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OFFICIAL REPORT

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

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

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House of Lords

Thursday 27 January 2022

11 am

Prayers—read by the Lord Bishop of Bristol.

Capita: Turing Scheme Contract

Question

11.07 am

Asked by ***Baroness Coussins***

To ask Her Majesty's Government what criteria were used to determine the award to Capita of the contract to administer the Turing scheme after March 2022.

Baroness Coussins (CB): My Lords, I declare my interest as co-chair of the All-Party Parliamentary Group on Modern Languages.

The Parliamentary Under-Secretary of State, Department for Education (Baroness Barran) (Con): My Lords, the procurement was run in line with Cabinet Office rules and bids were evaluated on the answers to four questions relating to quality and social value, compliance with a range of financial and corporate information tests and the cost of the service. Scores were moderated and weighted in line with the published evaluation model. Capita received the highest overall score and provided the best plan to administer opportunities for students to study and work abroad.

Baroness Coussins (CB): My Lords, is the Minister aware of the significant disquiet within the HE sector about this contract, notably from the University and College Union and the University Council of Modern Languages, on the grounds that Capita has a track record of failure on a range of other government contracts? The criteria listed by the Minister do not convince me that due diligence adequately covered the kind of experience and networks across the sector needed to run the scheme, rather than just being a cheaper alternative to the all-round stature and experience of the British Council. What mechanisms are in place to ensure quality assurance in the Capita contract?

Baroness Barran (Con): I am happy to try to reassure the noble Baroness. We are confident that Capita has the capacity and the skills to administer the Turing scheme. The delivery of the scheme is a major DfE project and therefore subject to best-practice project management principles. We have a dedicated delivery management team that will work with Capita to make sure it is fulfilling its contractual obligations. Looking at the quality aspects relating to the scheme itself, there are performance metrics and financial incentives around the key milestones to make sure that it delivers a good service.

Lord Anderson of Swansea (Lab): Capita may have been the lowest cost, but what experience does it have of higher education and international student exchange? How many fewer students do the Government expect to go to the EU as a result of this change from the Erasmus scheme? In addition to that, should we not see this in the context of the Government seeking to reduce ties with the EU?

Baroness Barran (Con): Capita is administering the grants in relation to the scheme, and it has huge experience of that. It works with 21,000 schools, with almost all local authorities and closely with the Department for Education. If I may say so, the scheme is intentionally offering more opportunities to disadvantaged children who want to go to countries where they do not have to speak a foreign language. Over 60% of applications are for outside the EU.

Lord Cormack (Con): My Lords, does my noble friend not accept that there is considerable disquiet that Turing is not an adequate replacement for Erasmus? It is not reciprocal in the same way, there is no guarantee that we will receive a large stream of students from abroad, and it is more indicative of insular Britain than of global Britain.

Baroness Barran (Con): I absolutely cannot accept what my noble friend suggests. We have had over 41,000 applications for the scheme this year. That compares with around 16,500 under Erasmus+ in 2019-20. Forty-eight per cent of those placements are from students from disadvantaged backgrounds, compared to 37% under Erasmus. We are aiming for global Britain and this reflects it.

The Earl of Clancarty (CB): My Lords, a huge concern is that Turing does not pay for tuition fees. What assessment have the Government made of provision within the 120 countries participating in Erasmus, since why would such providers accept UK students when Erasmus will cover the fees for those institutions?

Baroness Barran (Con): The noble Earl is right to raise the issue of tuition fees, but I am sure he is aware that even under Erasmus+ half of mobility placements were outside Erasmus+. Judging by the incredible success of our universities announced yesterday, with 605,000 international students coming to our universities —a ratio of two to one of in-placements to out under Erasmus—I do not think it is our top concern.

Baroness Blower (Lab): My Lords, I declare an interest as a member of the APPG for modern and foreign languages. Removing the Turing scheme from the British Council, which has a global reach and reputation, is questionable. Awarding it to Capita, whose list of public sector failures in England is extensive, is frankly incredible. How does the Minister justify this decision? Is it based on an ideology that, axiomatically for her, "public sector bad, private sector good", even in the face of evidence to the contrary?

Baroness Barran (Con): No, I tried to set out at the beginning how the decision was taken but I can give the noble Baroness more detail. The criteria for appointing

[Baroness Barran]
the new provider were based 70% on quality and 30% on cost. Within that 70%, 10% was in relation to social value and Capita came out as the stronger provider on both counts.

Lord Lexden (Con): My noble friend touched on the extent to which disadvantaged pupils are benefiting from the scheme. Are there any further details that she can give the House?

Baroness Barran (Con): I thank my noble friend for his question. As I mentioned, 48% of applications have come from students from disadvantaged backgrounds. We have made it a great focus of the scheme and its promotion geographically has tried to reach communities that have not previously participated as strongly in these kinds of international exchanges. We are making sure that the nature of the placements and the financial model to support them particularly encourage disadvantaged students.

Lord Hannay of Chiswick (CB): My Lords, does the noble Baroness not recognise that this issue of a lack of reciprocity and places for overseas—not just European—students in British universities is a serious failing of the Turing scheme? The figures she gives are not very convincing because we have always taken in more students to our excellent higher education sector than we have sent to others, so that is nothing new.

Baroness Barran (Con): I can only repeat for the noble Lord that funding has been made available this year for over 41,000 placements. I appreciate that they are not all comparable in scale to the previous ones but 41,000 young people will access this scheme, compared to 16,596 under Erasmus. I leave the House to judge.

Baroness Sherlock (Lab): My Lords, the Minister is talking about how well the Turing scheme started. She omitted to tell the House that the British Council in fact set the scheme up and ran it for the first year of its operation, having previously run Erasmus+. It has absolutely unparalleled international contacts and networks, and an understanding of student exchange. Is the Minister remotely worried that it has taken one cut in funding after another? Does she have any reservations about prioritising short-term savings over supporting a major public institution, which is part of our soft power around the world?

Baroness Barran (Con): The noble Baroness is absolutely right to pick me up on not having acknowledged the British Council's role in the set-up of the scheme. We are very grateful to it, as we are for the way that it and the new provider are working together to ensure a seamless transition. The international network is less relevant to this contract because it is about grant administration. It is up to the institutions participating in the scheme to make those international links.

Lord Forsyth of Drumlean (Con): My Lords, is my noble friend not astonished that many of the people now carping about how the scheme is run, even though it has delivered two-and-a-half times more people, were not so long ago telling us that if Erasmus disappeared there would be no opportunities at all? Does she not get a bit tired of those people still fighting old battles?

Baroness Barran (Con): I cannot comment on my noble friend's final point but it is important that we look at the data and the evidence of what happens. As my noble friend has pointed out, the evidence is extremely encouraging.

Baroness Warwick of Undercliffe (Lab): My Lords, will the Government guarantee adequate funding for Turing beyond the 2022-23 academic year?

Baroness Barran (Con): I have stated that the Turing scheme is extremely important. It is a real priority for us; obviously, we will look at future funding as part of future SR agreements.

NHS: Nurse Recruitment

Question

11.17 am

Asked by ***Lord Clark of Windermere***

To ask Her Majesty's Government what plans they have to increase the number of nurses working in the NHS.

The Parliamentary Under-Secretary of State, Department of Health and Social Care (Lord Kamall) (Con): The Government are committed to increasing nurse numbers in the National Health Service in England. We are on target to deliver this commitment by the end of the Parliament. We are increasing domestic recruitment, expanding nursing apprenticeships, increasing ethical international recruitment and taking action to improve retention across the NHS. Nurses employed by NHS trusts and clinical commissioning groups have increased by over 10,900 since October 2020, to almost 310,100 as of October 2021.

Lord Clark of Windermere (Lab): My Lords, I very much welcome that increase in the number of nurses in the NHS but it is not enough, as the Minister knows. If we are to meet the needs of the NHS, we shall have to look at our dedicated and committed workforce to see if we can increase the level of retention among them. I know that the Minister talks to nurses and I am sure he hears the same as I do: almost every one will say that every day they are on the wards, they face abuse from patients. Can the Minister look at the best practice, which some hospital authorities may be pursuing, to see whether that can be applied more widely across the NHS?

Lord Kamall (Con): I thank the noble Lord for giving us the opportunity to thank the nurses, and indeed all medical staff, for the incredible work that they do for us, day in, day out. On retaining staff, since 2017 NHS England and NHS Improvement have supported trusts with an intensive retention and support programme. There is also emotional, psychological

and practical support for NHS and care staff. It is really important that we not only recruit new staff but retain the great staff that we have.

Baroness Watkins of Tavistock (CB): My Lords, would the Government consider repaying student nurses' and other healthcare workers' course fees to retain new, young graduates in the NHS who work, for example, for two or three years?

Lord Kamall (Con): As the noble Baroness will be aware, there is a bursary available to encourage people into nursing but we are looking at completely different training pathways. It is not the old-fashioned way of being trained as you leave school and that being your one chance. We now have a number of different ways in, including degrees and apprenticeships. I could read all the different pathways out but I am happy to write to the noble Baroness with these details.

The Lord Privy Seal (Baroness Evans of Bowes Park) (Con): My Lords, it is the turn of the Liberal Democrats and the noble Lord, Lord Jones of Cheltenham, wishes to speak virtually. This is a convenient point to call him.

Lord Jones of Cheltenham (LD) [V]: My Lords, the Government signed up to the 2010 World Health Organization code of practice committing to a self-sustaining supply of doctors and nurses in the UK. Yet Patrick Cockburn and Professor Rachel Jenkins point out that the UK still trains proportionally fewer medical staff than other OECD countries. When does the Minister expect us to reach the WHO target, rather than recruiting medical staff trained by countries in much worse situations than ourselves?

Lord Kamall (Con): We do not think we should just have a protectionist view on staff. It is important that we recruit British staff from the UK, but we should not have a policy of British jobs for British workers. There are very good staff across the world. Indeed, in some countries they train more staff than they have places for in their health system so that they become a foreign revenue earner. Many people who have looked at the statistics say that remittances quite often are more effective than foreign aid.

Lord Hamilton of Epsom (Con): Could the Minister say how many agency nurses are being employed by the NHS? Is he not concerned that so many are being employed when they are so much more expensive?

Lord Kamall (Con): My noble friend makes a valuable point about the cost of agency nurses, which is why we have the goal of recruiting 50,000 nurses. We are looking at completely different pathways to ensure that we can encourage people into nursing. I do not have the statistics with me, but I will write to my noble friend.

Lord Grocott (Lab): The Minister referred to ethical recruitment of health service professionals from overseas. Can he explain to us precisely what he means by ethical recruitment from overseas?

Lord Kamall (Con): I thank the noble Lord for giving me the opportunity to explain that. It is really important that we do not suck out the best talent from countries, especially those with a shortage of medical staff. We are very clear that we talk to countries that train more staff than they need for their domestic service so that they can come here as foreign revenue earners. We have also published updated guidelines.

Lord Walney (CB): Is it not a real problem that the Treasury has not yet set the budget for Health Education England, given that there are fewer than three months before the new financial year and it has the responsibility for the number of new nurses that are going to be trained in this country?

Lord Kamall (Con): I am afraid I disagree with the noble Lord, because we are on track to reach our 50,000 target, particularly because we are not just using one route in. We are using a number of different routes; people can retrain from other courses, and we have apprenticeships. We are looking at completely different, innovative pathways into nursing.

Baroness Merron (Lab): My Lords, the Government's own impact assessment suggests that mandatory vaccination against Covid could lead to the loss of some 73,000 NHS staff in England. When designing their policies, did the Government take into account how many nurses might be among this number? Will the Minister take the opportunity of the Health and Care Bill to bring forward a long-term workforce plan to address the shortages of nurses and other staff?

Lord Kamall (Con): I congratulate the noble Baroness on bringing up an issue for the Health and Care Bill. In terms of VCOD—vaccination as a condition of deployment—most NHS staff are vaccinated, and those who are reluctant to be vaccinated are being offered one-to-one conversations with management to see whether they can be persuaded to take the vaccine or be redeployed elsewhere.

The Lord Bishop of London: My Lords, over the last two years I have been encouraged by the way in which the NHS has creatively met the mental health needs of nurses and other healthcare workers, encouraging their well-being and recognising what contributes to that. Can the Minister reassure us that the funding that has gone in over the last two years will continue to be put into the NHS, ensuring that we look after the well-being of our staff?

Lord Kamall (Con): That is an incredibly important point, which relates to an earlier point put by the noble Lord about retention. It is important that we look after our staff. We know that the last two years have been incredibly stressful, even more than usual, and that is why we have a number of different ways to help the health and well-being of the staff.

Baroness Hussein-Ece (LD): My Lords, is it not the case that the NHS should never have got into a situation where we are so dependent on international staff from

[Baroness Hussein-Ece]
developing countries? Can he confirm whether it is true that the NHS trusts are being paid by NHS England up to £7,000 for each vacant post to try to fill those posts from overseas countries, including India and the Philippines?

Lord Kamall (Con): I cannot comment on the exact numbers, but I will find the answer and write to the noble Baroness. I might add that I am the son of people who came from outside the UK or European Union, and I get slightly concerned with the tone when people say, "Let's not have foreign nurses in our NHS." It is important. Immigration plays a brilliant role in this country and always has. If you look at the post-war public services of this country, it was people from the Commonwealth who came and saved our public services.

Lord Rooker (Lab): Can I say to the Minister that more nurses means more uniforms and more garments? The NHS boasts about being the largest employer in Europe, so what action does the National Health Service take to ensure that the cotton in any of the garments used for NHS nurses' uniforms is not grown in Xinjiang in China? The technology is available to do that; paperwork is not required, and people tell lies. The use of technology would guarantee that we could play our part in making sure that slave labour is not part of the production of our nurses' uniforms.

Lord Kamall (Con): I hope the noble Lord will forgive me if I tell him that I have not examined nurses' garments in detail. In terms of provenance, it is important at the moment—and we are doing this on lots of equipment that comes to the UK—to ensure that it is not from regions where there is slave labour, or where the Muslim Uighurs are being persecuted by the Chinese Government. We need to do more; indeed, I have had conversations in the department to find out how we can trace the sources of the products and equipment that we buy to make sure that they are ethically sourced.

Lord Patel (CB): My Lords, the Minister has now said on several occasions that the Government will meet the target of 50,000 nurses. Can he tell us, if the Government do meet that target, what will the remaining deficit be?

Lord Kamall (Con): I am afraid I do not have the answer to that question, but I can certainly look into it. I am not sure what the deficit will be but, as I said, we are on course to recruit 50,000, not just from the UK and from different pathways—not only degrees and apprenticeships—but also from all over the world and not just Europe.

Social Care Sector: Private Equity

Question

11.27 am

Asked by ***Lord Sikka***

To ask Her Majesty's Government what assessment they have made of the impact of private equity on the social care sector.

Lord Sikka (Lab): My Lords, I beg leave to ask the Question standing in my name on the Order Paper and draw attention to my interests in the register, which states that I am an unpaid adviser to Tax Justice Network.

The Parliamentary Under-Secretary of State, Department of Health and Social Care (Lord Kamall) (Con): Under the Care Act 2014, it is the responsibility of local authorities to shape their local markets, which are largely made up of privately owned and third sector services. No assessment of the impact of private equity on the sector has been made, but, as of December 2021, 84% of care providers are rated "Good" or "Outstanding". The market oversight scheme mitigates the risk of a sudden failure of potentially difficult to replace care providers.

Lord Sikka (Lab): My Lords, I thank the Minister for that reply, which is really unsatisfactory because private equity is a disaster for the care home sector. To take one example, HC-One, which is the largest care home operator, is siphoning off 20% of its revenues to offshore affiliates through intra-group transactions, leaving very little for front-line services. Since 2011, it has declared a loss every year except one and paid no corporation tax but paid dividends of £48.5 million. Can the Minister explain why the Government tolerate such abuses? When will there be an independent inquiry?

Lord Kamall (Con): We value the role of independent and third sector care homes. It is important that we have that right mix. Some private companies will include private equity, and it is important not to tar all private equity with the same brush. Private equity plays a role in many companies in turning them around and retaining jobs. The important thing for us is that, if any companies are potentially in financial trouble, we have the market oversight scheme to ensure that, if they go bust, there is an ability to transfer patients elsewhere.

Baroness Chakrabarti (Lab): My Lords, front-line carers often get paid around £9 or £10 an hour, and it is hard to survive on that. Yet last year, Barchester Healthcare's CEO collected 120 times more than his care staff. What proposals does the Minister have to ensure that public moneys paid to private care homes are used to improve care and staff welfare and not siphoned off to fat cat executives?

Lord Kamall (Con): The CQC has a role in making sure that the care provided to care home residents is of satisfactory quality. As I said, 84% of care providers are rated good or outstanding. The market oversight scheme examines companies that could potentially be in trouble and keeps a close eye on them. There are six stages in the market oversight scheme to make sure that we manage that.

Lord Flight (Con): My Lords, I am sure that the noble Lord, Lord Sikka, is aware of the major benefits to our economy and the provision of social care contributed by the UK's successful private equity sector. Private capital is driving the development of the UK's

world-leading technology sector and powers the growth of the UK's dynamic new businesses. I have been chairman of the EIS Association for some 10 years. EIS has been a significant source of risk finance for new and small businesses. Is the noble Lord, Lord Sikka, aware that 32,965 companies have received £24 billion of EIS funds since EIS was introduced?

Lord Kamall (Con): I correct my noble friend: his question should be directed towards me. I am not sure whether the procedure allows me to delegate the noble Lord, Lord Sikka, to answer the question—I will have to find out.

The private sector, the third sector and private equity play an important role. The most important thing is the quality of care that patients get and making sure that we have a market oversight scheme, so that if any companies are potentially in trouble, we can manage that, if they go under.

The Lord Privy Seal (Baroness Evans of Bowes Park) (Con): My Lords, the noble Baroness, Lady Brinton, wishes to speak virtually, and I think that this is a convenient point to call her.

Baroness Brinton (LD) [V]: My Lords, typically, private equity-backed providers spend about 16% of the bed fee on complex buy-out debt obligations. The accounts of Care UK show that it paid £4.1 million in rent in 2019 to Silver Sea Holdings—a company registered in low-tax Luxembourg—which is also owned by Care UK's parent company, Bridgepoint. Given that the ONS says that 63% of care home residents are paid for from the public purse, does the Minister not think that private equity providers should be subject to a financial code of conduct?

Lord Kamall (Con): What is important is to make sure that we have continuous and high-quality care for patients. Therefore, where there are concerns about the financial stability of any company, whether it is funded by private equity or otherwise privately owned, it is important that we have a system to make sure that we manage that. If a company goes under, there is the ability to transfer patients to high-quality care. The important thing for us is the quality of care for patients—it is important that we put patients first.

Lord Browne of Ladyton (Lab): My Lords, last year, during the pandemic, the business that my noble friend has referred to, HC-One, paid 10%—nearly £5 million, tax free—of those dividends to its financial controllers, who are holed up in the Cayman Islands. At the same time, it was given almost £20 million from the Government's infection control fund to help it through the pandemic. Clearly, people's pockets are getting picked here. If ever anything called for an independent inquiry, it is this behaviour by private equity businesses. Such behaviour is concerning the Bank of England: the *Financial Stability Report* shows that the level of leveraged debt that these businesses have is a threat to our economy.

Lord Kamall (Con): The noble Lord makes an important point about the level of debt, but I am sure he is aware that a number of private companies operate with levels of debt. As we saw in the financial crisis, the issue is whether that debt is sustainable. The noble Lord, Lord Sikka, who is an accounting standards expert, understands all of the issues around IFRS 9 and all of the downsides to that when sufficient provision is not made for debt.

Baroness Wheeler (Lab): My Lords, the Minister's predecessor in this role repeatedly told the House that there was nothing wrong with the business model for the care home sector, despite record numbers of closures—particularly of small, independent homes, which are the backbone of residential care—and the dire financial problems that they face, with councils unable to pay going rates for staff pay and residents' fees. This is all compounded by the pandemic. The Centre for Health and the Public Interest estimates that around £1.5 billion leaks out of the health system each year, listed as

"dividend payments, net interest payments out, directors' fees, and profits".

Should this not all be going to front-line patient care?

Lord Kamall (Con): We believe that the quality of care that patients receive is really important—

Noble Lords: Oh!

Lord Kamall (Con): I am sorry if people do not agree with that, but the quality of care that patients receive is the most important thing. As of November 2021, 84% of all social care settings were rated good or outstanding by the CQC. For most people, the experience of adult social care has been positive, but, clearly, the pandemic came. To mitigate the risk posed by debt and other financial pressures in the sector, the Care Quality Commission operates the market oversight scheme, which monitors the financial stability and sustainability of the largest and potentially most difficult to replace providers in the adult social care sector.

Baroness Blower (Lab): My Lords, of course the quality of care is very important, but, at the moment, it is being provided at the expense of the exploitation of workers, who are paid £9 to £10 an hour. How many noble Lords in this House would have been happy to live on that for the whole of their lives?

Lord Kamall (Con): The noble Baroness raises an important point about the pay of staff. One of the things that we are looking to do with social care staff is to make sure that it is an attractive career and to persuade all providers to try to pay their staff a more sustainable wage. That is why we invested money into social care. We also must make sure that we get away from the situation where some private providers effectively subsidise state-funded providers, and make sure that they receive a suitable return.

Baroness Bennett of Manor Castle (GP): My Lords, on a number of occasions, the Minister has referred to the fact that, if these complex financial arrangements go wrong, we have the ability to transfer patients. Would he acknowledge that, when patients are forced to be transferred, the shock is too much for some of them and they die or suffer significant health damage?

Lord Kamall (Con): I will look into that. I thank the noble Baroness for raising that important point. As I have said a number of times—noble Lords are probably bored of hearing me say it—we take the quality of care seriously. We know that the social care sector has been, frankly, abandoned for far too long, which is one of the reasons that we have brought forward the Health and Care Bill, to make sure that we have integration across the whole of people's life path and that they are not just forgotten towards the end of their lives.

Lord Wallace of Saltaire (LD): My Lords, is the social care sector not one in which mutuals and charities are more appropriate providers than private equity companies? My family has benefited enormously from an excellent charity running a number of care homes, but I am conscious that some charities have moved out of the sector. Would the Government not like actively to encourage non-profits to be involved more widely in this sector?

Lord Kamall (Con): The noble Lord makes a very important point about mutuals: they play an incredible role. Indeed, at the founding of the NHS, one of the sad things was that the state pushed out many mutuals. The number of friendly societies and mutuals went down. It is important that we make sure that we have enough mutuals in the economy.

Veterans' Strategy Action Plan: Gambling Addiction

Question

11.37 am

Asked by ***Lord Foster of Bath***

To ask Her Majesty's Government why their Veterans' Strategy Action Plan: 2022 to 2024, published on 19 January, makes no reference to gambling addiction.

Lord Foster of Bath (LD): My Lords, I beg leave to ask the Question standing in my name on the Order Paper and draw attention to my interest as the chairman of Peers for Gambling Reform.

The Minister of State, Cabinet Office (Lord True) (Con): My Lords, the action plan contains over 60 commitments worth over £70 million and sets the direction for delivering for our veterans between 2022 and 2024. It does not represent the limit of the Government's ambitions, and we continue to work across government to address issues affecting veterans. We take gambling seriously. Veterans can access a range of support, including via the 24/7 Veterans' Gateway, and the National Gambling Helpline also gives advice to anyone affected by gambling problems in England, Scotland and Wales.

Lord Foster of Bath (LD): My Lords, I thank the Minister for his reply, but, as in other countries, recent research from the Forces in Mind Trust and the Royal Air Force Benevolent Fund shows that the UK's service personnel and our veterans are more likely to experience gambling harm than the general population, and yet Operation Courage, and now the *Veterans' Strategy Action Plan*, make reference to help for drugs and alcohol problems but not gambling problems. Does the Minister now accept that there is sufficient evidence to justify much greater action on this issue?

Lord True (Con): My Lords, I pay tribute to the noble Lord's work in this area. I will not allow myself to venture into personal opinions on gambling—I am answering as a Minister. We are grateful to the Royal Air Force Benevolent Fund for its work and are assessing its findings and the Forces in Mind Trust report. We will take both those reports very seriously in considering our work going forward.

Lord Lancaster of Kimbolton (Con): My Lords, we are at times in danger of giving the impression that the majority of our veterans who leave service are troubled, yet I remind your Lordships' House that 96% of service leavers make a successful transition to a civilian career within six months of leaving. It is an excellent action plan, but if I were to have one criticism, it is that it is not until page 32 that the Government first talk about promoting a positive image of our veterans. Can I ask my noble friend if that could be the headline—that service veterans are excellent people to employ?

Lord True (Con): I agree profoundly with what my noble friend said, and he is right that the significant majority of veterans go on to live happy and healthy lives when they move out of the Armed Forces, and make as great a contribution to our society when they are not serving as when they did. That does not absolve the Government of the duty to stand by those who need additional support.

Lord Browne of Ladyton (Lab): My Lords, the RAF Benevolent Fund research, to which the noble Lord, Lord Foster, refers, merely corroborates the Army's own assessment that military veterans are eight times more likely to have gambling problems than the rest of the country's population. Should the Government ask themselves not what do we do for the people whose distress has caused them to fall into this difficulty, but why there is such a prevalence of those who give their military service to this country developing this distressing condition?

Lord True (Con): I do not detract from the significance of what the noble Lord said, with his very great experience. The reality is that this Government take seriously the gambling concerns and problems in all sectors of society, and are committed to tackling gambling-related harms. As he will know, the Ministry of Defence is continuing to develop welfare support policies for supporting personnel, including those with gambling problems, and the MoD restricts the ability of service personnel to access online gambling sites.

Lord Browne of Belmont (DUP): My Lords, does the Minister agree that there is a necessity for an up-to-date community survey that will measure problem gambling among both Armed Forces and civilian populations?

Lord True (Con): There is a Gambling Act review, which I know that some noble Lords will feel is taking a little time. It will be, and is, the most thorough review of gambling law since the Labour Government's Act and we need to get it right. We are continuing with that and have already taken interim action—for example, banning gambling on credit cards.

The Lord Bishop of St Albans: My Lords, it is absolutely right that we pay tribute to those veterans who have successfully transitioned back into civilian life, but nevertheless the research by the RAF Benevolent Fund is striking, with much higher levels of problem gambling and at-risk gambling among veterans, which we need to attend to. Are there any plans by Her Majesty's Government to screen those transitioning back into civilian life, and to provide additional support where necessary?

Lord True (Con): As I have already said, the Government are grateful to the RAF Benevolent Fund and are considering that research. The NHS long-term plan is addressing provision for those who have gambling problems, and we will continue to work to ensure that we detect and support problems where they arise. In that respect, I am on all fours with every noble Lord who has contributed so far.

Lord Lexden (Con): I commend the Government for establishing a review of the treatment of LGBT veterans who served in our Armed Forces between 1967 and 2000, when many were disciplined, dismissed and humiliated for homosexual conduct which was perfectly legal in civilian life. Can my noble friend assure these veterans that, when the review is completed, it will be followed by action to address the suffering and hardship that they endured?

Lord True (Con): I pay tribute to my noble friend and others on all Benches who have campaigned on this matter. I am pleased to tell him that setting up this process is not the end; the end is the action that follows. We are committed to taking tangible action, where appropriate, to redress past wrongs. To do this in a meaningful way, we have to fully understand the impact that the historic ban still has today, and the independent review will help to do that.

Baroness Chapman of Darlington (Lab): My Lords, we know from research from Swansea University and others that veterans are 10 times more likely than non-veterans to experience problem gambling, yet we do not screen for it. Support for those leaving the Armed Forces has vastly improved in recent decades but there is still more to do, and support cannot be provided if we do not know those most likely to need it. When the Minister goes back to his department and speaks to colleagues at the MoD, will he encourage them to include screening for a propensity for problem gambling as part of the usual mental health screening?

Lord True (Con): I am sure that my colleagues will take note of everything said in this House; I certainly promise the noble Baroness that. I remind the House, if anyone doubts this Government's commitment, that it was this Government who set up the first ever dedicated Office for Veterans' Affairs, to champion veterans in every respect, at the heart of government. We have an action plan and we will have a veterans strategy refresh, drawing on all the wise advice given by your Lordships and others, but I think the Government deserve some credit for what has actually been done here.

Lord Forsyth of Drumlean (Con): My Lords, is not the truth of the matter that the explosion in gambling addiction is a consequence of the Labour Government's decision to change the law which previously prevented people promoting and stimulating demand for gambling?

Lord True (Con): My noble friend puts me in a dangerous place. The Government's answer—and it is right—is to undertake as comprehensive a review of the Gambling Act as there has ever been, and that will be pursued. My personal view, as a sports fan, is that I am sick and tired of gambling advertising being thrust down viewers' throats.

Ministerial Code

Private Notice Question

11.47 am

Asked by ***Lord Collins of Highbury***

To ask Her Majesty's Government whether their Ministers are expected to abide by the standards of conduct as set out in paragraph 1.3(c) of the Ministerial Code, as reflected in the resolution of the House of 20 March 1997 and paragraph 4.67 of the Companion to Standing Orders.

The Minister of State, Cabinet Office (Lord True) (Con): Yes, my Lords. Like all Ministers, I assented to the Ministerial Code on entering office, as I am sure all those in this House in all parties who have had the honour of serving as one of Her Majesty's Ministers will have done. The code sets out the standards expected of all those who serve in government. Ministers are personally responsible for deciding how to act and conduct themselves in light of the code, and for justifying their actions and conduct to Parliament and the public.

Lord Collins of Highbury (Lab): My Lords, in answer to my noble friend Lord Foulkes on Tuesday 7 December, the Minister of State—the noble Lord, Lord Goldsmith—denied reports that the Prime Minister intervened to evacuate an animal charity from Kabul at the height of the crisis. Yesterday, however, the House of Commons Foreign Affairs Committee published an email from the Minister's private office in August, which stated, contrary to this, that

"the PM has just authorised their staff and animals to be evacuated".

Only one of these two statements can be true—which is it? Given that paragraph 4.67 of the *Companion* clearly states that Ministers must correct any inadvertent errors at the earliest opportunity, or offer their resignation if they have knowingly misled, surely the noble Lord, Lord True, agrees that the noble Lord, Lord Goldsmith,

[Lord Collins of Highbury]
should, as a matter of urgency, return to make a Statement to the House. It is what all noble Lords would expect.

Lord True (Con): My Lords, as I said in my original Answer, Ministers are personally responsible for deciding how to act and conduct themselves in the light of the code, and for justifying their actions and conduct to Parliament and the public. I refer the noble Lord opposite to the statement that my noble friend Lord Goldsmith put out yesterday, in which he said:

"I did not authorise & do not support anything that would have put animals' lives ahead of people's … I never discussed the … charity or their efforts to evacuate animals with the"

Prime Minister.

Lord Wallace of Saltaire (LD): My Lords, did the Minister by any chance see the strapline comment by Guido Fawkes over the video of the noble Lord, Lord Agnew, leaving the Chamber, which read, "We have now reached the point where Ministers have to explain which scandal of the Government's they are resigning over"? We have another scandal here—an apparent contradiction between what one Minister has said and what it appears from the official record—which needs to be cleared up. We have a Ministerial Code which is effectively policed by a Prime Minister who has now lost public trust. Could not the Government begin to regain public trust by accepting recommendations from the Committee on Standards in Public Life that the Ministerial Code should be placed on a firmer statutory basis?

Lord True (Con): The noble Lord started off with "scandal" and retreated to "apparent contradiction". I would advise him and others to refer both to the statement put out by my noble friend Lord Goldsmith and the official statements put out by No. 10 Downing Street and the Defence Secretary at the Foreign Affairs Select Committee yesterday.

Lord Browne of Ladyton (Lab): My Lords, once again we are being treated to Ministers in studios and in the House not facing up to the fact that the evidence is out there. These emails are there for people to see. I have not heard one Minister deny that the Nowzad animals were helped out of Afghanistan by the noble Lord, Lord Goldsmith, and the Prime Minister—and possibly also by the intervention of his wife—or say that these emails are not correct. So the evidence is there. Over and above that, my noble friend Lord Foulkes, who cannot be with us today, was on LBC last night with Dominic Dyer, who explained at length how it happened, because he was involved in identifying the Prime Minister, his wife and the noble Lord, Lord Goldsmith, as helping them to get the animals out of Afghanistan. He is upset because they will not take credit for it; that is what is upsetting him. So when will we get to the point where Ministers here or in television studios will live in the same world as the rest of us, when all the evidence proves the contrary of what they are saying?

Lord True (Con): My Lords, I fear I say too often in this House that allegations do not constitute proof. I remind noble Lords that whatever the context of this particular circumstance, a truly outstanding operation was conducted to remove people from Afghanistan safely. I repeat that statements have been made by the noble Lord, Lord Goldsmith, No. 10 Downing Street and the Defence Secretary which repudiate the allegations being made.

Baroness Symons of Vernham Dean (Lab): My Lords, does the noble Lord not accept that it is the duty of the noble Lord, Lord Goldsmith, to come to this House and correct or explain the statement, or misstatement, that he made—not to make statements generally? He owes a duty to this House.

Lord True (Con): My Lords, I am sure my noble friend will read and hear what the noble Baroness has said. I said in my original Answer that Ministers are personally responsible for deciding how to justify their actions and conduct to Parliament and the public.

Baroness Hamwee (LD): My Lords, I entirely agree with the Minister that allegations do not constitute evidence, but is he suggesting that this is an allegation of a forgery?

Lord True (Con): No, my Lords—I am saying that there is a set of allegations which have been made in many respects and in many circumstances over the last few weeks, in relation not only to this alleged incident but to others, which are allegations and not proof. We well know the impatience that your Lordships have for the conclusion of the Sue Gray inquiry and the Metropolitan Police investigations, but these matters need to be investigated, the facts established and the truth revealed.

Baroness Smith of Basildon (Lab): My Lords, I do not want to prolong this unnecessarily, but I think the noble Lord may have missed the point. The only point my noble friends Lord Collins and Lord Browne were raising was that if the noble Lord, Lord Goldsmith, made a statement to this House that appears on the face of it to be at odds with a statement in an email from his private office that is now public, can he not come to your Lordships' House to explain? I think that is a very straightforward request, and I hope that the noble Lord, given the comments he has made about Ministers acting on their personal honour, would want to convey that to the noble Lord, Lord Goldsmith, at the very least. No one is making any allegations, but the House would like, and deserves, an explanation.

Lord True (Con): My Lords, again, I listen respectfully to the noble Baroness and to all in the House. I stand on the answer I gave that it is for Ministers to decide how to justify their actions and conduct, but I repeat that the assertions that have been made have been repudiated by the noble Lord, Lord Goldsmith, No. 10 Downing Street and the Defence Secretary.

Baroness Ritchie of Downpatrick (Lab): My Lords, in the interests of transparency and good government, will the Minister go back to his colleague, the noble Lord, Lord Goldsmith, and ask him to come to this House immediately and explain the accurate situation of what really happened, because we now have this email?

Lord True (Con): My Lords, again, I repeat that everything your Lordships say will of course be referred to those with whom your Lordships are concerned. But I must underline the fact that in the current state of affairs in our country, there are a great deal of allegations that are being taken as fact, and I stand by that comment also. People are innocent until proved guilty.

Subsidy Control Bill

Order of Consideration Motion

11.57 am

Moved by ***Baroness Bloomfield of Hinton Waldrist***

That it be an instruction to the Grand Committee to which the Subsidy Control Bill has been committed that they consider the bill in the following order:

Clauses 1 to 9, Schedules 1 and 2, Clauses 10 to 78, Schedule 3, Clauses 79 to 92, Title.

Baroness Bloomfield of Hinton Waldrist (Con): My Lords, on behalf of my noble friend Lord Callanan, I beg to move the Motion standing in his name on the Order Paper.

Motion agreed.

Flags (Northern Ireland) (Amendment) Regulations 2021

Motion to Approve

11.58 am

Moved by ***Lord Caine***

That the draft Regulations laid before the House on 23 November 2021 be approved.

Relevant document: 23rd Report from the Secondary Legislation Scrutiny Committee. Considered in Grand Committee on 25 January.

Motion agreed.

Microchipping of Dogs (England) (Amendment) Regulations 2022

Motion to Approve

11.58 am

Moved by ***Baroness Bloomfield of Hinton Waldrist***

That the draft Regulations laid before the House on 6 January be approved. *Considered in Grand Committee on 25 January.*

Baroness Bloomfield of Hinton Waldrist (Con): My Lords, on behalf of my noble friend Lord Benyon, I beg to move the Motion standing in his name on the Order Paper.

Motion agreed.

Transport Act 2000 (Air Traffic Services Licence Modification Appeals) (Prescribed Aerodromes) Regulations 2022

Motion to Approve

11.59 am

Moved by ***Baroness Vere of Norbiton***

That the draft Regulations laid before the House on 15 November 2021 be approved. *Considered in Grand Committee on 25 January.*

Motion agreed.

Competition Appeal Tribunal (Recording and Broadcasting) Order 2022

Motion to Approve

11.59 am

Moved by ***Lord Wolfson of Tredegar***

That the draft Order laid before the House on 16 December 2021 be approved.

Relevant document: 25th Report from the Secondary Legislation Scrutiny Committee. Considered in Grand Committee on 25 January.

Motion agreed.

Misuse of Drugs Act 1971 (Amendment) Order 2022

Motion to Approve

11.59 am

Moved by ***Baroness Williams of Trafford***

That the draft Order laid before the House on 15 December 2021 be approved. *Considered in Grand Committee on 25 January.*

Motion agreed.

Nationality and Borders Bill

Committee (1st Day)

Relevant documents: 7th and 9th Reports from the Joint Committee on Human Rights, 11th Report from the Constitution Committee

Noon

Clause 1: Historical inability of mothers to transmit citizenship

Amendment 1

Moved by ***Baroness Hamwee***

1: Clause 1, page 2, line 10, leave out "equally" and insert "in the same terms"

Member's explanatory statement

The JCHR recommended that the Home Office consider how best to ensure that the intention to treat those previously discriminated against equally well as those not previously discriminated against, is made clear in the drafting of Clause 1. This amendment is to probe the drafting of Clause 1.

Baroness Hamwee (LD): My Lords, Amendment 1 is grouped with Amendments 2, 8, 9, 10, 12, 17 and 21. Amendment 9 is in the names of the noble Lord, Lord Dubs, and my noble friend Lady Ludford; the others are all in our names.

This Bill is not all bad, so I am glad to be able to start with Part 1, most of which we support, although the exceptions to that support are very significant. This rather gentle introduction is to probe into the clause that remedies historical inequalities. What is not to like? One thing that I do not like—which is not directly related to the Bill, but I am going to take this opportunity to say it—is that I am not comfortable with receiving so many briefings from organisations to which we cannot do justice. That is my discomfort. It is not that we do not want the briefings, but often they come too late for us to reflect concerns in amendments. I know that I am not alone in this House in finding it hard to keep on top of the material and feeling particularly bad about not being able to use all that is sent to us. I hope that organisations—which I know are very often overstretched and understaffed, and have their day job to get on with—will understand that we are not ignoring them, but please could they send us material earlier than sometimes they do? I am sure I am not the only one who has received briefings this morning.

I turn to the substance of the matter. Clause 1 provides for parents where there is discrimination in British nationality law that prevents mothers passing on British Overseas Territories citizenship to their children. It provides for the parents in such cases to be treated equally in terms of passing on that citizenship. The Joint Committee on Human Rights pointed out that this could mean equally well or equally badly; naively, I had not thought about it being equally badly. The way the clause is drafted is not the same as Section 4C of the British Nationality Act, which addresses the same discrimination in respect of British citizenship. That uses the phrase "in the same terms", and that is what is proposed in several of these various amendments. I understand that concerns have also been raised that the reference to the parents having "been treated equally" is, on its face, unclear. The JCHR said it would be prudent to deal with the drafting so that it is "in the same terms". I add that when you have different wording relating to very similar situations, that in itself suggests that the two should be dealt with differently.

Amendment 8 takes us to the issue of good character and would repeal Section 41A of the British Nationality Act. That section requires adults and young persons to be "of good character" if they are to be able to register as British citizens. If someone has the right to become a British citizen—or, more accurately in some cases, to have their right to citizenship registered, because the right is to citizenship and registration is simply the procedure—then what is done by the right hand should not, by giving discretion to the Secretary of State, let the left hand take it away. I hope the Secretary of State will allow me, for this purpose, to describe her as the left hand.

This point applies to Amendments 10 and 19 and to Amendment 9 from the noble Lord, Lord Dubs, and my noble friend Lady Ludford. Their explanatory statement is much more elegantly expressed than mine, but it is the same point. This point is particularly acute in the case of a child. Is the test really in the child's best interests? I saw a bit of resonance with the police Bill, which I was going to say we have so recently finished but of course we have not, when we debated an amendment about candidates' disqualification for standing for office as police and crime commissioners because of a misdemeanour—I think I can almost use that term in its technical sense—in their youth. This term is not the same as that; it is more amorphous. It is a discretionary matter and is of particular concern. I beg to move.

Baroness Lister of Burtersett (Lab): My Lords, I will speak briefly in support of Amendments 8 and 9 about good character. Like the noble Baroness, Lady Hamwee, I am particularly concerned about its application to children and those whose conduct when a child—and we are talking about children as young as 10—is used to deny the right to register as a citizen, which would otherwise be theirs.

The Joint Committee on Human Rights has voiced its concern, not just with regard to this Bill but in a 2019 report, where it pointed out that

"half of the children denied their … right … to British nationality on good character grounds have not even received a criminal conviction (having merely received a police caution)—let alone been prosecuted for 'heinous crimes'."

The Select Committee on Citizenship and Civic Engagement, of which I was a member, expressed considerable concern about the good character requirement. The committee called for a review of its use and description and of the age from which it applies—which is, as I said, 10. The Project for the Registration of Children as British Citizens, of which I am a patron, and Amnesty International, which have been campaigning on this point for some years, say:

"That some British people are required to satisfy the Home Secretary that they are 'good' for their citizenship rights to be recognised is divisive and alienating."

I am not sure how many politicians would come out well as having "good character", but I shall leave that as it may be. The good character condition is relatively recent in nationality law. It certainly should not be extended; ideally, it should now be scrapped.

Lord Dubs (Lab): My Lords, as we have heard, the Joint Committee on Human Rights spent quite a lot of time considering this and related issues. I should perhaps say at the outset that when I was in the Commons, I served on the Public Bill Committee dealing with the Bill that became the British Nationality Act. I am trying for the life of me to remember some of the details of the discussions. I have not had time to look them all up, but we certainly spent many weeks and many sittings on that Bill, but I do not recall this issue arising. I do not think the good character requirement existed then; I think it was brought in later.

The issue is that in the process of trying to get British nationality, there has been some discrimination, or there would be discrimination if the good character requirement were to apply. I am thinking of somebody who should normally have been able to get British citizenship but was unable to do so and, when applying now, if this is passed, will have to meet the good

character requirement. That seems a little odd. I hope I have understood that correctly; that was certainly how we looked at it on the Joint Committee on Human Rights.

Perhaps the best thing I can do is to quote from the committee's report, because it states it very clearly. This is from paragraph 41:

"We reiterate concerns made by this Committee in previous Parliaments that requiring good character when considering applications resolving prior discrimination risks perpetuating the effects of discrimination for those previously discriminated against. Moreover, we also share the concerns raised by the JCHR in 2019 about the appropriateness of the good character requirements being applied to children, particularly children whose main or only real connection may be with the UK. It is difficult to align this requirement with the obligation to have the best interests of the child as a primary consideration."

That is the case for this amendment.

Lord Paddick (LD): My Lords, my noble friend Lady Hamwee has comprehensively explained the reasons for these amendments, which we support. On the issue of good character, if someone has the right to become a British citizen—they already have that right; they just want to register it—what has good character got to do with it, particularly if they are children? Even if the applicant is guilty of a criminal offence, surely denial of citizenship is a disproportionate punishment.

What are we to say about people who acquire British citizenship at birth? We do not say to British citizens, "You've been found guilty of a criminal offence, so we are going to take away your citizenship." What is the difference if people have to apply to register their British citizenship? We fully support these amendments.

Baroness Ludford (LD): My Lords, I just second what everyone else has said, in particular the noble Lord, Lord Dubs, whose Amendment 9 I have had the honour to co-sign. As he pointed out, the key element to stress here is that the imposition of a good character requirement for citizenship now would perpetuate discrimination against those who have been discriminated against in the past, when the whole—laudable—point of Part 1, which, as my noble friend Lady Hamwee pointed out, is the only good bit of the Bill, is to rectify historical injustice.

Indeed, as the Joint Committee on Human Rights believes, it could well amount to

"unlawful discrimination, contrary to Article 14 as read with Article 8 ECHR, to require a person to prove good character when remedying previous unlawful discrimination against that person."

When applied to children, it is even more unfair and obviously against their best interests. Hence the need to delete Clause 3(4), which is the focus of Amendment 9. The noble Baroness, Lady Lister, referred to the quotation that this is "divisive, alienating" and unjust, compared to the treatment of other British citizens.

12.15 pm

Good character is not even defined in statute—in this case, the British Nationality Act—but only in a Home Office policy document. The courts have stipulated that Home Office decision-makers should make an overall assessment, including evidence of positive good character—which is presumably difficult in the case of a child, certainly a small child—but, inevitably, the guidance focuses caseworkers' minds on when to refuse on grounds of bad character. Instead of that holistic, individualised approach to assessment, there can be an inevitably negative approach.

Due to past discrimination, any conduct subsequent to 2002 could risk being a bar to obtaining British citizenship; whereas, if that person had not been discriminated against and had been allowed citizenship 20 years ago, along with others, any subsequent conduct would not have affected their British nationality. It is a double whammy of discrimination. As the noble Lord, Lord Dubs, said, the JCHR has long raised the objection that requiring good character when considering applications to resolve prior discrimination simply perpetuates the effect. It is not only unfair, especially for children, but illegal.

The committee is thus entirely consistent in urging the deletion of Clause 3(4). At the very least, I should like to hear from the Minister in her reply whether she can clarify exactly how the discrimination would be used.

Baroness Bennett of Manor Castle (GP): My Lords, briefly, I offer Green group support for these amendments. The noble Lord, Lord Paddick, made a point that needs to be reinforced. We have a question, which will arise later with my Amendment 33. Do we have one class of British citizenship or two? If you are not a British citizen because of past discrimination, can we really allow you to be discriminated against again just because of where you or where your parents were born? That is simply unacceptable.

Lord Rosser (Lab): My Lords, we strongly welcome Clause 1 and, as the noble Baroness, Lady Hamwee, said, in a Bill where there is so little to welcome, the early clauses of Part 1 seek to redress historical injustices in our nationality law. That is certainly welcomed from these Benches, as well as by other noble Lords who have spoken.

Clause 1 corrects an historical injustice left over from what many would regard as the appalling situation in which mothers did not have the same citizenship rights as fathers. It addresses the citizenship rights of children of mothers who were British Overseas Territory citizens. I thank the noble Baroness, Lady Hamwee, for her amendments. We raised the clarity of drafting of the clause when the Bill was in the Commons. As the noble Baroness also explained, this concern was raised by the JCHR, which noted that the language in this clause is not the same as the language used for similar purposes in the 1981 Act and raised questions over how well the clause achieves its intention. The JCHR said:

"We recommend that the Home Office consider how best to ensure that the intention to treat those previously discriminated against equally well as those not previously discriminated against, is made clear in the drafting of clause 1."

In the Commons, my colleagues pushed the Government to amend the clause so that its drafting reflects the drafting in the 1981 Act, when this discrimination was addressed for children of British citizens. I am sure that the Minister will appreciate that, in raising this concern, we are all trying to get this right and make the clause work as it should.

[Lord Rosser]

The Minister's response in the Commons was that he did not believe that amendments were necessary, which is quite a standard government reply, and that the current drafting worked as intended. He also said that these points would be further clarified in underpinning guidance. Have the Government given this issue further thought since it was raised in the Commons? What objection do they have to a minor amendment to answer the JCHR's concerns? If Ministers believe that that will be further clarified in guidance, should they not consider clarifying it in the Bill?

When we consider the good character requirement—I do not want to repeat everything that has been said—the JCHR is concerned that requiring good character when considering applications resolving prior discrimination risks perpetuating the effects of discrimination for those previously discriminated against. Much of this debate is familiar. As has been said, over the past few years the JCHR has routinely raised concerns about the impact of the good character requirement in cases resolving previous discrimination and in cases concerning children. I simply ask: how does that square with our primary duty to act in the best interests of the child and how is that currently balanced with the good character test? Can the Minister provide details to the Committee on how many children each year are refused citizenship based on this requirement and on what grounds it is deemed that they do not meet the test?

I too welcome the questions raised by my noble friend Lord Dubs on behalf of the JCHR on the application of the good character requirement in Clause 3. I simply wish to make the point that we are debating this clause due to gaps left in the law where we attempt to redress historical discrimination. Where the JCHR is raising concerns that the good character requirement is inappropriate where an applicant has already had their rights denied for a significant number of years, the Government should consider that challenge seriously. If we are to remove existing injustices in our system, we should do so thoroughly and with great care, so that we do not find ourselves having to come back for further fixes at a future date.

I look forward to the noble Baroness the Minister's reply on behalf of the Government—or perhaps it is the noble Lord; I am sorry.

Lord Sharpe of Epsom (Con): I thank noble Lords, and I am sorry to disappoint the noble Lord, Lord Rosser..

I thank the noble Baroness, Lady Hamwee, for tabling Amendments 1 and 2. Both refer to Clause 1, which I am pleased to introduce, as it corrects a long-standing anomaly in British nationality law. I appreciate my noble friend's attention to detail in seeking to make sure that this new provision is clear and in line with the parallel provision in the British Nationality Act 1981 for children of British citizen mothers. However, we do not think that an amendment is needed, as the proposed wording here achieves what is intended. In saying that this provision applies to someone who would have been a citizen had their parents been treated equally, we are talking about a situation where the law applied equally to mothers or fathers, women or men. We are satisfied that the current wording does what is required.

I turn now to Amendment 8 and consequential Amendments 10, 12, 17 and 21, tabled by the noble Baroness, Lady Hamwee, and the noble Lord, Lord Paddick. British citizenship is a privilege, reserved for those who meet the requirements of the British Nationality Act 1981 and who respect the law and values of the UK. This is reflected by the statutory requirement for an individual to be of good character when they apply for British citizenship. Published guidance sets out the basis for how we assess whether a person is of good character and the types of conduct that must be taken into account as part of this assessment.

Decision-makers are required to give careful consideration to each application on a case-by-case basis, and must decide on the balance of probabilities whether an applicant is of good character. Grounds for refusal of citizenship on the basis of not meeting the good character test include criminality that meets the threshold laid out in guidance, immigration offending such as illegal entry or unlawful residence, and serious adverse behaviour such as war crimes, terrorism or genocide. Such behaviour is fundamentally in opposition to core British values of decency and adherence to the law. Removing the good character requirement from all registration routes for British citizenship would mean that we could no longer refuse citizenship to those opposed to these values.

I turn, finally, to Amendment 9, for which I thank the noble Lord, Lord Dubs; I know he has taken a great interest in a number of the provisions of the Bill. I start by reassuring the Committee that the Government are committed to removing discrimination from nationality legislation. That is the aim of Clauses 1 and 2. The Government also recognise the difficulties that current British nationality law has presented for some British Overseas Territories citizen parents who wish to pass on their citizenship. However, the Government do not agree that the application of the good character requirement as set out in Clause 3(4) results in unlawful discrimination. Removing the good character requirement for those applying to register as a British citizen having acquired British Overseas Territories citizenship through the new routes established by Clauses 1 and 2, as this amendment proposes, would be unfair and inconsistent with the approach for British Overseas Territories citizens who can apply to become British citizens by virtue of Section 3 of the British Overseas Territories Act 2002 and who are subject to the good character requirement.

The noble Baroness, Lady Hamwee, mentioned the word "misdemeanour" in connection with such matters. We need to be clear that the guidance is clear that a criminal record does not necessarily mean that an application for citizenship will be refused. Those with a non-custodial sentence or who have received an out-of-court disposal will normally be refused citizenship unless three years have passed. Caseworkers have discretion to make an exceptional grant of citizenship in certain circumstances. On the subject of children, we ought to remind ourselves that 10 years old is the age of criminal responsibility in England and Wales.

I want to clarify that the good character test applies only to new provisions introduced in the Bill to resolve historical discrimination where it already applies to the current route that the person would have been

entitled to register under had the discrimination not existed. So the only people who will have to meet a good character requirement under Clause 3 are those who would have had an entitlement to registration as a British Overseas Territories citizen under Sections 15(3), 17(2) and 17(5) if their parents had been married, because registration under those routes carries a good character requirement.

To try to answer the question of the noble Lord, Lord Dubs, where people would have become British automatically had women and unmarried fathers been able to pass on citizenship at the time of their birth, the good character requirement does not apply.

The noble Lord, Lord Rosser, asked how many children this issue has affected. I am afraid that I do not know the answer and will have to write to him. I should say that if the person would have become British automatically had the discrimination not existed, they will not now have to meet the good character requirement. That deserves reiteration.

I ask noble Lords to withdraw or not move their amendments for the reasons that I have outlined.

Baroness Ludford (LD): Can the noble Lord address the point that I made, which I think was in the JCHR report? The courts have said that there should be an overall assessment—a holistic approach—that looks at good character as well as bad. However, the noble Lord appeared to concentrate only on a bad record being a triggering factor. He used the phrase "balance of probabilities", but did not say that something bad could be outweighed by an otherwise wholly good record. He did not appear to suggest or confirm that overall holistic approach. He concentrated only on the negative triggers, which is precisely a fear expressed in the JCHR report. It goes against what the courts have said should be the approach.

Lord Sharpe of Epsom (Con): I thank the noble Baroness for her request for clarification. Guidance is clear that a criminal record does not necessarily mean that an application for citizenship will be refused. As I said earlier, those with a non-custodial sentence or who have received an out-of-court disposal will normally be refused citizenship unless three years have passed. But—and this is the key point—caseworkers have discretion to make an exceptional grant of citizenship in certain circumstances, which, I should imagine, would very much cover the circumstances that the noble Baroness has just described.

Baroness Hamwee (LD): My Lords, there is clearly concern about good character. I echo my noble friend's query; the point about a holistic assessment has not been answered. I appreciate that those briefing the noble Lord might not have anticipated the question, but the way in which a caseworker sets about the task is fundamental to this issue.

12.30 pm

I should make it clear that, when I mentioned a misdemeanour, it was in the context of the police Bill and not of this Bill. The Minister mentioned genocide. I am not, for a moment, suggesting that someone guilty of genocide would meet any sort of test of good character. Sorry, does the Minister want to respond?

Lord Sharpe of Epsom (Con): I did not mean to imply that the noble Baroness was saying that. I apologise for intervening on the noble Baroness, but I want to clarify the caseworker point. To answer the question, they do look at cases in the whole.

Baroness Hamwee (LD): Thank you. That is good to know.

I come back to the registration point that we are dealing with. The Minister made some distinction between different routes. I take that point. I am not capable of making these distinctions myself, on my feet, without a lot of papers spread around me.

Section 41A is about registration. I say to the noble Lord, Lord Dubs, that it must have come in after the Bill had been introduced in order for it to be numbered in this way.

I turn to my first two amendments—to replace "equally" with "in the same terms". I repeat my point that having one concept expressed in different ways in the same Act is bound to cause confusion, if not trouble. This may be very boring and it does not go to the root of a lot of what we are debating, but it is potentially of great importance in practice. I hope that the government lawyers can look at it again—or perhaps all my legal training is out of date. I beg leave to withdraw Amendment 1.

Amendment 1 withdrawn.

Amendment 2 not moved.

Amendment 3

Moved by ***Baroness McIntosh of Pickering***

3: Clause 1, page 2, line 46, at end insert—

"(7) The Secretary of State must not charge a fee for the processing of applications under this section."

Member's explanatory statement

This amendment ensures that the Secretary of State must not charge a fee for the processing of applications under section 17A.

Baroness McIntosh of Pickering (Con): My Lords, this is the first time I have spoken on the Bill, as I was unable to speak at Second Reading. I want to speak to the amendments in my name in this group. I look forward to hearing the thrust of Amendment 13 from the noble Baroness, Lady Lister. At the outset, I declare that my mother was a naturalised Brit through marriage, under an earlier incarnation of this Act. I am also a non-practising member of the Faculty of Advocates.

I shall move Amendment 3 and speak to Amendments 4, 5, 6, 7, 18 and 22. I am enormously grateful to Michael Clancy of the Law Society of Scotland for his expertise and briefing in preparing these amendments, which concern the fees to be charged under Clauses 1, 2, 3 and 7 of the Bill. The amendments are the work of the Law Society of Scotland, and in particular I pay tribute to its immigration and asylum sub-committee, which has considered this part of the Bill in some detail.

The Law Society of Scotland states that it agrees with Clause 1, subject to the registration process being free. There is no clarity around that in Clauses 1, 2, 3 and 7. This is a cause of concern and which is why I have tabled these amendments. In this connection, the

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Law Society acknowledges and agrees with the 2020 report by British Future, *Barriers to Britishness*. At pages 10 and 11, it recommends:

"Citizenship by registration should be free for those who become British by this route. This group mostly comprises children and those with subsidiary categories of British nationality, such as British Overseas Territories Citizens and British National (Overseas) passport holders from Hong Kong who now have a route to citizenship through the bespoke British National (Overseas) visa.

Nationality law should be amended to allow children born in the UK to be British citizens automatically, restoring a policy that applied before 1983.

Vulnerable groups of people should be encouraged to take legal advice, which should be affordable and widely available in all parts of the UK."

The Law Society looked particularly at the case of PRCBC and O v Secretary of State for the Home Department—reported in "[2021] EWCA Civ 193"—where the Court of Appeal held that the fee of £1,012 for certain applications by children to register was unlawfully high. An appeal to the United Kingdom Supreme Court has recently been heard. We await the decision in due course.

I also want to refer to the extremely helpful report from the Constitution Committee of this House about the Bill. Paragraph 16 concludes:

"The Government should clarify its intentions on the amount of fees to be charged under Clauses 1, 2, 3 and 7."

The committee sought clarity as to what fees will be charged for registration applications under this clause and under similar provisions in Clauses 2, 3 and 7, referred to earlier. The committee also referred to the forthcoming appeal decision of the Supreme Court.

I urge my noble friend, when summing up on this little group of amendments, to come forward and say whether fees are going to be applied and at what level they will be set. It is inappropriate to discuss the Bill at this stage and not to have any idea as to what fees will be charged during the process. With those few remarks, I beg to move.

Baroness Lister of Burtersett (Lab): My Lords, I shall speak to Amendment 13 in my name. I thank the noble Lord, Lord Alton of Liverpool, the noble Baroness, Lady Stroud, and the right reverend Prelate the Bishop of Durham—who cannot be here today—for their support. I support the other amendments in this group. I am grateful, too, to the Project for the Registration of Children as British Citizens, of which I am a patron, and to Amnesty International UK, for their help. Once again, I pay tribute to them for their continued work to promote children's citizenship rights.

Essentially, the new clause would ensure that children are not excluded from their right to citizenship by registration by unaffordable fee levels, well above the cost of administering that right. It will also require action to raise awareness of this right.

It feels a bit like Groundhog Day. I have lost count of the number of times we have raised this issue in your Lordships' House. Indeed, we are now known as "Terriers United", although I do not think that all the terriers are able to be present today. On our last outing, during debate on the then Immigration and Social Security Co-ordination (EU Withdrawal) Bill of 2020, I warned the Minister that we would be snapping at the Home Office's heels until we achieved justice for this vulnerable group of children.

I will recap the arguments briefly. We are talking about a group of children who were either born here to parents—neither of whom was, at that time, British or settled—or who have grown up here from an early age and have rights to register as British citizens. A combination of factors, notably the exorbitant fee of more than £1,000—£640 more than the most recent stated cost of administration—lack of awareness of the need to register, and the difficulties faced by local authorities with regard to looked-after children, have resulted in thousands of children being denied that right to British citizenship, even though it is theirs. A High Court judgment, to which I shall return, noted the mass of evidence. As a consequence, many children born in the UK feel alienated, excluded, isolated, second best, insecure and not fully assimilated in the culture and social fabric of the UK.

When we last debated this issue, as part of an amendment calling for a review of the barriers to registration of the right to citizenship, the Minister said:

"I completely acknowledge the points that the noble Baroness makes about citizenship costs; I will not tell her that you do not need citizenship to live here, because your Lordships will not accept that sort of answer."

Quite right. I trust that there will be no attempt to revive such arguments today. Instead of trying to combat our arguments, the Minister proposed a "task-and-finish activity". This would involve discussion of the issues in the wider context of societal cohesion and integration, which, sadly, will suffer as a result of this Bill. She then said that she would

"think about how we can then bring that back to the House".—[*Official Report*, 5/10/20; cols. 429-30.]

Well, we had one initial meeting. It was very constructive, but it did not really address the substance of the withdrawn amendment, and nothing came back to the House.

In the meantime, there has been a significant development: the Court of Appeal upheld the High Court's judgment which had found the fee unlawful because of the Home Office's failure to take account of the best interests of children under Section 55 of the Borders, Citizenship and Immigration Act. It is worth noting a few points from the Court of Appeal's judgment. First, it spelled out:

"There is no issue but that the recent and current levels of fees have had a serious adverse impact on the ability of a significant number of children to apply successfully for registration."

It noted that payment of the fee would involve "unreasonable sacrifices" for those on low or middle incomes and, in the case of the children of lone parents on benefits,

"it is difficult to see how the fee could be afforded at all."

Secondly, it underlined the importance of citizenship. Both these points, it said, were

"not disputed by the Secretary of State."

Thirdly, and crucially, it said that, because

"no other consideration is inherently more significant than the best interests of the child",

the Home Secretary

"must identify and consider the best interests of the child … and must weigh those interests against countervailing considerations."

The judgment gave short shrift to the frankly pathetic Home Office argument that the debate on the fees initiated by Members of both Houses constituted consideration of children's best interests. The chutzpah of trying to put that argument takes my breath away; anyway, the court would have nothing to do with it.

The case was heard by the Court of Appeal in October 2020 and the judgment was given in February 2021. The Home Office chose not to appeal against the best interests judgment yet, nearly a year later, it still has not published the outcome of the best interests review required by that judgment. However, because of a separate appeal on a different point of law to the Supreme Court in the name of PRCBC, of which I am a patron, and O, whose case it was, judgment on which is still awaited, Ministers now argue that publication of the best interests review must await that judgment. Why, given that the judgment has nothing to do with the best interests review?

As it happens, I understand that the judgment will be given next week. Can the Minister therefore commit to publishing the outcome of the best interests review swiftly following that judgment, and certainly before Report? If not, why not? The longer the continued wait, the more children will be denied their right to citizenship because of the level of the fee. This cannot be right. Please do not use the Supreme Court's irrelevant judgment as an excuse for rejecting this amendment. These children cannot afford to wait any longer. Every month of delay is another month of exclusion and alienation from British society. The terriers are growing very impatient.

The Lord Bishop of Gloucester: My Lords, I will speak on Amendment 13 on behalf of my noble friend the right reverend Prelate the Bishop of Durham, who sadly cannot be in the House until later today. He wishes to declare his interests in relation to both RAMP and Reset, as set out in the register. The following words are his, but I will say that I wholeheartedly agree with every one of them.

My interest comes from my ongoing engagement in this House with issues concerning children and ensuring that their best interests are central to legislation. The Government should be doing everything they can to ensure that all children in the UK have the opportunity to thrive. We should be working to remove barriers that they may face in seeking to reach their full potential. The current British citizenship registration fees create a barrier for many children to being and feeling fully part of society.

12.45 pm

The effect on a person of being excluded from the citizenship of their home country, of where they have been born and to which they are entitled, is deeply alienating. It is simply unacceptable for a group of people living in the UK to be alienated in this way. It is not good for individuals, families, communities and society as a whole. There should not be people unable to access their rights simply because of ability to pay. Children in particular should not have reduced rights because their parents cannot afford to pay for registration—especially when these costs are generating profit for the Home Office and are not purely to cover administrative costs. This simply cannot be justified.

We cannot continue to have a situation where thousands of children grow up in the UK believing that, since they were born here and have a British birth certificate, they have citizenship. It is only when they reach adulthood that they discover that they are not recognised by their Government as belonging to the country they call home. More needs to be done to raise awareness in communities of the right to British citizenship and how to exercise it.

I support this amendment because I want every person to feel valued, recognised and included in our society and to be given every chance to thrive and take a full part in it.

Lord Alton of Liverpool (CB): My Lords, it is great pleasure to be one of the terriers of the noble Baroness, Lady Lister, and a signatory to Amendment 13. I thank her for her conviction, eloquence and persistence in bringing this issue back to us again. It is, as I said at Second Reading, an opportunity to put right old wrongs, and we should not miss this opportunity yet again.

When she introduced this group, the noble Baroness, Lady McIntosh of Pickering, reminded us of her origins and, therefore, of an interest. I suppose I should declare to the House that I too am the son of an immigrant. My mother was Irish; Irish, not English, was her first language. She came here at the end of the Second World War and married my father, who was a Desert Rat and had fought at El Alamein; he also saw action at Monte Cassino and elsewhere. He was brought up in the East End of London, where he saw terrible anti-Semitism. He and his brothers enlisted in the Armed Forces because they wanted to contest the fascism represented by the Nazis in Germany—and one of them paid the ultimate price.

I say that simply to illustrate that you do not have to hate one country—Ireland, in this case—to love another. I am very proud of the fact that I have both a British and an Irish passport, as do my children and grandchildren. I hope that they, too, will grow up knowing about the traditions that they come from but being incredibly proud to be British citizens.

In the same spirit that the noble Baroness, Lady McIntosh, described her origins, I will say that, when I went to the great city of Liverpool as a student, I was pretty shocked when I went out in my second year looking for accommodation to see in tobacconists' windows notices that advertised accommodation and said, "No blacks and no Irish need apply". I know that the noble Baroness, Lady Williams, and I have this shared experience in common.

It is against that backdrop, as well as being a patron of Asylum Link Merseyside and having been involved in these issues over the years in both Houses, that I am particularly keen to support what the noble Baroness, Lady Lister, has said today. Indeed, I was involved in the 1981 proceedings in the House of Commons on what became the British Nationality Act. It was, as the noble Lord, Lord Dubs, will recall, a genuine attempt to try to define what it meant to be British. It certainly was not part of our proceedings at that time to take away the rights of children to register because of prohibitive costs debarring them from becoming citizens. I felt so strongly about this that, when I was asked

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whether I would provide a witness statement about what I believed to be the considerations that we had in 1981, I provided that statement to the High Court in the action that the noble Baroness, Lady Lister, described to us.

I should also mention that the late Lord Sacks, Jonathan Sacks, in two great books, *The Home We Build Together* and *The Dignity of Difference*, spelt out the nature of citizenship and why we have to learn to live alongside one another and to value the idea of citizenship. During 20 years or so as director of the Liverpool John Moores University Foundation for Citizenship, I explored the issue. It is good to see the noble Baroness, Lady Chakrabarti, here today, because she was one of our lecturers as part of the Roscoe series of lectures looking at what it means to be British and how we all should fulfil our individual missions to be good citizens in our society.

The noble Baroness, Lady Lister, has told us the High Court ruling. It is not the fault of the Government that this has gone for further definition at the Supreme Court, but why on earth did the Government not accept the decision of the High Court on this specific point about the cost of citizenship for children and leave the other issues to be decided about the general parameters, as she said? The one does not stop the other and the House should turn its attention to this.

The Court of Appeal upheld the High Court ruling that the £1,012 fee for a child to register as a British citizen was unlawful, because it was set without consideration of the best interests of children. That is at the heart of this amendment. Two of the judges, I might add, also saw great force in the argument that is continuing at the Supreme Court—that it may be additionally unlawful because it effectively deprives many children of their rights to British citizenship.

The noble Baroness, Lady Williams, has been very diligent in responding to questions on this issue, including a Question that I had tabled in the House on 19 October 2020. I said then that it was

"passing strange that the Home Office can calculate the difference between the £640 that it costs to administer the citizenship fee and the £1,012 that it actually charges, even to children in care, but cannot assess the legal costs of contesting the High Court's judgment? Instead of racking up lawyers' fees and subsidising the immigration system with what Sajid Javid",

when he was Home Secretary,

"rightly called huge citizenship fees, should it not be reviewing this policy as noble Lords from right across your Lordships' Chamber have argued?"

In 2020, there was indeed a widespread view across the House. The right reverend Prelate the Bishop of London said:

"Putting a financial barrier on being able to access one's rights is a clear barrier to one's access to justice".

The noble Baroness, Lady Altmann, said:

"this is not about immigration but about children with the right to register as citizens and potentially denying them their right to register if they cannot fund more than £1,000".

The noble Baroness, Lady Primarolo, asked:

"Will the Minister tell the House whether the Home Office carried out a children's best interest assessment of the Government's policy on fees in light of the original judgment?"

As far as I know, that question remains unanswered. The noble Lord, Lord Paddick, asked the Government to explain why

"the Government want the immigration system to be self-funding in a way that no other government department is".

Again, this seems an unanswered question, but in the course of these proceedings we really need to have an answer. I was struck by what the noble Baroness, Lady Gardner of Parkes, one of the longest-serving Members of your Lordships' House, said from the Government Benches. She asked,

"whether the Government have assessed how many people forgo registering for British citizenship for themselves and their families as they cannot afford it? How this might contribute to their sense of belonging and well-being is important".

The noble Lord, Lord Kennedy of Southwark, asked:

"Can the Minister tell the House whether she believes it is right that the immigration system is subsidised by children who are born in Britain and have lived their entire life in Britain and have the right to be British?"—[*Official Report*, 19/10/20; cols. 1273-74.]

I could go on, but I will not. The point is surely now registered with noble Lords. We have the chance between now and on Report not to turn this into yet another contested issue. There is feeling across the House that we need to put right this injustice. This is about putting right an old wrong and I hope the Government will attend to it.

Baroness Chakrabarti (Lab): My Lords, I briefly pay tribute to my noble friend Lady Lister of Burtersett for her campaigning on this issue and on so many related issues on behalf of the poorest and most vulnerable in our society. I also congratulate the noble Baroness, Lady McIntosh of Pickering, and other distinguished Members of the Committee on bringing this issue to the fore.

For me, the nub perhaps lies in the distinction between some comments that the Minister—the noble Lord, Lord Sharpe—made on the previous group about British nationality being a privilege and comments made in this group repeatedly by almost every speaker about the rights of these children or the rights of this or that group.

We all acknowledge that to be British is, in a colloquial sense, always a privilege in that we are proud and fortunate to be British. Whichever route we have taken, we are all very proud and fortunate, given the other places in the world where we could be. However, in the legal sense at least, in a number of cases—not all, but including those that the Government are attempting to deal with in Part 1—citizenship is a right. The Government's intention seems clear in some of the early clauses to rectify previous injustices and to confer rights on people who should have them. It would be a terrible shame to do this and then to make the right illusory or difficult to access on the basis of a financial bar, particularly for children.

Noble Lords have approached this in slightly different ways, and different options have been made available in this raft of amendments for the Government to look at between now and Report. I urge Ministers, with all the controversy that I fear is inevitably coming on subsequent clauses, to see what they might do in relation to the rights that they are conferring here, if not to citizenship rights and fees more generally.

Lord Horam (Con): My Lords, there is obviously strong feeling on this issue across the House. I congratulate the noble Baroness, Lady Lister, on the work that she has put into this over the years. It is an important campaign. I sympathise with all the remarks that have been made by the noble Lord, Lord Alton, and others. This is an interesting and important issue. The problem is that the solution proposed does not work.

Very often, in these sorts of debates, it is proposed that the cost be related to the cost of registration or some aspect of that. The difficulty is that the cost can be manipulated. We never know what can go into the cost of producing a particular form or what overheads are involved. This is the difficulty; I have seen it again and again. In the end, the object is subverted by people manipulating the cost in such a way that they get the result they wanted in the first place.

My noble friend Lady McIntosh is right that we need some clarity from the Government in saying exactly what their proposals are in this area. I hope that when my noble friend the Minister replies and on Report we will get more clarity on this issue. I fully agree with the principle of what the noble Baroness, Lady Lister, is putting forward. The difficulty is with the suggestion that it should, first, be in primary legislation, with the inflexibility that it brings; and, secondly, that it is related specifically to the cost of registration, which can be manipulated. That is my concern and I hope the noble Baroness, who is about to rise to her feet with a charming smile on her face, will understand what I am saying.

1 pm

Baroness Lister of Burtersett (Lab): I thank the noble Lord for his support of the principle, but is he suggesting that the Home Office would manipulate the cost in this way? The figure that we have is a Home Office figure. The Home Office tells us how much it costs to administer it, and therefore it seems reasonable that the fee should be linked to that. Ideally, I would like there to be no fee for this either, but that might be pushing things too far. Certainly, we are arguing for no fees for those who are in local authority care, but it is a Home Office figure, not a figure per person who is registering.

Lord Horam (Con): I appreciate that perhaps "manipulate" was the wrong word. I simply meant that events and costs can change over time. If you have it in an Act of Parliament, you cannot change it; you introduce inflexibility, which may in some instances work against you. Often the case is put forward that this is the right way to do it; I have seen a number of these instances, but it never works.

Baroness Chakrabarti (Lab): Forgive me, but is the noble Lord agreeing with me that, in relation to citizenship rights that the Government are seeking to confer on those who should have them, there should not be a fee at all?

Lord Horam (Con): I am sorry, but I did not quite follow the noble Baroness's point.

Baroness McIntosh of Pickering (Con): Perhaps I can clarify. We all agree that we should know what the figure is. We are also seeking clarification from the Government Benches on why the fee is almost double the cost of processing the work. That is where there is a bit of a mismatch, if I have understood Members correctly.

Lord Paddick (LD): My Lords, I say to the noble Lord, Lord Horam, that there is no suggestion of putting a figure in the legislation. The noble Baroness, Lady McIntosh of Pickering, is suggesting that there should be no fee at all, and the noble Baroness, Lady Lister of Burtersett, does not mention any numbers at all in her amendment.

Lord Horam (Con): You may not have a number, but costs can change from year to year; that is the point.

Lord Paddick (LD): Absolutely, and I understand that that might be the case, but that is not the essence of either of the noble Baroness's amendments. If I have not explained it by the end of what I have said, I am sure that the noble Lord will come back to me.

We support all these amendments, and I am grateful to Amnesty and many others for their briefings. As we have heard, and as the Explanatory Notes explain, Clauses 1, 2, 3 and 7 are aimed at ending anomalies in British nationality law, such as allowing women as well as men to pass on citizenship at the time of birth, including where the parents are not married. They also aim to allow the Secretary of State to grant citizenship where a person failed to become a British citizen and/or a British Overseas Territories citizen because of an historical legislative unfairness, such as an act or omission by a public authority or other exceptional circumstances—the Windrush injustices come to mind. But all these measures come to nothing if those entitled to citizenship cannot afford to pay the required fees to correct the injustice; hence Amendments 3 to 7, 18 and 19, in the name of the noble Baroness, Lady Mcintosh of Pickering. The Government accept that applicants have been unfairly treated, but they then continue to treat them unfairly by charging, in many cases, prohibitively high fees.

I pay tribute to the sustained and tireless work of the noble Baroness, Lady Lister of Burtersett, on this issue, and thank the noble Lord, Lord Alton of Liverpool, who summarised previous debates in the House so well. Amendment 13, in the name of the noble Baroness, Lady Lister, takes a slightly less generous approach than the amendment tabled by the noble Baroness, Lady McIntosh, but one perhaps more likely to be accepted, ensuring that the Home Office could charge only cost price for citizenship—still a considerable amount of money—or less in the case of children if the family cannot afford it.

Baroness Lister of Burtersett (Lab): I take this opportunity to clarify what is says: it says that no person may be charged a fee that is "higher than". It is not saying that it should be the cost price. Given that, every year, the Home Office must look at the fees, I do not see that there is a problem. I am sorry to interrupt.

Lord Paddick (LD): I am very grateful for that important clarification. The cost price is the maximum that should be charged, not the actual cost that should be charged.

[Lord Paddick]

There may be some difficulty around whether there is to be a means test, as implied by subsection (3), but the important addition to the amendments proposed by the noble Baroness, Lady Mcintosh—subsection (4)—is the requirement for the Secretary of State to raise awareness of the right to be registered as a British citizen or British Overseas Territories citizen. As Amnesty rightly points out, thousands of children grow up in the UK excluded from their citizenship rights because they are unaware that they are without British citizenship and need to exercise their right to be registered.

Citizenship should not be an optional extra. It is the right to have rights. It is not, as the Minister said on the previous group, a privilege. It is a right that these people have. It is also likely to make those who acquire it feel more included, and more likely to be loyal to this country, its laws, values and traditions. It is not just of value to those who acquire it but to everyone in the UK, and, as such, the cost of acquiring it should not fall solely on the applicant but on society as a whole.

Lord Rosser (Lab): My Lords, I express our support for the amendments in this group. The amendments in the name of the noble Baroness, Lady McIntosh of Pickering, raise a simple and crucial point. The intention of this part of the Bill, at least its early clauses, is to remove barriers for those who have been unjustly denied citizenship. To then present a barrier to that citizenship in the form of fees for accessing those withheld rights raises obvious problems. This is particularly, and one would hope undeniably, the case for those who would and should have been automatically granted citizenship if it were not for outdated injustices impacting their mother or the marital status of their father.

What has so far been missing from the Government is clarity on this issue. I understand that in Committee in the Commons, the Minister would not directly answer questions as to whether fees will be charged. I hope we may fare a little better today, with the noble Lord the Minister—if that is who responds—telling the House whether the Government intend to charge people to access these routes. Is the intention no fees, fee waivers in some cases, reduced fees from what we have now, or the continuation of existing fees? When and how will this be made clear? In the Commons, the Minister suggested that this was more appropriately dealt with in secondary legislation, but why should clarity not be provided in the Bill in relation to this key issue?

I express too our support for Amendment 13, in the name of my noble friend Lady Lister of Burtersett, with notable cross-party support from the right reverend Prelate the Bishop of Durham, the noble Lord, Lord Alton of Liverpool, and the noble Baroness, Lady Stroud. As has been said, to say that my noble friend Lady Lister of Burtersett has been tenacious on this issue would be the understatement of the year; she has been rather more than that.

The amendment tabled by my noble friend addresses a current fee policy that charges people who have the right to register for citizenship exorbitant amounts to do so. As has been said, the amendment does not ask the Government to scrap the fee for application; it simply requires the fee not to be higher than the actual cost of the registration process. As has been said, this means it could be fixed at a considerably lower level or there could be no fee at all.

In particular, I add our strong support for measures to reduce the cost for children to register their citizenship, which they have as much right to access as any Member of this House, and to remove the cost completely, certainly for children in our care. Although the Government have repeatedly resisted this change, it is not without Cabinet support, as has been said. After all, the Health Secretary has described the fees as

"a huge amount of money to ask children to pay".

I repeat that these costs are levied against children who are born here, grew up here and go to school here but who, unlike their classmates, are not automatically British at birth. Surely it is the will of this Parliament and our nationality law that those children are entitled to citizenship after certain conditions are met. But, in reality, that right is being denied for at least some—probably many—because it is just too expensive for them to access. The Government have already been asked for information on the numbers who have been denied citizenship on the basis that the fees are too high. I am not sure whether we are going to get a response to that point.

There has been some discussion about the legal position. As has been said, in February last year the Court of Appeal, in referring to the best interests of the child, ruled that the child citizenship fee, at over £1,000, is unlawful. That had also been determined earlier by the High Court. A number of noble Lords commented that, instead of using the obvious vehicle of this Bill on citizenship to rectify the issue, the Government have argued—as I understand it—that they want to await a further ruling in the Supreme Court.

Finally, I admit my surprise that, in the Commons, the government Minister claimed that this issue of the cost of registering citizenship was

"not a matter for the Bill."—[*Official Report*, Commons, Nationality and Borders Bill Committee, 19/10/21; col. 165.]

This part of the Bill is about access to citizenship. I question how the Government can say that this issue, which has been raised many times across both Houses and with cross-party support, should not be regarded as a matter for this Bill. I hope we have a helpful response from the Government when they now reply.

Lord Sharpe of Epsom (Con): My Lords, I am grateful to the noble Baroness, Lady Lister of Burtersett, the right reverend Prelate the Bishop of Gloucester speaking on behalf of the right reverend Prelate the Bishop of Durham, and the noble Lord, Lord Alton of Liverpool, for tabling Amendment 13; and to my noble friend Lady McIntosh for tabling Amendments 3, 4, 5, 6, 7, 18 and 22 on fees charged for applications for British citizenship and British Overseas Territories citizenship. My noble friend the Minister would also like to place on record her thanks to the noble Lord, Lord Alton, and the noble Baroness, Lady Lister, for engaging with her on this subject in various meetings.

I first turn to the amendments put forward by my noble friend Lady McIntosh. You will be aware of the importance that application fees play in the funding of the migration and borders system, which has been

noted in this debate, and that this income is vital to reduce the reliance on taxpayer funding and run a sustainable immigration system. Immigration and nationality fees are set in fees regulations, which are laid before Parliament and subject to the negative procedure. I hope that answers a number of noble Lords' questions. If we were to remove or amend fees during the passage of the Bill, it would undermine the existing legal framework without proper consideration of the sustainability of the system and fairness to the UK taxpayer. Not only that, but it would create an alternative mechanism for controlling fees, which would reduce the clarity of the fee structure.

As the noble Lord, Lord Rosser, noted, I am of course aware that similar provisions were considered in the other place. We are sympathetic to the view that a fee should not be charged where a person missed out on becoming a British citizen due to historical anomalies.

In answer to the specific questions of the noble Lords, Lord Paddick and Lord Rosser, about those who cannot afford application fees, we have always provided for exceptions to the need to pay application fees for leave to remain in a number of specific circumstances. These exceptions ensure that the Home Office's immigration and nationality fees structure complies with international obligations and wider government policy.

The subject of children in government or local authority care also came up. The Government do cater for children and their well-being. There are a number of exceptions to application fees, which protect the most vulnerable, including young people who are in the care of a local authority and applying for limited or indefinite leave to remain.

1.15 pm

Baroness Lister of Burtersett (Lab): Does the Minister accept that there is a difference between leave to remain and citizenship? We are talking about citizenship, and the courts were very clear about the importance of citizenship. Please do not rerun the argument that leave to remain is as good as citizenship, because it is not.

Lord Sharpe of Epsom (Con): Of course I accept the distinction. There is no arguing about that at all.

The noble Baroness, Lady Chakrabarti, raised the point that the provisions in this Bill are about righting historical wrongs, and I assure the Committee that it remains our intention to continue to adopt the approach of not charging fees in instances where unfairness or injustice has occurred. But as I tried to outline above, this is not a matter for the Bill. As my noble friend Lord Horam noted, it should be remedied through secondary legislation in line with other changes to immigration and nationality fees, as far as applications for British citizenship are concerned. Administration of British Overseas Territories citizenship applications is a matter for the overseas territories. We have consulted with them about the new nationality provisions; that applies to all the amendments except Amendment 13.

Baroness Hamwee (LD): I apologise to the noble Lord. On the previous point about regulations for fees, the amendment of the noble Baroness, Lady Lister, in fact anticipates regulations. It limits the amount of fees that can be paid, but does not seek to use primary legislation to set the specific fee.

Lord Sharpe of Epsom (Con): If we were to remove or amend fees during the passage of this Bill—I have said this before—it would undermine the existing legal framework, without proper consideration of the sustainability of the system.

Lord Alton of Liverpool (CB): Will the Minister clarify what he just said? The existing legal framework has itself been undermined by a decision of the High Court. Is that not something we now need to rectify? From the expression on the Minister's face, I think he is coming to that and I am grateful to him. To return to the point that has been repeatedly made about not specifying the amount of money in the Bill, this amendment does not do that. It seeks to create a context in which fees can be charged, in which the cost is no more than the administrative cost. The point the noble Lord made about taxpayers is dealt with in this amendment. I hope he will concede that and, when he does, will he confirm the remarks by the previous Home Secretary that what is being charged at the moment is

"a huge amount of money"?

Is that the view of the current Home Secretary, the right honourable Priti Patel?

Lord Sharpe of Epsom (Con): My Lords, that it is a lot of money is not in dispute. I am coming to the part that deals with the various reviews and the High Court judgment, so I hope the noble Lord will bear with me for a second. I think this will address his other questions.

Amendment 13 was put forward by the noble Baroness, Lady Lister, the right reverend Prelate the Bishop of Durham and the noble Lord, Lord Alton of Liverpool. I note that this new clause is identical to one considered in the other place. That the noble Baroness has put it to this Committee to consider leaves us in no doubt about the strength of feeling on this matter, and this debate has reinforced that.

Proposed new subsection (2) would prevent the Secretary of State charging a fee to register as a British citizen or British Overseas Territories citizen if the child is being looked after by a local authority. I just mentioned that as well. The Government already have waivers in place, which I referred to, that will allow any child looked after by their local authority, irrespective of nationality, to apply for both limited and indefinite leave to remain, which I accept is not the same citizenship, without being required to pay application fees. This ensures that children in local authority care can access leave to remain, and the benefits of living, working and studying in the UK, without having to pay a fee.

Baroness Lister of Burtersett (Lab): The noble Lord acknowledges that leave to remain is not the same as citizenship. When we last discussed this, the Minister, the noble Baroness, Lady Williams of Trafford, accepted that this is not an argument that this House will accept. Please do not keep putting that argument, because it does not wash here.

Lord Sharpe of Epsom (Con): I assure the noble Baroness that I am not going to try it again today.

[Lord Sharpe of Epsom]

Proposed new subsection (4) would require the Secretary of State to take steps to raise awareness of rights under the British Nationality Act 1981 to be registered as a British citizen or British Overseas Territories citizen among people possessing those rights. The Government publish information about becoming a British citizen on GOV.UK and we are committed to ensuring that such information is fully accessible by all.

Going on to the Supreme Court, pretty much every speaker has alluded to the fact that child citizenship fees have been the subject of a legal challenge brought forward by the Project for the Registration of Children as British Citizens, and that this litigation has not yet concluded. We await the final judgment of the Supreme Court hearing, which took place on 23 and 24 June 2021, so that we can take proper account of the Supreme Court's views. I believe that judgment is due next week, to confirm what I think has also been said here. In the meantime, the Home Office will continue to charge the fees set out in the Immigration and Nationality (Fees) Regulations 2018.

Baroness Lister of Burtersett (Lab): I am very sorry to interrupt yet again, but I pointed out that the appeal that has gone to the Supreme Court is a completely separate legal point from the one that requires the Home Office to carry out a best interests review. Why do the Government keep putting this argument when it has been over a year since the judgment? Why can they not produce the best interests review now? It has nothing to do with the appeal to the Supreme Court.

Lord Sharpe of Epsom (Con): I was just coming to that.

The Government are currently carrying out a Section 55 assessment, in tandem with the best interests review, in relation to the child registration fees. I cannot predict the outcome of that assessment, but that does not necessarily mean that the fees will change. I cannot give the noble Baroness the assurance she seeks on when it will be published, but the reviews are ongoing.

Baroness Lister of Burtersett (Lab): Who is carrying out this review?

Lord Sharpe of Epsom (Con): I cannot answer that, I am sorry. I will write on that.

Lord Alton of Liverpool (CB): I promise not to intervene again, but before the noble Lord leaves this point, is he not inviting the Committee to be like Don Quixote and to tilt at imaginary windmills? As the noble Baroness, Lady Lister, pointed out, this is not the substance of the continuing action in the Supreme Court. The question of the cost of the fees was dealt with by the High Court. The Home Office lost. Surely that is the issue that should be laid to rest in these proceedings.

Lord Sharpe of Epsom (Con): With the greatest respect to the noble Lord, they are all part of the same debate. As I said, I cannot pre-empt the Supreme Court's decision or the outcome of the ongoing review, for which I obviously apologise. I would like to give him the answer he seeks, but I cannot.

Lord Deben (Con): When the court has said that this is illegal, why do the Government not accept what the court has said? Or are the Government setting themselves up against the court and deciding that it is not illegal? If it is illegal, it should be changed at once.

Lord Sharpe of Epsom (Con): Again, with respect to the noble Lord, we are awaiting the further judgment.

Baroness Lister of Burtersett (Lab): I am sorry, but the lawyers behind this are very clear that these are completely separate legal points. The people who appealed the Court of Appeal's judgment were not appealing in relation to the best interests of the child. The Government accepted the best interests of the child judgment a year ago. Why do we still not have the best interests review? As the noble Lord, Lord Deben, said, surely the Government should have acted immediately once they accepted that it was unlawful to charge this fee without taking account of the best interests of the child.

Lord Sharpe of Epsom (Con): As I said, I do not have the answer to why it has taken a year, but I will write to the noble Baroness and all noble Lords who have expressed an interest in this subject to try to explain.

Having said all that, I hope you understand that I cannot comment on the Supreme Court's judgment. We remain of the view that it is the right course of action to wait until the judgment—I am sorry to labour the point. Accordingly, for the reasons I have given, I invite noble Lords not to press their amendments.

Lord Paddick (LD): My Lords, first, we do not address each other as "you". I know that the Minister is new to the House, but we do not use that term.

Secondly, there is a difference between an on/off decision about whether to charge a fee, as suggested by the Baroness in her amendments, and interfering with the current system, where the fee level is set by regulations. They are two different issues.

Thirdly, the noble Lord kept talking about interfering with the existing legislative framework. That is our job. We interfere with the existing legislative process by passing legislation. That is a nonsense argument.

Finally, the noble Lord talked about fees being waived in exceptional circumstances. People do not apply to register their right to British citizenship and then, when they take a look at what the fees are, say, "There's absolutely no way that we can go ahead with this. We're not even going to apply." The fee being waived in exceptional circumstances does not even arise. Does the noble Lord not accept that?

Baroness Lister of Burtersett (Lab): The noble Lord said something about how the system relies on these fees. Could he clarify what he means? I hope he does not mean the immigration system, which is often referred to, because we are not talking about immigration here. Many of these children were born in this country.

Lord Sharpe of Epsom (Con): I apologise for my inadvertent use of the word "you". I feel suitably admonished. My apologies. To answer that question, it is the migration and borders system.

Baroness Lister of Burtersett (Lab): I am sorry, but that is irrelevant, because this is not about immigration. It is about the right to register for citizenship for children who have been born here or who otherwise have lived most of their lives here.

Baroness McIntosh of Pickering (Con): My Lords, I thank everybody who contributed to this debate. I thank my noble friend for his courteousness in giving as full a reply as he is able to at this time.

I acknowledge the indefatigable campaigning skills of the noble Baroness, Lady Lister, and the noble Lord, Lord Alton of Liverpool, and the work they have done. I am grateful to the right reverend Prelate the Bishop of Gloucester for sharing the concerns of the right reverend Prelate the Bishop of Durham and his work in this regard.

I will focus on one particular aspect of my noble friend's reply. I will not get involved in the best interests review because that is a separate argument. We need a very clear undertaking that, if the Supreme Court is to rule on the appeal as soon as next week, the Government will come forward and let us know what the scale of fees will be. I accept that the amendments I have put forward are the more radical. They say that the fees should be waived for all the reasons given during the debate: they are proving a barrier to children who, as the Government Benches and the Minister have agreed—I welcome that—should be welcomed, and citizenship should be awarded to them provided they meet the conditions. I do not think that a fee of £400 more than the cost of the work being done is satisfactory. It is unacceptable.

In the words of the Law Society of Scotland and of the Constitution Committee, I urge the Government to clarify their intention on the amount of fees to be charged under the relevant clauses—Clauses 1, 2, 3 and 7—after the Supreme Court judgment is announced, and to come forward with an amendment in this regard before Report, otherwise I will feel obliged to retable the amendments. At this moment, I beg leave to withdraw the amendment.

Amendment 3 withdrawn.

Clause 1 agreed.

1.30 pm

Clause 2: Historical inability of unmarried fathers to transmit citizenship

Amendments 4 to 6 not moved.

Clause 2 agreed.

Clause 3: Sections 1 and 2: related British citizenship

Amendments 7 to 9 not moved.

Clause 3 agreed.

Clause 4: Period for registration of person born outside the British overseas territories

Amendment 10 not moved.

Clause 4 agreed.

Committee adjourned until a convenient point after 2.15 pm.

House resumed.

The Deputy Speaker (Baroness McIntosh of Hudnall) (Lab): My Lords, I probably should have consulted my absolutely authentic book of words, but I believe it is now clear that we wish to resume the Committee at a convenient moment after 2.15. I think I must have had a particularly bad night, and I do apologise to the House—no sympathy required—for the slight confusion. We will now take the lunchtime business.

Draft Revision of the Highway Code

Motion to Regret

1.33 pm

Moved by ***Baroness Jones of Moulsecoomb***

That this House regrets the draft Revision of the Highway Code because, despite making important changes to protect road users from harm, Her Majesty's Government has failed sufficiently to educate the public on the changes.

Relevant document: 24th Report of the Secondary Legislation Scrutiny Committee (special attention drawn to the instrument)

Baroness Jones of Moulsecoomb (GP): My Lords, I was so sorry to have missed the earlier debate in full: it looked very exciting—and I rather think that this debate might be exciting as well. There might be quite a lot of opposition.

In spite of having tabled a regret Motion, I am, in fact, fully in favour of these changes, and I congratulate the Government on their foresight in actually bringing them in to make our roads safer. It is absolutely brilliant. I wholeheartedly welcome the changes to the Highway Code. They try to create a situation on our roads where those who can do the greatest harm have the greatest responsibility to reduce the danger that they may pose to others. That means that a cyclist should assume responsibility for the safety of those walking; and a driver has greater responsibility to look out for those cycling, horse-riding and walking. [*Interruption.*] Shush!

It means that car drivers do not turn at junctions when someone is waiting to cross the road—although I have to say that I thought that was the rule already, and I always stepped out fearlessly, scowling at the drivers. So I am glad that that change is being made. It means that drivers should not cut across people on cycles and horse-riders travelling straight ahead when the drivers are turning at a junction. It means that drivers use the "Dutch reach", using their left hand to open the door, which makes the driver look over their shoulder to check for nearby road users.

All this is common sense, so I am quite curious about what people perceive as the problem. In fact, of course, the answer is that many drivers believe that might is right: the bigger your vehicle, the more right of way you have. In the UK, drivers are still buying bigger and more polluting vehicles. These are safer vehicles—but only for them, the drivers. Road casualties have fallen a lot over the past three decades, but that is because far fewer car drivers are being killed or injured, because cars are safer for their drivers. The number of

[Baroness Jones of Moulsecoomb]
pedestrians killed or injured in busy cities such as London has plateaued rather than declined. We made safer vehicles but we did not create safer roads.

Many drivers think that they are beyond the law. In 2018, a staggering 540 people were injured or killed every week in Britain. That is the most phenomenal cost in all sorts of ways. It costs the NHS; it costs the emergency services; it costs social services to mop up after these collisions and injuries, some of which of course are life-changing. We have lawless roads, and the reason for that is that road crime is not treated in the same way as regular crime. I have always supported our amazing traffic police; they do an incredible job against the odds. They make the most astonishing number of arrests because, when they see an illegal car moving around and they stop them, they quite often find that the drivers are criminals: they have drugs and weapons and all sorts of stuff in their car.

The problem is that many drivers will pay as much attention to these changes in the Highway Code and the guidelines as Boris Johnson did to the Covid rules. Our only hope is a massive publicity campaign to convince the majority of people that being a responsible driver or a responsible cyclist—or even a responsible pedestrian—is a matter of courtesy, caring and common sense. We need the same energy that went into the TV ads for the Green Cross Code, drink-driving or "clunk-click". Without that, I am worried that these changes will escalate injuries on the road. Pedestrians will assert their right to cross the road at a side junction, and car drivers or cyclists will not stop. Pedestrians will be in the right, but that will not stop them being hurt.

These new measures need immediate publicity, including notices, for example, sent with every notification that drivers receive. I found out about these changes only by accident, and if I, who care a lot about road safety and road danger, found out about them only by chance, there are going to be an awful lot of people who have not heard about them yet. So I appeal to Ministers to spend the money to make these Highway Code changes relevant and noisy. I hope they will be a small step towards changing the culture of lawless roads, which leaves so many grieving for lost family and friends and many thousands suffering from life-changing injuries. I beg to move.

Baroness McIntosh of Pickering (Con): My Lords, I congratulate the noble Baroness on securing this debate and on so ably setting out the changes, on which I will not elaborate. It is not entirely clear whether cyclists or drivers of e-scooters will be covered by these changes as well, so I hope that the Minister might address that in her reply. Does she agree that one of the difficulties of the present Highway Code—and, in particular, with these current changes—is that cyclists can, on occasion, display insufficient regard for other road users. I echo what the noble Baroness, Lady Jones of Moulsecoomb, said about insufficient awareness.

I speak from the vantage point of a rural dweller who travels on country lanes a lot by car rather than by bicycle, particularly in North Yorkshire and County Durham. What concerns me is that, if I understand the Highway Code changes correctly and cyclists are to be asked to cycle in the middle of a country lane, it is going to be impossible for other road users to pass them safely. I want to flag this up to my noble friend the Minister, since in the pubs and tea rooms of North Yorkshire people will talk of little else until these come into effect. It would be helpful to know whether that is the case. Also, with regard to cycle lanes in cities, is it the case that cyclists are now requested not to use them if they do not feel safe but to revert to using the lane?

Finally, my noble friend is aware of my Bill to amend the Road Traffic Act 1988 and the Road Traffic Offenders Act 1988, extending the Road Traffic Act 1988 to include the offences of causing death by dangerous cycling, causing serious injury by dangerous cycling and causing death by careless or inconsiderate cycling. The reason why I raise this in the context of the Highway Code is to ask whether we require primary legislation to make these changes. I was delighted to hear the Secretary of State announce that the Government are now prepared to make these changes. Do we need legislation? Can I lay my Bill to rest, or do we actually require primary legislation? If so, when do the Government intend to bring that legislation forward?

Lord Young of Cookham (Con): My Lords, as a former Secretary of State for Transport and a keen cyclist, I very much welcome the new Highway Code and congratulate my noble friend and her colleagues in the department on producing it. It makes a very sensible adjustment in terms of the trade-off between pedestrians, cyclists and horse riders on the one hand and those driving cars and motor vehicles on the other. As such, it goes with the grain of the Government's overall transport policy of promoting sustainable forms of transport. My only reservation, which has already been touched on, is not about the measures themselves but about the information vacuum that has been filled by some inaccurate press reporting, which I will come to in a moment.

Four years ago the Government committed to revising the Highway Code to improve safety for pedestrians and cyclists. Cycling UK, along with Living Streets and others, put forward proposals that were then refined by the snappily named Highway Code review stakeholder focus group. These went out to consultation, and what is before us basically reflects those proposals.

I welcome the principle that those using the roads in vehicles with a greater potential to endanger others have a greater responsibility to avoid doing so, which seems to me to be self-evident. I welcome the advice to cyclists to stay away from the edge of the road and from potholes and parked cars. This has actually been the advice given to cyclists for the past 16 years in the government-backed Bikeability training scheme, but it has only just made it into the Highway Code. It does not advise cyclists to pedal in the middle of the road or to ride two abreast all the time, but it does say that that can happen in certain situations when it is safer to do so.

On cycle lanes, which I welcome—indeed, I successfully campaigned for the first one in Hyde Park in the 1970s—perhaps cyclists should be encouraged to use them where we have them. I know that car users are irritated to find cyclists on the road when there is a parallel cycle lane. The relevant rule 140 says:

"Bear in mind that cyclists are not obliged to use cycle lanes or cycle tracks."

Perhaps an additional few words could have been added, saying, "But they are strongly advised to do so, not least for their own safety." Related to that, could my noble friend alert local authorities to the opportunity to redesign junctions crossed by cycle tracks, giving them priority over vehicles turning across them?

My concern, shared by others, is that so far there has been an inadequate public awareness campaign to publicise these changes. We have seen stories that drivers will be fined £1,000 for opening a door with the wrong hand, which simply are not true. I welcome the proposed factual awareness campaign. I would be grateful if my noble friend could perhaps concede that there could have been more publicity before the scheme came into effect—as happened, for example, with the publicity before the Covid regulations were passed, so there are precedents. Can she say a little more about the timing and the budget for phases 1 and 2 of the public awareness campaign?

Against that background, I very much welcome the new Highway Code.

Baroness Hodgson of Abinger (Con): My Lords, I thank the noble Baroness, Lady Jones of Moulsecoomb, for securing this debate. As has been mentioned, this statutory instrument enables the proposed revision of the Highway Code aimed to improve safety for cyclists, pedestrians and horse riders when using the highway, but 71% of the members of IAM RoadSmart, the UK's largest road safety charity, feel that it will increase conflict.

1.45 pm

I declare my interest: I am a driver, a pedestrian and a horse rider, and there are cyclists in our household. Surely it is important that everybody using the road takes responsibility for themselves and for other people's safety. I think it is regrettable that these changes are being put through Parliament in such a way as to avoid proper scrutiny and debate. I understand that they are to be introduced almost immediately, but the general public know absolutely nothing about them.

I question whether some of the proposed changes are realistic. For instance, the recommended two metres of space for passing bicycles and horse riders is welcome, but anyone who has been on our single-track country lanes will know that this is simply impossible. Why are cyclists and horse riders not also made to give two metres' berth to other road users?

Courtesy and consideration need to be exercised on the roads, not just rights. When I am riding a horse on narrow lanes and encounter a car, I find a gateway or a drive to pull into to let the car pass. I notice that HGV drivers often do the same when they find a long queue behind them, but many bicyclists do not, and they sometimes create huge tailbacks.

I am pleased that the revised version says that cyclists must give way to horses on bridleways. Many horses are terrified of bicycles, but off-road cyclists often appear to be completely oblivious to this fact, to the safety of walkers and that of their dogs, and to the fact that they are not meant to cycle anywhere but on bridle paths. How can this be enforced, and how can these cyclists be held to account?

I know that many noble Lords in this House are cyclists, and I am sure they all cycle in a considerate and responsible manner. However, one has only to spend a little time on London's streets to see that this is not always the case. Indeed, the recent IAM survey found that 57% of cyclists admitted to red-light jumping. Just last night, coming across from my desk to the House, I saw four bicyclists go through red lights. They are never apprehended. Two years ago I was knocked over on that crossing and, even though a policewoman took evidence, nothing was done about the bicyclist.

Roads are going to be safe only if everyone obeys the rules. Surely serious thought ought to be given to bike owners being registered and therefore identifiable. This would also help with crime, as bicycles are often used for getaways, as well as tackling the off-road issues that I mentioned earlier. Of course, the safest way is to separate cars and bicycles, so I applaud the effort to create new bike lanes. Where there are bike lanes, I really think bicycles should stay in them.

Changes to rule 204 emphasise that, in any interaction between road users, those who cause the greatest harm have the greatest responsibility to reduce the danger or threat that they pose to others. The last thing any driver would wish is to be involved in an accident, and especially to hurt someone; that has huge mental health ramifications for everybody involved. But while I recognise that a lorry or car can create the most damage, it feels as if the blame set out by these revisions is always one-way. Sometimes the fault is genuinely with other road users who are not abiding by the rules—going too fast, jumping red lights or overtaking on the inside. When you are in a line of cars it is often impossible to see a bicycle whizzing up the inside or people weaving in and out of traffic, not signalling properly. How are those going to be fairly addressed under this new hierarchy? Can the Minister assure me that those responsible for an incident will be treated equally, regardless of mode of transport?

Following last week's debate, I trust that e-scooters will not be introduced on to our roads. You do not need a consultation or trial period to see how incredibly dangerous these things are.

I hope the Minister can offer some comfort on these specific issues in her response today.

Earl Attlee (Con): My Lords, I am grateful to the noble Baroness, Lady Jones, for raising this important issue. It is not usual for noble Lords to claim in debate that they do not know what they are talking about but that is the position I find myself in. This is despite being, I think, the only person in either House who is an HGV driving instructor, albeit out of date. I will speak from the perspective of a vocational driver.

Yesterday, I tried to obtain a copy of the new Highway Code from WHSmith in Petersfield. I was told that new copies were not due in until April; they had none of the old. I then tried to download an online version but could find only the existing code and the amendments to it, not some form of PDF or the like that would show me the whole code, complete with graphics. Even your Lordships' Library could not do better and we are grateful for the briefing that it has supplied.

[Earl Attlee]

Outside your Lordships' House, I have detected considerable concern about the new and/or amended rules. I hope that my noble friend the Minister will be able to allay some of that. It is important to read these new provisions in the context of the whole code and with the benefit of the excellent and clear graphics that we have come to expect in it. We do not have that, which is why I claim not to know what I am talking about. Most motorists will be in the same position, yet the code comes into operation on Saturday, if I understand matters correctly.

Notwithstanding my limitations, I have a few points to make, which are shared by many who I talk to. Ever since I first drove an HGV in about 1976, I have recognised, as I was taught, that there is a hierarchy of road users. The HGV drivers were at the top while pedestrians and children were at the bottom, and most vulnerable. I am therefore perfectly content with the new hierarchy. It seems that the whole point of vocational or professional driving is to ensure that the needs of other road users are respected and met. The noble Baroness, Lady Jones, made the point that might is not right; she is perfectly correct, and I was always trained and taught that HGV drivers should not abuse their bulk or weight.

On priority for pedestrians at junctions when a vehicle is turning off the main road, it seems that the Minister has placed an imaginary zebra crossing at every such junction. However, a zebra crossing has several other features to enhance safety. There are the flashing yellow lamps and the zig-zag lines that have the effect of prohibiting waiting, unloading, parking or overtaking. When I was training HGV drivers to negotiate a zebra crossing, I would make sure that they identified the hazard in good time and ensured that there was no possibility of any pedestrian getting to the crossing before they did. This is easy enough, because of the layout that I have referred to. There should never be a need for heavy braking, let alone an emergency stop, on the approach to a zebra crossing. However, the same cannot be said for these junctions and, not having been able to study the code properly, I and others are deeply concerned. I hope that my noble friend the Minister can provide reassurance.

Turning to the new rules regarding cyclists, I have always been trained to respect cyclists and take special care with them. As your Lordships would expect, I always do so. I am currently undertaking a lot of driving on rural A roads and unclassified roads. I understand my travel time to within a few minutes on a 45-minute journey. When there is no possibility of safely passing a cyclist or a group of them, I will hang back so that they can enjoy their ride without feeling under pressure. When conditions are more propitious, I will move closer and overtake safely, giving them plenty of room. This is what they expect of me.

Meeting the needs of cyclists, which I am happy to do, never causes me measurable delay on my journeys. Since the Conservative-led Government so wisely increased the speed limit for HGVs on a single carriageway, neither do HGVs. What does cause significant delay is a few older motorists driving at far below the prevailing speed limit. In my opinion, they would fail if on a driving test for failing to make normal progress. Not only can I not pass them safely, HGVs cannot do so either but that is not the problem for today. My concern is that the side-by-side rule for cyclists, which I hope my noble friend the Minister will carefully explain, will have the same effect as a car being driven far too slowly and without the possibility of a safe overtake. It could not only increase journey times but seriously damage the relationship between responsible and skilled motorists and cyclists, as pointed out by my noble friend Lady Hodgson.

I have one technical question for the Minister regarding the code but I expect that she will have to write to me. The code makes it clear that a warning triangle should not be placed behind a broken-down car, especially on a motorway. There must be a good reason for this but it is contrary to advice, and sometimes to the law of many countries on the continent. Our continental friends do not get everything right in terms of road safety. Can my noble friend please write to me and other noble Lords speaking to explain the reasoning for this rule? My greatest concern is the non-availability of the Highway Code in its complete form, so that we could understand what is meant in the whole document.

Baroness Randerson (LD): My Lords, I thank the noble Baroness, Lady Jones, for bringing this debate to the House today. I agree completely with the concerns expressed by those noble Lords who have already spoken in it. Having said that, of course one welcomes an update to the Highway Code. I welcome the reordering and clarification of the hierarchy of road users and the concept of basing it on vulnerability. I also welcome that there is a precise spelling out of the rules on cycling and safety.

However, it is surreal that e-scooters are not mentioned in this document. I realise that the Minister will tell us that the Government are waiting for the pilot project results but, in the meantime, tens of thousands of them are out there on our pavements and driving heedlessly through red lights. There is a great deal, which is welcome, on how to deal with horses. I live in an urban area; I have lived in my house for 40 years and cannot recall ever seeing a horse walk down the road, but every day I see dozens of illegal scooters going down it. It is all the more concerning because rule 42 refers specifically to mobility scooters being allowed on pavements. That is right, of course, but given the present information vacuum it is likely to mislead people. Even a simple restatement of the current rules—that e-scooters are illegal, except in pilot areas—would have been a welcome clarification.

I also share the concern that, as I read it, having spent many millions of pounds on developing cycle lanes, which was greatly welcome, cyclists do not actually have to use them. One of the great things about cycle lanes is that, as a motorist, I can say that you know where the cyclist should be, so you know how to use them. The fact that cyclists may now feel that they can, rightly, go to other parts of the road is a matter of concern.

2 pm

My major concern is the timescale because, as noble Lords have said, this comes into force in two days' time, in the face of almost total public ignorance.

How will it be fair if a police officer decides that they wish to enforce some of these new rules in the next week or two, when the Highway Code is not available either online or in bookshops, as the noble Earl just spelled out? When will people doing the written part of the driving test have to answer questions using this new information? Will it be immediately or will there be a time lag before people have to have knowledge of the new provisions?

I realise that there is the 40-day rule about implementation but, to be honest, it is clearly in the Government's power to change that. I draw attention to the concerns of the Secondary Legislation Scrutiny Committee and the Government's astonishing defence that the printed copies will only be available later on because there is an acute paper shortage—I had not heard about that—and because the price is too low for the booksellers to stock it. I have two points on that. First, increase the price so that booksellers will stock it. Secondly, you do not need to go to a bookshop to buy books any more: you can buy them in supermarkets, which stock an awful lot of things that are less than £2.50. Buy it along with your newspapers and birthday cards, if the booksellers do not feel that it is worth while to stock.

There needs to be a much more ambitious approach to publicity. People will not buy or download something that they have never heard of. We need modern methods of publicity—emails to us all or tweets—as well as the usual visits by police officers to schools and youth clubs. I have some specific questions for the Minister. How much of the Government's budget is dedicated to publicity? How much extra or additional money will be allocated to police and local authorities so that they can fulfil their essential roles in educating people on this? What publicity methods do the Government plan to use in the modern age, when many people do not watch television news and certainly do not watch public information films? Will they urgently address the need to provide paper leaflets as well, because a lot of the most vulnerable people are elderly and do not necessarily have the skills to find these things on the internet?

Lord Tunnicliffe (Lab): My Lords, I, too, thank the noble Baroness, Lady Jones, for initiating this debate. The changes to the Highway Code are a welcome addition to help cyclists, who are feeling increasingly unsafe. However, without any effort to publicise these changes, they risk being entirely meaningless and, indeed, unsafe. With the changes now imminent, the Government should be leading a national campaign to make the public aware of the new code, as part of a comprehensive national safety campaign. Instead, Ministers are missing in action.

The justification for these changes is in the Government's own data, which reveals that 66% of cyclists think that roads are too dangerous. As part of the transition to net zero, we all need people to cycle more often than drive, but clearly more people than ever are being put off doing so because of the risk. More and more cyclists are now being killed or seriously injured on UK roads. In 2020, the number killed or seriously injured was 4,320, with the number killed being 140. This is having a knock-on effect on the number of people prepared to bike, given that 66% of people thinking that it is too dangerous to cycle is a 30% increase on a decade ago.

It is worth noting that the same survey, the National Travel Attitudes Study, found that most would be more prepared to cycle if new infrastructure was introduced. Some 55% said that segregated cycle paths would make them more likely to cycle, while 49% said the same for well-maintained road surfaces. This shows that it is entirely within the Government's gift to encourage people to move from driving to cycling. Unfortunately, the Government are still refusing to release the remainder of the £2 billion of funds promised for active travel.

Although the new changes to the Highway Code are welcome, few people are aware of them. The AA has conducted research that has found that many drivers have no intention of looking at the new rules, while Cycling UK warned of the dangers of a lack of official publicity—no wonder, given that there seems to be no concerted effort to make the public aware of these changes. In response to a Written Question by the shadow Transport Secretary last month, a Minister responded that an awareness-raising campaign would not begin until February, with a broader behaviour change campaign later in the year.

I have discovered in recent days that even those who actively seek to learn about these changes will struggle to do so. I have had a similar experience to that of the noble Earl, Lord Attlee. On Monday, I visited the Waterstones bookshop in Trafalgar Square to purchase a copy of the new Highway Code—I thought that, if it is anywhere, it will be there—only to be told that none was available in any store and, further, I was advised that none was expected until April. Can the Minister confirm whether the public are currently able to purchase a copy of the updated Highway Code anywhere?

Although the amendments have been published, I, like the noble Earl, Lord Attlee, was unable to find the full amended version of the Highway Code online. Can the Minister confirm that this has not been published online? I reckon myself to be a black belt in googling—that is the only way that I can survive in this role—so I tried again last night just to make sure that it had not crept in in the previous 48 hours. I went on GOV.UK, where, if you simply click on "Highway Code", you find a Highway Code and you think, "Oh, that's it", until you notice that that Highway Code was last revised in 2015. I persevered and moved around that site and I was treated to eight newspaper-type articles about how the new code was changed, but nowhere could I find a copy of the code so that I could view the whole thing holistically.

It is important to understand that this revision is not just a tweaking of the present rules, responding to the changing world of electric scooters et cetera—I wrote that before I discovered in this debate that it makes no reference to electric scooters. It is about—this is crucial—a fundamental change, requiring road users to do things differently. It is not a tweak or a refinement; it is about fundamental change. This is not being adequately communicated.

Consider a scenario where a well-informed cyclist who believes that he or she has the right of way meets an ill-informed HGV driver who believes that he has

[Lord Tunnicliffe]
the right of way. This is exactly the scenario set out in the code, where the cyclist gets run over. The cyclist presumes that they have the right of way to proceed and the HGV driver believes that he has the right to turn. The outcome could be catastrophic: another cyclist death. Were such deaths taken into account in the decision not to prepare a full impact assessment? Given the department's lamentable performance in communicating the changes, surely the scenario that I have described is credible, as are many deaths in the next 10 weeks. These deaths will be the responsibility of the DfT and its leader, the Secretary of State.

The Parliamentary Under-Secretary of State, Department for Transport (Baroness Vere of Norbiton) (Con): My Lords, I am very grateful to the noble Baroness, Lady Jones, for giving noble Lords the opportunity to discuss the Highway Code changes today. It has been a good debate with some very interesting contributions, which I will come to. I would first like to set out the Government's position clearly so that we have a good framework from which to delve into some of the points raised.

I note at the outset there were some changes to the Highway Code just a few months ago which did not attract a debate, and it has not been republished since. Putting that to one side, for any changes there is a parliamentary process which needs to be gone through. At any time, they could be prayed against, in which case those changes would not happen. I could also imagine, had I started communicating this 40 days ago, noble Lords being very cross with me for communicating something Parliament had not yet agreed. There is definitely a balance, but the end of the 40-day period has now come almost to a close.

Noble Lords will note that only yesterday we issued a press note to stakeholders and the media, which essentially kicks off the process of informing and educating the road-using public. I agree with noble Lords that most people do not read the Highway Code; it is not where they get their information from at all. It is all about enabling us to communicate with trusted stakeholders and the public via the media and paid-for promotion, which is also part of what the Government intend to do.

Keeping our roads safe for everyone, in particular those most at risk on our roads, is one of my key priorities. The Highway Code and the rules therein are central to that mission. I noted that my noble friend Lady Hodgson said that the roads will be safe only if everyone obeys the rules. I agree with her; everyone must obey the rules. But I am the Roads Minister, so of course I would think that. That is for pedestrians and cyclists, but it is not just about obeying the rules—that is a very harsh way of looking at it. It is also about respect and consideration for other people travelling on the roads. I will come back to that in relation to rural roads, where I sometimes feel that the motorist feels they have the run of them.

At the heart of these changes is active travel: cycling and walking. The Government would like to increase the number of people doing both and these changes to the Highway Code should ensure that they can do so as safely and respectfully as possible, because everybody has the right to use the road. We want to make sure they do so in a safe, considerate and responsible manner. We want to encourage people to think about how they travel and choose more sustainable and active modes of it. One of the biggest barriers to people choosing to cycle or walk is safety, and the perception of safety. It is often due to the users of motor vehicles of whatever type who also choose to use the roads that that perception—or reality—of a slightly less safe environment comes to pass.

These proposed alterations to the Highway Code seek to improve safety for cyclists, pedestrians and horse riders and make active travel an attractive alternative to using the car. However, they are in no measure anti-motorist. We had an enormous response; I think 21,000 people responded to the consultation and we believe around 60% were motorists. I think that motorists want a calm, respectful and law-abiding road network as well.

There are three key alterations in these changes. The first is on the hierarchy of road users, which was ably explained by my noble friend Lord Attlee. We are all cognisant that those people driving the heavier and faster vehicles are able to cause greatest harm. The second is clarifying the existing rules on pedestrian priority on pavements, and that drivers and riders should give way to pedestrians crossing or waiting to cross the road. Finally, we are strengthening guidance on safe passing distances when overtaking cyclists or horses. Guidance on safe passing distances has existed for quite some time—this is not a new invention. We have to look at a positive shift in road user behaviour.

2.15 pm

I think it might have been my noble friend Lord Attlee who asked whether, if you are turning left, for example, you should give priority to a pedestrian. Yes, you should, but you should not be going around a left-hand turn at 30 miles per hour anyway. You should be able to stop safely if there is a pedestrian waiting to cross. Just stop safely, let them pass and continue with your journey, and nothing bad will have happened.

I take issue with my noble friend Lady Hodgson, who unfortunately cannot see cyclists whizzing up on the inside. They have been allowed to travel up the inside of a car for quite some time; that is why the left-hand wing mirror is there—to enable you to check your wing mirrors before you make a left turn. Just as you would not, if you were on the outside of a car, turn left in front of it to go down a left-hand side street, the same applies to a cyclist. Do not cut in front of them—wait for them to pass, wait for it to be safe, and do not whizz around the corner at 30 miles per hour.

We are going to face some challenges, but it will lead to a much more respectful environment on our roads. It is certainly needed, having suffered some terrible road rage yesterday involving a gentleman throwing an apple at my car. I had done nothing wrong—indeed, I was not even the driver. But let us move on.

I turn to the publicity for the changes, which is incredibly important. I have already said that the Government would not have embarked on a massive publicity campaign prior to the completion of the parliamentary process. That would have been wrong. However, there has been an enormous amount of debate about the proposals dating back to 2018. There

was the consultation in October 2020 and the response to the consultation in June 2021; it filled up a lot of column inches in places where they were supportive of the changes and places where they were not. The debate is already out there. I believe that people are starting to become aware that there will be a change.

Now it is up to the Government to set out exactly what those changes are. We have set out some myth-busting summaries of what is and is not changing. For example, we are not saying that cyclists should cycle down the middle of the lane. That is not what the rules will say; they say that you might consider it if it is safer to do so on quiet roads or approaching a junction. Ditto, the rules do not say you should cycle two-by-two down the road; they say you might consider doing so on quieter roads and if it is safe to do so, et cetera. Much of the Highway Code, noble Lords will be aware, is not prescriptive; it is not set in law at all. It is a code for using the road. The noble Baroness, Lady Randerson, said "What are we going to do about the police if they pull someone over on the basis of these new rules on Monday?", but we have not changed the law, we have changed the code.

Baroness McIntosh of Pickering (Con): Will my noble friend permit me to intervene? I think the concern is this. I was pinged with the press notice, for which I am very grateful, because I subscribe. I would just like to flag up these two sentences:

"Many of the rules in the code are legal requirements, and if you disobey these rules you're committing a criminal offence. If you do not follow the other rules in the code, it can be used in evidence in court proceedings to establish liability."

We are changing the law here, not the guidance.

Baroness Vere of Norbiton (Con): That is exactly what I am trying to say. A "should" or "should not" that is in the code can be used. Going back to my noble friend Lord Attlee's point about an HGV and a cyclist going around the corner and having an incident, whoever is at fault, the fact that they were going against the Highway Code would be a factor if it were ever to reach court. But this is not necessarily about the changes—

Earl Attlee (Con): My Lords, it was not my point; I think it was made by the noble Lord, Lord Tunnicliffe. But I would like to intervene and point out that an HGV driver is trained to never endanger a vulnerable road user. The only problem arises when the HGV driver, for one reason or another, is not aware of the vulnerable user's position.

Baroness Vere of Norbiton (Con): I am grateful to my noble friend for pointing that out. I apologise for assigning the wrong speaker to that point, but it remains the case that noble Lords should be cognisant about what the Highway Code is and is not, and what certain rules in there are or are not. Some reflect what the underlying law says, and others are in the code because they are guidance on how one operates the road system. I will not dwell on that further, otherwise I could go into a long treatise on road safety and how it works. Let us not do that, because I want to come back to communications.

We are going to use the free channels as much as possible, via the press notice and our trusted stakeholders, and we will then use the THINK! campaign. The code will come out over the weekend, once the parliamentary process has been completed. Therefore, our paid campaign will start in February; the noble Lord is quite right. It will be badged under the very successful THINK! campaign, and over half a million pounds has been targeted towards that. The communications plan has been tested with all trusted stakeholders. It is slightly different from the old days—the Clunk Click days—because, of course, audiences have massively atomised, so they may not see something on a terrestrial television network. Quite frankly, I have not heard of many of the channels we use either, but I am reassured that people actually watch them.

I turn very briefly to some of the points raised. On the timing of the communications, there is the initial hit in February. Obviously, we will continue with that and will have another burst as we head into the summer because that is when cycling becomes a greater issue.

Should e-scooters be allowed on British roads, we would revise the Highway Code accordingly.

I will come back to the issue of rural roads. I spoke to my noble friend Lady McIntosh yesterday about this, and she asked if I had ever driven on a rural road—yes, I have, and one of the things I am astounded by is the speed at which people travel on those roads. We know that they were never designed for cars. They started off as tracks from one village to another. Many vehicles hare along them at great speed, and they are some of our most dangerous roads in the country. I am afraid that if you cannot overtake a horse because it is on a rural road—I take my noble friend Lady Hodgson's point that the horse rider might want to just move over periodically—you will just have to wait behind the horse. It is okay; nothing bad will happen. You should do that instead of trying to squeeze your way past and haring off into the distance on a very dangerous rural road. We have to calm down on those sorts of roads, because they are incredibly dangerous. They kill far more people than cyclists are killed. We really need to get back that respect for cyclists, horse riders, pedestrians—all the people who are out enjoying the countryside.

On my noble friend Lord Young's point, I can say that we have recently revised LTN 1/20, which sets out how cycling infrastructure should be constructed. That will, of course, enable us to spend the money—about which I am going to write to the noble Lord, Lord Tunnicliffe, because I sense that I am running out of time and the House has a Bill to be cracking on with.

I will very happily write with further details. On the point on the shortage of paper, I had no idea that that was the reason, but I am aware that we do not update the Highway Code in paper copy very often. As the noble Baroness, Lady Randerson, will be aware, we updated the Highway Code for the smart motorway changes. Again, we would not have reprinted it after that, but most people do not access the Highway Code via a printed copy.

I will certainly go back and look through *Hansard*, because so many good points were raised and I have not been able to cover them all. I am grateful to all noble Lords.

Baroness Randerson (LD): Before the noble Baroness sits down I ask that, in the letters she will undoubtedly write to us, she will address my very specific questions about budgets for publicity and for the police and local authorities to spread the word on this. Can she also clarify when the new information will have to be known by people taking the driving test written examination?

Baroness Vere of Norbiton (Con): I will.

Baroness Jones of Moulsecoomb (GP): My Lords, I thank every noble Lord who has taken part in this debate, and I particularly commend the Minister. It is such a pleasure to agree with a government Minister and to hear her spirited defence of old and new regulations.

There are a lot of issues here and, of course, I disagree with quite a lot of what has been said. We always have to remember that car drivers are subsidised by the rest of us. They are subsidised by cyclists, pedestrians and, obviously, other car drivers. Please let us not think that car drivers have the right to do whatever they like on our roads.

There are too many issues to cover, but on the issue of cyclists killing other people and so on, that hardly ever happens. In fact, 99% of pedestrian deaths are from motor vehicles. Please let us not forget that. I was going to refer to what the noble Baroness, Lady Hodgson, said, but the Minister corrected that. Cycle lanes are often dangerous, and the infrastructure has to be looked at.

The noble Baroness, Lady Randerson, talked about the budget. That is quite important, because I think there is £500,000 at the moment, which will be nowhere near enough. I recommend that if government Ministers could get that out there and notify people on prime TV time—talking about this instead of cake—that would obviously help to spread the word.

The Government have been very slow to produce a draft of these changes. In fact, they were told back in July 2018 that there was a need for a public awareness campaign, yet the relevant people looking at it were given the details only a week ago.

I thank the noble Lord, Lord Tunnicliffe, for his positive and sympathetic response. As somebody who does not cycle any more, because I walk, I am well aware of the dangers of cycling in London and other places, including rural areas, and I commend the Minister for saying that we should show some patience and courtesy. It is perhaps time that we all learned that. I beg leave to withdraw my Motion.

Motion withdrawn.

Nationality and Borders Bill

Committee (1st Day) (Continued)

2.28 pm

Amendment 11

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

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

"Provision for Chagos Islanders to acquire British nationality

(1) Part 2 of the British Nationality Act 1981 (British overseas territories citizenship) is amended as follows.

(2) After section 17H (as inserted by section 7), insert—

"17I Acquisition by registration: descendants of those born in British Indian Ocean Territory

(1) A person is entitled to be registered as a British overseas territories citizen on an application made under this section if they are a direct descendant of a person ("P") who was a citizen of the United Kingdom and Colonies by virtue of P's birth in the British Indian Ocean Territory or, prior to 8 November 1965, in those islands designated as the British Indian Ocean Territory on that date.

(2) An application under this section must be made before the date specified in subsection (3).

(3) The specified date means—

(a) in the case of a person aged 18 years or over on the date of coming into force of this section, five years after the date of coming into force of this section, or

(b) in the case of a person under the age of 18 years on the date of coming into force of this section, before they reach the age of 23 years.

(4) A person who is being registered as a British overseas territories citizen under this section is also entitled to be registered as a British citizen.

(5) No charge or fee may be imposed for registration under this section.""

Member's explanatory statement

This amendment would allow anyone who is descended from a person born before 1983 on the British Indian Ocean Territory to register as a British overseas territories citizen. They may also register as a British citizen at the same time. Both applications would be free of charge. The application must be submitted within 5 years, or in the case of a minor born before the date of coming into force, before they reach 23 years old.

Baroness Lister of Burtersett (Lab): My Lords, I thank the noble Baronesses, Lady Ludford and Lady Bennett of Manor Castle, and the noble Lord, Lord Woolley of Woodford, for their support for the amendment. The amendment would extend the right to register as citizens to the descendants of Chagossians exiled from their homeland, subject to a time limit. I am grateful to Rosy Leveque of BIOT Citizens for her help with it, and to Chagossian Voices for its briefing.

To understand the case for this amendment, a bit of history is necessary. Back in the 1960s and early 1970s, the inhabitants of the Chagos Archipelago—a British Overseas Territory which became part of the British Indian Ocean Territory—were evicted by the then British Government to make way for a US airbase on Diego Garcia, the largest of the islands. They have never been allowed to return. Not only did they lose their homeland, but their grandchildren and other descendants have no right to British Overseas Territory citizenship and, therefore, to British citizenship. Only those born on the islands and the first generation born in exile have such a right. I should perhaps make it clear that the right to citizenship should not be confused with the quite separate right of return, which is not affected by this amendment, important as it is.

The Chagossians were deported to Mauritius and the Seychelles and now around 4,000 live in the UK, but because of the unjust citizenship rules many are undocumented and children have been and continue to be deported. Families have been broken up and communities are divided, as some members have access to citizenship rights while others do not. This has caused hardship for many and has aggravated the

trauma associated with exile. The lack of citizenship rights has created insecurity and made it harder to integrate into local communities.

In the Commons, in Committee, the Minister, Tom Pursglove, expressed some sympathy for the case made for the extension of citizenship rights and acknowledged that

"the Chagossians present a unique case."—[*Official Report*, Commons, Nationality and Borders Bill Committee, 4/11/21; col. 644.]

He said he would "reflect further". It all looked rather hopeful but when the Conservative MP, Henry Smith, raised the issue on Report, what looked like a half-open door was slammed shut by the Immigration Minister, Kevin Foster, which was very disappointing. Mr Smith emphasised the anomalies created, the injustices caused and that we are talking about no more than a few hundred to the low thousands of people who would benefit. So far, BIOT Citizens has identified 500 descendants. What is at stake is a small concession but one that would make a huge difference to the lives of those affected. It would also have symbolic importance for a people who have lost their homeland through no fault of their own.

Mr Smith's amendment was rejected in a single paragraph. There appear to be two strings to the Government's case. The first is that the amendment

"would undermine a long-standing principle of British nationality law … under which nationality or entitlement to nationality is not passed on to the second and subsequent generations born and settled outside the UK and its territories, creating quite a major precedent."—[*Official Report*, Commons, 7/12/21; col. 258.]

I am sure noble Lords can spot what a specious argument this is in this context. The only reason the Chagossians in question do not meet this condition is because they are descended from people who were evicted against their will from a British Oversees Territory. Forced and continued exile prevents them from meeting these long-standing conditions. It is not clear that the Government really understand this, but as the Junior Minister acknowledged in Committee, it is "a unique case" so no precedent would be set, unless the Government have plans to evict others from their British Overseas Territory homelands. I hope and trust that, if the noble Baroness—I think it is the noble Baroness—the Minister has been briefed to use this argument, she will scrap it now.

The second government concern is more credible. They do not want to create an open-ended right in the way that the Commons amendment did, and I think that is reasonable. This amendment therefore creates a five-year time limit for applications, following the Windrush precedent in the British Nationality Act 1981. Those aged under 18 at the time of enactment will have up until the age of 23. I am offering the Minister an opportunity to add something positive, that would be widely welcomed, to a Bill that—with very few exceptions to be found in this part of it—has been widely condemned. If this particular way of capping entitlement is not to the Government's liking I am, of course, open to discussions about alternative means, such as a generational cap. I very much hope that the Minister will accept the amendment or a revised version of it for Report. Is she willing to meet virtually with me and other signatories to the amendment and those advising me to discuss how we might proceed? I plan to return to the issue on Report to try to put right what Henry Smith MP correctly described as an "appalling injustice". I beg to move.

Baroness Ludford (LD): My Lords, I thoroughly endorse what the noble Baroness, Lady Lister, has said, and I am very pleased to co-sign this amendment. In the first two groups that we discussed this morning, we talked a lot about righting injustices. This is an opportunity to right a gross historic wrong—a forced eviction and exile that was, indeed, ruled illegal by the International Court of Justice in 2019.

I was one of those who raised this issue very briefly at Second Reading. I do not think the Minister referred to it in her response, although I know she had a lot of issues to cover. It should be noted, though, that the amendment in the other place from Henry Smith MP at Report stage, which the noble Baroness, Lady Lister, referred to, had the sizeable support of 245 Members, displaying the strength of feeling about the trauma and hardship of the Chagossian community that the noble Baroness, Lady Lister, referred to.

The all-party group on Chagos is a strong and active group that has long campaigned to right, in so far as is possible, the wrongs of the 1960s when, having resisted independence from Mauritius, of which Chagos was part, Britain secretly acceded to an American request to make one of the islands, Diego Garcia, available on a long lease as a "communications hub". Of course, it later became notorious as a site for rendition flights. Anyway, the then British Government of, I am afraid, Harold Wilson, detached Chagos from Mauritius and then emptied Chagos, chucking out its inhabitants. This appeared, apparently, to be compensation for the Americans for the UK declining to get involved in the Vietnam War.

The saga is littered with lies and about-face. The UK told the UN that the Chagos Islands had no permanent population and the Chagossians were merely contract labourers. The British Indian Ocean Territory—BIOT—comprising all the Chagos Islands was detached from Mauritius and, between 1968 and 1973, the entire population of Chagos was removed. Some 2,000 people were deported to Mauritius, some went to the Seychelles and some arrived in the UK, particularly in Crawley, perhaps because it is near Gatwick, in Sussex.

As was discussed this morning, the purpose of Part 1 of this Bill is to address long-standing discrimination in British nationality law. I put to the Committee that Amendment 11 fits perfectly in this context. The original appalling injustice of the late 1960s and early 1970s perpetrated against the Chagossians has been compounded ever since, not only by their continuing enforced exile from their homeland but by the deprivation of their descendants of their citizenship rights. Had they not been evicted but had stayed in BIOT, they would have passed British Overseas Territory citizenship from generation to generation and some would have had the entitlement to be registered as British citizens or at least benefited from the Home Secretary's discretion to so register them.

As the noble Baroness, Lady Lister, said, Ministers in the other place have provided no justification for resisting the rectification of this injustice suffered by

[Baroness Ludford]
the Chagossians. The Government simply rely, in a sense, on the injustice of eviction to perpetuate the injustice. Because we had chucked them out, they were not BIOT citizens and so they cannot benefit from any subsequent citizenship rights. The Government now have an opportunity with this new clause to make substantial amends—hardly complete amends—for the wrongs done half a century ago. I suggest that it is wrong to seek to assert that correcting the nationality law consequences of this wrong would create any wider precedent, as the noble Baroness said.

By the way, if anyone wants to read the history of the UK's perfidious treatment of the Chagossians, I recommend this booklet of a lecture by Professor Philippe Sands QC entitled *Chagos: The Last British Colony in Africa – A Short History of Colonialism, a Modern Crime Against Humanity?* and I will give this to Hansard so it can correctly identify it. I urge the Minister to give a positive response.

Baroness Whitaker (Lab): My Lords, I apologise for not being able to speak at Second Reading. I strongly support Amendment 11, which has cross-party support. I speak as a vice-chair of the All-Party Parliamentary Group on the Chagos Islands.

My noble friend Lady Lister explained powerfully and clearly the position of this small number of people, whose ancestors were wrongly deported from their island homes and who have been caught up in big-power politics, denying them the basic human rights that we in your Lordships' House enjoy. The noble Baroness, Lady Ludford, gave the whole context.

The fact is that, although all UK Governments agree that the exile of the Chagossians from their island homes 50 years ago was wrong and unjust, the present Government continue not to allow resettlement. They cite a range of reasons for continuing this injustice, including conservation, finance, feasibility, security and defence. This is irrespective of the fact that it is well known that the American base on Diego Garcia would not be threatened or impeded by resettlement on the 54 outer islands. Indeed, the UK Government committed in their 1965 Lancaster House agreement to returning the territory

"to Mauritius when no longer needed for defence purposes."

The outer islands are not part of the defence framework. Conservation could be maintained by the Chagossians, as happens in other marine conservation areas, and there are various avenues for assistance with resettlement costs.

It is political will and respect for human rights that are lacking. This Government are acting in defiance of the UN charter on decolonisation and United Nations General Assembly resolutions, and contrary to the opinion of the International Court of Justice and the decision of the tribunal of the UN Convention on the Law of the Sea, in their obdurate refusal to countenance resettlement for this, I repeat, small number of people.

The all-party group strongly supports the international rule of law and the right of return. In respect of this amendment, which follows from all the events we have set out, we firmly believe that, until resettlement is permitted, Chagossians should not have to endure having loaded on them the further injustices that this amendment would remove: the separation of families, deportation and the unreasonable costs of excessive fees. The Government adopting this modest amendment, Amendment 11, would at least go some way to ameliorating the acknowledged injustice that Chagossians have endured by their exile.

Lord Horam (Con): My Lords, as I did this morning, I express great sympathy for the point of view expressed so eloquently and passionately by the noble Baroness, Lady Lister. As she rightly said, the amendment moved in the other place was voted down because it contradicted one of our long-standing, century-long principles for who becomes a British citizen. However, as she pointed out, the new amendment deals with the point made in the other place by putting a limit on the applicability of the proposal, which is good. So we are in a better place than we were then. The noble Baroness also offered to talk, if possible, to see whether there is any other way forward on this problem.

I am also a member of the All-Party Parliamentary Group on the Chagos Islands. I have great sympathy for their position; it is indeed a terrible plight. An evil deed was done to those people. We are talking about perhaps only 500 people now in this context; there are more Chagossians in history, but there are only about 500 of them in this particular category at the moment.

Of course, the real villain here—my noble friend the Minister will be glad to know this—is not the Home Office; it is the Foreign Office, which, frankly, behaved disgracefully. When it examined this matter, the International Court of Justice voted 116 to six against us. For heaven's sake, you can hardly have a bigger majority than that; I suppose you could have 192 to one or something—that is how many nations there are in the United Nations—but it was a comprehensive defeat. Not only that but, as previous speakers have pointed out, the United States Government are helpful on this matter, and the Mauritian Government have pointed out that they are willing to give the US Government a 99-year lease if they wish to carry on having a base on the island. Every base is covered. There really is no case for the Foreign Office to resist doing the right thing. Frankly, it is costing us in the international arena when we are so completely in the wrong on this issue.

2.45 pm

I happened to read—I am a bit of a nerd in this respect—Sir Alan Duncan's diaries. I am probably the only person here to have done so—perhaps I see another who has, over there. They were quite interesting—too long, but interesting none the less. He indicated the contempt with which the Foreign Office holds this point of view: it simply says that the International Court of Justice's decision was advisory. We know that, so why does the Foreign Office not take some advice for once? This is doing us huge damage internationally. There really is no downside to agreeing to a new deal, acceding to the demands of the Mauritian Government and dealing with the Chagossian case.

My noble friend on the Front Bench will be glad to know that, ultimately, this is not her responsibility. None the less, here is an issue that the Government could grasp at the right level, and should do so.

Baroness Altmann (Con): My Lords, I congratulate the noble Baronesses, Lady Lister, Lady Ludford and Lady Bennett, and the noble Lord, Lord Woolley, on laying this amendment. I was not familiar with this issue until it was brought to my attention, but I hope that my noble friend on the Front Bench will be able to take it seriously and address it.

I understand that the British Overseas Territories Act 2002 granted British citizenship to Chagossians who were resettled, but only if they were born in the 13-year window from 1969 to 1982. This has left families divided. For example, Jean-Paul Delacroix was born in 1968, and is the oldest of his siblings. At the age of 64, he wants, but cannot obtain, British citizenship; his siblings can. Having been refused, he is now here illegally and cannot even work to support himself.

In 2017, my honourable friend in the other place, Henry Smith, introduced a Private Member's Bill—which has still had only its First Reading—and then laid in the other place the amendment to the Bill that has been referred to by noble Lords. As has been said— I find it difficult to understand their argument—the Government's rationale for rejecting Chagossians' right to British nationality relies on the cause of the injustice while refusing to correct it. Having forcibly resettled 3,000 individuals at the time, the injustice seems to be being compounded by refusing the small number of people who want, and I would argue deserve, to be in receipt of citizenship that opportunity. This Bill represents a chance for the Government to act on a long-standing injustice.

Amendment 11 would correct the nationality law consequences of exiling the Chagossians. Only those born there or born in that 13-year window can currently claim citizenship, but the amendment in the name of the noble Baroness, Lady Lister, would give the opportunity to all those who were born there. The five- year, time-limited window tries to address the Government's concerns. Like my noble friend Lord Horam, I understand those concerns, but the Chagossians represent a unique case. It is hard to see this setting a precedent. I urge my noble friend the Minister to consider this concession before Report.

Baroness Jones of Moulsecoomb (GP): My Lords, my noble friend Lady Bennett of Manor Castle signed the amendment and has asked me to speak in her place as she is unable to be here.

This is obviously a 50 year-old injustice, inflicted by the UK—by the Foreign Office, as the noble Lord, Lord Horam, suggests, so it might have been good to have a Minister from the Foreign Office here to answer our points. What was done to the Chagos Islanders—deprivation of their lands, dispossession of their community, chaos brought to individual lives—was not limited to one or two generations; it has gone on and on. True reparations would involve the right of return. This is not special circumstances or special treatment. This is justice that we can deliver, albeit very, very late. Simple justice ensures that we take responsibility for people whose lives we took control of without their consent. I hope the Minister can take this back and ensure that it becomes part of the Bill.

Lord Ramsbotham (CB): My Lords, I declare my interest as a founder member and, like the noble Baroness, Lady Whitaker, a vice-chairman of the Chagos Islands All Party Parliamentary Group. Having once had the pleasure of meeting the Chagos Islanders based in Mauritius, I rise to strongly support this amendment. As the noble Baroness, Lady Lister, and the noble Lord, Lord Horam, have explained, this issue is an international scandal for which the Government are entirely responsible.

Baroness Falkner of Margravine (CB): My Lords, I did not have the opportunity to speak at Second Reading and I apologise for that. I declare my interests in the register and want to clarify that I am speaking in a personal capacity, and I will keep my intervention very brief. I agree with every speech that has been made today, but I particularly want to reference some points made by the noble Lord, Lord Horam.

I gave a speech at the Mauritian Foreign Ministry in 2019 in advance of the United Kingdom's court case. While my speech was wide-ranging about international affairs and Britain's role in the world generally, I was astonished by the strength feeling that the people present, mainly civil servants working in the Foreign Office, had about this issue. They were not all affected by the Chagossians' claims—some were, some were not—but there was a national sense of disbelief that a law-abiding, rules-abiding great power in the world was behaving in this shabby manner towards a very small number of people.

I want to pick up on one point raised by the noble Baroness, Lady Lister, about the reason given by the Minister in the House of Commons as to why he would not support the amendment moved there. He said that it would overturn, and set a precedent over, years of British nationality law. My simple response to that is: the Government profess that we are increasingly bringing rights home, in terms of their assessment of the Human Rights Act and so on. But, as the noble Baroness knows very well, our courts are increasingly taking account of precedent with regard to Ministers' intentions when they speak in both Houses of Parliament —and Parliament's intentions when it decides to do whatever it decides to do.

So, if she has concerns similar to those expressed by the Minister in the House of Commons about setting precedent, all she would need to do when this Bill comes back to the Chamber on Report is to make it clear in her speech that she does not intend this Act—a humanitarian Act—to set a precedent in any other way. That is all she has do to reassure the House, and the courts will take account of that. I hope she will listen with great sympathy to the speeches on this matter across the House today, because that is what this small number of people deserve from us.

Lord Paddick (LD): My Lords, as we have heard from my noble friend Lady Ludford, the Chagos Islanders were evicted by the UK Government in the late 1960s and early 1970s to make way for a US naval base, and they are still exiled from their homeland. I would say to the noble Lord, Lord Horam, there are two separate and very distinct issues here. The first, as the noble Lord quite rightly says, is giving the Chagos Islands back to the islanders, which is very much an issue for the Foreign Office. This amendment is about giving Chagos Islanders nationality, and that is very much

[Lord Paddick]
the responsibility of the Home Office, not the Foreign Office. I would also say, in response to the last speaker and to the noble Lord, that century-long precedents are not necessarily good precedents.

One impact of the eviction has been to deprive descendants of their citizenship rights. The Chagos Islands remain a British Overseas Territory and, as we have heard, were it not for the eviction, they would have passed British Overseas Territories citizenship from generation to generation. In certain circumstances, they could have acquired entitlement to be registered as British citizens and, since 2002, they could have benefited from a general discretion from the Home Secretary to register as British citizens.

As the noble Baroness, Lady Lister of Burtersett, said, the Government's objection in the other place does not hold water. The situation of the Chagos Islanders is unique and, while the other measures in this part of the Bill to address historic injustices are welcome, they are incomplete without the amendment of the noble Baroness, Lady Lister of Burtersett, which we wholeheartedly support. As the noble Baroness explained, it is narrow in scope, focused exclusively on the Chagos Islanders' direct descendants and limited to a five-year window, either from the date the amendment comes into force or five years from when the eligible person turns 18. The Minister will have to do more than simply repeat the words of her colleague in the other place to convince noble Lords not to pursue this matter further on Report.

Lord Rosser (Lab): I would like to express our support for this new clause. I wish to be clear about its objectives and will read from the Member's explanatory statement:

"This amendment would allow anyone who is descended from a person born before 1983 on the British Indian Ocean Territory to register as a British overseas territories citizen. They may also register as a British citizen at the same time. Both applications would be free of charge. The application must be submitted within 5 years, or in the case of a minor born before the date of coming into force, before they reach 23 years old."

As we have heard, the proposed new clause is intended to rectify a long-standing injustice which impacts descendants of the Chagos Islanders who were forcibly removed from British Indian Ocean territory in the 1960s. I too wish to express my appreciation and admiration of all those who have been raising and pursuing this issue over a number of years, not least my noble friend Lady Lister of Burtersett and the noble Baroness, Lady Whitaker—although I know they are not the only ones who have been working on behalf of the Chagos Islanders.

The issue has significant cross-party support, and the case for this change was powerfully made by a Member of the Minister's own party in the Commons, Henry Smith MP, who was supported by Members across that House. The clause, as I have indicated, would extend the right to register for citizenship to the grandchildren and other descendants of this population, and it would, as has been pointed out, apply to only a small number of people.

In the Commons, the Minister's response was not too encouraging, suggesting that this would be too significant a departure from existing law. However, he did say that the Government had heard the strong points made and would

"continue to consider what more we could do, particularly given the low uptake of the £40 million Foreign, Commonwealth and Development Office fund designed to assist this diaspora community, and we will certainly be keen to look at that and, potentially, at how it could allow those people to settle here in the UK."—[*Official Report*, Commons, 7/12/21; col. 258.]

What consideration of this issue has since occurred across Government? What have Ministers settled on as to

"what more we could do"?

In recent years, we have raised significant concerns about this Government's ongoing foreign and defence policy as regards the Chagos Islands. The Bill provides an opportunity for a distinct and limited change to our own law—one which would have a significant impact for those affected by half a century of injustice. This is surely a unique case. Frankly, we are not setting a precedent, which is what the Government seem to have been arguing to date.

3 pm

The Minister of State, Home Office (Baroness Williams of Trafford) (Con): My Lords, I thank all noble Lords who have spoken in this debate. I hope that, at the end of my response, they will feel that I have at least given a partly positive response. I am aware that the noble Baroness, Lady Ludford, did not refer to this at Second Reading, but I am very grateful for the discussion we had—I think only yesterday—about this and other matters. I found it very helpful.

I, too, understand the strength of feeling being expressed. I both sympathise and empathise with the residents of the Chagos Islands about how they were treated back in the 1960s and 1970s. I also agree with the noble Baroness, Lady Lister, that return and citizenship are two different matters in relation to the Chagossians.

We recognise that some former residents of what is now the British Indian Ocean Territory missed out on rights to British nationality when legislation was last passed in 2002 to address the nationality of the Chagossians. Section 6 of the British Overseas Territories Act 2002 granted British Overseas Territories citizenship and British citizenship status by descent to any child born on or after 26 April 1969 and before 1 January 1983, where the mother was a citizen of the United Kingdom and colonies by virtue of her birth in the British Indian Ocean Territory. This measure reflected the removal of the Chagossians from the British Indian Ocean Territory and the fact that the mother of a British Overseas Territories citizen could not pass on her citizenship to a child born outside of the UK or a UK territory. The Chagossian community, however, has criticised this provision because it did not provide for circumstances where women left the BIOT before 26 April 1969 in anticipation of being required to leave, nor did the provision allow children to inherit citizenship from an unmarried BOTC father.

Here is the partly positive response to these concerns. I am pleased to say that the Nationality and Borders Bill currently makes provision to extend BOTC and British citizenship rights to any second-generation Chagossians who were not able to acquire citizenship through their mothers or unmarried fathers, due to discrimination in nationality law.

The issues are complex. As one noble Lord pointed out, some family members in the same generation hold British nationality while others do not. I agree with my honourable friend the Minister for Safe and Legal Migration, who stated in the other place that the Government are keen to consider what more we can do to support families seeking to settle here under the current system. Minister Foster has said that he is open to considering how we might use the FCDO £40 million fund package to support the Chagossians settled in the UK.

I must point out the position that successive Governments have expressed on this point. Amendment 11 would undermine the principle in our nationality law that applies to all other descendants of British nationals. Second and subsequent generations, born and settled outside the UK and its territories, do not have a right or entitlement to register as British nationals. I know that the amendment from the noble Baroness, Lady Lister, seeks, as she said, to limit the right to register as a British national to current generations who must apply within a limited timeframe. This does not alleviate the Government's concern that offering this right is contrary to long-standing government policy. It goes further than the rights available to many other descendants of British nationals settled elsewhere around the world.

The noble Baroness requested that I meet her and others interested in this matter. I always follow up on requests from noble Lords and I am very happy to meet her. We will consider the point raised by my noble friend Lord Horam about what more we can do to address concerns about the Immigration Rules. My noble friend Lady Altmann raised a point about citizenship. Of course, those without citizenship become overstayers. These are complex issues. As I said in reply to my noble friend Lord Horam, we are happy to consider what more we can do through the immigration system.

Baroness Chakrabarti (Lab): In the light of the eloquent and compelling speeches made in this debate, does the Minister concede a distinction between people who leave a territory to settle elsewhere and people who are forcibly evicted from that territory?

Baroness Williams of Trafford (Con): I do not think that anybody in this Committee would say that what happened to the Chagossians was, by any means, acceptable to them personally. I do not think I was trying to make that case.

Baroness Lister of Burtersett (Lab): My Lords, I thank everyone who has contributed to this debate. It is fair to say that there is unequivocal support across the Committee—perhaps not for the exact wording of the amendment, but for what it is trying to achieve. Noble Lords spoke very strongly. It is unusual for nothing to be said in opposition to what is trying to be achieved.

The Minister expressed her sympathy and empathy. I am afraid that butters no parsnips when it comes to what the Chagossians rightly want. As other noble Lords have said, this is a question of justice and human rights. My noble friend Lady Chakrabarti asked a pertinent question about the distinction between those who choose to leave a British territory and those who are forced out. The Minister has accepted that a wrong was done. Whichever Government were in power—I know it was my party—we share the shame. Here is an opportunity, not to put it right but at least to do something tangible that will go some way towards putting one aspect of it right.

I am desperately disappointed that the Government are still using the argument that, because the Chagossians are in the wrong place, they are subject to a long-standing principle of British law. What other group of people has been forcibly evicted in this way? As I said, we are not setting a precedent because I assume we are not planning to evict anybody else.

I thank the Minister for the offer of a meeting. Perhaps we could take a cross-party delegation to reflect the strength of feeling across the House. I hope she will think again. If not, I shall want to bring this back on Report.

My noble friend Lady Whitaker has been supporting the Chagossians for many years; I am relatively new to this issue and the legal position is extremely complicated. I may not have it completely right but there is a principle of justice and human rights, which has been recognised across the Committee. We must use this legislation to put it right. As a number of noble Lords have said, there is no better place than this part of this Bill, which is about putting right historical discrimination in nationality and citizenship law. Having said that, I beg leave to withdraw the amendment for now.

Amendment 11 withdrawn.

Clause 5 agreed.

Clause 6: Citizenship where mother married to someone other than natural father

Amendment 12 not moved.

Clause 6 agreed.

Amendment 13 not moved.

Clause 7: Citizenship: registration in special cases

Amendment 14

Moved by ***Baroness Hamwee***

14: Clause 7, page 9, line 36, at end insert—

"(1A) In section 1 (acquisition by birth or adoption), in subsection (5)—

(a) in paragraph (a), for "minor" substitute "person", and

(b) after paragraph (b), for "that minor shall" substitute "that person or minor (as the case may be) shall"."

Member's explanatory statement

This amendment seeks to bring British nationality law in line with adoption law in England and Wales. In those nations, an adoption order made by a court may be made where a child has reached the age of 18 but is not yet 19. Yet such an adoption order currently only confers British citizenship automatically where the person adopted is under 18 on the day the order is made.

Baroness Hamwee (LD): My Lords, I beg to move Amendment 14, in my name and that of the name of the noble Lord, Lord Russell of Liverpool, and will speak to Amendments 15, 16, 19, 20, 23 and 24 in this group. The noble Lord apologises to the Committee—he is unwell and had really wished to be here—but I hope that the discussion this afternoon will not be an end of the matter. He and I are keen to rectify an anomaly of which he became aware through his association with Coram, and it is also a concern of the Immigration Law Practitioners' Association. There are not a large number of people affected by the point we raise but, as the noble Lord says, that is no reason to ignore a matter of principle. He suggested that we flag this up and that we might discuss it with the Minister before Report. We are lucky enough to have a Minister whose diary secretary must go mad when she hears the commitments being made during Committee days.

The issue is another anomaly. British nationality law in England, Wales and Scotland—Northern Ireland is in a different situation—is not in alignment with adoption law. In England and Wales, an adoption order may be made where a child has made an application before reaching the age of 18, as long as they are not yet 19. In Scotland, an adoption order may be made in respect of someone over the age of 18, as long as the application was made when the person was under 18. An adoption order confers British citizenship automatically only when the person adopted is under 18 on the day it was made. As the noble Baroness, Lady Lister, said very forcefully earlier, citizenship is significant: it is about belonging as well as being a technical matter.

Coram gave the example of a young woman who completed her degree at Oxford after her mother had died of cancer, and her maternal aunt, a British citizen resident here, applied to adopt the young woman before she turned 18. The High Court ordered the adoption when she was 18 but not yet 19. I understand—and this must be quite unusual—that the Secretary of State for the Home Department was represented and did not oppose the adoption order, but the relevant section of the British Nationality Act did not operate to confer British citizenship on her, so she was left with student status due to end shortly after her degree was obtained, no basis on which she could continue to enjoy family life in the UK with her adoptive mother, and Immigration Rules making no provision for someone in her position because she did not have 10 years continuous lawful residence in the UK. I have been given other examples but I am sure noble Lords get the point—and I can see from the Minister's face that she does.

3.15 pm

In each of the years 2019, 2020 and 2021, there were 10 adoptions of people aged over 16; we do not have the figures for those aged 18 and over. We all know through adoption practices that relatively few children of that sort of age are adopted, so we are not suggesting anything major in terms of numbers. The average time taken in the adoption process from placement through to final adoption can be very long. When this issue was raised in the Commons, the Minister said that he was "sympathetic" but that the reasons for the amendment were not ones to be advanced. The Government said that an adult would normally be capable of making their own life choices, but I have just given an example of when an over-18 could not do so.

The point of adoption is the family: the emotional and psychological connection, as well as recognising the legal unit. After all, the point about citizenship is recognised by our law, because there is automatic citizenship for only very slightly younger people. I find it difficult to believe that Parliament intended to withhold citizenship from such a small cohort. Years ago, I was associated with an adoption agency, and I came to understand something of what adoption means to everyone in the family. It would be ungenerous of the Government if they were to resist correcting this anomaly, which, as I said, cannot have been anybody's intention.

Turning to the other amendments, Amendment 15 to Clause 7, which contains new Section 4L, would take out the words

"of full age and capacity".

This is not consequential on the good character point we have been debating—although I think it is suggested that it is—but it does stem from the same point. If you are entitled to citizenship, why should full age and capacity be required? It occurred to me last night that I might be misreading the new section. Perhaps "of full age and capacity" is directed only to whoever is making the application, rather than the person on whose behalf it is made. I am slightly confused about that, because I think it could be read in two ways, but I will pursue the point today so that we can perhaps look at it between now and Report. If the Government are concerned that someone not of full age or capacity should not be initiating the process, that is a different point, but I trust that they are not suggesting that age or capacity are requisites for citizenship.

Amendment 16, to the same new section, would change the word "may" to "must"—a familiar point to your Lordships—so that the Secretary of State would not have discretion in the special circumstances dealt with by the new section. Amendments 19 and 20 make the same point later in the Bill. Amendment 23 is also about an issue of discretion. Section 44 of the British Nationality Act provides that any discretion

"shall be exercised without regard to … race, colour or religion",

which seems quite dated when you read it in 2022. We are proposing guidance, following consultation—which is important—on the exercise of the Secretary of State's discretion under the various new British Nationality Act provisions and under Section 44A, which is about the waiver of requirement in respect of a specified applicant if the Secretary of State thinks it is in the applicant's best interest. As I am making clear, discretion should be irrelevant when rights are the issue, a point which my noble friend Lord Paddick emphasised a few minutes ago.

Finally, Amendment 24—also suggested by the Immigration Law Practitioners' Association—is a new clause which was debated in the Public Bill Committee in the Commons. We have retabled it to enable a response to what the Minister said in the Commons. There are people who would be British overseas citizens today but for historical unfairness. Clause 7 attempts to rectify the position for those who would be British

citizens or British Overseas Territories citizens but for similar errors. It does not do anything for people who would be British overseas citizens today. Again, this is an attempt to deal with an anomaly.

The Home Office acknowledges—we have seen it in the Bill—that past unfairness in British nationality law is not unusual, but it makes that acknowledgement only where such persons would be British citizens or British Overseas Territories citizens today. The prejudice that has been suffered through sex discrimination and so on has applied to them too. There are pockets of British overseas citizens around the world and, although they have no right to come to the UK or to remain in a British Overseas Territory, the status still has value. It enables them to acquire and use of a UK BOC passport; to seek consular assistance; to seek residence and permission to work in third countries under local rules; and where their children are born stateless, to benefit from UK laws that reduce statelessness. This was relevant in Aden, now Yemen, for instance, when it was a British colony.

The Government's objection to the new clause in the Commons was in effect that being a British overseas citizen reflects a finite class of British nationality. In fact, new BOCs—it seems tough to use such an impersonal acronym—are being born to BOC parents, where they would otherwise be stateless, and there is still a power to register a minor as a BOC, but it is used only exceptionally.

I hope that the Minister will, ideally, accept the amendment, but, if that is not possible today, that she will take on board the response of the practitioners, who in my experience always know what they are talking about and can express it better than through an interpreter like me. They make the point very clearly. I beg to move.

Lord Rosser (Lab): I would like in particular to add our support for Amendment 14 in the names of the noble Lord, Lord Russell of Liverpool, and the noble Baroness, Lady Hamwee. We hope that the noble Lord, Lord Russell of Liverpool, is feeling a lot better very soon.

Labour's shadow Minister raised this issue in the Commons and received disappointing answers. As we have heard, the amendment would put right a discrepancy in our nationality law and adoption law. Currently, an adoption order can be made where a child has reached the age of 18 but is not yet 19, but the same adoption order can confer British citizenship only where the child is under 18. In the same order, our law provides that a person is a full member of their adopted family but also that they are not, because they cannot share citizenship with them.

The answers given by the Minister in the Commons were that 18 year-olds are

"capable of making their own life choices",

that they can

"purchase alcohol, accrue debt, join the Army, or vote in an election",

and so they are

"fully fledged and can theoretically live independently of other family members".—[*Official Report*, Commons, Nationality and Borders Bill Committee, 19/10/21; col. 190.]

On that basis, is the Government's argument that at 18 someone is young enough to be adopted and provided for in our adoption law, but at the same time too old to really be an adopted child and be recognised in our nationality law?

The Minister in the Commons also argued that this change would be "out of step" with existing nationality law. One can only comment that this amendment is not seeking to make a general change to our law. By its nature, it is a completely limited, clearly defined provision for a small number of children who are going through our adoption system. It is difficult to see why this would be controversial rather than a common-sense change.

I also welcome the amendments in the name of the noble Baroness, Lady Hamwee, and her questions to the Government. We await the response with interest. We welcome Clause 7 and recognise that its aim is to provide a means to correct further injustices, but our concerns are, first, to make sure that the clause is used and is not just a token power which the Secretary of State "may" choose to action. That is probed by Amendments 16 and 20. Will the Minister clarify whether it is the Government's intention that the Secretary of State may choose not to allow for a person to be registered as a citizen in a case where they have been subject to a historical injustice?

Secondly, we wish to be sure that this clause is rightly a reactive and fleet-of-foot mechanism to respond to newly identified problems but that it is not an excuse to avoid making further changes in the law where these are necessary. Where a further injustice or any flaw in our nationality law is identified, the Government must amend the law to rectify that. No doubt, the Government could say in their response whether that is their intention.

On the question of the inclusion of British overseas citizens in the provisions of Clause 7, addressed by Amendment 24, the ministerial response in the Commons was unclear. At the same time, the Minister seemed to claim that the clause needed to be as flexible and unfettered as possible but also that it was right to put limits on it; to not include cases which may arise on British overseas citizenship. That would appear somewhat contradictory.

We support the amendments and await answers to the questions raised by the noble Baroness, Lady Hamwee. I hope the Minister will also respond to my questions on this group of amendments.

Baroness Williams of Trafford (Con): I thank noble Lords for tabling these amendments to Clause 7, which will allow the Home Secretary to grant British citizenship to those who would have been, or been able to become, a British citizen, but for historical legislative unfairness, either an act or omission of a public authority or their exceptional circumstances. It also creates a similar route for governors in overseas territories to grant British Overseas Territories citizenship on the same basis.

3.30 pm

We think this provision in the Bill is a positive step, allowing us to grant citizenship to those who missed out. The noble Lord, Lord Russell, and the noble Baroness, Lady Hamwee, have also tabled an amendment

[Baroness Williams of Trafford]
related to acquiring citizenship following adoption in the UK. At this juncture, I, too, send my best wishes to the noble Lord, Lord Russell. I hope he feels better soon.

On the point from the noble Baroness, Lady Hamwee, British overseas citizenship was introduced for those who would otherwise be stateless under the 1981 Act. It was not intended to be passed on, like British citizenship and British Overseas Territories citizenship.

I turn first to Amendment 14. Under the law currently in force, a child adopted in the UK can automatically acquire British citizenship, provided they are under 18 on the date the adoption is made. The Adoption and Children Act 2002 permits adoptions after their 18th birthday in England and Wales, as long as the adoption order is issued before the person turns 19.

I am mindful that different rights and responsibilities exist in law and many have ages attached to them. For example—the noble Lord, Lord Rosser, alluded to this—children as young as 10 can be held responsible for criminal behaviour, as teenagers they can start employment and from 17 they can drive. Arguably, the biggest evolution in an individual's life happens at 18, when they can vote, marry without consent or enter into legally binding contracts. Similarly, under British nationality law, a person is no longer considered a minor once they reach the age of 18. The automatic conferral of nationality to someone who is legally an adult is out of step with the nationality and wider immigration systems.

I have great sympathy with young adults who feel they have lost out, but we are introducing an adult registration provision at Clause 7. Those who genuinely missed out on British citizenship because an adoption order was made when they were aged 18 may be able to benefit. I must stress that each case will be considered on its merits. I accept this necessitates a further act on behalf of the individual, but this is reasonable for consistency within the wider provisions of the nationality and the immigration laws. The case cited by the noble Baroness, Lady Hamwee, was resolved through existing rules. I am aware that Scotland permits adoption for those over the age of 18, but it differs from England and Wales in that there is no upper age limit. Northern Ireland does not currently permit adoption to happen after the age of 18. This amendment would therefore cause uncertainty depending on the jurisdiction in which the adoption is sought.

It is proposed in Amendments 15 and 19 that we remove the requirements within these provisions for a person to be of full age and capacity. I will address them in turn. The reason this applies to people of full age—that is, over the age of 18—is that there is already discretion within the British Nationality Act 1981 to register a child at the Home Secretary's discretion under Section 3(1) or a governor's discretion under Section 17(1). The only statutory requirements are that the child is under 18 and of good character if they are over the age of 10. We do not therefore need to include children within Clause 7, which is in fact more limited in its application.

The full capacity requirement applies to all applications, so we would not wish to treat this group differently. Since 2006, the Secretary of State has had discretion to waive the full capacity requirement, if she thinks doing so would be in the person's best interests. Since then, no applications have been refused solely on capacity grounds, which shows that the current discretion is sufficient to allow decisions to be taken in the best interests of the applicant.

The noble Baroness, Lady Hamwee, asked whether the full capacity and age requirements relate to the subject of the application or the person applying. They relate to the subject of the application.

Amendments 16 and 20 would give a person a statutory right to be registered as a British citizen or British Overseas Territories citizen if they met the relevant criteria, rather than it being at the Home Secretary's or governors' discretion. Clause 7 applies not just to those who would have acquired citizenship automatically but to those who would have been able to become a British citizen or British Overseas Territories citizen but for historical legislative unfairness, an act or omission of a public authority, or their exceptional circumstances. This means that it covers not just those who would have become citizens automatically but those who might have had an entitlement to registration, or could have registered or naturalised at the Home Secretary's discretion. We think it is right that this provision remains discretionary to allow the Home Secretary to take into account any assessment she or he might have made at the time of the person's eligibility or suitability for citizenship.

Where registration in legislation is an entitlement provision it needs to be more tightly set out so that there is no doubt as to who does and does not benefit. As we want this clause to benefit those who have missed out on the citizenship that should have been theirs, we want to have flexibility to consider a person's circumstances without being overly prescriptive. That means we will be able to consider applications where issues might arise that we might not already have be aware of or where a person is affected by a number of circumstances that may be difficult to set out in detail. We are making this a discretionary provision not to refuse deserving people but to allow us further flexibility to respond to situations that cannot have been reasonably foreseen.

We do not think that having a discretionary power is a negative thing in this situation. Noble Lords will know that naturalisation is a discretionary provision, which works well, with decisions being made in line with published casework guidance, which sets out all sorts of circumstances where discretion would normally be exercised.

This leads on to Amendment 23, which would impose a statutory requirement on the Home Secretary to publish guidance for Clause 7 following consultation. We have already stated our intention to make published guidance available for this new adult registration route. I agree with the noble Baroness that published guidance would help people to understand how this provision might be used and help maintain consistency in decision-making. However, given our stated intention, I do not think it would be helped by a statutory requirement. We will continue to publish guidance on the GOV.UK website, as we do for all nationality routes.

Finally, Amendment 24, tabled by the noble Baroness, Lady Hamwee, would introduce a discretionary adult registration route for a person to become a British

overseas citizen. BOCs, as they are called, were created by the British Nationality Act 1981 for people connected with former British territories who did not have a close connection with the UK or one of the remaining British Overseas Territories. This was usually where they were from or connected to a country that had become independent but they did not acquire the citizenship of that country. The intention was to avoid making people stateless due to complex histories of independence or countries ceasing to be British protected territories.

British overseas citizenship was intended to be a transitional status, and it is expected that many who held that status will have acquired the nationality of the place where they were born or have been living in the 38 years since that legislation was passed. The existing routes to British overseas citizenship are therefore very limited, and we do not intend to create a new route. However, people who hold only BOC and do not have, and have not voluntarily lost, another citizenship or nationality can apply for British citizenship under existing legislation. If a person believes that they missed out on becoming a BOC because of historical unfairness, and as a result they also missed out on being able to become a British citizen because they have no other nationality, and have not done anything that meant they lost a nationality, there is nothing to prevent them applying for that status under this clause. With that, I hope the noble Baroness will not press the amendments.

Baroness Hamwee (LD): My Lords, I agree with the Minister that Clause 7 is positive and I agree with the noble Lord, Lord Rosser, that it must not be just a token. I am obviously disappointed with a good deal of what the Minister had to say. With regard to guidance, which I am glad to hear is proposed, the reference to consultation in our amendment was not accidental. It is important, particularly when we are told that the point of this is to allow flexibility for the Secretary of State, to have the input of stakeholders.

On the point of capacity, if the current discretion is sufficient, I should have said that working on the basis of experience one should put something discretionary into statute, so that everyone is quite clear where they are. As to the transitional nature of British overseas citizenship, there are still people who are affected. The fact that there are very few does not change the position.

With regard to adoption and the need to go through a registration process and for it not just to be automatic, the Minister said that this would be considered on its merits. Just repeating those words indicates how different this is from automatic citizenship, which is part and parcel of whole adoption arrangement. She mentioned the need to be consistent with other nationality provisions. I should say that this amendment would be consistent with the arrangements for adoption that we have in the different parts of the UK. I am particularly disappointed about that, but I hear what she says and I beg leave to withdraw the amendment.

Amendment 14 withdrawn.

Amendments 15 to 24 not moved.

Clause 7 agreed.

Clause 8 agreed.

Schedule 1 agreed.

Clause 9: Notice of decision to deprive a person of citizenship

Amendment 25

Moved by ***Baroness McIntosh of Pickering***

25: Clause 9, page 11, leave out lines 33 to 36

Member's explanatory statement

This amendment deletes the proposed new sections 40(5A)(a) and (b) in the British Nationality Act 1981.

Baroness McIntosh of Pickering (Con): My Lords, I will speak also to Amendment 26 in this group and I look forward very much to hearing other noble Lords speak to their amendments in this group, which are very much on the same theme.

My amendment is perhaps a little more radical than some in this group, so, for the purposes of clarity, I am seeking to delete from the amendment to Clause 9 that was carried in Committee in the other place the proposed subsection (5A), which states that the notice to be given to a person to be deprived of citizenship, thereby notifying that their citizenship is to be withdrawn,

"does not apply if ... the Secretary of State does not have the information needed to be able to give notice under that subsection"

or if it is not

"in the interests of the relationship between the United Kingdom and another country".

I will set out my reasons for doing this.

3.45 pm

I will allude to my earlier remarks: I obviously have an interest to declare, in that my mother was a naturalised British citizen by marriage to my father in 1948. Obviously it is a source of some concern to me that, were my mother still alive, she could be deprived of her nationality. I have to say that I am envious of the noble Lord, Lord Alton of Liverpool, and others, including on my own Benches, who, by dint of their parents, have dual nationality—British and Irish, in most cases. I applied for Danish nationality and got a six-page note from the consulate of Denmark saying why I did not qualify—so I feel very deprived of my right to Danish nationality, which I would be very proud to carry.

The Constitution Committee of the House set out, in paragraphs 18 and 19:

"Clause 9 was tabled by the Government at committee stage in the Commons. At present, under section 40(5) of the British Nationality Act 1981, a person who is to be deprived of citizenship must be given written notice of a deprivation order, the reasons for the order and a notification of the person's right of appeal. Clause 9(2) specifies circumstances in which the Secretary of State will be able to deprive a person of British citizenship without giving notice … This is a potentially very broad power, enabling the Secretary of State to deprive a person of citizenship without giving notice on grounds including national security or the public interest. It is unclear how it will operate or who might be caught by it. Accordingly, the appeal process is potentially important. Clause 9 provides a right of appeal to the First-tier Tribunal. However, if a person has not been given notice of the deprivation of citizenship it is difficult to see how he or she would be able to appeal the decision."

[Baroness McIntosh of Pickering]

The committee concluded in paragraph 20:

"If a person is to be deprived of citizenship without notice there ought to be additional safeguards. For example the Secretary of State should have to apply to a court to dispense with service of a notice or obtain an order of substituted service so as to give the person affected the best opportunity of responding to the notice."

As I mentioned earlier, I am grateful to the Law Society of Scotland, and Michael Clancy in particular, for the briefing and for preparing this amendment. The Explanatory Notes to the Bill state in paragraph 140:

"This clause amends section 40 of the British Nationality Act 1981 … to allow a decision to deprive a person of British citizenship to be made in the absence of contact with the person and to ensure that the associated deprivation order is valid."

This objective is achieved by Clause 9 of the Bill, which inserts into Section 40 of the British Nationality Act 1981 new subsection (5A). We are all now familiar with this subsection, which I read out earlier, as well as subsection (5B).

My understanding is that the aim of the clause is to provide a means of depriving a person of their British citizenship where it is not possible to give, or there are reasons for not giving, prior notice of the deprivation decision, as specified in subsection (2) of the clause. This is necessary to ensure that deprivation powers can be used effectively in all appropriate circumstances, including, for example, where a person is no longer contactable by the Home Office. Again, this is set out in paragraph 141 of the Explanatory Notes.

I put it to the Committee that the fact that the Home Office has lost contact with a person is not a sufficient reason to remove the obligation to notify that a person is to be deprived of citizenship. Amendment 25 would ensure that notification was still required in such circumstances. However, where a decision was made to deprive a person of citizenship on the basis that they posed a threat to national security, it would remain permissible to remove citizenship without notice on the basis that the person could appeal against that decision.

On Amendment 26, I respectfully and humbly submit to the Committee that the Government should provide further justification for the provision set out in new Clause 40(5A)(c)(ii) of the British Nationality Act, which I read out earlier—namely,

"in the interests of the relationship between the United Kingdom and another country".

Does that not seem a vague and imprecise reason for not notifying a person of the deprivation of their citizenship? In my view, it should be struck out of the Bill.

I received a briefing, for which I am grateful, from the European Network on Statelessness, setting out its views on what is wrong with Clause 9 as it exists. In its view:

"States must conduct a thorough assessment of the consequences of deprivation of nationality".

It concludes:

"Clause 9, as proposed, will have severe impacts on the rule of law and on a person's fundamental rights, and disregards many of the UK's international obligations, including the prohibition of arbitrary deprivation of nationality, the obligation to avoid statelessness, and the right to a fair hearing. The UK Government has not provided any justification as to why such a restriction on fundamental rights is needed."

I welcome the support from the European Network on Statelessness for the removal of Clause 9 from the Bill, which the noble Lord, Lord Anderson of Ipswich, will address in short order. I am minded to support him if my amendments do not carry favour.

I understand and support many aspects of the Bill that have regard to the rule of law and where the rights of the citizen are to be respected. What I find unacceptable about those parts of Clause 9 that I am seeking to remove is that, through no fault of their own, a citizen could be deprived of their citizenship without having been given prior notice and without their right to consult a legal representative to act on their behalf. With those few remarks, I beg to move.

Lord Moylan (Con): My Lords, I shall speak to Amendment 27 in my name. I declare at the outset that I was born both a British citizen and a citizen of the Irish Republic.

I am sympathetic to the remarks made by my noble friend Lady McIntosh of Pickering. She described them as radical but in my view they could be more radical, because they address what is essentially a symptom rather than the underlying disease. To understand that disease, it perhaps helps to go back a little in history. As the First World War went on, there were fantasies in this country about German spies who were everywhere. The belief grew up that the Kaiser had for many years been planting German agents here who had a remarkable ability to look like us, talk like us and infiltrate the highest levels of society. The late Lord Tweedsmuir's novel *The Thirty-Nine Steps* may read to us today as a *Boy's Own* story but it tapped into and encouraged a widespread national anxiety.

In 1917 the MP Noel Pemberton Billing claimed to be in possession of the Kaiser's "black book" containing the names of 47,000 prominent figures in government and society at large who were German agents or had been blackmailed into becoming so. It was the subject of a sensational libel trial and made headlines throughout the land. This was the background to the British Nationality and Status of Aliens Act 1918, which introduced for the first time the power to deprive naturalised British citizens, and only naturalised British citizens, of their nationality.

At Second Reading, noble Lords, including my noble friend Lord Wolfson of Tredegar and the noble Lord, Lord Rosser, stated that the power of deprivation was introduced in 1914, but the 1914 Act merely allowed deprivation in the case of naturalised citizens who had obtained that status by fraud, making statutory a power that was always implicit. It was the 1918 Act that made the radical change. Until that point, the bond of British nationality had been indissoluble. Now it could be removed, from naturalised subjects only, in the event of disloyalty or disaffection to the monarch, for trading with the enemy in time of war, for being subject to a prison sentence of over a year in His Majesty's dominions, and on some other essentially similar grounds.

The British Nationality Act 1948 maintained substantially the same deprivation provisions but introduced a new right for British citizens whose nationality was not wholly clear to register the British nationality that they were entitled to. I shall come to

the relevance of that in a moment. The great consolidating and modernising statute that still governs our nationality law, though much amended subsequently, is the British Nationality Act 1981. It is essentially the original language of that Act that Amendment 27 in my name seeks to reinstate. Noble Lords have already recognised the historical roots of the grounds on which the Act allowed the Government to deprive a British subject of their nationality: fraud, of course, but also disaffection towards Her Majesty, trading with the enemy and serving a one-year prison sentence within five years of naturalisation, though now anywhere in the world, not merely in Her Majesty's somewhat shrunken dominions.

Regarding deprivation, the Act made one change of capital importance. It extended the Government's power to deprive from naturalised citizens to those registered as having a right to British citizenship. If the 1918 Act made naturalisation a sort of provisional business, the 1981 Act extended that for the first time to the small number of British citizens by right—not by birth or descent, admittedly, but those who had vindicated their nationality through registration.

We move on rapidly to the Nationality, Immigration and Asylum Act 2002, and I am delighted to see the noble Lord, Lord Blunkett, in his place. This Act radically altered the position, extending the Government's power to deprive to all British citizens by birth, descent, registration or naturalisation. The flowery language about disaffection and trading with the enemy was diluted to any conduct

"seriously prejudicial to the … interests"

of the United Kingdom. In a subsequent Act in 2006, it was further diluted to allow deprivation if it were merely

"conducive to the public good."

These measures were introduced by a Labour Government but no party in your Lordships' House has wholly clean hands in this regard, because the Immigration Act 2014, introduced by the coalition Government of Conservatives and Liberal Democrats, went even further, diluting the one constraint that the Government faced in exercising this power, namely that it could not be used if it rendered a person stateless. Under the 2014 Act, being rendered stateless is no protection if the Home Secretary reasonably believes that the person could acquire another nationality.

4 pm

The result is that we have gone, in the space of a century, from an indissoluble bond to a position where an enormous proportion—I cannot calculate it—of British citizens hold their nationality contingently at the discretion of the Home Secretary. This includes anyone with an Irish grandparent; all British Jews, on this solemn Holocaust Memorial Day; anyone, like the Prime Minister, born in the United States; and, of course, the very large number of British citizens who have Commonwealth ancestry that might afford them the opportunity of another passport. My noble friend Lady McIntosh of Pickering said she felt deprived because she was not qualified for dual nationality. I understand what she says, but in return, it must be said, it gives her the protection that many people do not have that she cannot be deprived of her British nationality.

Why has all this happened, and what has been the effect? I have already explained how the first breach in 1918 arose as a response to a vicious, fake news campaign. The "black book" was entirely bogus, obviously: perhaps I did not need to say that. None the less, the powers that it created were never much used. Between 1949 and 1973, 10 people were deprived of British nationality, according to a 2016 report by the noble Lord, Lord Anderson of Ipswich, when he was Independent Reviewer of Terrorism Legislation. Between 1973 and 2002, the power appears not to have been used at all.

The 2002 Act was, of course, a response to 9/11. The 2006 Act was specifically designed, as I recall, to deal with Abu Hamza. The 2014 Act was in response to the case of a Mr Al-Jedda, who had been up to no good in Iraq. Of course, Clause 9 today is an explicit response to a case recently lost by the Government in the courts, the case of D4. If bad law is made by hard cases, what we are witnessing is the wholesale undermining of the rights of British citizenship on the basis of a very few hard cases.

Noble Lords might say that it is all necessary for the protection of the public, and I agree that that is a compelling rationale. There are indeed some very dangerous people in the world, and some of them are British. However, the numbers do not entirely bear out that story. A degree of estimation is required here, because it is not clear that all the numbers are entirely in the public domain. It appears that the number of people deprived of nationality on all grounds were: in 2011, six; in 2012, a further six; in 2015, 18; in 2014, 23; in 2015, 19; and in 2016, 38. In the three following years, some 300 people have had their nationality removed, no doubt because of the rise of ISIS. However, given the damage done to the whole basis of British citizenship, was there really no other means of dealing with these people, who are counted in the hundreds? They could, for example, be tried and convicted in a court of law, rather than effectively reintroducing the medieval punishment of banishment.

Those who speak against Clause 9 today are, in my view, slightly missing the point. Clause 9 is merely an administrative tidying-up of an iniquitous system. It is much better to address the root cause, and that is what I ask your Lordships' support for in this amendment in my name and in the names of my noble friends Lady Warsi and Lady Mobarik and the noble Baroness, Lady Fox of Buckley. I am grateful for the help that I received from Amnesty in drafting it. The amendment not only deletes Clause 9; it effectively eliminates all the changes made to Section 40 of the British Nationality Act since 1981. Section 40 is the section that deals with deprivation.

The wording is slightly changed from 1981 to make it coherent with changes to other parts of the Act in the last 40 years. There is one change of substance: except in cases where registration has been obtained by fraud, my amendment eliminates also the Government's powers to remove the nationality of British citizens by registration because they are citizens by right, just like the rest of us, and confines it to those who are naturalised. The grounds for deprivation remain as high as they were in 1981; they cannot be used if they will cause statelessness. The appeal to a tribunal remains, as does the requirement for the Government to give notice.

[Lord Moylan]

There are those who would go further. Amendment 32, in the name of the noble Baroness, Lady Bennett of Manor Castle, would more radically extinguish the power of deprivation altogether. I understand her argument. I do not disagree with her, and if the House supported her amendment in preference to mine I would be perfectly content. But I have taken the view that reverting to the original language of the 1981 Act might be more acceptable to your Lordships' House, being tried and tested and coherent with the other parts of this important Act. It may not be perfect, but I would not want us to fall into arguments about terminology. As I say, if the House preferred the noble Baroness's amendment I would of course be happy with that.

The current degraded state into which we have, by means of the changes made since 2002, allowed the whole concept of British citizenship to fall has a particularly deleterious effect on minority communities. Because I have spoken quite long enough, I shall leave it to other speakers who I know are going to expand on that. It also has an effect on us all. When something as important as nationality and national identity is treated by our own Government like a mere driving licence or library ticket that can be cancelled by administrative fiat, we are all the poorer.

It is not often that life gives you the chance to go back, start again and get it right the second time around. This is one of those cases and I urge noble Lords in all parts of the House to seize it.

Lord Anderson of Ipswich (CB): My Lords, I shall speak to oppose the Question that Clause 9 stand part and to my Amendment 28, with my thanks to noble Lords from four different parties who have added their names. Unlike Amendments 27, 29 and 30 to 32, my proposals would not affect the grounds on which citizenship can be withdrawn, though, in partial sympathy with those amendments, and subject to hearing the Minister, I suspect that the current "conducive to the public good" criterion, introduced in 2006, as the noble Lord, Lord Moylan, has just said, is broader than it needs to be.

My stand part amendment gives effect to proposals of the Joint Committee on Human Rights and your Lordships' Constitution Committee. Grateful as I am to the Minister for her letter on Clause 9—and I really am—it does not allay my profound concerns about a new power to remove a person's citizenship not just without giving reasons, but without ever having to tell them that you have done so.

I would like first to probe rather further the need for Clause 9, by which I mean the practical need rather than the theoretical points set out in the letter. A Written Question in my name of 5 January asked in how many cases the need to give prior notification had prevented use of the deprivation power. The Minister replied:

> "Prior to the recent High Court decision in the case of D4 ... there had been no cases where the notification requirement had prevented deprivation action from taking place."

That is an interesting admission. For a short period between August 2018 and July 2021, the Government thought they had the power to notify by merely entering a note on the subject's Home Office file, a route which the High Court and now the Court of Appeal have declared in the D4 case to be outside the statutory requirement that a person be given written notice.

The Minister's answer shows that not only during this period but before it, when the Government did not claim to be able to notify simply by "putting the document in a drawer", as Lord Justice Baker put it yesterday in the Court of Appeal, there were no cases in which the requirement to give notice prevented them removing citizenship. That is perhaps not surprising, since it is enough under the existing rules, which are very broad, for notice to be sent by post or email to the person's last known address, or to a parent, or to the parent's last known address.

What of the one exception, the case of D4? Her own lawyers told the High Court that her whereabouts in a Syrian camp were known to the Government at the time of deprivation—government agencies had been there to talk to her daughter—and that her family continued to live at her previous address in England. If that is right, the problem was not that the ordinary rules were inadequate but that the Home Office sought to use a procedure that turned out to be unlawful. The case for Clause 9, therefore, even in a case such as that of D4, has yet to be made. I urge the Minister to remedy that defect, if she can.

I question, secondly, the scope of application of Clause 9. Amendments 25 and 26 from the noble Baroness, Lady McIntosh, would remove some of the alternative grounds on which notice can be withheld. However, with great respect, they do not address the ground that is so broad as to make the others almost redundant: the power to withhold notice whenever it appears to the Secretary of State that this is in the public interest. With or without the noble Baroness's amendments, Clause 9 permits notice to be withheld even when notification would be perfectly feasible and when no national security concerns are in play. Its effect would be to give the Home Secretary the simple option of telling people or not, as she pleases.

The Home Office has suggested, on social media, that the power would be used only in exceptional circumstances, or only if other means of service are not practicable, or in cases of a threat to national security. If that is the case, it should say so in the Bill. Tweets and videos do not bind current Home Secretaries, let alone future ones—neither, so far as the courts are concerned, do statements from the Dispatch Box. I say to the Minister: please put it in the law.

Thirdly, there is a remarkable absence of safeguards, even by comparison with the two countries I have found whose Parliaments have been prepared to give Ministers a power to withhold notice of citizenship removal: Australia and New Zealand. In Australia, the power to withhold notice applies only to deprivations on national security grounds, and only if the giving of notice would harm security, defence, international relations or law enforcement. There are no such limitations here—and there is accountability: the Minister must regularly table a report to Parliament on his use of the power and brief the Australian Intelligence and Security Committee in writing as soon as practicable after doing so. The Australian equivalent of the Independent Reviewer of Terrorism Legislation, the even more

indigestibly titled Independent National Security Legislation Monitor, has a standing own-motion power to review citizenship deprivation laws, something that successive Home Secretaries have refused to permit here. The withholding of notice must be reviewed by the Minister personally every 90 days, and cannot be extended indefinitely, as Clause 9 proposes, keeping the subject in the dark and rendering nugatory his right of appeal. The previous Australian independent monitor, the military lawyer, James Renwick SC, has proposed that notice should be given as soon as reasonably practicable and always within six months of the deprivation.

New Zealand has in place a stronger safeguard still. If the Minister wishes to dispense with notice, she must apply to the High Court and, if the High Court accepts her application, it will then carry out a full merits review of the decision to deprive. Prior judicial authorisation is hardly alien to our national security culture: we apply it to TPIMs, temporary exclusion orders and a whole range of intrusive surveillance powers. Why should it not apply to this most life-changing of executive measures—the cutting of the bond between citizen and nation?

My Amendment 28 would subject the citizenship removal power on "conducive" grounds to annual review, like the other powers used to combat terrorism. The current triennial review applies only to citizenship removal resulting in statelessness, as provided for by the Immigration Act 2014—removals which, one would hope, are unlikely ever to be more than a tiny proportion of the total.

Why? A recent Written Answer said there had been 14 citizenship deprivations on conducive grounds in 2016, rising to 104 in 2017 and falling back to 21 in 2018. No further breakdown, I was told, could be provided. Why the variation? Why the huge number in 2017, and why has there still been no publication of the figures for 2019, 2020 or 2021? A security cleared independent reviewer—why not the one we already have?—needs to be able to ask those questions, hold feet to the fire and report regularly to Parliament. How else are we to know what is going on in our name?

4.15 pm

I have one final point. Many of us—including, I think, the noble Lord, Lord Moylan, whose speech I very much appreciated—would agree that there are some acts so traitorous as to merit the forfeiture of citizenship. In making laws, however, we need to remember not just those few people but the many millions who have come to our shores, who want to be accepted, who see the breadth of the law and who, perhaps with bad experience of other Governments, fear its arbitrary application. I was contacted after Second Reading by Michelle Barbour, who works with residents of Napier barracks in Folkestone. She wrote:

"Every man there is completely accepting of the process they must complete to request citizenship. These men understand that they must justify their right to remain. To learn that they may receive citizenship status and then, unknowingly, have this rescinded, produces stress and fear that I am fortunate enough to be unlikely ever to experience."

Surely it is in everyone's interest, most of all the Government's, to reassure these men, and indeed any of our dual or naturalised citizens, that in this country these most extreme powers cannot be exercised arbitrarily because they are constrained by laws.

I therefore ask the Minister, who has spoken to me once and has kindly offered to do so again, to take Clause 9 out of the Bill, and, if she can make the case for such an extraordinary power, which I do not take for granted, to come back with a version of it that is far more limited in scope and subject to proper safeguards and accountability.

Baroness Fox of Buckley (Non-Afl): My Lords, we are told that the provisions of Part 1 overall seek to remove historical anomalies and to remedy areas of historical legislative unfairness in British nationality law that have prevented citizenship being available to a range of people deemed to have the right to it.

Although we have already discussed some of the problems today, and possible improvements to Part 1, on the whole this part of the Bill is full of positive aspirations, and I welcome it. However, Clause 9 as presently framed stands out as jarring and negative, as it confers on the Secretary of State even more ill-defined and overreaching powers to make citizenship-stripping orders without notice and effectively without appeal, as we have heard. However, it builds on a prior problem of treating citizenship as contingent—a gift of the Home Secretary. We have a chance here to build on the theme of the intent of Part 1, which is to be able to remove historical injustice. That is why I have put my name to the amendment in the name of the noble Lord, Lord Moylan, which strips back powers to the 1981 Act, as he explained.

I will not give as long a rendition of history as the noble Lord, Lord Moylan, did—his was ever so interesting—but I want to go a bit further back to look at how we got here. Way back in 1870, William Gladstone proposed a plan to require the ability to revoke the naturalisation of any individual who

"acted in a manner inconsistent with his allegiance as a British subject."

What is interesting is that this was vigorously opposed by Lord Houghton as a

"transcendental power—more than ought to be entrusted to any man."

Lord Houghton added that not only was this to place too much power in the hands of the Executive but that the law would also be discriminatory in dealing

"differently with naturalized than with British-born subjects."—[*Official Report*, 10/3/1870; cols. 1616-18.]

Parliament then agreed with Lord Houghton, and I hope that today's Parliament will agree with the noble Lord, Lord Moylan.

Parliament and Lord Houghton then rejected the proposal by arguing that citizenship is a right that should not be arbitrarily removed by the state—"Hear, hear" to that. Now, sadly, this Government and previous Governments enjoy far greater transcendental power than Mr Gladstone ever dreamed of. They are treating citizenship as a privilege, not a right, and they carry on apace.

Following some points made by the noble Lord, Lord Moylan, on 1918, I find it extraordinary that, in 2017, more Britons have had their citizenship revoked

[Baroness Fox of Buckley]
than in both world wars combined. Since 2010, more than 150 people have been stripped of their citizenship; although, as the previous speaker already described, it is entirely unclear why and when, and what explains different figures at any time. But of course this is not just about numbers.

This amendment is drafted to undo an increasingly used power, and it would prohibit the Secretary of State making anyone stateless, other than those who have obtained citizenship through fraud or misrepresentation. I note that anyone who has obtained citizenship through fraud or misrepresentation is not a citizen at all. In other words, this is about protecting people who are citizens.

Clause 9 and the present powers are justified by the Government and in popular discussion on this issue as reserved for those who pose a threat to the United Kingdom or whose conduct involves very high harm. They are associated especially with jihadists—key dates form around 9/11, 7/7 and the rise of ISIS—and violent criminals. That explanation seems dangerous, as it allows the state to use the withdrawal of citizenship as a tool of punishment.

I make the point that citizenship is a legal status for individuals in perpetuity, with no ifs and buts. It enshrines a set of rights and responsibilities. As always when we have this discussion about the control of national borders, there is a spotlight on those trying to cross them and get in, as it were, but we do not give enough attention to the virtues of national borders for those within them. They allow the creation of citizenry with rights and the foundations of social bonds and solidarity.

Any nation state is not just an arbitrary grouping of individuals or made up of members of an abstract entity of humanity; national laws are made on behalf of citizens within a given territory and they do not apply to citizens of other nations. Democracy makes sense only within a specific place. Politicians in the UK are accountable to British citizens, not French or Australian citizens or what have you. UK citizens are then treated equally to each other within the boundaries of that nation state. They are treated equally at the ballot box or before the law. Whether bishop or builder, corporate CEO or cleaner, whoever or whatever your parents are, before the law and as voters, you are equal. That equality between citizens of any nation state means that they have different rights and duties from non-citizens.

For these special citizenship rights to mean anything, that equal treatment is crucial. Even when some of our fellow citizens renege on their duties and break the law—sometimes committing the most heinous transgressions of national law—we still do not renege on their citizenship.

We should not be squeamish about punishing British citizens who, for example, join a barbaric army such as ISIS, any more than when punishing British citizens who are child murderers or rapists. What we do not and should not do is wash our hands of our citizens because we deplore the vile crimes they have committed. Does it not exhibit moral cowardice if the state pretends it has no responsibility for dealing with the reprehensible actions committed by some of our own citizens? That is true for Stephen Lawrence's racist murderers, Sarah Everard's murderer or Shamima Begum's active involvement in a death cult committed to destroying western free societies. What they all have in common, whether we like it or not, is that they are British citizens.

If ISIS and Islamist terrorism are considered special cases, as some argue, the Government should bring special legislative solutions to Parliament. Instead, the Home Secretary is given a general power to outsource British criminals to third parties, such as countries they have never set foot in, while allowing a practice that undermines and damages the very precious citizenship that British jihadis so grossly betray.

The truth is that this power given to Home Secretaries does not keep citizens safe in the UK. Instead, it creates a citizenship framework in which some are second-class citizens, their rights contingent and provisional. To those who say, "Don't worry. Trust the Home Office not to abuse these powers. They'll be used in only a very narrow way, directed at very particular people", I reply: Windrush.

How counterproductive all this is. It is inevitably racially divisive and has caused huge worries and anxieties, as we have heard, among millions of British citizens, or would-be British citizens, especially those from ethnic minorities. As we noted at Second Reading, Part 9 sends a message that certain citizens, despite being born and brought up in the UK and having no other home, remain migrants in this country. While so many of our own fellow citizens feel their citizenship, and therefore all their rights, to be precarious, it makes an absolute mockery of demanding of them the duties of citizenship, such as loyalty, law-keeping, obligation to the life of the national community, and taking responsibility for the democratic future of one's own society.

To conclude, the noble Baroness, Lady McIntosh of Pickering, cited British Future's excellent report, *Barriers to Britishness*, which notes that, at a time when society can feel fragmented and atomised, when there are new challenges to a unified citizenship in the form of, for example, divisive identity politics, or in the context of many institutions that once bonded us all as citizens together having a less powerful hold and, to be honest, a trust deficit, then surely the common bonds of secure citizenship are more important than ever. In preference to this, this clause's message—that citizenship is a privilege and that many possess it only under sufferance, depending on what a particular Home Secretary of the day, of whatever party, considers acceptable or unacceptable behaviour—is very damaging.

Let us take the opportunity of this Bill to reset the narrative. I will support a later amendment proactively promoting a positive citizenship agenda, but this amendment is a good start to this endeavour. I am also sympathetic to Amendment 32 and anything radical that secures the rights of British citizens, whoever they are, whoever their parents are and wherever they are from, and not the power to the Home Secretary.

The Lord Bishop of Chelmsford: My Lords, I am grateful to those noble Lords who have already spoken. It is heartening to hear voices from across the Committee raising concerns about the proposed powers in Clause 9. My contribution will be very short.

I can well imagine variants on our current conversation happening time and again, ever since the British Nationality Act 1981, which has already been referred to by the noble Lord, Lord Moylan, brought in deprivation of citizenship. Indeed, a look through *Hansard* would confirm that.

Since 1981, these deprivation powers have been amended and extended, including in 2003, 2006, 2014 and 2018. Each time, the rationale provided by the Government is the same: that these are relatively minor tweaks made for pragmatic reasons, with the security of the nation in mind, and that these powers will be used only in extreme circumstances, with great caution and restraint on the part of the Government. Yet it seems that these powers are never quite enough. The argument that they would be used in only the most extreme cases seems somewhat at odds with the 104 cases reported in 2017, as referred to by the noble Lord, Lord Anderson. At some point, it must surely become necessary for us to say that the Secretary of State has more than sufficient powers, given the gravity of what it means to be stripping citizenship away from people. Instead, it seems we are being asked to allow for the goalposts to be moved yet again—for the third time in less than a decade.

4.30 pm

I will listen with care to the Minister's response, but the accompanying factsheets of this Bill and the answers from Ministers to date do not seem to provide the necessary substantial evidence that there is a widespread problem which needs fixing; nor do they yet provide the reassurance that such new powers are proportionate or necessary, given the significant concerns that they cause among many, particularly minority groups. I hope that the Minister can reassure us with some clear evidence of the number of cases we are talking about and why it is that current powers are inadequate.

Baroness Jones of Moulsecoomb (GP): My Lords, I have been very pleasantly surprised to see the level of public anger that has been expressed against Clause 9. People are rightly absolutely furious to learn that there is a two-tier system of citizenship in this country, where if you have a second nationality you are at risk of the Government withdrawing your British citizenship. That is pretty grim. However, it is concerning that some people are suggesting this is something new. It is not new; it is already the law that dual citizens can have their British citizenship revoked with the very wishy-washy legal test of it being conducive to the public good.

That is why my noble friend Lady Bennett of Manor Castle has tabled Amendments 32 and 33. These will revoke the power of the Government to remove people's British citizenship unless their citizenship was obtained by fraud or deception. Clause 9 extends the power, but simply defeating Clause 9 will not remove the power. I hope that we can work with noble Lords to remove the power on Report to eliminate this two-tier system of citizenship.

While we are discussing numbers, since 2006 the legal website Free Movement has found that at least 464 people have been stripped of their British citizenship. For comparison, in the 30 years before 2003 no one had been stripped of citizenship. So much for transparency—this could be discovered only through research, as the Government do not provide any sort of regular reporting on the figures. I ask the Minister if the Government will start doing that, so we can keep track and be fully aware of what they are doing.

Lord Blunkett (Lab): My Lords, reference has understandably been made to one of the Acts which came to fruition when I was Home Secretary, and I do not resile from that. I speak this afternoon because this is a critically important debate, and the contributions so far have been both informative and enlightening.

Amendment 28 from the noble Lord, Anderson, has a great deal of merit. I say to the noble Lord, Lord Moylan, for whom I have the most enormous respect and good will from working together on a whole range of other issues, that simply going back to day zero is not necessarily the best answer for the solution we are seeking. If we could find a way forward on Report that takes away the genuine fear from millions of people who believe—erroneously, but they believe it—that Clause 9 as drafted and the implementation of further measures will put them and their families at risk, then we will have done a good job in clarifying the situation.

To put things in perspective, the reason that there was a change from the early 20th century onwards has a great deal to do with the nature of dual citizenship, the way in which global movements have changed quite dramatically and the consequences of global franchise terrorism, which did not exist before. Our main threat, as we all know, up to the beginning of this century, was seen to be from the conflict in Ireland.

To be fair to the Minister, an effort to try to bring the present situation up to date is understandable, but the way it is being done is not. I do not think that the 2002 legislation, implemented in 2003, actually went too far. It was done on the back of the attack on the World Trade Center and beyond, and it was necessary to take into account the dangers that were foreseen and the people who were known to be a danger to our country. I thought that the measures taken at the time seemed to be proportionate. We can debate whether they were or were not, but it is absolutely clear that simply going further and further without justification is not appropriate in our democracy. A step back and a reflection on what it is we are trying to achieve, and why, would be beneficial.

By the way, I do not consider that the measures I was involved in were about punishing anybody. They were about protecting people from those embedded in the community who were no longer committed to our democratic society; in other words, those who had forfeited this part of their dual citizenship—citizenship of our country—because of the actions they took or were prepared to take. These were the actions of individuals, not actions imposed by government.

Let us try, if we can, to get this right on Report. If we can do that, we will take away that fear, which I think is the main reason why we should remove Clause 9.

Baroness Mobarik (Con): My Lords, first, I apologise for being unable to speak at Second Reading. I have put my name to Amendment 27 in the name of my noble friend Lord Moylan, who laid it out so well.

[Baroness Mobarik]

Clause 9 has shone a spotlight on legislation concerning the deprivation of citizenship—legislation that has essentially been in existence since 1918, as has been pointed out. However, the degree of power that this legislation wields has evolved over decades, most notably in 2002, 2006 and 2015. The current attempt to deprive a British person of their citizenship without even informing them in advance takes these powers to a wholly unacceptable and sinister level; powers that we would not expect in a modern democracy and, as has been said, more akin to archaic banishment laws.

As my noble friend Lord Moylan stated, this amendment would allow us to row back from the damaging legislation of recent years to the British Nationality Act 1981. It is by no means perfect, as it has certain aspects that one could question, but it is perhaps the most pragmatic and acceptable legislation that we have currently. At the very least, this amendment would go a long way to providing some degree of security to the many people who feel that they are vulnerable under the current legislation, and certainly the proposed legislation. Such legislation has crept in, often as a knee-jerk response to a single event or individual.

The Minister may argue that what I say is an over-reaction and that these powers would be used only in exceptional circumstances. But if Clause 9 is enacted into law, there is a very real danger of its misuse. The open-ended term

"conducive to the public good"

flashes red. If citizenship is revoked without notice—perhaps while someone is abroad, with the Home Secretary considering them unreachable—it is highly unlikely that that person would have any recourse to appeal by the time they found out their predicament. On a more basic level, you cannot appeal a decision of which you are unaware.

As a person cannot be made stateless according to international conventions, by default this clause has a disproportionate impact on people from ethnic-minority backgrounds who have a connection to the Commonwealth or a country where they are entitled to dual nationality. It also has an impact on people from Europe, and it impacts Jewish communities who are entitled to citizenship in Israel.

There are already examples of wrongful revocation of someone's citizenship, in effect destroying years of their life, as in the case of the British man known as E3. He was stripped of his citizenship while in Bangladesh and stranded there for five years. He only recently had his citizenship reinstated, with no explanation by the Home Office as to its actions, no shred of evidence against him and eventually no charge. There needs to be greater transparency as to how this power is used, as the noble Baroness, Lady Fox, pointed out. Surely we cannot have a society made up of degrees of citizenship, where some are full citizens while others are half-citizens and some are perhaps a bit more than half-citizens.

Being British should not mean that people are expected to deny their ethnicity or renounce their religion, their culture, the country of their birth or that which gives them their identity. We should all be able to celebrate every aspect of who we are and still be a citizen of the state able to vote, work, contribute, raise our families and live in freedom and free from prejudice. I understand that this is not what is being disputed, but there are many people in our country right now—good, law-abiding, loyal citizens—who feel threatened, let down and even scared because they feel that they are the target of this legislation due to their ethnic heritage. There is real disquiet among minority-ethnic communities about the impact of this proposed legislation. Certainly, it does not give confidence or engender loyalty and a sense of belonging, which is what I hope the Home Office would wish to see from all those who live here.

Today, expulsion is for extreme crimes. Tomorrow, it may be for wrongfully accused postmasters or for those exercising the right to peaceful protest on some issue. After all, expulsion may be deemed to be

"conducive to the public good".

On a personal level, I feel utterly disappointed. If your Lordships will permit me to digress, I do so by way of illustrating how others like me feel. I came to this country as a child of six in the 1960s and was subsequently naturalised—yes, I am associated with that dubious term. My late father served in what was then the British Indian Army during the Second World War. He came from Pakistan. His loyalty to the UK throughout his life was without question and his contribution notable, both in wealth creation and in public service. He was a first-generation immigrant familiar with the language and culture of his country of birth.

We now have a significant population of second, third and even fourth-generation people from the Commonwealth who know no other country than the UK. They have local accents, and they are relaxed with local cultural norms. They feel themselves to be 100% British. They are, nevertheless, in a category of those who have links to another country: that of their parents' or grandparents' birth. Therefore, they are potentially vulnerable to having their citizenship revoked and—if Clause 9 is enacted into law—perhaps without even the courtesy of being informed beforehand.

I believe that there is a wider debate to be had over whether citizenship deprivation as a whole is in the interests of our country. I support Amendment 32 in the name of the noble Baroness, Lady Bennett, in this regard.

I understand that the broad objective of this legislation is aimed at only a handful of extremists and criminals, but legislation has to be more wind-tight and watertight. What is essentially at stake here is the principle of the rights of all citizens. Are we really going to let a handful of criminals dictate our very values of fairness, justice and equality? I hope that we would trust in our justice system, one that is the envy of the world, and not perhaps a whim and a flick of an administrator's pen.

As a six year-old newcomer, unfamiliar with the language or customs of this country, I was acutely conscious of any prejudice or discrimination, however subtle. Human beings are good at detecting such subtleties. Unlike my carefree school friends, I grew up very mindful of immigration legislation whenever it was being debated. I was also conscious of the attempts by

our various Governments to address inequalities and to establish good race relations. Having recently served in the European Parliament, I can say that I am proud that the UK has done more in the area of equality, inclusion and diversity than any other country in Europe.

We have so much to be proud of as a nation, so let us not bring into law such a blatantly illiberal and divisive piece of legislation. It is not in accordance with our values and will not serve us well. I agree with the conclusion of the Constitution Committee that Clause 9 must be removed from the Bill.

4.45 pm

Baroness Warsi (Con): My Lords, I support the amendment in the name of my noble friend Lord Moylan and the intention of the noble Lord, Lord Anderson, to oppose Clause 9; I have added my name to both. I also lend my support to all other amendments in this group. We should support anything that allows us to think again, row back and reset in an area that has developed in ways that we could not have envisaged, and take any opportunity to put it right.

The consequences of Clause 9 are, once again, incremental changes but with far-reaching consequences. I do not intend to rehearse the arguments I made at Second Reading on the history of the state's power to strip UK citizens of their citizenship. I am grateful to my noble friend Lord Moylan, the noble Lord, Lord Anderson, and the noble Baroness, Lady Fox, for comprehensively and clearly stating the history of this issue, the background, the policy, the changes and its impact.

Each change has been sold by successive Governments as small, incremental, narrow and necessary. But each change has widened further the net of who, how and why the state can strip our fellow countrymen and women of their right. Clause 9 removes the requirement for the Secretary of State to notify someone when they are being deprived of their citizenship in a broad range of loosely defined circumstances, including when it does not appear to be "reasonably practicable". I am grateful to my noble friend for her recent correspondence, but I am afraid it provides little justification for this change, as the noble Lord, Lord Anderson, said.

Today I want to make three points. The Government have stripped hundreds of citizens of their citizenship over the last decade. Indeed, as recently as 2017, we heard that over 100 people were stripped of it in one year alone. The requirement for notice was, of course, fulfilled in all those cases. The lack of a Clause 9 power did not prevent the Government acting in hundreds of cases. The case of D4, which has been mentioned by other noble Lords, was what led to this clause at the 11th hour, with little debate in the Commons. To help the Committee understand the rationale behind this clause, can my noble friend start by publishing in a single document the numbers of people deprived, the reasons for the deprivation and the ethnicities of those deprived from, say, 1981 to 2010 and 2010 to date?

Secondly, I want to talk about stripping someone of their citizenship. It strips them of their right to live in their country and of their home, their job and their right to family. It often deprives them of the only place they know and forces them to find another place in the world that may or may not accept them—often a place with which they have little if any connection and where their life may be at risk.

Clause 9 seeks to do this without even notifying the person of such a radically life-altering decision. This in reality removes the person's right to challenge the decision, the basis of it, the accuracy of the facts on which it was based or, indeed, even whether the person stripped is the right person. My noble friend's explanation in her letter, I am afraid, goes no further in giving any reassurance that appeal rights will be preserved with Clause 9. As the Constitution Committee said in its report on the Bill:

> "The House may conclude that this clause is unacceptable and should be removed from the Bill."

Thirdly, I want to move to a fundamental principle that we are equal before the law, entitled to equal protection and equal treatment. I think the whole Committee can agree on that. In this country, we legislate for what is a crime and publish the law, including sentencing guidelines. If we break the law, we know the consequences that will follow—and follow equally for all citizens. Yet it seems that these fundamental principles are now being eroded.

So perhaps I may ask my noble friend: if an act, a crime, carries the penalty and sentence of citizenship being stripped, should it apply to anyone convicted of that crime? Do my noble friends on the Front Bench agree that sentencing should be linked to crime, not where your grandparents or great-grandparents were born, and that a sentence should not change based on heritage or race? If my noble friends agree with that principle, they will think again and, I hope, before Report they will strike Clause 9 from the Bill, because to do anything else would mean that we further the appalling situation in which we find ourselves now in Britain that seeks to sentence predominately a minority black and brown community differently from the majority white community. Yes, that is hard to listen to, but it should disgust and disturb us in this House.

Being a citizen of this country means that, when you commit a crime, you are arrested, tried and convicted by our laws and our courts. I therefore disagree with the noble Lord, Lord Blunkett. I accept that it is hard for him to revisit his time, but it is punishment and cannot be protection, as he says it is. If the laws, as he says, were brought in as a response to the challenge of terrorism and an international terrorist franchise, surely that required an international response. So how will dumping our citizens who have shown support for that international franchise in another country—likely with less resources—protect us? I would argue that it makes us all less safe.

Finally, this clause has had a chilling effect in our country. It has provoked debates in homes in settled, established communities such as mine and those of other noble Lords. I want to mention a very personal story. When I was growing up, there were two things I remember acutely. The first was a Hitachi case containing everyone's papers, passports and naturalisation certificates. When anything happened in our home, for example if we moved, that Hitachi case was rescued first, because the fear was real that, without that case, we might be asked to leave.

[Baroness Warsi]

The story that I heard from my parents was this. My dad is an optimistic guy who always thought that he would build a house in the north of Pakistan in the way that many of us dream of having a villa in the south of Spain. But my mum, like many women, was more realistic and cynical. She worried that one day we would be asked to leave and go back home. I did not envisage that here I would be at 50, not quite dreaming my dad's dream but definitely worrying my mum's worry.

So I say to my noble friend that opposition to this clause is widespread. Most of our inboxes are full of briefings and correspondence. The clause is broadly opposed in this Committee. Today we have seen the House at its best; across it and across political divides we have had noble Lords raising their concerns. So I hope that my noble friend will think again before Report.

Lord Kirkhope of Harrogate (Con): My Lords, I want to say just a few words because I have listened very carefully, looked at all these amendments and heard some extremely good speeches from colleagues on all sides of the House. However, I am a former Immigration Minister and, looking back at legislation that I was involved in in the 1990s, there were certain Bills in which clauses came forward, we looked at amendments and, frankly, we concluded that, however good the amendments were, the clauses were unamendable and should be removed when they were not effective and where it had been clearly shown that they would have had bad effects.

I am grateful to those who have moved or spoken to their amendments, but I can think of few proposals that can offend as widely and as profoundly as the removal of people's citizenship. Clause 9, sadly—to me, anyway, as a lawyer—is an affront to our common law, to international legal standards and understandings, and to our various human rights commitments. Critically, it could have appalling consequences for those affected.

As I stated at Second Reading, stripping people of their citizenship—secretly and unilaterally, on vaguely defined grounds such as "in the public interest"—exposes us to actions that fall short of our normal democratic standards, both at home and abroad. It also predicates many legal proceedings.

We all know that the first rule of government is to protect our citizens. I took that very seriously then, as I do know. Clause 9 would place already vulnerable people at greater risk. There are plenty of examples of this. A person may be deported to a country where capital punishment is practised, or where other inhumanities might present themselves. This proposal could hardly be described as protective, as it would open us up to accusations of double standards, which would undermine our efforts to speak out against issues such as the death penalty or cruel and inhumane practices elsewhere.

The UK has a very good and proud record of calling out injustice when it applies to other countries that show a lack of respect for human rights and international standards. At times—not often, but occasionally—we are also good at sporting spurious justifications to mask unsavoury policies. I fear that this clause would grant the UK the same sort of cover and ability to employ the same sorts of excuses to enforce policies that are otherwise indefensible and might be misused.

Citizenship is a valuable status and a clear constitutional right. The issue of revocation is, therefore, to be taken seriously. Any attempt by the state to withdraw an individual's citizenship must have a clear and robust basis in law. It must assert the primacy of due process, including the right of appeal. Above all, it must be transparent, where the basic rights of notification of action to a subject are followed.

I fear that Clause 9 will create a process that is arbitrary and fundamentally unjust. That is why it should not be supported. I hope that my noble friend can rectify the situation before Report. I listened particularly to the noble Lord, Lord Anderson of Ipswich. He was quite correct; it is very difficult to see that any form of amendment could put this clause right.

Lord Macdonald of River Glaven (CB): My Lords, it is important to situate Clause 9 within the breadth of our immigration law as it stands. For obvious reasons, deprivation powers available to a Secretary of State to strip a person of their British citizenship were historically very tightly drawn indeed. In 2003, 2006, 2014 and 2018, these powers were significantly expanded. They may now be exercised in relation to any British citizen who is a dual national—including British citizens from birth—where the Secretary of State is satisfied that deprivation is conducive to the public good.

If we want to grasp how broad a power that is and how broad are its implications, we need only recall what the Supreme Court said in the Begum case last year—that this includes a situation where the person does not even know that they are a dual national and where they have little or no connection with the country of their second nationality.

The power can also be exercised in relation to naturalised British citizens even where they are not dual nationals if the Secretary of State is satisfied that the conducive to the public good test is passed because the person has acted in a manner seriously prejudicial to the vital interests of the UK. If the Secretary of State has a reasonable belief that the person is able to become a national of another country and that belief turns out to be unfounded, the individual will become stateless.

The leading immigration law silk, Raza Husain, has said:

> "This progressive extension over the last two decades has meant that it is no longer necessary to demonstrate that someone is a terrorist or a traitor before stripping them of British citizenship. Individuals may be deprived of citizenship on general public interest grounds of the sort usually invoked to justify deportation, rather than on the basis of their severing the bonds of allegiance that are the hallmark of nationality."

It is no doubt because of the lowering of these procedural safeguards that the exercise of deprivation of citizenship is now relatively common. In the period from 1973 to 2002, there were no deprivation orders at all. I am told that, since 2011, the power has been used in at least 441 cases, with 104 in 2017 alone. Of course, Clause 9 has the potential very significantly to increase

the use of this power. The noble Baroness, Lady Mobarik, has spoken very compellingly about the disproportionate impact that this will inevitably have on non-white British citizens.

5 pm

In 1958, the great United States Chief Justice Earl Warren, who—we might remind ourselves—was a Republican put on the Supreme Court by President Eisenhower, said that the loss of nationality amounts to

"the total destruction of the individual's status in organized society … the expatriate has lost the right to have rights."

There he was citing the well-known formulation of Hannah Arendt. Deprivation of citizenship is such a far-reaching and draconian power that it must be accompanied by proper procedural safeguards. Clause 9 goes in precisely the opposite direction, removing the most basic safeguard—it is really just at the Home Secretary's discretion even to tell the individual that their citizenship is lost to them. I agree that, in some circumstances or contexts, or for some reasons, this may be necessary and notice cannot be given to an individual. We can all, I suppose, imagine situations in which that might have to occur. But to permit the Home Secretary to take this drastic course, simply on the basis of a determination by them that this is in the public interest, is a procedural safeguard so weak as to be completely insupportable.

Lord Hunt of Wirral (Con): My Lords, we have benefited from the intervention of the noble Lord, Lord Macdonald of River Glaven, because he has reminded us that, although we have heard some very moving speeches going a little wide of the mark, Clause 9 is all about how you notify the unnotifiable.

I will go back to the speech of the noble Lord, Lord Anderson of Ipswich, and declare the interests that I have in the register. We as a House have to decide what we do about the criminals who wish to do us serious and long-lasting harm in the context of this. Perhaps it is too wide-ranging, but it is a necessary bid to try to ensure that, where we have people who wish to do us harm, they are somehow prevented from our giving them, under existing legislation, the ability to do so.

I have very carefully read the judgment of the Court of Appeal, and the key question that we now have to turn our minds to is whether we wish to empower the Secretary of State to deprive a person of citizenship without giving notice. In many ways, this debate should be all about that because, speaking I suppose as a practising solicitor, I cannot find Clause 9 as a change in the policy of deprivation of citizenship—the change proposed is all about notification. So Clause 9 does not allow the Home Secretary to remove citizenship on a whim, it is not targeted at particular ethnic minorities and it does not change the reasons why a person might be deprived of their British citizenship. Clause 9 does not remove the right to appeal a decision to deprive. I cannot see that law-abiding British citizens have anything to fear from Clause 9.

We are charged by the court in the following terms. Lady Justice Whipple said this in the ruling delivered yesterday:

"There may be good policy reasons for empowering the" Home Secretary

"to deprive a person of citizenship without giving notice, but such a step is not lawful under this legislation. If the government wishes to empower the Secretary of State in that way, it must persuade Parliament to amend the primary legislation. That is what it is currently seeking to do under the Nationality and Borders Bill".

She concluded, which brings us back to where we are now, that

"it is for Parliament to decide,"

This has been a valuable debate, but I think we have strayed too far from the key question: how do you notify the unnotifiable?

There are evil people. I am probably one of many Members of this House who has received letter bombs and death threats. When I was in the Cabinet, I had death threats from three separate organisations. Fortunately, the Post Office intercepted the letter bombs. There are people who wish to kill us, to injure us and to destroy the fabric of our society, and we must try to focus on how we are to stop that happening.

Baroness Blower (Lab): My Lords, I did not speak on Second Reading, but I am delighted to have been here today to have heard the speeches from noble Lords, and what an interesting debate it has been. I have learned a good deal, and I am indebted to the Bingham Centre, whose publications I now read avidly to inform myself about legislation that comes before this House.

I am rather pleased to be following the noble Lord, Lord Hunt, because I was persuaded of the problems with Clause 9 by one of the paragraphs in the analysis from the Bingham Centre:

"Clause 9 departs from the requirements of the Rule of Law by allowing a British citizen to be deprived of their citizenship without even being warned about it, or told the grounds for it. There is zero judicial or parliamentary oversight of the dispensation of notice, and the grounds can be as insubstantial as the mere administrative inconvenience that it is not reasonably practicable to give notice."

If that is what is intended by the legislation before us, there is definitely a chilling effect, as referenced by the noble Baroness, Lady Warsi, in the suggestion that this is how we should operate. I do not do demur from the argument that there will be difficulties at some point, as outlined by the noble Lord, Lord Hunt, but these are very wide powers and they have, as the Bingham Centre says, no judicial or parliamentary oversight at the point at which they would be invoked. Giving these powers to the Home Secretary—any Home Secretary—is unacceptable. In the words of the noble Baroness, Lady Mobarik, they would be divisive and would, in my view, not accord with the values of fairness, of justice or of equality before the law.

Lord Hodgson of Astley Abbotts (Con): My Lords, my noble friend Lord Hunt narrowed the debate to the issues that are in the clause, but the noble Baroness, Lady Blower, has widened it again by discussing broader powers. I do not have my name to any of the amendments, but I have been listening carefully to the speeches; indeed, we have been listening for the last hour and a quarter. Like other Members of your Lordships' House I have had a volume of briefing, some of it arriving

[Lord Hodgson of Astley Abbotts]
very late—a point made by the noble Baroness, Lady Hamwee, earlier in our proceedings. It is quite hard to take it on when it arrives the morning before you are due to participate. Some of that briefing seems to be fairly hyperbolic, and I am not sure it is in terms that help a calm discussion of what has at its core the really serious point that my noble friend made about keeping people safe. Phrases such as "two-tier citizenship" do not help us to establish in a calm way what the underlying effect, impact and purpose of the clause is as presently drafted.

That said, when you pick up the *Financial Times* of 21 January and see that the president of the Law Society has the lead letter with the headline,

"Legal changes will put UK rights culture in peril",

while other submissions suggest that the rule of law is being undermined, one has to sit up and take notice. I am not a lawyer, as the House will be aware, but I absolutely, comprehensively and unequivocally support the rule of law as a cornerstone of our society. So, in the couple of minutes that I have, I would like to try to pierce the fog of claim and counterclaim to see if one can reach any sort of firm ground. My respect for the rule of law stems from a lecture that I heard 50 years ago. It is our fate in this House to listen to an awful lot of speeches and an awful lot of lectures, and many of them disappear from one's mind almost as soon as the speaker sits down, but this lecture from 50 years ago rings as true to me today as it did then. It came about because for a time after I finished university I went to live in the United States and Canada, and nearly stayed there. I went to do an MBA at the Wharton School of finance in Philadelphia. The school used to arrange for outside speakers, eminent people in various fields, to come and talk about their experiences.

One such person was a Cambridge University professor called Peter Bauer, later a member of your Lordships' House as Lord Bauer, of Market Ward in the City of Cambridge. Peter Bauer was Jewish, born in Budapest in the closing years of the Austro-Hungarian empire, 1914-15, and his great contribution was looking at the role of development economics and how we manage to deal with it. That afternoon, he explained how no country could hope to survive without two things: the rule of law and respect for property rights. He went on to say that the rule of law was not an absolute; it was relative, and it depended on what he called the informed consent of a population—that is, if a large proportion of the population, having heard the arguments, had an informed position and did not agree with it then the rule of law was not assisted but undermined. In his view, to use an oft-quoted phrase, the law is too important to be left to the lawyers. In considering the difficult issues raised by the speeches and by Clause 9, I would like to test them against the Bauer "informed consent" test. In that sense, I have drawn certain conclusions but I am not on the Front Bench, so I hope my noble friend can reassure me that the interpretation I have made of the clause is in fact in accordance with reality.

Let us assume that we are on the lower deck of the Clapham omnibus. The passengers on the Clapham omnibus are our fellow citizens. They are a questioning crowd. They do not think the Government always have a lot to offer, and they think political parties of all persuasions probably have rather less. If we were to begin by explaining to them that our wish was to discuss the issue of the deprivation of citizenship, they would begin by asking, "Are the Government proposing to change the basis on which citizenship can be removed?" As I understand it, the answer is no. "If there is no change to that," they would say, "then what is the change going to be?" The answer would be that if, after reasonable effort, the person who had done terrible things to our country could not be found, citizenship could be removed without notice being given directly to the person affected.

The people on the bus might then ask us, "If this change were not made, would people be able to hide themselves away to evade justice?" The same question might be asked about people who happened to live or ended up in war zones or areas of conflict. We would have to tell them that that would mean that they could not have their citizenship removed, because we could not reach them. Because they are suspicious of the Government, the travellers on the bus would ask, "Could the new procedures be appealed against, or are they just a fiat, without any appeal?" I understand that they can be appealed against. Because it is a Clapham omnibus, there will be people from all parts of our community, minority as well as majority, and they would want to be reassured that this was not going to be used, as my noble friend Lady Warsi suggested, against one particular part of our community. There is no evidence that I have seen that it is so designed.

Finally, I think they would say, "How big a problem is this?". In particular, the point made by the noble Lord, Lord Anderson, "How many people have had their citizenship removed on the grounds that it was not conducive to public good?" That is a big catch-all. I understand that fewer than 20 people on average have had their citizenship removed in recent years. Will my noble friend confirm that? If we had informed consent of what was planned on the Clapham omnibus—if Peter Bauer's test was used—I think people would understand why this was being done.

We have heard a lot about the important moral case for protecting the position of everybody in our society, including that very small number of people who set out deliberately to do us terrible harm. However, as we struggle to balance the conflictive needs of freedom and security, we must not overlook the moral case for the silent majority—the millions of our fellow citizens who look to the Government to keep them safe and who do not expect offenders to be able to evade the consequences of their actions.

5.15 pm

Could some of the sharpest corners in this legislation be smoothed off? I do not know, but it is because of those millions of silent majority who would see many of the objections to Clause 9 to be perverse, unfair, unreasonable or possibly all three, that I think the Government have so far got the balance right in what they are seeking to achieve in Clause 9 and why I support it.

Baroness Lister of Burtersett (Lab): My Lords, I am not a lawyer either, but like my noble friend Lady Blower I have read the Bingham Centre's report on

this. I want to draw your Lordships' attention to one aspect of it, which I do not think has been mentioned—I apologise if it has. There have been so many good speeches, particularly from the other side of the House, and across the House.

According to the report, the clause includes a retroactive power which would allow what was not lawful at the time to be made lawful now. The report suggests that this is retroactive lawmaking of the worst kind and particularly offends the rule of law. I think we should do away with the clause altogether. I have also read an article by Dominic Grieve, the much-respected former Conservative Attorney-General, on the "ConservativeHome" blog, which I must admit is not normally at the top of my daily reading list. It is an instructive piece. I will not read at length, because time is getting on, but he calls it,

"using legislation as a form of propaganda"

That is from a former Attorney-General and worth taking note.

I also draw attention to the fears that this is creating in the wider public. I have just had an email saying that over 100 organisations have written an open letter to the Prime Minister asking that this clause be removed. I hope that, when we come to Report, the House will remove this clause, which offends the rule of law.

Lord Paddick (LD): My Lords, I am also not a lawyer, but we have Amendment 29 in this group and we join the noble Lord, Lord Anderson of Ipswich, in opposing the Question that Clause 9 stand part of the Bill. I accept that Clause 9 is about giving notice, but the amendments in the group go beyond that. The main concerns that this group addresses are the significant increase in the use of the power to deprive British citizens of their citizenship and the new provision of dispensing with the requirement that the Secretary of State requires notice to be given to a person deprived of citizenship.

There have been many detailed and compelling speeches and I do not intend to repeat them, but I will refer to the powerful and personal speech of the noble Baroness, Lady Warsi, about how this provision is affecting some British citizens. This is not going to affect some British citizens, like me, at all, but when you hear her personal recollections of the fear that this clause is generating and about the importance of the family attaché case—reinforced by the noble Baroness, Lady Mobarik—you understand that, although it may not be targeting particular communities within the cohort of British citizens, it is certainly causing distress among certain parts of that cohort.

To answer the question of the noble Lord, Lord Hunt of Wirral, on what we do with those people who wish to do us harm, I say that we prosecute them in the courts. We do not dump them on other countries.

Depriving someone of their citizenship is a very serious step to take and it is being taken with increasing regularity. To then do away with the requirement even to notify the subject is totally unacceptable. How can anyone take any steps to correct or challenge a decision that they know nothing about? The noble Lord, Lord Hunt, talked about how we notify the unnotifiable. Even in the case that he and other noble Lords referred to, which has been in the courts, the individuals were not uncontactable; they were not unnotifiable within the law. As the noble Lord, Lord Anderson of Ipswich, explained, notice could have been served on that individual, but the Home Office chose not to. In the figures he gave about how many times that has stopped the Home Office from serving notice on somebody of deprivation of nationality, the answer was zero. Clause 9 is not only unreasonable but, based on the facts, unnecessary as well.

With the increased use by the Secretary of State of the power to deprive a British citizen of their citizenship, we support Amendment 28 in the name of the noble Lord, Lord Anderson of Ipswich, which says that reviews of the use of the power should be annual and not every three years. We also agree with Amendment 27 in the name of the noble Lord, Lord Moylan, to restrict the circumstances in which someone can be deprived of their British citizenship. My noble friend Lady Hamwee will address our Amendment 29, which removes the power of the Secretary of State to directly deprive a British citizen of their citizenship, requiring an application to be made to a court.

We agree with the principle behind Amendments 32 and 33 in the name of the noble Baroness, Lady Bennett of Manor Castle, that the powers the Secretary of State has to deprive British citizens of their citizenship need to be curtailed and the process made more transparent, but we believe that our Amendment 29 achieves those objectives.

Baroness Hamwee (LD): My Lords, I sense very well that the Committee would like to move on, so I will be much quicker than I had intended to be, but my noble friend Lord Paddick has asked me to speak to Amendment 29. Before I do so, I cannot resist rising to the challenge about my party's involvement in the 2014 legislation. Perhaps after this debate I will explain to the noble Lord, Lord Moylan, the concessions gained in negotiation at that time in response to the agreement.

Amendment 29 would change the requirement from an assessment of conduciveness, if that is a word, to the public good to necessity in the interests of national security. I thank the Minister for her letter following Second Reading. I could not help thinking that the two examples she gave of where Clause 9 could apply probably were matters of national security. She says so for one example, and the other is where it is assessed to be

"in the interests of the relationship between the UK and another country".

That must be very close to national security, unless the issue is a very long way away from the other country's security, which would not be a good basis on which to move forward. The amendment would change the requirement of an order to allow for judicial involvement. These two examples actually show why the matter should go to a judge.

I am editing my speech as I go. Reference has been made to particular communities being especially affected by this provision. I say to the passengers on what, in my neck of the woods, is the 337 bus to Clapham that something does not need to be designed to have a particular effect. If it has that effect, it falls into the area we are concerned about.

[Baroness Hamwee]

Our amendment would also add to the exclusions a person holding British citizenship by birth, and where it would

"affect the best interests of a child in the family".

That is looking at a fairly wide family. Use of the power would require an annual review, which I think is in the amendment from the noble Lord, Lord Anderson.

Baroness Chakrabarti (Lab): My Lords, I have listened to this debate with enormous care. I have conflicting feelings about it. I do not know whether I am prouder of the quality, logic and humanity of so many of the speeches, particularly from the Benches opposite, or whether the more compelling emotion I feel is anger that the speeches even had to be made. Unsurprisingly, I will speak against Clause 9 standing part of the Bill and in favour of the various amendments attempting to dilute its pernicious effect—and even more in favour of the proposed new clauses that attempt to go further.

I almost feel as if I and the noble Lord, Lord Hunt of Wirral, have listened to two completely different debates. The absolute tour de force by the noble Lord, Lord Moylan, and other speeches on these new clauses were not wide of the mark, because they quite rightly acknowledged that Clause 9 deals just with notice. They conceded that point, but talked about the rot that goes further back in terms of two-tier citizenship and the more precarious version of citizenship that some people are coming to experience because of the increasing use of powers of deprivation, and because these will inevitably have to be used more against some groups within the citizenry than others.

5.30 pm

Why is that inevitable? It is inevitable because some citizens, more than others, can be imputed to have links with other countries whether or not they really do, they would ever apply for citizenship elsewhere and that would even be granted. We have seen people deprived of citizenship on very spurious bases. That is, of course, because the United Kingdom has obligations not to make its citizens stateless, and therefore the vulnerable people are those who are thought, imagined or imputed to potentially be able to apply for citizenship elsewhere. That is why these powerful speeches were not hyperbolic or wide of the mark. They were right in law, right in history and right in terms of the experience that some of us have as British citizens in this country.

I am one of them. I have the privilege to have been born a British citizen. By definition, being here means that I have lived a very fortunate life. My parents came to this country in the late 1950s as lawful migrants at the invitation of Mr Macmillan. That did not prevent them being beaten up while I was in the pram by racist skinheads who had been encouraged by the rhetoric of Enoch Powell. That is my lived experience, and it is not hyperbolic or irrelevant.

Legislation is part of the national conversation, and my learned friend Dominic Grieve—who I sincerely hope will one day be in this place, because he would be a fantastic asset to this Committee of your Lordships' House—is right to ventilate the possibility of legislation being part of dog-whistle rhetoric. I am really sorry to have to say this, because I feel very bipartisan about this, not least because of some of those fantastic speeches from the Benches opposite, but Clause 9 is part of the culture war currently being waged in this country. It makes people like me, personally, feel very vulnerable.

I too have had death threats periodically in my career, without the benefit of ministerial security. I tend not to bang on about this too much, but I know that these kinds of threats—whether they come on social media or in the post—come in waves and cycles that are affected by the national discourse, not just speeches and rhetoric but pending legislation. It was the anxiety about those times past that led my parents to want to register before the 1981 Act came to be. I sense, in the correspondence that I am getting from people in minority communities in particular—and the noble Lord, Lord Moylan, set out the various communities that are particularly affected—that they are now feeling the way my parents felt in the 1970s, thanks to Enoch Powell. That is totally unacceptable, and that is one of the reasons why Clause 9 is unacceptable.

The noble Baroness, Lady McIntosh of Pickering, was quite right to say that due process is effectively impossible if you have not had notice. It is not a complicated point to grasp. Somebody might be telling lies about Joseph K, or probably Joseph Khan. If he does not even have notice of the deprivation, how effective is any right of appeal? It is an utter nonsense.

I have mentioned the noble Lord, Lord Moylan, probably to his eternal embarrassment. The noble Lord, Lord Anderson, was so right to point out the comparison with the very few other jurisdictions that take draconian powers to take citizenship away and to say that even in Australia and New Zealand, the powers are much more restricted and there are safeguards, which are totally absent here.

With the greatest of respect to my noble friend Lord Blunkett, with whom I did not always agree during the war on terror, just because you intend something to be protective and not punitive, that does not mean it is not punitive in effect. Some of us remember the Belmarsh case in which probably the greatest jurist of recent times in this country, Lord Bingham, gave the leading speech. Just because the Government of the day said, "This is not imprisonment; this is just immigration detention, pending removal", it did not wash then and does not wash now. We have gone further down that road.

It has always been possible to discriminate between citizens and non-citizens in relation to their rights. This is understood, but if you are now able so readily to take citizenship away, what is the value of that citizenship? What you do, increasingly, is to use administrative powers to sidestep the rule of law and criminal due process in particular. Noble Lords in this Committee were so right to say that the way we address threats from dangerous, criminal people, including terrorists, is that we track them down, charge them, put them on trial, convict them and then incarcerate them. That is right not just in principle but in security terms.

I ask the Committee to think about Clause 9, the amendments and the wider discourse about deprivation of citizenship in two ways. One way to look at it is in terms of what we are saying to citizens about the bond that the noble Lord, Lord Moylan, described. What

are we saying to them about the value of being part of this British family—how important and sacred it is, and how it is a two-way street with rights and responsibilities? What are we saying if this can be taken from them so easily, not by a court but by the Home Secretary of the day? How are we making people feel about their belonging in this country? If I feel the anxiety that I have over the last couple of hours, how do we think that people with far fewer privileges than me feel as minority communities in this country?

The second thing I ask the Committee to consider is not just citizenship here but the UK's place in the world, as a responsible citizen on the world stage. If every grown-up, mature and responsible democracy in the world chooses to deal with threats to its security by depriving bad people of their citizenship, and other countries follow our lead, what will the consequences be for global security? If every mature democracy gets to just take citizenship away from bad people, whoever they are—terrorists, murderers or paedophiles—where will we be then? We will be dumping our citizens like toxic waste in international waters. How will that make Britain or the world a safer place?

Lord Rosser (Lab): My Lords, I thank the Minister for her letter to all Peers of 25 January. If I understood correctly what the noble Baroness, Lady Warsi, said, I rather gather that it did not make a great impact on her. I am probably in the same category. Nevertheless, I appreciated receiving the letter.

I have added my name in relation to Clause 9 standing part of the Bill, which was spoken to with such clarity and authority by the noble Lord, Lord Anderson of Ipswich, and will speak to that. No doubt there will be a need for some reflection on all the amendments in this group, as well as the stand part debate, as to what may or may not happen on Report.

Frankly, through Clause 9, the Government—metaphorically speaking, I stress—take no prisoners. They seek to amend the long-standing position, under the British Nationality Act 1981, that an individual must be notified if they are to be deprived of their nationality. That requirement of prior notice is removed by Clause 9

"if it appears to the Secretary of State that … the Secretary of State does not have the information needed to be able to give notice … it would for any other reason not be reasonably practicable to give notice … or … notice … should not be given … in the interests of national security … in the interests of the relationship between the United Kingdom and another country, or … otherwise in the public interest."

The noble Lord, Lord Anderson of Ipswich, made particular reference to that last part on the basis that it is so broad and wide-ranging.

Yet, as we know, the present rules already allow for citizenship deprivation letters to be delivered to an individual's last known address. As the noble Lord, Lord Anderson, pointed out—this was repeated by the noble Lord, Lord Paddick—the Government said that there have been no cases where the requirement to give notice stopped a deprivation of citizenship order coming into being. Of course, that begs the question: why do we have Clause 9 at all? I do not think that we got an answer to that in the letter from the Minister of 25 January 2022.

The number of people deprived of their citizenship, which the Government can now do on the basis that it would be

"conducive to the public good",

has risen over the past 12 years. We have heard a variety of figures during this debate as to the extent of that deprivation and the numbers involved. I have a figure, too. It does not tally with some of the figures that have been given but the figure that I have is that, between 2010 and 2018, around 175 people were deprived of their citizenship on the grounds that it was conducive to the public good. A significant number happened in 2017, as has been said; the figures certainly seem to be on an upward trend.

In that context, information on the Court of Appeal decision that has been referred to that upheld a High Court ruling—the D4 case—says that the Home Secretary

"argued that notification had been given to D4, who has been detained in the … camp in Syria since January 2019, by simply placing a note on her Home Office file, relying on regulations introduced without parliamentary approval."

Under Clause 9, we are faced with even wider powers being given to the Home Secretary. In the light of a note simply being placed on a Home Office file, relying on regulations introduced without parliamentary approval, how are we expected to have any confidence in the provisions of Clause 9 being applied fairly and objectively when this kind of thing is going on and has been brought to our attention? In how many cases has this been done, with a note simply being placed on the Home Office file? It certainly does not inspire confidence in giving the Home Office the kind of powers that are provided for in Clause 9. I know that the Minister will tell me that these powers relate only to the notification of a decision to deprive, but it is the criteria against which the conclusion can be reached to give notification of a decision without notice that are of concern.

5.45 pm

If Clause 9 comes into effect, we can surely be in no doubt that the numbers will likely increase, because if the Government do not intend to use the additional power that Clause 9 gives them to deprive people without notice and without judicial involvement of their British citizenship, why are they seeking to include it in the Bill? It must be because they intend to do notices in this way, despite what the noble Lord, Lord Anderson, has said about there having been no cases where the requirement to give notice had stopped a deprivation of citizenship, according to the information that he has been given. Assuming that they know the answer, in the light of what was said by the noble Lord, can the Government say what the number of people deprived of British citizenship would have been in each year since 2010 had this power to deprive citizenship without notice been available, compared with the actual number who had their citizenship withdrawn in each year since 2010?

The Bill says that a person so deprived of their citizenship without notice and without judicial involvement, and in secret, will be able to appeal to the First-tier Tribunal but, as so many other noble Lords have asked, how do you appeal against something that you do not know about? It could result in statelessness, yet the Government have decided not to tell you; they

[Lord Rosser]
appear to have fairly wide-ranging criteria against which they can reach that decision and do not need to give you notification. Is not the reality that one of the key purposes of Clause 9, about deprivation of citizenship without notice, is to introduce measures that will in effect and in reality reduce rights to appeal? Is that not what it is all about? Will the Government be disclosing publicly the names of those from whom they have withdrawn citizenship without notice, so that we all know what was being done in our name and how frequently?

Other questions obviously arise in relation to Clause 9, but I am doing my best to stick to what the noble Lord, Lord Hodgson of Astley Abbotts, wanted, which was to address the issue that is raised in Clause 9, although I agree with other noble Lords that all the points that have been made have been related to Clause 9. How and by whom will the definitions be determined of

"in the interests of national security"

and

"in the interests of the relationship between the United Kingdom and another country"

and

"otherwise in the public interest"

referred to in Clause 9? How and by whom will it be determined whether the Secretary of State has the information needed to be able to give notice and whether for any other reason it would be "reasonably practicable" to give notice? Who will make that decision? Will it be made by the Home Secretary? How hard will the Secretary of State be required to try to obtain the information needed to give notice to activate Clause 9? Against what criteria will the Secretary of State have to show that it would not be reasonably practicable to give notice to activate Clause 9? Where does that power live? Where does that decision-making rest?

As has been said, the consequences of this clause are likely to be felt most, but certainly not exclusively, by those from ethnic minority backgrounds. It is unlawful to deprive someone of their citizenship and leave them stateless. Even so, the Home Office is still on record as saying that British citizenship

"is a privilege, not a right."

Yet without citizenship, people do not have rights. It has been estimated that nearly 6 million people in England and Wales could be affected and that, under this proposal, two in five British citizens from an ethnic minority background are eligible to be deprived of their citizenship without being told, since they have or may have other citizenships available to them. That compares with one in 20 characterised as white. That is a sobering consideration when looking at the merits or demerits of Clause 9.

It is time that we heard from the Government, but I say in conclusion that Clause 9 should not be in the Bill. As the noble Lord, Lord Anderson of Ipswich, said, there are no safeguards, there is no accountability in respect of its powers, provisions and associated broad criteria and it is likely to increase feelings of discrimination and fear, apparently for no measurable or meaningful purpose at all.

Baroness Williams of Trafford (Con): My Lords, I thank all noble Lords who have spoken on this late Thursday afternoon, and those who tabled Amendments 25, 26, 27, 28, 32 and 33, for their contributions, which have made it a very lively debate. Some 14 noble Lords talked about wider deprivation, which is obviously not in Clause 9, and five noble Lords spoke on Clause 9 itself. I would like to address some of the most irresponsible scaremongering surrounding Clause 9 that I have probably ever heard. As my noble friend Lord Hodgson of Astley Abbotts says, there have been some quite overblown comments today.

It is very important to be clear about what Clause 9 is and what it is not. It is not, as my noble friends Lord Hodgson of Astley Abbotts and Lord Hunt of Wirral said, an amendment to the deprivation power that has been in force for 100 years. It does not allow the Home Secretary to remove citizenship on a whim. I look forward to a conversation with my noble friend Lady Mobarik, as I was concerned by her level of fear on this. Clause 9 will not strip 6 million people of their British citizenship without warning. It is not targeted at particular ethnic minorities, and it does not change the reason why a person may be deprived of their British citizenship. It does not remove the right of appeal against a decision to deprive law-abiding British citizens, like my noble friend Lady Mobarik, of their citizenship; they have nothing to fear from Clause 9, nor does the mother of my noble friend Lady McIntosh of Pickering, or the grandparents of my noble friend Lady Warsi. They could not be deprived because they have done nothing wrong.

I might add here that the people who need to declare any interest or concern are not those of the Windrush generation, not Jews, not Muslims, and indeed not Catholics such as myself with dual nationality, but terrorists—people who would actually do us harm. I glean from the noble Baroness, Lady Jones of Moulsecoomb, that she does at least support the removal of citizenship in fraudulent applications, if I understood her correctly.

I will start by addressing the amendments relating specifically to Clause 9, and then move on to the amendments that focus on the wider deprivation power. I thank the noble Lord, Lord Anderson, for Amendment 28. I reassure him that the Government have repeatedly made clear that all deprivation decisions are taken carefully, after full consideration of the facts, and in accordance with domestic and international law. I do not think he disputes that. The decisions are, as he knows, already subject to judicial oversight via the statutory right of appeal, and individuals are also able to seek judicial review proceedings, where appropriate, on any aspect of the decision-making process not captured by the statutory right of appeal.

In addition, the Independent Chief Inspector of Borders and Immigration has a wide remit to inspect any aspect of the immigration and nationality system, and at any time can review the use of deprivation powers. The Home Secretary can also commission specific reviews, as desired, which the noble Lord, Lord Anderson, referred to, particularly with regards to their frequency. I look forward to speaking further with him on that that before Report. He will also be aware that the Supreme Court of Appeal and SIAC,

the Special Immigration Appeals Commission, have recently affirmed the Home Secretary's competence to decide on matters of national security.

The noble Lord commented, as did the noble Lord, Lord Paddick, on the number of cases in 2017 and the status of figures since then. The rise in 2017 is due to the large increase in global terrorism. More broadly, I want to assure the noble Lord that the Home Office is committed to publishing its transparency report into the use of disruptive powers, and will do so in due course. I look forward to continuing to engage with him on this matter and others pertaining to this Bill.

My noble friend Lady Warsi asked about the numbers, and I think others did, since 2010. There was an average of 19 between 2010 and 2018. The noble Lord, Lord Anderson, also asked about the comparison with Australia and New Zealand, and kindly shared his papers on this with myself and my officials. I have listened to his points extremely carefully, and I intend to consider them carefully and to continue to engage with him outside this Committee.

Amendments 25 and 26 would mean that we could not deprive a person of British citizenship purely because we did not know where they were and could not get the notice to them. We would be reliant on people whose conduct is serious enough to warrant deprivation keeping in contact. It is not correct to say that we will not ever have to notify someone of deprivation. Of course, if they come back to the UK—and most of them are outside the UK—they will find out; if they do not, one presumes that they did not try to when they came back or do not care.

I move now to the amendments relating to the wider power to deprive someone of citizenship. This is an extremely serious matter and is rightly reserved for those whose conduct involves very high harm or poses a threat to public safety, or those who obtained their citizenship by fraudulent means. The UK Government are absolutely clear that no one citizen should have the right to destroy the lives of other citizens in this country.

As I have mentioned, it cannot be right that we risk the UK's interests to make contact with dangerous individuals who wish us harm, nor is it right to allow them to exploit a loophole in legislation and retain the benefits of British citizenship simply by removing themselves from contact with the Government or relocating to a place where we could not reasonably send them notice. Amendment 32 would completely remove the ability of the Home Secretary to make a deprivation decision in relation to those high harm individuals. Deprivation would then be possible only where a person has obtained citizenship by fraudulent means.

We have sadly often seen the effect of terrorist attacks on our way of life or the impact of serious organised crime on the vulnerable. The threat picture, as noble Lords have spoken about, is in direct correlation to deprivation—in other words, an increase in the threat picture leads to an increase in the number of deprivations. The 464 figure that the noble Baroness, Lady Jones, cited combines both the fraud and conducive to the public good figures. It cannot be right that these people keep their British passports and remain free to come in and out of the UK as they please. It is the Government's duty to keep the public safe, and we do not make any apologies for seeking to do so.

But I understand the concerns about "secret" decision-making. Deprivation decisions are made following very careful consideration of advice from officials and lawyers and in accordance with international law. Some of that consideration involves sensitive information and evidence, as noble Lords might be aware, and it would not be in the public interest if that evidence were made public. For example, it could jeopardise ongoing criminal investigations or undercover operations and thus harm those working on behalf of the Government to keep us safe. That is why appeals against a deprivation decision relying on such evidence are heard by the Special Immigration Appeals Commission, or SIAC. Amendment 33 would remove the ability to rely on this sensitive evidence, because with no means to securely air it at the appeal stage, the Government would not be able to take deprivation decisions in these cases. Also, removing the public interest test for certification of deprivation decisions into SIAC risks creating an anomaly within the immigration and nationality system as grounds for certification are the same regardless of case type, and the special advocate system and rules of court ensure that any evidence which can be heard in open court is done so.

6 pm

I turn next to Amendment 27, which would take us back to the limited grounds for deprivation that were historically in legislation. In today's modern world, the threat to the UK's safety and security is not restricted to those who have shown themselves disaffected towards the Crown or engaged with an enemy during times of war, nor is it restricted to those who are not automatically British. This amendment would restrict deprivation of fraudulently acquired citizenship to cases where it was also conducive to the public good for the person to be deprived. The right approach cannot be to make it more difficult for the Home Office to address abuse of our immigration and nationality system while those who have actually cheated the system retain the benefits of the British citizenship that they were never entitled to.

Moving on, Amendment 29 would remove our ability to deprive those who, despite being British by birth, bear no loyalty to this country or its people. Serious organised criminals and those who conduct high-harm acts, even those who were not British by birth, could not be deprived of their citizenship. The threat to the UK's safety and security is not restricted to those who are not British by birth, nor is it limited to those who pose a threat to national security. Consideration of the child's best interests is already a primary consideration in deprivation decisions which affect them. However, this amendment would mean that it would not be possible to deprive someone who posed a threat to national security if it affected the best interests of a child in their family, unless the person has conducted themselves in a manner seriously prejudicial to the fundamental interests of the UK or a British Overseas Territory.

This amendment would also restrict deprivation of fraudulently acquired citizenship to cases where a court gave its consent. The right approach cannot be to make it more difficult to address abuse of our

[Baroness Williams of Trafford]
immigration and nationality system, asking a court for permission to make a decision that they will consider again when the person exercises their right of appeal. In the meantime, those who have cheated the system retain the benefits of the British citizenship they were never entitled to.

The amendment would also increase the frequency of the review of the deprivation power at Section 40(4A) of the British Nationality Act 1981 to an annual review. I think noble Lords have made the point that this power has been in force since 2014 and has not been used to date. It would not be appropriate to increase the frequency of reviewing a power which has never been used, but I look forward to further discussions with the noble Lord, Lord Anderson, on this issue.

Finally, as I have said, deprivation decisions always come with a statutory right of appeal. Reviews undertaken in respect of such cases where there are live appeals or appeal rights not yet exercised or exhausted risk undermining the statutory provision and the judiciary's independent role. Such a review would place an additional burden on the departments involved in supporting the Home Secretary in such cases, as well as the burdensome cost to the taxpayer.

I will conclude by speaking to the need for Clause 9 as a whole. It is necessary in order to avoid the situation where we could never deprive a person of British citizenship just because it is not practicable or possible to communicate with them. Preserving the ability to make decisions in this way is vital to preserve the integrity of the UK immigration system and protect the security of the UK from those who would wish to do us harm. We cannot do that if our hands are tied because we have to give people notice in situations where they have removed themselves from contact. We have, sadly, too often seen the effect of terrorist attacks on our way of life or the impact of serious organised crime on the vulnerable. It cannot be right that these people keep their passports and remain free to come in and out of the UK as they please.

I will touch on the Court of Appeal case that has been mentioned by a number of noble Lords today. It found that the Secretary of State for the Home Department is entitled to decide that

"deprivation of citizenship is conducive to the public good because, by reason of the individual's harmful conduct, he ought not to be allowed to enjoy the benefits of British citizenship generally, quite aside from the possibility of his removal from the UK."

My noble friend Lady Warsi asked about the meaning of

"conducive to the public good".

In simple terms, it means that it is in the public's interest that the person is not British.

I turn to something that my noble friend Lady McIntosh asked about. I talked about people coming in and out of the country—they are often deliberately hiding from the authorities to evade detection and being brought to justice. Proposed subsection (5A)(c)(ii) refers to where sensitive information tells us where a person is but revealing that could harm our relationships with other countries—namely, if it is from their intelligence services. So it is the Government's duty to keep the public safe, and we make no apology for trying to do so. But we do not want to deny a person their statutory right of appeal where we have made a decision to deprive, so this clause also preserves that right.

The noble Baroness, Lady Lister, asked whether this retrospective element just covers our backs. We are actually seeking to affirm our robust and effective system. It is important in cases where we have already made a decision to deprive that the subsequent deprivation order remains valid and effective to protect the UK from high-harm individuals. In cases where we have already made a decision to deprive but, for one reason or another, we have not notified the person, this clause also ensures that such decisions, as well as the subsequent deprivation, are still lawful.

The noble Baroness, Lady Chakrabarti, my noble friends Lady Warsi and Lord Moylan and the noble Lord, Lord Paddick, talked about a criminal justice response to the most high-harm individuals—of course, not all of them have committed criminal offences—by putting them in prison. In this country, we have seen what happens when we do that: they get out, and a few of them have either attempted or succeeded to do members of the British public the worst harms.

On the point of the noble Lord, Lord Paddick, about dumping people outside the UK, I say: we are not—most of them are already outside the UK. It is important that deprivation orders made before this clause comes into force remain valid—otherwise, individuals whom the Home Secretary has already decided should be deprived of their citizenship because it is conducive to the public good could have their citizenship effectively reinstated and could be free to travel in and out of the UK, with dire consequences for national security.

I will leave the last words to the noble Lord, Lord Blunkett, who talked about his history of the wider power and challenged this House to remove the fear. After what I have said today and some of the further discussions that I will have with noble Lords before Report, I hope that we are on our way to removing that fear.

Lord Moylan (Con): My Lords, I think my noble friend has been misadvised in characterising Amendment 27 as imposing any new or further restriction on the power to deprive in the event of obtaining nationality by fraud. That simply is not so; they have misconstrued that clause. Can I ask her a very narrow question? She referred in her speech to the use of deprivation in cases of serious organised crime. Did she mean serious organised crime apart from terrorism?

Baroness Williams of Trafford (Con): It could encompass both, but in the context of what I am talking about, some serious organised crime is outside of terrorism.

Baroness Fox of Buckley (Non-Afl): Can I just a question that relates to that? A picture has been painted of a group of people darting over borders with their passports, getting away with serious organised crime and terrorism. I wondered why somebody did not stop them if they were involved in serious organised crime or terrorism and bring them in, as it were. What about those people involved in serious organised crime and

darting over borders who do not have a parent or grandparent that means they are potentially able to live in another country? Are the Government suggesting that the harm British citizens are being protected from is all committed by people who are coincidentally related to somebody which means that they can go and live somewhere else? Are there no home-grown, with nowhere else to go types doing any of this harm that threatens British citizens?

Baroness Williams of Trafford (Con): Of course there are home-grown people trying to do harm to our British citizens, but this is one of a number of powers to try to reduce high harm activity against the people of this country.

Baroness Warsi (Con): As a follow-on from the noble Baroness's question, I have a question that I asked in my initial intervention. Why should they be treated differently? Say one person is involved in serious organised crime, such as major drug dealing, child trafficking or sex trafficking offences, and another person commits exactly that same offence, and say both of them were born in the United Kingdom, raised in the United Kingdom, have never lived anywhere else and have never taken citizenship of any other country. If they commit exactly the same crime, why should one be told to leave and the other not?

Baroness Williams of Trafford (Con): My Lords, what I think I have tried to explain today—and it will be obvious that are clearly differences between us—is that, where the highest harm individuals can rely on another citizenship, the Home Secretary has within his or her power the ability to remove that citizenship. Of course, the one citizenship that is protected is when someone is only a British citizen and of no other territory.

Baroness McIntosh of Pickering (Con): My Lords, this debate has been very moving in parts and extremely thoughtful, and I thank everybody across the House who contributed.

I, for one, am not unsympathetic to what the Government are trying to do. To tackle my noble friend Lord Hunt full on, I think he said that if Parliament does not accept Clause 9 then the Committee, or Parliament, will try to stop the Government from doing it. From what I have heard from the debate today, I think that is precisely the mood of the Committee and the conclusion that we have reached.

There are a number of alternative amendments. The noble Lord, Lord Blunkett, and the noble Lord, Lord Moylan, have come to blows, if you like, as to the purport of Amendment 27. There are parts of the amendments tabled by the noble Lord, Lord Anderson, that I find attractive, in particular removing the whole of Clause 9.

6.15 pm

Wider concerns have been expressed in the debate this afternoon. Practitioners have to meet this at the sharp end, hence the concerns of the Law Society of Scotland. Concerns have also been raised by the Joint Committee on Human Rights, as well as by the Constitution Committee of the House of Lords.

My noble friend Lord Hunt said that even if there is no right to be given notice of deprivation of citizenship, there is still a right of appeal. I quoted the comments of the Law Society of Scotland in my opening remarks. In paragraphs 19 and 20 of our own Constitution Committee report, this is addressed head on:

"if a person has not been given notice of the deprivation of citizenship it is difficult to see how he or she would be able to appeal the decision",

because they simply do not know about it. In paragraph 20, it goes further. I referred to this earlier, so I apologise if I am repeating myself. It was not addressed in the summing up:

"If a person is to be deprived of citizenship without notice there ought to be additional safeguards."

If my noble friend is agreeable—and I think she has a very good track record in this regard—I propose to come back with my Amendment 25. I should like this to be considered further. I am pleased that my noble friend addressed the concerns raised in my Amendment 26. She said that it is often for security reasons that the Government are not able to say. The benefit of Amendment 25, which does not go as far as the amendments in the name of the noble Lord, Lord Anderson, is that it would give the Government part of what they want but not all of it. I do not think we will reach an agreement in Committee this afternoon. I hope that my noble friend could perhaps convene a meeting of all of us who have these concerns, so that we could try to reach some common ground with her. I beg leave to withdraw the amendment.

Amendment 25 withdrawn.

Amendments 26 and 27 not moved.

Clause 9 agreed.

Amendments 28 and 29 not moved.

Clause 10: Citizenship: stateless minors

Amendment 30

Moved by ***Lord Dubs***

30: Clause 10, page 13, line 11, after "birth" insert "without any legal or administrative barriers"

Member's explanatory statement

This would give effect to the recommendation of the Joint Committee on Human Rights to ensure that, in compliance with Article 1 of the 1961 UN Statelessness Convention, British citizenship is only withheld from a stateless child born in the UK where the nationality of a parent is available to the child immediately, without any legal or administrative hurdles.

Lord Dubs (Lab): My Lords, I again refer to my membership of the Joint Committee on Human Rights. We have produced detailed reports on many aspects of the Bill, including on this matter.

It is surely a basic right that nobody should be stateless. This is fundamental. Stateless people have fewer rights—they have virtually none—and they are vulnerable. I have tabled this amendment to avoid statelessness.

As things stand, stateless children born in the UK are covered by this provision in the Bill. Prior to the British Nationality Act 1981, all children born in the UK were British under jus soli. As I said earlier,

[Lord Dubs]
I served in the Commons at the time—indeed, I was on the Public Bill Committee which dealt with this Bill for many long weeks—and we had a long discussion about jus soli, and I only hope that the position I took then is the same as the one I am taking now—in other words, in opposition to the provision. I think I can claim that I have been consistent over 40 years; I hope so, but if anyone wants to look it up in order to disprove it, I will listen to them.

Clause 10 has a new requirement that will make it more difficult for stateless children to acquire British citizenship. It puts another hurdle in the way of acquiring that citizenship. The onus will now be on children—or, if they are very young, the people responsible for them —to produce the evidence, unless the Home Secretary is satisfied that the child is unable to acquire another nationality. The provision will effectively mean that a child born in the UK, or their parents or carers on their behalf, will have to prove that they could not reasonably have acquired another nationality—so the onus is on the child, or the parents or carers, to prove that. That may be quite a difficult point to prove, and the onus is switched in allocating the burden of responsibility. That could be especially hard for children who do not have significant support or access to the relevant documents. For example, the children of refugees might find it very difficult to have the necessary documentation or to be able to produce the evidence, so it would put a significant additional burden on them.

It is an anomaly that when children become adults they can apply. It remains an oddity that a child can remain stateless for some years until they become an adult, when they can then apply. What is the advantage to anyone of having a child stateless for that period? It certainly cannot be in the best interests of the child, and that surely must be the bottom line. The United Nations Convention on the Rights of the Child always talks about what is in the best interests of the child; Article 7 says that a child should be registered as having a nationality immediately after birth. That is fairly clear. Furthermore, it says that a contracting state shall grant its nationality to a person born in its territory who would otherwise be stateless. With this clause, the Government are going against these provisions in the Convention on the Rights of the Child.

It is difficult to see how Clause 10 complies with the United Kingdom's obligations under both the 1961 United Nations Convention on the Reduction of Statelessness and the Convention on the Rights of the Child. It is an unnecessary measure that makes things even more difficult. I can see no argument, not even the security arguments that the Minister advanced in the previous debate, for putting this hurdle in the way of children who might otherwise be stateless. I beg to move.

Baroness Lister of Burtersett (Lab): My Lords, I support my noble friend Lord Dubs and the proposal that Clause 10 should not stand part of the Bill. I put on record my thanks to the Joint Committee on Human Rights for the very helpful work that it has done on the Bill, with a whole raft of very useful reports. According to ILPA and the Bar Council, this clause contravenes the 1961 UN Convention on the Reduction of Statelessness, and that should give us pause for thought. Research by the European Network on Statelessness shows how some children in very vulnerable circumstances will be affected, as my noble friend said, and found that there can be good reasons for delays in registering a child's nationality.

To my mind, the justification that the clause is needed because there has been a significant increase in the number of registrations of stateless children smacks of the culture of disbelief and suspicion criticised by Wendy Williams in the Windrush report. Surely it is to be celebrated that more children are exercising their rights—no thanks to the Home Office, which has been dilatory in making children and their parents aware of these rights and in removing the barriers to registering them. It is thanks to the hard work of organisations such as the Project for the Registration of Children as British Citizens that more children and parents have become aware of the right to registration. As I say, this is to be commended, not cracked down on as if it were some kind of crime.

As the JCHR observes, and Amendment 31 addresses —a point made also by my noble friend Lord Dubs—it is difficult to see how this clause is compatible with the UN Convention on the Rights of the Child. While the Home Hoffice human rights memorandum states that it has considered the best interests of the children affected, it is not clear from it how such a clause is in their best interests, so can the Minister spell out exactly how this clause meets the best interests of children affected?

Baroness Ludford (LD): My Lords, as a member of the Joint Committee on Human Rights, I agree with the noble Baroness that we have done good work on the Bill. On a more serious note, perhaps I may say how much we appreciate the chairmanship of the right honourable Harriet Harman MP, whose recent bereavement has saddened us so much.

I will speak to both Amendments 30 and 31. As has been said by other noble Lords, Clause 10 amends the British Nationality Act to introduce new requirements for the registration of a stateless child—a child born in the UK—and could make it even more difficult for them to acquire British nationality, to which there are already significant hurdles. I could not agree more with the noble Baroness, Lady Lister. Why should it be a problem that children are becoming stateless and ceasing to have the security of nationality?

Under Clause 10, the Home Secretary has to be satisfied that the child is unable to acquire another nationality. That puts that child in the position of having to prove that they could not reasonably have acquired another nationality. The policy rationale seems to be a suspicion that parents are wilfully causing their child's statelessness—the culture of disbelief that the noble Baroness, Lady Lister, referred to. As colleagues and the JCHR say, it is difficult to see how the best interests of the child, as required by the 1961 UN Convention on the Reduction of Statelessness, are served by the new test in this provision. How is it in that child's interests to be left stateless?

Indeed, asserts the JCHR, Clause 10

"risks punishing the child for a perceived failure"

on the part of their parent or carer, which is obviously through no fault of their own. However, the UN convention does not impose a requirement on the parent to exhaust all avenues to seek the citizenship of another state. So Clause 10 could move the UK away from the convention. I was interested that the noble Baroness, Lady Lister, quoted ILFA and the Bar Council as saying that they do indeed think that this is a contravention of the convention, and I can see why. Amendment 30 is an attempt to move the UK back towards the intention of the convention by saying that British citizenship could only be withheld

"where the nationality of a parent is available to the child immediately, without any legal or administrative hurdles."

Amendment 31 aims to make the best interests of the child central to the decision-making.

Finally, in addition to the risk of alienation from our society of individual children, it cannot be in the interests of British society as a whole for young people born here to be excluded from sharing citizenship and thus rootedness in their community.

Baroness Jones of Moulsecoomb (GP): My Lords, I support the amendments and the proposal that Clause 10 should not stand part, and my noble friend Lady Bennett of Manor Castle has also signed them. We should be making it as easy as possible for children to obtain a nationality if they are already stateless. Quite honestly, who dreams up these cruel clauses at the Home Office? Do they not have a heart when they are writing these things? Do they not understand the impact that they can have on children through no fault of the child? The decision should be made purely in the best interests of the child, as provided by Amendment 31. I hope that the Government change course and make this as easy and straightforward as possible. People outside are looking in and are judging this to be cruel, unpleasant and perfectly horrendous.

6.30 pm

The Lord Bishop of Durham: My Lords, I am trying to imagine how it could ever be in the best interests of a child born and raised in this country not to be given the right to be a citizen of this country. In what possible circumstances could we decide that it would be in the best interests of someone born and raised in this country to be decreed, at the age of 13 or 14, a citizen of another state? That is the situation. You could almost forget the 1961 convention, human rights and so on; we are simply talking about the best interests of the child. You can then back it up with all the international stuff on top. I support these amendments.

Lord Paddick (LD): My Lords, Clause 10 talks about, to quote the Explanatory Notes,

"cases where parents have chosen not to register their child's birth, which would have acquired their own nationality for their child, which means that the child can register as a British citizen under the statelessness provisions."

I seriously question how many parents have such a detailed understanding of nationality law that they choose not to register their child's birth in order to register their child later under statelessness provisions to give them British citizenship. That is just not credible. How many cases can the Minister cite where parents have deliberately not registered the nationality of their child in order for that child to get British citizenship under the statelessness provisions?

This strikes me as a cynical attempt to tighten the law, in a similar way to that in which the Bill tightens the provisions around modern slavery, to give the impression of being tough—bordering on xenophobic—on immigration, when there really is not a problem. It should not be part of the Bill. The power in this clause given to the Secretary of State to deny British citizenship to a child, unless she is satisfied that the child cannot reasonably acquire the nationality of its parents, needs to be qualified at the very least.

Amendment 30 in the name of the noble Lord, Lord Dubs, would give effect to the recommendation of the Joint Committee on Human Rights

"to ensure that British citizenship is only withheld"

from a stateless child born in the UK

"where the nationality of a parent is available to the child immediately",

without any legal or administrative hurdles. We will support this amendment if this clause stands part of the Bill.

These are decisions being taken by parents and the Secretary of State about an innocent child who has no influence over what is being decided about their future—decisions about something as fundamental as citizenship. For that reason alone, we strongly support Amendment 31: that the best interests of the stateless child born in the UK must be central to any decision whether to grant or refuse British citizenship.

This is what we have come to: seeking to deny stateless children born in the UK British citizenship. As I said on a previous group, British citizenship has benefits to society as well as to the individual concerned. This is not just about the best interests of the child, although it should be; it is about what is in the best interests of society. Keeping children stateless as they grow into adults surely increases their chance of being radicalised and becoming a threat to society. On the last group, the Minister kept talking about high-harm individuals. All the evidence points to one of the most important factors in radicalisation being people not feeling part of society or of this country. Keeping a child stateless surely will increase the danger of that person growing into a terrorist.

Lord Rosser (Lab): My Lords, my name has been added to the proposal to oppose Clause 10 standing part of the Bill, which was tabled by the noble Lord, Lord Paddick. As has been said, Clause 10 is intended to disentitle stateless children in the UK from their statutory right to British citizenship. It proposes amending and restricting a vital safeguard in British nationality law that prevents and reduces childhood statelessness. Under our international obligations, we have safeguards that mean that a child who was born in the UK and has always been stateless can acquire British citizenship after five years of residing here.

Through Clause 10, the Government now propose to restrict and amend that obligation. Clause 10 requires the Secretary of State to be satisfied that a child was unable to acquire another nationality before being permitted to register as a British citizen. That creates

[Lord Rosser]
an additional and unjustified hurdle to stateless children's registration as British citizens, which could be difficult for a child or those acting on their behalf to prove.

Rather than helping such children attain citizenship, the Government are intent on putting up more barriers and making it more difficult for children under 18 to be registered. They seem to want to try to deny citizenship, particularly citizenship of the place where the child was born and lives—in fact, the only place they know. No doubt the Government will explain what substantial wrong they consider this clause addresses and what hard evidence there is that that wrong is actually significant, as opposed to it being claimed as such.

Clause 10 can only be highly damaging to a child's personal development and their feelings of security and belonging, with this exclusion and potential alienation being inflicted in their formative years. The noble Lord, Lord Paddick, referred to the serious implications that can have. There has been no assessment made by the Government of the impact this proposal will have on those children affected, which suggests that this issue does not trouble the Government. As my noble friend Lady Lister of Burtersett said, how can this be in the best interests of the child? This issue is addressed in Amendment 31, reflecting a JCHR recommendation.

In the Commons, we supported an amendment to Clause 10 which sought to ensure that the Government act in compliance with Article 1 of the 1961 UN Convention on the Reduction of Statelessness, the Government having failed to protect the existing safeguards, which are in line with international law, in this Bill. The amendment altered Clause 10, so that British citizenship was withheld from a stateless child born in the UK only when a parent's nationality was available to the child immediately, without any legal or administrative hurdles. That is as per Amendment 30, moved by my noble friend Lord Dubs, which also reflects a JCHR recommendation.

I am probably being overoptimistic in hoping that there will be a positive government reply to this stand part debate. At the very least, if my fears are justified and we do not get a positive reply from our point of view, I hope that we will be told what the hard evidence is that Clause 10 actually addresses a significant wrong, rather than one being claimed as such.

Baroness Williams of Trafford (Con): My Lords, I start by thanking the noble Lord, Lord Dubs, for tabling Amendments 30 and 31 to Clause 10, which requires the Secretary of State to be satisfied that a child aged between five and 17 cannot reasonably acquire another nationality in order to be registered under the stateless child provisions. I also note the opposition to and concerns about this clause of the noble Lords, Lord Paddick and Lord Rosser, should they not be satisfied by my response. In an ideal world, we would not need to include this clause, but current trends mean that we feel we must.

That goes to the question that the noble Lords, Lord Paddick and Lord Rosser, asked about the figures. In 2017, in the case of R v Secretary of State for the Home Department, even though the applicant was eligible for the grant of British citizenship under paragraph 3 of Schedule 2 to the BNA 1981, and despite the fact that they could acquire the nationality of their parents, the judge recognised that his conclusion

"opens an obvious route to abuse".

The figures bear that out. In 2010 there were five cases; in 2018 they peaked at 1,775. There is obvious evidence that this is happening. I rest my case there.

Clause 10 has been developed in response to concerns that a number of non-settled parents, many of whom did not have permission to be in the UK at the time of their child's birth, have chosen not to register their child's birth with their own authorities in order to qualify under the current child statelessness provisions. This in turn can impact on the parents' immigration status.

Amendment 30 would add a new condition to Clause 10, so that a child is defined as being able to acquire a nationality from birth only if there were no legal or administrative barriers to them doing so. That would mean that the parents I have talked about could, in theory, benefit from the stateless child provisions by not registering their child's birth. In answer to the point made by the noble Lord, Lord Paddick, it is very easy to register a child's birth. The parents simply need to complete a form and provide supporting information about their identity, status and residence and the child's birth. I do not think that is difficult.

I appreciate that the noble Lord's use of the term "barriers" might have been intended to suggest something more significant and assure him that the clause already reflects our expectation that children who cannot reasonably acquire another nationality should not be excluded. The UNHCR's document *Guidelines on Statelessness no. 4: Ensuring Every Child's Right to Acquire a Nationality through Articles 1-4 of the 1961 Convention on the Reduction of Statelessness* recognises that the responsibility to grant nationality to children who would otherwise be stateless is not engaged where a child could acquire the nationality of a parent through registration or a simple procedure. The genuinely stateless child will not be affected. This is about those who can reasonably acquire another nationality. It is not about the Windrush generation—they are entitled to be British.

We do not think it is fair that parents can effectively secure a quicker route to British citizenship by choosing not to register their child's birth. In doing so, they are depriving their child of a nationality, which is not only about identity and belonging, as I heard one noble Lord say, but can allow them to acquire a passport or identity document and the ability to travel overseas to see family, for example.

They are also taking advantage of a provision intended to protect those who are genuinely stateless. We want them still to be able to benefit, but we want to change the registration provisions so that parents cannot effectively choose statelessness for their children and then benefit from the provisions. We think it is appropriate that families should take reasonable steps to acquire a nationality for their child. We will set out in guidance the sort of steps that we think are reasonable, and applications will be considered on their individual basis.

Amendment 31 would mean that we could not regard a child as being able to acquire another nationality, and so decline their British citizenship application, if it would not be in the best interests of the child to gain

that nationality. Noble Lords have pointed out the value they see in a child being able to secure and acquire a nationality, and it is difficult to see why parents might argue that it is not in their child's best interests to share their status. We have already taken into account that some countries' nationalities may be problematic for a child to acquire. The proposed clause reflects our expectation that a parent should not need to try to acquire a nationality for their child if it is not reasonable for them to do so.

6.45 pm

Adding a statutory assessment of a child's best interests in not holding a particular nationality would not be helpful. The Home Secretary is already required by Section 55 of the Borders, Citizenship and Immigration Act 2009 to take into account the need to safeguard and promote the welfare of children. Including this requirement here could cast doubt on the application of Section 55 in other areas where the duty is not expressly required.

We want to use Clause 10 to amend the existing registration provision for stateless children by adding a requirement that the Secretary of State must be satisfied that the child cannot reasonably acquire another nationality. We hope that this will encourage parents to acquire a nationality for their child where they can. As I have said, it will not affect genuinely stateless children or those who have a nationality but whose parents cannot approach their own country's authorities for a passport or documentation.

In answer to the right reverend Prelate the Bishop of Durham, for children born in the UK who do not become British and do not have any other nationality, there are specific provisions to register as a British citizen. A child can be registered as a British citizen if they were born in the UK, have always been stateless, have lived in the UK for five years and make an application before their 22nd birthday. This means that, if a child is stateless and has had no other citizenship or nationality from birth, they can effectively be registered on reaching the age of five, rather than after the age of 10, like other children born in the UK.

On international obligations, the noble Baronesses, Lady Lister and Lady Ludford, asked whether we are breaching the 1954 and 1961 conventions and the UN Convention on the Rights of the Child. We propose having two separate registration routes: one that applies to those aged between 18 and 22, to which no additional requirements apply; and a new registration route that applies only to children below the age of 18 and which introduces a new requirement that the Secretary of State be satisfied that the child is unable to acquire another nationality. We are satisfied that this complies with our obligations under the statelessness conventions, and we have taken into account the approach recommended by the UNHCR's guideline No. 4 in drafting this provision.

I should add that citizenship is not the only option. There are also provisions in the Immigration Rules for a stateless person to apply for permission to stay in the UK and for which they do not have to wait five years. Equally, their parents are able to apply for immigration leave more generally if they believe that they have a valid basis to stay here.

I hope that, with those explanations, noble Lords will be happy to withdraw and not press their amendments to Clause 10.

Lord Paddick (LD): My Lords, can the Minister clarify something? She gave us some figures; I did not have a chance to write to them down. She talked about the figures peaking at, I think, somewhere around 1,700 cases. Is that the number of stateless children born in the UK who are granted British citizenship, or are they cases where parents deliberately chose not to register their child's birth in order to take advantage of the system?

Baroness Williams of Trafford (Con): I assume that it is the latter, but I will write to the noble Lord with the details of the figures I have here. In particular, I will give him more detail about the countries from which these cases derive.

Baroness Ludford (LD): I want to follow up, because the Minister has answered the question I was going to ask. She mentioned that the 1,700 figure—I cannot remember what year it was for—was evidence of abuse, and as she just replied to my noble friend, she is assuming that the parents in those cases could not apply. It seems to me that there is no evidence of abuse. I am thinking of the strengthened safeguards in Amendments 30 and 31, especially Amendment 31. The Home Secretary must be satisfied that "in all the circumstances" it is reasonable, et cetera. The Minister referred to circumstances where parents cannot access the authorities of the relevant state. One can think of dozens of countries around the world in conflict, civil war or whatever chaos. Adding the words

"without any legal or administrative barriers"

would go with the flow of the Home Secretary having to be satisfied that it is reasonable to refuse, and I really cannot see why the Home Office cannot accept Amendment 30, even if it is claiming that Amendment 31 is unnecessary because it already cares about the best interests of the child.

Baroness Williams of Trafford (Con): I shall write to noble Lords about this in more detail, because it is quite detailed, and explain where the figures have derived from. I was actually quoting the judge in his conclusion that an "obvious route to abuse" would be opened. I shall send the figures to the noble Baroness. On case sampling, many of the cases have a poor immigration history, with 79% of the parents having no leave at the time of the birth and only 16% having such leave, but I will outline it to noble Lords in greater detail and they can draw their own conclusion.

Lord Dubs (Lab): My Lords, I have tried to follow the Minister's reply, and I am bound to say that I too am a little confused about these figures. I think she has just not yet made her case. Please could she give us more information before we get to Report? If not, we will not be persuaded by this. I may not have been quick enough to pick up all the nuances—I do not think any of us were, really; it was quite difficult. I look forward to getting more information from her;

[Lord Dubs]
we shall have to listen to what she has to say. I am grateful to noble Lords who contributed to the debate, and I beg leave to withdraw the amendment.

Amendment 30 withdrawn.

Amendment 31 not moved.

Clause 10 agreed.

Amendments 32 and 33 not moved.

House resumed.

House adjourned at 6.53 pm.

Grand Committee

Thursday 27 January 2022

Arrangement of Business

Announcement

1 pm

The Deputy Chairman of Committees (Lord Rogan) (UUP): My Lords, members are encouraged to leave some distance between themselves and others and to wear a face covering when not speaking. If there is a Division in the Chamber while we are sitting, this Committee will adjourn as soon as the Division bells are rung and resume after 10 minutes.

Commercial Rent (Coronavirus) Bill

Debate before Second Reading

1.01 pm

Moved by ***Lord Grimstone of Boscobel***

That the Grand Committee do consider the Commercial Rent (Coronavirus) Bill before Second Reading.

The Minister of State, Department for Business, Energy and Industrial Strategy and Department for International Trade (Lord Grimstone of Boscobel) (Con): My Lords, it is an honour to open this debate on an important piece of legislation. The primary purpose of this Bill is to support commercial tenants and landlords in resolving outstanding rent debt accrued during the Covid-19 pandemic.

As noble Lords know, the pandemic has brought forward unprecedented challenges. Many difficult decisions have been made in the interest of protecting public health, including the mandated closure of businesses. These closures have had immense impacts across the economy. Sectors such as hospitality, leisure and non-essential retail have been subject to significant restrictions and closures. Certain businesses, particularly in the night-time economy, were mandated to close for over 15 consecutive months.

Minimising the economic damage caused by the pandemic has been a key aim for this Government. To that end, the Government put in place an economic package of support which provided businesses and individuals with certainty. Since the start of the pandemic, the cumulative cost to the Government has been £400 billion. Measures introduced include loan schemes, grant funding, tax deferrals and the Coronavirus Job Retention Scheme, all of which were designed to be accessible to businesses in most sectors and across the UK.

The Government also introduced several temporary measures that have helped commercial tenants. These measures have prevented the eviction of commercial tenants based on unpaid rent, restricted landlords' ability to seize goods to recover rent owed, and restricted landlords and other creditors from instigating certain insolvency proceedings. These protections have been in place since March 2020 and have been extended to late March 2022 in order to allow time for Parliament to consider the legislation before us. While the protections have succeeded in their aim of minimising insolvencies and job losses, they have also led to commercial tenants building up a significant amount of unpaid rent debt. An estimated £6.97 billion in rent was deferred over the course of the pandemic.

The Government have therefore worked alongside tenants and landlords to develop a code of practice for the commercial property sector. That code was published in June 2020 to support rental negotiations amidst these temporary measures. Of course, it has always been the Government's preference that landlords and tenants negotiate and come to agreements on rent independently and openly. An updated version of the code was published alongside the Bill's introduction to the other place, and it has been really encouraging to see that many landlords and tenants have used the code to reach settlements.

As was heard in the oral evidence sessions in the other place, the anticipation of this Bill coming into force has encouraged even more landlords and tenants to come to an agreement. However, there are still tenants and landlords who have been unable to reach agreement. It is estimated that by March 2022 there will still be more than £1.5 billion in deferred rent that will not have been agreed on. As such, multiple businesses and jobs continue to face the threat of insolvency as a result of this rent debt. Without this Bill in place, the measures protecting tenants will expire before the end of March, leaving commercial tenants in the sectors covered by the legislation vulnerable to evictions and insolvency proceedings.

Importantly, the Bill is not one-sided. Landlords, too, have also incurred significant financial losses as a result of the pandemic. We are aware of several high-profile tenants who have refused to pay rent despite being able to do so, and many landlords have been unable to recover rent from—let us describe them as "reticent"—tenants. Through this Bill, the Government seek to support commercial tenants who were required to close, and their landlords. This will ultimately allow the commercial property sector to transition away from these temporary measures and return to normal market conditions.

I shall give a quick overview of the Bill. It introduces a system of binding arbitration that will act as a backstop for certain tenants and landlords who have been unable to come to an agreement on outstanding rent debt. We initially estimated that around 50,000 firms would be eligible for the arbitration scheme; this number excludes parties that have already reached agreement. However, it is very positive that it is now estimated that of those 50,000 firms, only around 7,500 cases are left that will go through the arbitration scheme. We will continue to encourage parties to negotiate in the first instance wherever possible. I should stress that it is important to note that these figures are only estimations, as outlined in the impact assessment that was published alongside the introduction of the Bill.

The introductory provisions of the Bill are set out in Clauses 1 to 6. These include the definition of rent debt, the businesses that are in scope for arbitration and the specific period in respect of which rent debt is

[Lord Grimstone of Boscobel]
protected. The decision to apply the Bill to businesses that were mandated to close ensures that this support is targeted to those that require it most. These businesses are among those hardest hit by the pandemic. Although they have been able to resume trading without restrictions, many of them have historically low profit margins and minimal cash reserves.

To show the extent of the problem, during the first period of restrictions, the average rent collection dropped to around 38% at the due date, and 51% at seven days past the due date. The lowest collection rates were seen in leisure and retail, which had rates of 26% and 46% respectively at seven days past the due date. By quarter 4 of 2021, these rates had risen. Rent collection had improved to 61% for the leisure sector, up from 26%, and 70% for retail, up from 46%, at seven days past the due date. I am reassured that businesses are showing signs of recovery. However, expecting businesses to be able to pay rent debt accumulated over the pandemic in a one-off payment would in many cases be unreasonable.

The "protected period" for rent debt will differ depending on the business and will end on the date the business last faced closure or restrictions on how to operate. This period, at its lengthiest, runs from 21 March 2020 until 18 July 2021 in England and until 7 August 2021 in Wales.

The bulk of the provisions in this Bill set out the parameters of the binding arbitration scheme. To ensure that the scheme gives rise to speedy resolutions, tenants and landlords will have a period of six months to refer a case to arbitration, beginning when the Bill comes into force. Alongside a referral to arbitration, the applicant will be required to put forward a proposal for resolving the matter of relief from payment of protected rent debt.

The Secretary of State will approve the arbitration bodies that he considers suitable and capable of delivering the scheme. These arbitration bodies will then maintain a list of suitable arbitrators that are available to act and appoint arbitrators to each case. Arbitrators will review the proposals and any supporting evidence to determine whether the dispute is eligible for arbitration under the scheme and, if so, whether any relief from payment of the debt is appropriate. This relief may take the form of a reduction to the total debt, cancellation of the debt, or an extension to the repayment period of the debt. The arbitrator will consider financial records and any other evidence considered appropriate to assess the viability of a business or the solvency of a landlord. The arbitrator will make an award and, if granting relief from payment of a protected rent debt is appropriate, the award will set out the terms of that relief. These awards will then be published, which will help set market expectations and aid negotiations outside of the arbitration scheme. So the scheme will be transparent in its operation.

The arbitrator will base their award on a set of clear and proportionate principles, which we have considered carefully. These principles are set out in Clause 15 and make it clear that preserving viable businesses is a key aim of the scheme, but that the preservation of a tenant's business should not come at the expense of a landlord's solvency. The principles provide that any relief given should be no greater than necessary and that any tenant who is able to pay should do so. The arbitrator must follow these principles when making their award. Only viable businesses, or those that would become viable with an award of relief from payment, will be eligible for arbitration. For example, a business could be granted an award that reduced the amount of debt owed if that reduction would allow it to become viable again.

In this way, we are actively supporting businesses that will continue to prosper and grow, will provide jobs, and will support the UK to build back better. As your Lordships will have expected, we have engaged with arbitration bodies to develop this approach, and I am confident that it will deliver swift resolution for tenants and landlords locked in disputes.

As I mentioned earlier, only rent debt attributable to a specific period will be eligible for arbitration. This rent debt will continue to be protected for the six-month application period and then up until the end of the arbitration proceedings.

The protections afforded to this rent debt are contained in Clauses 23 to 26. These include a targeted continuation of existing restrictions, such as the moratorium on the eviction of commercial tenants, the restriction on landlords' ability to seize goods in lieu of unpaid rent and restrictions on issuing winding-up petitions against commercial tenants. This ensures that parties who cannot come to an agreement will have a genuine opportunity to apply to arbitration before landlords will once again be able to resort to other legal remedies. I am confident that this six-month period is enough time to allow tenants and landlords to apply to the scheme. However, if there is evidence that this period is not long enough, the Bill allows for the application period to be extended.

The Government have engaged extensively with tenants, landlords and arbitration bodies throughout the development of this Bill. The policy contained in it has been rigorously tested with key stakeholders. A call for evidence was launched in April 2021, which gathered the views of tenants and landlords on the temporary measures, the state of rent negotiations and the preferred exit options for the temporary measures. The feedback from that call for evidence made it clear that the voluntary nature of the code of practice was hindering negotiations and that a statutory solution was required. Nearly half of respondents—49.2%, to be precise—were in favour of binding adjudication, and only 27.4% were against this proposal.

Since the call for evidence concluded, we have continued to work closely with tenant and landlord representatives, as well as arbitration bodies, to help shape this legislation and support negotiations. My colleague the Minister for Small Business, Consumers and Labour Markets, Paul Scully, has met regularly with tenant and landlord representatives to discuss these proposals and the issue of rent debt in the affected sectors. I am grateful to the bodies representing commercial tenants, landlords and arbitrators which have taken the time to provide feedback. They have recognised the efforts that the Government are making to encourage continued negotiations and the value of establishing a system in the event that negotiations fail.

I held a drop-in session yesterday, and thank the noble Lords, Lord Hunt of Wirral and Lord Shipley, and the noble Earl, Lord Lytton, for their time and interest. I look forward to working again with the noble Baroness, Lady Blake, and the noble Lord, Lord Fox, with whom I worked on the Professional Qualifications Bill. I hope to be pleased to hear of their support for this Bill and warmly welcome their constructive scrutiny as we discuss it in more depth.

To conclude, the Bill brings forward a solution that should be used only when parties are unable to reach agreement between themselves. The Government's position continues to be that tenants and landlords should negotiate where possible. The protections put in place by the Government during the pandemic have offered much-needed respite for businesses fearing insolvency. However, these measures must come to an end. This Bill will facilitate an exit from these temporary protections and support the resolution of unpaid rent debt that is preventing commercial tenants and landlords from recovering. I beg to move.

1.18 pm

Lord Shipley (LD): My Lords, I first remind the Committee that I am a vice-president of the Local Government Association—I do so because local authorities can have a substantial role as commercial landlords. I thank the Minister for his comprehensive introduction to the Bill and for his meeting yesterday with Peers who have an interest in the Bill to discuss its details. I like the opportunity afforded by this new system for debate; it is a most welcome change.

I welcome the Bill itself because it addresses the need to minimise bankruptcies of tenants and landlords. Many businesses have been kept afloat by reductions in their costs while closed during the pandemic, which have been important contributions by the Government to supporting those businesses. Many are viable businesses that simply need time to recover. However, as temporary protections for tenants are reduced, it is vital that the recovery of those businesses is not put in jeopardy by the actions of landlords. That said, landlords have not received £1 in every £6 that they should have over the last two years.

The Bill seems to balance the needs of landlords and tenants fairly. Binding arbitration clearly has very substantial support and seems the best way to proceed for businesses forced to close. A balance has been struck between the needs of landlords and the needs of tenants which should significantly reduce closures which are not in the interest of consumers or landlords. I am thinking here of the importance of the Bill to the retail sector and the high street, which needs all the support it can get. Empty shops just make the physical retail offer less attractive and will lead to even greater dependency on internet shopping.

I move to some specific questions on clauses that the Minister may be able to respond to today—if not, later in writing, if that helps. In Clause 2 there is mention of interest rates payable. My question relates to the levels of interest payable on unpaid rents and what controls the Government are planning, if any, on excessive rent charges. How are those to be prevented?

In Clause 9, there is a requirement to refer a dispute for arbitration within six months of the Bill passing—the Minister referred to this figure. Longer than six months may prove necessary, but I accept that the Government have built in a means of addressing that problem should it arise. In that context, does the Minister feel that there are enough arbitrators to meet the demand that is likely to be forthcoming? It is estimated that 7,500 businesses could need arbitration because there has been no resolution of the stand-off between the landlord and tenant directly. That is a large number; therefore, there is a question of capacity within the system as a whole.

On Clause 13, is the Minister satisfied that there are enough protections in place to ensure that an error is not made by an arbitrator on the viability of a business? I refer to alleged errors of judgment by arbitrators and whether they can be challenged by a tenant or whether they simply cannot be challenged at all, even with recourse to the law. I can foresee articles being printed in the press complaining about the actions of arbitrators where they are deemed to have made an unfair decision about the viability of a business. I recognise that these are difficult and sometimes complex issues, and there are issues of commercial confidentiality as well. Nevertheless, I would welcome the Minister's assurance that in the defining of viability by an arbitrator, the rights of the tenant are protected.

Clause 14 requires rent debt to be paid within 24 months of a decision. I am not sure that that is long enough. It may be in most cases, but it may not be enough for a business which is viable but on the margins and which would benefit from a longer time period. How fixed is that 24 months in Clause 14?

I say in passing that I welcome Clause 27, which will enable the Secretary of State to apply the provisions of the Bill to business tenants forced to close by future coronavirus restrictions. It is wise that the Government are proposing to use the affirmative procedure. Clause 27 is very important.

I have two further issues, as I draw to a close. The first relates to case law, because there is going to be a great deal of new case law. The Minister referred to transparency in the operation of the Bill, and I welcome that intention. I am not quite clear how, with all the new case law that is established by all the binding arbitration, there will be a system in place to ensure that binding decision-making reflects that body of case law. Is it the Government's assumption that there will not be any new case law? With 7,500 cases all being heard over a comparatively short period, how are we going to ensure that a decision made in one place by an arbitrator is actually similar to a decision made somewhere else by a different arbitrator?

These are imperfect systems—I fully understand that—but nevertheless I am not quite clear on the extent to which decisions and the reasons for them can be shared publicly for other arbitrators or the general public as a whole to see. I recognise that there are issues around commercial confidentiality, but are the Government satisfied that enough is going to be published about the reasons for decision for awards that are being made?

Can I just double-check the issue of fee levels with the Minister? This Bill is about businesses on the brink. Fee levels for binding arbitration will be important

[Lord Shipley]
for a tenant. I hope that the Government have in place means of ensuring that fee levels will not be excessive.

The Minister has explained the context. The Government have taken a whole set of temporary measures to support businesses over the last two years, which I have welcomed, but the problems that we now face are, first, with the business rates system, worth £25 billion a year to the Treasury. It is expensive, and I read in the press that there is a stand-off between the Department for Levelling Up and the Treasury about whether retail premises on high streets in particular should, for a period at least, pay no business rates.

There is a huge problem then for local government, because income from business rates really matters. We do not have the right level of discussion about some of those big strategic issues, and I am not sure that it is something that can be dealt with by only one political party. That said, there is a business rate context; for many businesses on the brink, business rates really matter, but they are also facing rises in general inflation and rising energy costs. What this Bill does can actually help mitigate some of the cost pressures that viable businesses currently face.

I welcome this Bill, which is a huge step forward. The Government have protected themselves by enabling themselves, through the negative or affirmative procedure, to make changes to it—but I welcome it, and I commend what the Government are attempting to do.

1.28 pm

The Earl of Lytton (CB): My Lords, I, too, welcome the opportunity to debate this Bill—I apologise, I may be standing too close to the microphone; it is my stentorian tones. In making my initial comments, I refer to my interests as a practising chartered surveyor and my association with the Chartered Institute of Arbitrators, although I do not practise as an arbitrator—and last but not least as a private landlord of let commercial property, although I do not have any rental or arrears issues. However, I do have a working knowledge of commercial landlord and tenant matters.

I thank the Minister for holding the briefing session yesterday and for his introduction today, and I acknowledge straightaway that the Government have made a necessary move to deal with an extreme set of circumstances surrounding suspension of business during parts of the pandemic and the accrual of rent arrears, as we have heard. So I agree that this is essential. After all, keeping tenancies going, as opposed to having occupational voids, is straightforward economic common sense. Like all such pieces of legislation, it is a typically blunt instrument of last resort, but I note that the threat it poses already seems to have concentrated some minds, and the estimate of some 7,500 cases is certainly less than I feared was the case.

Although I note that arbitration was the majority method of determination in response to the call for evidence, it certainly is not free from issues of its own and is not necessarily cheap, quick or, if appealed under the limited grounds under the arbitration Act, final. Good adjudication comes at a cost, and my sense is that the department may be underestimating this. The Chartered Institute of Arbitrators tells me that it has a budget package for written representation-only cases involving claims of between £5,000 and £100,000 and exclusive of the parties' own costs. That is priced at £3,000 per case, split between the parties, and turned round in circa 89 days. But actual costs may vary substantially because of the actions of the parties themselves, and can easily be escalated. I must say that the proposed timeline in the Bill is, to my mind, tight.

In the absence of a contractual agreement to refer—and, potentially, of any party agreement of any sort—running up to arbitration under the Bill, I would suggest that some default terms of reference will be required and that minimum standards of information from the parties be specified. I am not sure that the Bill actually achieves this.

I have already raised with the Minister what I see as an asymmetrical approach based on tenant viability on the one hand and landlord insolvency on the other. These are not the same and, in my opinion, it would be difficult for an arbitrator to compare those on a truly like-for-like basis. From the various documents it is hard to identify, for instance, just exactly what critical change to a landlord's circumstances as between, say, extended borrowing or actual insolvency, is intended to form the relevant line in the sand for the purposes of the Bill, so I hope that that can be clarified. One cannot necessarily assume that either landlords or tenants will be in the stronger position, so this needs a fair balance, bearing in mind that many landlords may be private individuals with one or two pension pot properties, just as tenants may be sole traders.

I am concerned, as is the noble Lord, Lord Shipley, about the principle of viability as it applies to tenant businesses and how that can be assessed in practice. I believe a number of eminent bodies also have concerns about this. The revised code is singularly uninformative and the Bill a fairly minimal checklist. In early years, a business may be technically unviable or depend on personal good will until it has sufficient trading under its belt to be objectively seen as solvent. That is a normal risk. The arbitrator, at a cost to somebody or other, would have to make an initial decision on viability before proceeding to the issue of rental liability and what should actually be paid. I would be concerned if this Bill were itself to create perverse incentives, and I ask the Minister what safeguards will exist to ensure objective viability tests and monitor fair balance in outcomes.

The noble Lord, Lord Shipley, in a magisterial presentation, referred to the question of arbitral precedent, and I agree with him. The circumstances here are rather specific: it is not very normal to be looking into a tenant's viability. I am aware that there is some experience of dealing with things like turnover rents but again, that is a rather different algorithm.

Any perceived imbalance may reinforce trends. I take the point the Minister made about returning, hopefully, to normal business, but I am not sure that there is such a thing. Landlord and tenant businesses can in future expect much greater scrutiny of management culture, lettings policy, trading viability and financial status now that their risk profiles and proclivities will be more apparent. Consequential investor, lessor and lessee

nervousness may well be the result, especially if, as noted by British Property Federation, this sets a precedent for future "step-in" powers. As the BPF also observes, this is not just some limited category of landlord and tenant who may suffer varying degrees of loss, both financial and of confidence, as a result of emergency measures; it is pension funds, local authorities —referred to by the noble Lord, Lord Shipley —individual investors and entrepreneurs, charities, the vitality of high streets, consumer choice and convenience: in other words, all of us.

The noble Lord, Lord Shipley, referred to the bigger picture, and I relate to what he said. Looking at these things in an overarching policy balance is extremely important.

To a slightly more specific point, one question raised with me is whether rent arrears agreements already reached voluntarily, whether under threat of these sanctions or not, could be reopened and made subject to the Bill's arbitration provisions. My working assumption is not, but the applicable degree of finality in that respect needs to be spelled out unless 7,500 is going to become some rather larger figure.

Like the noble Lord, Lord Shipley, I am not reassured about arbitral capacity in the property sector. It is not just a matter of signing up new arbitrators or rolling out existing ones but of how many have adequate experience in the commercial landlord and tenant sector. I am not sure that experience of

"business finances and commercial negotiations"

referred to in the code represents the complete skill set needed, so I would appreciate further and better information on this because the objectives of the Bill depend on the window of opportunity of six months and delivery in fairly short order.

The Royal Institution of Chartered Surveyors—RICS—believes this Bill inadvertently may make arbitrator appointing bodies responsible for the oversight of arbitrators, their conduct and their fitness. If correct, I sense that that might run counter to the provisions in the Arbitration Act 1996 relating to arbitrator autonomy and powers. More particularly, it could also create liabilities for the appointing body, increase costs and slow the process, always assuming the bodies are willing or legally able to take responsibility.

RICS also raises the pertinent point that arbitrators should be required to be free of conflicts of interest. I was once accused of bias because "Everyone knows that chartered surveyors always act for landlords." I suppose in part, because I have in the past acted for both landlords and tenants, I am guilty as charged, but that points out that it is as much the perception of bias and resultant confidence in arbitrator impartiality that matter as opposed to actual conflicts of interest. Furthermore, most cases of appointments by appointing bodies rely on arbitrator self-disclosure of any conflict of interest, so I think the point is valid.

Nearly finally, although I appreciate that this ship may have sailed, I particularly dislike the conflation of rack rent and service charges as rent for the purposes of arbitration under the Bill. I do not believe that that merging proposal was made clear from the outset. It is one thing to be deprived of the rent but another thing altogether to be liable for the services related to use and occupation that are an on-cost payable to a third party and with no possibility of relief. The Government should reconsider that because different considerations apply within the stated global definition of rent.

That said, I appreciate the need for the Bill to complete its passage speedily but hope that I may have some answers to these points.

1.38 pm

Lord Fox (LD): My Lords, I do not think I have spoken in a debate before Second Reading in the Moses Room before and I do not think I have spoken when the department staff almost outnumber the speakers, which probably points out why we are in the Moses Room.

Many of the issues I am going to cover have already been covered by previous speakers. I am quite relieved about that. Given the vast experience in local government of one speaker and the experience in the property market of the other speaker, I am rather glad that I am covering some of the same ground, because we appear to be in the right place.

Covid has shocked the commercial lives of our villages, towns and cities across the country. As we have heard, the Bill is designed to help deal with one of the big aftershocks, rent debt. The Minister said earlier that there is £6 billion of rent debt. To put this into context, all town centres and high streets have been hit, but businesses with physical premises—bricks and mortar—tend to have suffered the most. For example, some shops have lost close to one year's trading in value terms over the course of the Covid pandemic.

I am sure the Government will say that help has been on hand on during this process, which it was, but, meanwhile, as we have heard, rent has been accruing, Covid loans will soon need to be repaid and there is much catching-up to be done. It should be noted that the Covid shock has come on top of other difficulties that already make trading hard. The noble Earl, Lord Lytton, alluded to some, as did my noble friend. They include supply chain issues, difficulties hiring and retaining employees, wage inflation and energy costs. So this Bill is welcome, and the Minister will be pleased to know that we will be more in lock-step than we were during the previous Bill on which we worked together.

The Bill is important not least because a lot is staked on the way businesses develop going forward. Communities will be deprived of their focal points and their services if we get this wrong. Local jobs will go, and a deprivation spiral will sink further. The Minister set out the number of businesses that are currently in arrears—some 60%—which is falling, but what is the geographical breakdown? While "only" 40% of leisure businesses are still in arrears, are they focused in particular communities? My suspicion is that they are, so the concentration of damage will be higher in some areas than in others. Frankly, they will be the areas that have already experienced more problems. This is really important, and it is coming at a time when we are all being urged by the Government to reopen our economy.

As set out, there is a balance to be established between the needs of tenants and those of landlords. As has been said, it is in nobody's interest for great

[Lord Fox]
holes to open up across real estate. It is right that we should remember that not all landlords are large corporates. They are private individuals or small firms and, as my noble friend Lord Shipley pointed out, in many cases they are local authorities, which are quite big players in some communities. When the Minister kindly met me, he spoke about consultation. I should have asked whether local authorities have been explicitly consulted on this issue. I would appreciate an answer to that.

When it comes to striking a balance, we support binding arbitration as a way forward. Therefore, the role of the arbitrator will be crucial, and we heard comments along those lines. The Minister told us that he has consulted bodies which will serve up the necessary arbitrators and said that they are satisfied with the way this Bill is going. Although the Minister reported that they are confident that this process will be doable—I do not know whether it is straightforward—I echo some of the comments made on the complications. Not only will there need to be an assessment of what has been lost, which should be a relatively straightforward calculation, but there needs to be a reasonable sense of business prospects. This is a much harder call. That is not only because of the hardening business environment that I have just described but because consumer and work habits have changed. We do not know to what extent these changes are permanent and how they will develop, but we do know that those changes will influence the trading prospects of many of the businesses that will come up for discussion. The definition of "viable business" will by no means be clear-cut in a lot of cases. That has already been pointed out. My noble friend asked about challenging a ruling on the viability of a business, which I think will be an issue that rears its head. How will the department support arbitrators in the definition of "viable business"?

The next point is around the source and supply of arbitrators, which both noble Lords spoke to. It is not clear yet how many arbitrators the Minister believes are necessary, assuming the 7,500 figure is a reasonable estimate. Has that number been matched with the available people? Furthermore, what is the plan for quality control and training of these people? This comes to the point made by the previous speaker. This is a different situation and role. It is a national role, and we want to see equivalent quality across the country.

Does the department have some outreach plan to make sure that the arbitrators are working from the same statistics, for example, inflation estimates? If one arbitrator is using inflation estimates of one level and another is using a different one, their outcomes will necessarily be different. How will they be kept in line? That is just one area.

The Minister outlined that, using the code, we hope there will be a diminishing need for arbitration. In a sense, as he set out, the main purpose of this Bill is to put something in place that will not be used too often. He called it a "backstop", a term which I was going to suggest, so we are in line on that one. Its presence will hopefully act as an incentive, as we have heard, to drive prior agreement before arbitration is called on. The access process for triggering arbitration is not completely clear to me. I might have missed it in some of the guidelines, but it would be helpful if the Minister could outline how, if I am a landlord or a suffering tenant, that process is triggered.

Like the noble Earl, Lord Lytton, I have concerns about asymmetry. We discussed this when we met. When you have a big landlord and a small tenant, there is a clear opportunity for a mismatch. The Minister was clear when we met that the low cost of entry should prevent this being an issue, but can he explain how other costs will be controlled? How will the ancillary costs of preparing one's case be limited? It is quite clear that a corporation with a large chequebook has much more firepower in preparing its case for the arbitrator than a small sole trader. Of course, sometimes the mismatch is in the opposite direction. It is not just the cost of entry but the cost of preparing one's defence or offence in the arbitration process.

Assuming that the Government are successful in maintaining this low-cost, symmetrical situation, how will they communicate the availability of this process to landlords and tenants across the country? What is the communication plan sitting underneath all this?

I do not expect subsequent stages to be long, but I will set out a few questions it would be helpful to answer. What consultation has there been with local authorities? Are sufficient arbitrators available? What modelling has been done and what training and quality control process is sitting under this? Can the Minister remind your Lordships what constitutes an arbitrator? In our meeting he mentioned country solicitors. On reflection afterwards, a reg flag went up, given country solicitors I have known. Are changes planned in the arbitration accreditation process to acknowledge the new nature of this role? Will there be ongoing communication with arbitrators—for example, providing them with not just data and results but case studies of how those results arose, as a previous speaker mentioned—or are they effectively on their own, inventing it every time? What is the process for triggering arbitration? How will the Government go about communicating all this to tenants and landlords?

Even if this Bill is successful and the number of bankruptcies is reduced, there is going to be a waterfall of bankruptcies in our towns, cities and villages across the country. As well as this—and I would like the Minister to acknowledge it—there is other work to be done in maintaining local economies, particularly in the most underprivileged and least well-off areas. This Bill will not be sufficient to keep our way of life running in some parts of the country.

I look forward to hearing the noble Baroness, Lady Blake, and the Minister's response to these speeches.

1.50 pm

Baroness Blake of Leeds (Lab): Following the example of the noble Lord, Lord Shipley, I also declare my interest as a vice-president of the LGA, and I thank him for that reminder.

I am very pleased to be able to contribute to this important legislation today. When I think back to this time last year, I was still the leader of Leeds City Council, and the issues that we are talking about today are so real to me—all those horrific debates and

discussions with the Cabinet Office and No. 10 about which tier of restrictions we were going into, knowing what the implications of those decisions, often made with less than 24 hours' notice, would be for local businesses and communities. Of course, there was the perverse situation that, for some businesses, it was better to go into a higher tier, because they would be mandated to close and therefore would get more protection than businesses that were not covered and had to try to make awful decisions about whether to keep trading or struggle on, and all those things.

So I come to this with a very raw, first-hand experience of understanding what businesses and landlords have been through, and the decisions that they have had to take over the past two years. Of course, we are talking about the trauma of financial loss and potential bankruptcy, but we should not underestimate the real personal cost that this has put on individuals responsible not only for their own families but for those of their employees in the decisions that they have made.

I, too, echo the concern expressed in this debate about the future role of local authorities, because they have mostly had responsibility for helping businesses and communities through the past two years—and their knowledge of all the issues that we have raised is going to be invaluable in making sure that we can move this forward. Then there is the whole issue of how we can ensure that decisions made through this process actually contribute to the levelling-up agenda. That needs to all be put together in the round.

All of us who have spoken have recognised and acknowledged the need for fairness in the process, and I think that is going to lead to future scrutiny and challenge as the scheme unfolds. I am sure that we all agree that our aim here today and in the ongoing discussions is to ensure that the proposals are effective and accessible—and we have had some discussions about accessibility and sharing information about availability of support. As I have said, most important is how we fairly balance the interests of all relevant parties.

The main principle must be, as we have heard, that no otherwise viable business should face significant burden from rent arrears without a due arbitration and burden-sharing process. Likewise, commercial landlords must have access to clear mechanisms by which to recoup appropriate levels of arrears. Again, the issue that we are facing is around the long-term interests of British businesses, and some of those judgments and decisions around viability are going to be extremely difficult. But of course, all of us are concerned with protecting livelihoods and employment, acknowledging the real difficulties that have been suffered over the past two years.

I emphasise that we have to recognise the context in which we are working. As well as the impacts we have had over the last two years—it is hard to believe we are almost coming up to the second anniversary of the first lockdown—businesses are facing major challenges in the weeks and months ahead. They include the pressures from inflation, the energy crisis and dramatic increases in fuel costs, the proposed hike in national insurance contributions, and the supply chain crises, to name but a few. That is why we on our side are focusing on additional steps to help businesses and bring forward plans to deal with the long-standing problems facing them, particularly around the vexed issue of business rates, and why we have announced a major package of measures to tackle the mess that surrounds the whole business rates agenda. This matters, and these debates will have a profound influence on how high streets, for example—it is not limited to them alone, although they do get repeated mentions—will be able to emerge on the other side of the recovery.

Debate in the other House specifically on the Bill has sought to achieve greater clarity and fleshing out the detail. As we have heard repeatedly today on the basic definition of "viable" in this context, and to echo the comments from the noble Earl, Lord Lytton, how can we ensure that it is clear and appropriate in scope?

We have stressed a great deal the question of whether we are confident about the basis for the arbitration agreements. How can we ensure that constituency of approach and delivery will be guaranteed, and how will any such inconsistencies be dealt with? How can we be sure that the fees charged are consistent and not excessive? A specific question: will there be a cap on fees? I would welcome the Minister's comments on that. Another question has been raised repeatedly: is there enough capacity in the sector to cope with the demand and—crucially in this context—to prevent further delays?

The date of retrospectively prohibiting court judgments only from 10 November is a case in point that we have to be mindful of. Evidence from the various interested parties outlines the huge ongoing burden that businesses have been facing. The impact assessment from the Treasury notes that the total amount of deferred rent liabilities could be around £9 billion by March. There has been enough delay, and we recognise the urgency of putting the right provisions in place.

We also recognise a welcome move in that many landlords and businesses have been able to reach agreement and have settled their liabilities. I make reference as well to the code of practice from the Department for Levelling Up, Housing and Communities and to how that has contributed. However, the uncertainty with regard to coronavirus restrictions in the run-up to Christmas—whether there would be any and what they would be—had a further devastating impact for many, especially across retail, hospitality, cultural venues and many more. With debts high as a result, further costs around arbitration become even more relevant. With the levels of uncertainty facing businesses and landlords going forward, surely it would be sensible to have a mechanism to keep progress under review. Is this an area where the Minister could also provide answers for us?

I look forward to the Minister's closing comments and particularly to hearing where we have scope to add improvements to the Bill.

2 pm

Lord Grimstone of Boscobel (Con): My Lords, I thank noble Lords for their insightful contributions to today's debate. We have heard four speeches, all of which were eloquently delivered. The number of speeches was small but they were rich in content, and I congratulate noble Lords on that. I thank the noble Baroness, Lady Blake of Leeds, and the noble Lord, Lord Fox, for

[Lord Grimstone of Boscobel]
their constructive approach to this important legislation and the noble Lord, Lord Shipley, and the noble Earl, Lord Lytton, for the welcome they gave the Bill.

Many issues have been thoughtfully raised, and I will address as many as I can now. On some of the detailed points, I shall write to noble Lords, and I am sure we will come back to them in Committee. That will include the points made by the noble Lord, Lord Shipley, about interest and by the noble Earl, Lord Lytton, about service charges and whether it is appropriate to include them in the award. The noble Lord, Lord Fox, asked about geographical distribution, and I will find out all I can about that and write to him. I can confirm that the consultation on the Bill covered local authorities and their bodies.

I quickly remind noble Lords of what this Bill signifies and what it will achieve. Businesses which could not pay their rent due to the impacts of the pandemic have rightly been protected from evictions, seizure of goods and certain insolvency proceedings. As I said earlier, these businesses have now built up a significant amount of rent debt. I know that noble Lords welcome the fact that many tenants and landlords have been able to have open, transparent conversations, and I am thankful to those willing to be flexible when negotiating on unpaid rent. However, we have heard of plenty of cases where negotiation has been unsuccessful and agreement has not been reached. The Bill's binding arbitration scheme is a proportionate and carefully crafted solution to these cases. It will provide the commercial tenants who need it the most and their landlords with the clarity and certainty they need to plan ahead and recover from the pandemic. In this way, the Bill will protect jobs—the noble Baroness, Lady Blake, is particularly concerned about the impact on society and jobs that we have seen during the dreadful pandemic—and, we hope, will enable a swift return to normal market conditions.

The noble Lords, Lord Shipley and Lord Fox, asked about the capacity of arbitrators to undertake this work and whether there would be sufficient arbitrators. I reassure noble Lords that we have worked closely with arbitration bodies during the development of the arbitration system. The application process which will permit an arbitration body to be included in the list of approved bodies will require it to evidence its capacity. We will not just take it for granted; it will be considered carefully before an arbitration body is admitted to the approved list. However, I believe our market-based approach of allowing arbitration bodies to set fees will ensure that on the one hand there is enough arbitrator capacity and on the other hand that the scheme is affordable.

On the autonomy of arbitrators, the Arbitration Act guarantees it. We can come back to that again in Committee.

The noble Lord, Lord Shipley, asked how the viability test would be applied. I know that the noble Baroness, Lady Blake, is also interested in this. That is probably best dealt with when are in Committee, where we can go through it in detail. I undertake to do that. The assessment of viability and solvency undertaken by arbitrators is an important step in determining whether relief from payment of rent debt should be granted. I think professional arbitrators will be able to do that. I do not want to disagree with the noble Lord, Lord Fox, about whether country solicitors are capable, but I assure him that someone who is not capable of being the appropriate arbitrator would not be put forward by the arbitration body. I am sure that neither of us would want the wrath of country solicitors to come down on our heads.

Lord Fox (LD): As a point of information, it was the Minister who brought up country solicitors rather than me. Coming from the country, I need to be careful.

Lord Grimstone of Boscobel (Con): I am constantly amazed by the noble Lord's wit in these debates.

I hope that I can reassure noble Lords that these principles will ensure that the Bill supports businesses that will continue to prosper and contribute to our economy while protecting landlords.

I say to the noble Earl, Lord Lytton, that we will certainly come back in Committee to how the solvency tests will work. I will write with further details of that.

Noble Lords asked about the monitoring of arbitrators to ensure that they apply the principles consistently. First and foremost, arbitration bodies will appoint only arbitrators that are considered suitable to carry out the arbitration as set out in this Bill. An arbitration body also has the power to oversee any arbitration in relation to which it has appointed an arbitrator. So the arbitration bodies are in the front line of ensuring the quality of the arbitrators who will operate under the Bill.

The Secretary of State can request a report from approved arbitration bodies covering the exercise of their functions under this Bill. This report can include details on awards made and the application of the principles set out in the Bill to arbitration that they have overseen.

Noble Lords rightly asked about transparency. There is a requirement for arbitrators to publish the details of awards made, including the reasons behind them. This will show how arbitrators have applied the principles in the Bill to reach their decision. Over time, as noble Lords have mentioned, this will allow case law to be built up.

Lord Fox (LD): Will the department retain the ability to withdraw the accreditation of arbitration bodies in the event that their performance proves to be unsatisfactory?

Lord Grimstone of Boscobel (Con): I am sure that if an arbitration body is not performing satisfactorily there will be a mechanism to ensure that it does not carry on providing arbitrators, but I will check how that operates and include it in the letter that I will write to the noble Lord.

As this process continues, if there is a need to revise the guidance—for example, to clarify or add new information for arbitrators—the Secretary of State is able to do that.

Noble Lords, including the noble Lord, Lord Shipley, my noble friend Lord Lytton and the noble Lord, Lord Fox—it would have been simpler if I had just

said everybody—asked about the affordability of arbitration. I think the market-based approach that we have adopted, in which arbitration bodies will set the fee levels, will work in practice. Arbitration bodies have, of course, extensive experience of costing and running schemes such as this; they are best placed to decide on fee levels to make the scheme affordable and accessible for parties, but also to incentivise arbitrators to take on cases and maximise capacity. We have tested the costs of similar arbitration schemes currently on offer in the market, and landlords and tenants in our consultations have both indicated that it is affordable. However, if it turns out not to be the case, Clause 19 gives the Secretary of State a power to make regulations specifying limits on the fees and expenses of arbitrators and approved arbitration bodies, if that is necessary.

The noble Lord, Lord Shipley, asked about opportunities for scrutinising the scheme once it has been implemented. I believe that ensuring that it is properly monitored will be a key aspect of a smooth delivery, and the most crucial way in which we will evaluate the scheme is through the requirement for arbitration bodies to publish their awards—a point I made earlier.

I understand that there may be concerns about the commercially sensitive nature of much of this information but, of course, arbitrators are required to exclude confidential information, including any commercially sensitive information, unless the person to whom it relates consents to its publication.

We really want the arbitration process to be as transparent as possible because, of course, it is in the public interest for it to be so. Transparency will help to establish market expectations of fair outcomes from the arbitration process on rent arrears for different business circumstances. Stakeholders raised questions—noble Lords are right—about transparency, but I believe that the relevant clause in the Bill will address that concern.

Noble Lords asked about consistency. Arbitration bodies will appoint only those arbitrators considered suitable to carry out arbitration as set out in the Bill. These bodies will also have the power to oversee any arbitration in relation to which they are appointed an arbitrator, which will provide the necessary safeguards we all want to see.

In conclusion, I thank all noble Lords who have engaged in today's debate; it is a shame that we did not have a larger audience to see us in action. We have had informative and erudite contributions and, of course, as always, that is a testament to the wealth of experience in this House. I am conscious that I have not addressed all the detailed points raised by noble Lords but, of course, as well as writing, I am more than happy to meet to discuss any individual concerns as the Bill moves forward. It is a pleasure to be leading the Bill through the House, and I will warmly welcome engagement with noble Lords across the House to ensure that the Bill gives businesses and landlords the certainty and support they sorely need. I look forward to discussing it in Committee.

Motion agreed.

Committee adjourned at 2.13 pm.