minister would be prepared to share those letters with the Committee. If he is not able to, perhaps he could explain in another letter what was going on here. I am not interested in prying into confidential details but I would like to know how the process works in practice.

All speakers mentioned it, but my noble friend Lord Foulkes and the noble Baronesses, Lady Ritchie and Lady Bowles, went into some detail about how we are going to be fed information about the shared prosperity funds that replace all the existing funding. As I said, £9.5 billion is a lot for even this Treasury to find on the money tree. The case has been well made for early notification about the thinking behind this and the consultation process going into it. Tying it to some feature of the calendar that allows a Minister to say something more concrete than just "It's coming soon" would be good.

It is important to get assurances from Ministers that there is going to be a fund of this nature, size and reach, to understand better how constraints will apply to how much it is expected to do and how that will be done, whether there will be partnership arrangements—as was expressed by the noble Baroness, Lady Ritchie—and whether there will be a bidding process or top-down delivery. We do not need firm details, but it would be interesting to know which way the Government are thinking.

I follow that with the astute observation of the noble Baroness, Lady Bowles, that we might need to think harder about what might happen to us if the situation affecting the withdrawal agreement continues and the EU takes sanctions against the UK for its approach so far. If the first port of call is the retention of previously allocated structural funds, perhaps not this SI but the previous one will need to be repealed and we will have to go back to the first version. SI 625 may indeed have a longer life than we originally thought. I do not expect the Minister to go all the way down the track on this, but it would be helpful or reassuring to us if we knew that he had thought this through and that there are plans in place.

As I said at the beginning, we are talking about substantial sums of money, hard-wired into the way our country operates. It may not be the best or a long-term solution, but I appeal to the Government to think carefully about changes, as they come forward. It is important that we learn the lessons from the ESIF and its various formulations over the years. Bringing it all into one fund might be attractive, but the appetite to stop term funding is not there, and they will need to think carefully about how to share this money in a way that is effective and efficient, in terms of its overall goals, and that does not cut out partnership and local intelligence in how it is best applied.

4.22 pm

Lord Callanan (Con): I thank noble Lords again for their valuable contributions to this short debate. Now that the UK has left the European Union, one of the opportunities that we have is to design and implement our own regional funding programmes. Through the UK shared prosperity fund, the Government can cut out bureaucracy and create a fund that invests in UK priorities and is easier for local authorities and areas to access.

I know that there have been queries on our future participation in EU programmes but, to reiterate, the UK will not participate in any future ESIF programmes, apart from the PEACE PLUS programme mentioned by the noble Baroness, Lady Ritchie. The UK Government have committed to contributing to PEACE PLUS until 2027, as part of their unwavering commitment to uphold the hard-won peace in Northern Ireland following Brexit. PEACE PLUS will succeed the current PEACE scheme, which has helped promote economic and social progress in Northern Ireland and the border region of Ireland since 1995. The current programme, run with funding from the UK, Ireland and the EU, will end in 2020. The Special EU Programmes Body will continue to act as managing authority for these PEACE PLUS programmes. Discussions around shaping the proposal and the wider regulations are ongoing and the UK is participating in these.

The noble Lord, Lord Foulkes of Cumnock, in his usual combative tone, asked about timings for the allocations. I assure him, the noble Baronesses, Lady Bowles of Berkhamsted and Lady Altmann, and other noble Lords that the 2019 Conservative manifesto—of which the noble Lord, Lord Foulkes, is a strong supporter—committed to at least matching the funding for EU structural funds to each nation in the United Kingdom. In response to their questions, I say again to the noble Lord, Lord Foulkes, and the noble Baronesses, Lady Bowles, Lady Kramer and Lady Ritchie, that final decisions on the allocation of the UK shared prosperity fund will be taken following the cross-government spending review, which is in progress. When that is completed, we will have further announcements to make. The Government have been working closely with interested parties across the UK, while developing the fund.

In response to my noble friend Lord Naseby, who asked whether it is the Government's intention to apply for new projects for the remaining three and a

half months, I say yes. The Government will be signing new projects during 2020 to make the most of the available European funding, which is recycled British funding in real terms. On the question from the noble Lord about Wales, I assure him that the SI indeed applies to Wales. On his question about ERDF and ESF, £9.5 billion is the agreed amount of EU funding for ERDF and ESF for the 2014-20 multiannual financial framework.

The noble Baroness, Lady Ritchie of Downpatrick, asked how it will be resourced. The intention is for the fund to be resourced centrally and then allocated to the devolved Administrations. The noble Baroness and other noble Lords also asked about co-operation with other devolved Administrations. It will operate across the UK, and UK government officials regularly speak to their counterparts in the devolved Administrations to discuss any updates to their concerns or queries about the proposed fund. Similarly, Ministers also meet their counterparts in the devolved Administrations. I assure all noble Lords that these matters are raised regularly, and that Ministers from the devolved Administrations regularly air their concerns.

The noble Baroness, Lady Altmann, asked whether the sums agreed under the withdrawal agreement could be withheld. The answer is no. Article 138 of the withdrawal agreement states that the UK will continue to have access to European structural funds until the end of the current multiannual financial framework funding cycle. Funding to the UK SPF will be realigned to match domestic priorities, with a focus on investing in people.

There were also multiple queries about how the new fund would be operated and whether it would target by need. As I said, it will be driven by domestic priorities with a focus on investing in people. It will, at a minimum, match current levels of funding to each nation from the structural funds. We strongly believe that leaving the European Union provides us with a fresh opportunity to create a fund that invests in our priorities and targets funding where we decide it is most needed, while maintaining support for businesses and communities.

My noble friend Lady McIntosh of Pickering asked about rural areas. The European agricultural fund for rural development is outside the scope of this SI. The original SI, which it revokes, repealed regulations for the European regional development fund, the European Social Fund and the European territorial co-operation fund only.

The noble Baroness, Lady Kramer, asked about the impacts of Covid-19. We will continue working closely as one United Kingdom to understand the changing needs of local and regional economies. In our response to the impact of Covid-19, including the role the UK SPF will play, we have a great opportunity to design a fund driven by domestic priorities. As I said earlier, the decisions on the quantum of the fund will be made through the spending review.

I know that all queries have been about the shared prosperity fund. I have tried to aid noble Lords by responding to them, but they have nothing to do with the statutory instrument, which revokes the original no-deal instrument to ensure that our legislation is compatible with the arrangements set out under Article 138 of the withdrawal agreement. If the original no-deal SI were not repealed, it would confuse the statute book and cause potential conflict with these provisions. The Government fully recognise the role that structural funds play in supporting vital jobs and growth opportunities across the UK. I commend this SI to the Committee.

Motion agreed.

4.29 pm

Sitting suspended.

Arrangement of Business

Announcement

5 pm

The Deputy Chairman of Committees (Lord Faulkner of Worcester) (Lab): Good afternoon, my Lords. The Hybrid Grand Committee will now resume. Some Members are here in person, respecting social distancing, others are participating remotely, but all Members will be treated equally. I must ask Members in the Room to wear a face covering except when seated at their desk, to speak sitting down and to wipe down their desk, chair and any other touch points before and after use. If the capacity of the Committee Room is exceeded or other safety requirements are breached, I will immediately adjourn the Committee. If there is a Division in the House, the Committee will adjourn for five minutes.

Sentencing (Pre-consolidation Amendments) Act 2020 (Exception) Regulations 2020

Considered in Grand Committee

5.01 pm

Moved by ***Baroness Scott of Bybrook:***

That the Grand Committee do consider the Sentencing (Pre-consolidation Amendments) Act 2020 (Exception) Regulations 2020.

Baroness Scott of Bybrook (Con): My Lords, this draft instrument will ensure that the victim surcharge payable by an offender sentenced under the forthcoming sentencing code will not be higher than the amount which would have applied at the time they committed the offence.

For those not familiar with the surcharge, it is imposed by the court on offenders following sentence to ensure that offenders hold some responsibility for the cost of supporting the victims and witnesses of crime. The amount imposed varies, depending on the age of the offender and the type of sentence they received. Income from the surcharge contributes to the victims and witnesses budget, which funds support to help victims and witnesses of crime.

The sentencing code is a consolidation of sentencing procedural law in England and Wales. It will bring much-needed clarity and accessibility to this area of law by providing sentencing courts with a point of reference for the procedural provisions which govern

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the sentencing process. The Law Commission's Sentencing Bill, which creates the sentencing code, is currently before Parliament.

Let me turn to the purpose of this instrument. In April, the Criminal Justice Act 2003 (Surcharge) (Amendment) Order 2020 came into force. That order increased the surcharge payable by an offender in particular circumstances. Importantly, these increases apply only where a court deals with someone who committed an offence after that order came into force. Since then, the Sentencing (Pre-consolidation Amendments) Act 2020 received Royal Assent on 8 June. That Act makes amendments to existing sentencing legislation to facilitate the consolidation of sentencing procedural law in the sentencing code. The pre-consolidation Act gives effect to a clean sweep of sentencing law. This removes the need for sentencing courts to identify and apply historic versions of sentencing law and, as a result, the current law as enacted in the sentencing code will apply to all sentencing decisions when an offender is convicted after its commencement, irrespective of the date that the offence was committed.

To protect the fundamental rights of offenders, the clean sweep is subject to certain exceptions. They are set out in Schedule 1 to the pre-consolidation Act. The Act also allows for further exceptions to the clean sweep to be made by statutory instrument. These regulations are made under that power. In accordance with the provisions of the pre-consolidation Act, the clean sweep will apply to the 2020 order unless steps are taken to exempt it. This would mean that the increased surcharge amount specified in the 2020 order would apply to certain offenders sentenced under the sentencing code who committed offences before that order came into force. That is clearly unfair and would run contrary to the aim of Article 3 of the 2020 order, which states that those increases apply only where a court deals with someone who has committed an offence after that order came into force.

This draft instrument therefore exempts Article 3 of the 2020 order from the clean sweep, meaning its effect will be preserved after the sentencing code is commenced. As a result, whenever a court deals with an offender under the sentencing code for an offence committed before the 2020 order came into force, the amount of surcharge payable by the offender will remain the amount that applied when the offence was committed.

5.05 pm

Lord Blunkett (Lab): It is in no way to disrespect the noble Baroness, who has made a good fist of explaining this very simple measure, to say that I am extremely sorry that the Advocate-General, the noble and learned Lord, Lord Keen, was not able to be with us, for reasons we understand. I put on record that it is critical that we applaud those who show such a principled and moral stand. I have no idea what the response will be from Downing Street, but our thoughts are with him.

I am participating in this very simple instrument because I took part in the debate on the consolidation Act and raised one or two questions about whether it would be possible to use the exemption facility we are debating this evening to deal with one outstanding anomaly. I do not expect the Minister to respond in detail, but I would be very grateful if she would take this back to the Ministry of Justice with a view to trying to examine it.

Taking the regulations before us, I am slightly mystified as to whether someone who commits or committed an offence that duly warranted a surcharge under the sentencing code before the measure came in, and committed a similar offence afterwards, would be charged two different rates. Perhaps that is an esoteric point, but it seems to me that there was some ambiguity in how it was outlined in the Explanatory Memorandum.

I particularly want to raise IPP prisoners with indeterminate sentences. I was responsible for both the surcharge and the subsequent mistaken implementation of the IPP. The surcharge has held; the IPP sentence was abolished eight years ago. However, people are being sentenced now for minor breaches of the terms laid down by the Parole Board under the previous legislation and are therefore subject to exactly the same terms of incarceration as they were prior to the abolition of the Act in 2012, even though the minor offence or breach might warrant a very small sentence—including, perhaps, regulations of this sort, with surcharge and reparations. Could the noble Baroness go back and see whether some of the outstanding issues here could be resolved in this way?

Finally, as everyone here and online knows, today the Government published a White Paper on sentencing. It included some of the things I talked about 17 years ago, such as the importance of a victims' code, which also went through the Domestic Violence, Crime and Victims Act in the same year. It talks about trying to sort out issues relating to low-level offences, as we might call them, and the sentencing appropriate for them, and the strengthening of sentences for more heinous crimes. We went through all this, and I would like the noble Baroness to take back to the Lord Chancellor and Justice Secretary one simple thing: is any sentencing code to be left to those participating in the judiciary, with the Lord Chancellor chairing that, or is it to be laid down rigidly? This was quite a contentious issue 17 years ago, and I erred on the side of allowing the Sentencing Council to determine the guidance and therefore the terms on which the law would be implemented. Having been severely rapped over the knuckles since for not having been more prescriptive, I put on record that I hope the present Justice Secretary gets the balance right.

5.10 pm

Lord Thomas of Gresford (LD) [V]: My Lords, I add my personal tribute to the noble and learned Lord, Lord Keen of Elie, the Advocate-General for Scotland. Over the past number of years, he has held some very difficult briefs and has done so with great professionalism and aplomb. I have admired him for it, although I must say that I have not envied his position. It so happened that a year ago, when I was ill at home, I had the opportunity of watching the whole of the Prorogation proceedings before the Supreme Court, when he was in charge of a very difficult and, ultimately, losing case and he did that very well. On a personal level, he has always been extremely polite and pleasant, and I am glad that he has taken the route of

honour, which I hope will be followed by the Lord Chancellor, Robert Buckland, who I also know to be, both personally and professionally, a very decent man. I imagine that he will be tortured in the same way as the noble and learned Lord, Lord Keen, has no doubt been in the past few months.

I must confess that I am a little puzzled by the regulations, as is the noble Lord, Lord Blunkett. We all applauded the clean sweep provisions of the Sentencing (Pre-consolidation Amendments) Act 2020. The regulations appear to maintain the level of a surcharge ordered by the court at the level which was appropriate at the time of the offence. As I understand it, the surcharge was designed to transfer some of the costs of a court hearing, including support for victims, to an offender, and it varies according to the nature and seriousness of the offence and the overall sentence passed. It seems that under the regulations the clerk of the court will have to maintain a record indefinitely of the level of historic surcharges as they apply from time to time, and thus lose the benefit of the clean-sweep principle. Since the cost to the public purse of the court hearing and of support for victims is at the time the court hearing takes place, not at the time of the offence, I fail to see the logic of this.

My understanding of the situation has not been helped by the fact that my search for the Statutory Instrument 2020/310, the effect of which this order purports to retain, produced a nil return on the government website. I hope, therefore, I will be forgiven if my understanding is at fault, but it seems to me that the simple question is: why should an offender not contribute towards the current cost of a court hearing and of support for victims, rather than the cost at the time they committed an offence? In any event, what discretion does the court have in fixing the amount of the surcharge and does it vary in accordance with the offender's ability to pay? I would be grateful for a response from the Minister on these points.

5.13 pm

Lord Ponsonby of Shulbrede (Lab) [V]: My Lords, I, too, pay a personal tribute to the noble and learned Lord, Lord Keen, who has always been extremely courteous and helpful to me.

These regulations relate to the Sentencing (Pre-consolidation Amendments) Act 2020, which is a precursor to the introduction of a sentencing code and consolidates all previous sentencing legislation into a single code for the ease and convenience of both the judiciary and the public. There are, however, some exemptions, to which the noble Lords, Lord Thomas and Lord Blunkett, have referred. This instrument creates a further exemption in relation to victim surcharge, which has recently been increased by 5%. Specifically, this instrument means that any offence committed before the change to the victim surcharge should be charged at the old rate. I have a few questions for the Minister.

First, why has this instrument been created after the passing of the sentencing Act? Could it instead have been included in the Bill and thus afforded further scrutiny? Secondly, the revenue from the victim surcharge forms part of the Ministry of Justice's victim and witness programme, which is largely sent directly to the police and crime commissioners. Can the Minister confirm that the changes in this instrument have been communicated to the PCCs so that they can better budget how much they will receive from the programmes?

As some noble Lords may know, I also sit as a magistrate, so I regularly apply the victim surcharge to various cases I sentence. It is very unclear—certainly from the court's point of view, or, I suspect, from the Government's—where the money goes for the victim surcharge. We know that it goes to the PCCs but, as far as I know, there is no central government assessment of the effectiveness of the money spent to support victims and witnesses. I have pursued that in other forums through the Magistrates' Association and more widely in London. It is very unclear how this money is spent, and it seems that there is no central assessment of the effectiveness of using it to support victims.

I therefore hope that the Minister will undertake in some way to look at the effectiveness of the victim surcharge and making the PCCs accountable for the money passed through to them.

5.17 pm

Baroness Scott of Bybrook (Con): My Lords, I am grateful for the limited but good contributions to this debate. Before I answer some of noble Lords' questions, I reiterate that the purpose of this instrument is to ensure that offenders sentenced under the sentencing code for offences they committed before the Criminal Justice Act 2003 (Surcharge) (Amendment) Order 2020 came into force will not be liable for the increased surcharge amounts specified in that order.

I will address a couple of the points. In response to the noble Lord, Lord Blunkett, I will look at *Hansard*, particularly the outstanding issues that he brought up from previous debates, and I will ask the department to look at how we might respond to him.

There is a difference between this and the sentencing White Paper, which I believe was published yesterday. This paper will look at sentencing policy. The Government are serious about fighting crime and protecting the public from its devastating consequences. Under this Government, the most serious offenders are more likely to go to prison and for longer, helping to protect the public and keep communities safe. That is what the White Paper will hold, and we expect that it will eventually come through as legislation. However, the legislation we are talking about that this instrument applies to is the Law Commission's Sentencing Bill. That will consolidate all the sentencing procedural law in England and Wales into a sentencing code, which will provide courts with a point of reference for procedural provisions which govern the sentencing process. The Sentencing Bill does not introduce any new sentencing law, amend the maximum penalties available for criminal offences or increase the scope of minimum sentencing provisions. They are therefore very different pieces of legislation. It is important to understand that, and that this small instrument needs to be laid just before the sentencing code comes in so that we are fair to all offenders in future.

I am sorry that the noble Lord, Lord Thomas of Gresford, is puzzled but I am sure we can help. He says that there is a discrepancy over surcharge levels. A factsheet

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on surcharge levels is available and we can let him have it; it makes it very clear that, depending on the type of sentence, whether you are a young person, an adult or an organisation, there are different amounts and the courts will use those surcharge levels to determine how much has to be paid by the offender.

On the point of the noble Lord, Lord Ponsonby, I talked about the Sentencing Act—not the Sentencing Bill. On the PCCs, the whole issue of what happens to the surcharges is important—I asked the same question. However, the Government feel that it is an important charge on offenders, both individuals and organisations, by the court. It is collected alongside all other criminal impositions by the National Compliance and Enforcement Service, which is part of HMCTS.

The purpose of the victim surcharge is to make sure that offenders hold some responsibility for the cost of helping the victims cope with and recover from the impact of their crimes. The level of surcharge imposed is dependent on the severity of the sentence the offender receives, whether they were under the age of 18 or an adult when the offence was committed and whether they are an individual or an organisation.

The victim surcharge contributes, as I have said, to the victim and witness budget, which is used to fund support services for victims and witnesses of crime. In 2019-20, about a third of the victim and witness budget, which was just over £92 million, came from the victim surcharge.

The noble Lord, Lord Ponsonby, asked about the ability to pay. We estimate that around 65% to 70% of all victim surcharges imposed are collected. However, collection rates vary considerably from year to year. In 2018-19, £46 million of the victim surcharge was imposed on offenders and £34 million was collected. Therefore it differs, but the Government feel that it is important for offenders to understand their responsibility to victims and witnesses. However, this is a small piece of regulation that will also be fair to the offender as we move forward into a different way of working.

With that, I commend this instrument to the Committee.

Motion agreed.

The Deputy Chairman of Committees (Lord Faulkner of Worcester) (Lab): That completes the business before the Grand Committee this afternoon. I remind Members to sanitise their desks and chairs before leaving the Room. The Committee stands adjourned. Good afternoon.

Committee adjourned at 5.24 pm.