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PARLIAMENTARY DEBATES
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HOUSE OF LORDS
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

No party affiliation is given for Members serving the House in a formal capacity or for the Lords spiritual.

House of Lords

Tuesday 1 February 2022

2.30 pm

Prayers—read by the Lord Bishop of St Albans.

Retirement of a Member: Lord Rotherwick

Announcement

2.36 pm

The Lord Speaker (Lord McFall of Alcluith): My Lords, I should like to notify the House of the retirement, with effect from today, of the noble Lord, Lord Rotherwick, pursuant to Section 1 of the House of Lords Reform Act 2014. On behalf of the House, I should like to thank the noble Lord for his much-valued service to the House.

Social Welfare Law Cases: Legal Aid

Question

2.36 pm

Asked by ***Lord Bach***

To ask Her Majesty's Government what plans they have this year, if any, to restore legal aid for social welfare law cases.

The Parliamentary Under-Secretary of State, Ministry of Justice (Lord Wolfson of Tredegar) (Con): My Lords, following a consultation which concluded in January this year, we will lay legislation later this year proposing better access to social welfare advice for people facing possession proceedings. On 19 January, we laid legislation to pilot the provision of early legal advice for debt, housing and welfare benefit matters. The pilot will commence later this year. We will shortly publish our review of the means test for civil legal aid.

Lord Bach (Lab): My Lords, I thank the Minister for his reply. Many who work in this vital area of law very much welcome his departmental responsibility for civil legal aid and social welfare law for the reason that we and they know that he is a powerful supporter of access to justice for all. However, does he agree that the small but welcome steps the Government are taking in this field are peanuts when compared to the millions of pounds that has been cut from social welfare law funding year on year and the hundreds of thousands of our fellow citizens who have been unable to get advice and assistance? Does he further agree that, for as long as many of our fellow citizens—often those with the very least—are deprived of access to justice by not getting the advice and representation they need, there remains a stain on our much-vaunted legal system?

Lord Wolfson of Tredegar (Con): My Lords, I am well aware of the noble Lord's experience and work in this area, and I respectfully commend him for it. If I may say so, I think it is rather unfair of him to say that we are spending peanuts, when actually last year we spent £1.7 billion on legal aid services. I agree with him that access to justice is a fundamental part of any justice system, and our reforms are intended to ensure that people have not only legal aid but legal support at an earlier stage of the proceedings.

Lord Thomas of Gresford (LD): My Lords, *The Impact of LASPO on Routes to Justice*, by Dr James Organ and Dr Jennifer Sigafoos of the University of Liverpool and published by the Equality and Human Rights Commission in 2018, found that, due to the lack of legal aid and the demise of specialised advice, the high demand for advice on disability benefits means that the almost complete removal of welfare benefits from the scope of legal aid has had a disproportionate impact on disabled people and those with long-term health conditions. The Minister mentioned a number of areas where pilots are being carried out, but will the Government take steps to restore the funding, at least for this important sector of the community?

Lord Wolfson of Tredegar (Con): My Lords, I note that when it is Justice Questions we always seem to have longer questions. We are starting a pilot in both Manchester and Middlesbrough to focus on the point that the noble Lord makes: to what extent can we divert people away and solve their problems at an earlier stage? I am aware of the report the noble Lord mentioned, and of others, but we are starting a pilot, so that we have evidence of what actually works on the ground.

Lord Sandhurst (Con): My Lords, I thank my noble friend the Minister very much for his first Answer. I remind him that the Conservative Lord Rushcliffe's 1945 report urged that:

"Legal aid should be available in all Courts and in such manner as will enable persons in need to have access to the professional help they require".

At the last pre-Covid count, in more than half the local authorities in England and Wales, with some 22 million people, there was no provider in the field of housing legal aid. Would it not be a simple first step in the process of levelling up to take immediate steps to fund at least one such provider in each local authority in England and Wales?

Lord Wolfson of Tredegar (Con): My Lords, I am aware of the issue with legal aid for housing. I should make two points. First, we keep this under review and are making special efforts to ensure that we find providers in areas where there are currently no providers. Secondly, as my noble friend will also be aware, wherever you are in England and Wales you can always get legal advice through the CLA telephone service. Legal advice is always available.

Lord Morris of Aberavon (Lab): My Lords, the Government trumpet their intention of levelling up the disadvantaged regions through investment. Will the Minister at the same time take steps to provide adequately and properly for the needs of the disadvantaged

[Lord Morris of Aberavon]
individuals at the bottom of the ladder by providing investment for their levelling up, so that they can put their cases without disadvantage? Does the Minister really consider that they are properly dealt with?

Lord Wolfson of Tredegar (Con): My Lords, I have already mentioned the pilot we are starting in Middlesbrough and Manchester to identify the best way of providing legal aid for, among others, those people. I also said in a previous answer that we are looking at a review of the means test for legal aid. Indeed, we have revoked that means test for various parts of civil legal aid to ensure that people can access courts when they are most vulnerable—for example, domestic abuse victims seeking a non-molestation order.

Lord Bird (CB): Do we need a pilot when we know that, when you are on social security, there are so many things around welfare that exclude you and make you feel that you are actually not a part of democracy and society? Around justice, you do not need some test; you need to roll it out and get it working.

Lord Wolfson of Tredegar (Con): My Lords, with respect, you need a test to ensure that what you are doing is the most useful thing you can do. For example, we are looking at putting legal advice centres in hospitals, because we know that people who have legal problems often have other social welfare problems as well. It is often the case that you cannot resolve all your problems through the law; you need a holistic approach. I think we need some hard evidence, and the pilot will be very useful in this area.

Lord Watts (Lab): My Lords, is it not the case that the Government's review and the pilot schemes demonstrate that the Government got it very badly wrong when they cut millions of pounds from this area? Would it not be better to restore those cuts and then do a proper review and make sure that, this time, it covers people and gives them some rights?

Lord Wolfson of Tredegar (Con): My Lords, I made a commitment to myself today not to mention the words "Grayling" or "Gray". What I would say is that, in this area, there is no going back to the pre-LASPO position. What we want to do in other areas of law where LASPO gave people legal aid is to divert them from the courts altogether. For example, in private family cases we have a mediation voucher scheme. We do not want people in court arguing about private family cases; we want them to resolve their problems outside court through mediation.

The Lord Bishop of St Albans: My Lords, it is to be welcomed that there is pilot scheme going on. I am particularly pleased to hear about the mediation scheme, which is crucial to trying to find ways to deal with things one-to-one. Can the Minister say a little more though about what is going on? What I hear from people working in the legal system is that it is absolutely blocked up by people who cannot get advice, or indeed aid, coming with hopeless cases. If only they could be given guidance earlier on, we might be able to solve some of the huge backlog, which is in itself an injustice.

Lord Wolfson of Tredegar (Con): The right reverend Prelate is right: we want to ensure that people do not go to court when they do not need to. During the pandemic we invested £5.4 million in not-for-profit legal support services, to make sure that people can have access to early legal advice so that only those who need the assistance of a judge go to court.

Lord Ponsonby of Shulbrede (Lab): My Lords, it is 10 years since the LASPO Act came into force, which so dramatically reduced legal aid funding. The Government's review of LASPO, published in February 2019, pointed out that the housing sector was particularly affected by these cuts, and that when housing legal advice was in scope, people were still failing to get access to the relevant legal advice. What will the pilot that the Minister has talked about do to help people get the advice which they are entitled to in any event?

Lord Wolfson of Tredegar (Con): My Lords, the pilot that I was referring to is a general pilot in relation to social and welfare entitlements. Regarding housing possession cases, as the noble Lord knows, there is a housing possession court duty scheme. We are running a specific focus on that, because there are areas where people are not getting the advice that they need. That was paused during the pandemic because we put a complete halt on repossessions, but we are now looking at the best way to make sure that we get focused housing advice to people who need it, when they need it.

Baroness Jones of Moulsecoomb (GP): My Lords, what was the Government's original motivation back in 2012? Presumably, it was to save money, which this probably has not done overall. What the Government have done is to throw thousands of the poorest people in the UK into a situation where they cannot find justice.

Lord Wolfson of Tredegar (Con): I am afraid that I cannot assist the House with what the Government's motivation was in 2012. My motivation is very simple: the rule of law and access to justice. It is as simple as that.

EU: Imports

Question

2.47 pm

Asked by ***Lord Howarth of Newport***

To ask Her Majesty's Government what plans they have, if any, to facilitate imports from the European Union.

The Lord Speaker (Lord McFall of Alcluith): My Lords, on the second Oral Question, the noble Lord, Lord Howarth of Newport, will be contributing virtually.

The Minister of State, Department for Business, Energy and Industrial Strategy and Department for International Trade (Lord Grimstone of Boscobel) (Con): My Lords, HMG have taken several actions to facilitate imports from the EU. First, we have negotiated the EU-UK Trade and Cooperation Agreement, which delivers zero tariffs and zero quotas. Secondly, HMRC provides services to help importers understand the customs border requirements, including webinars reaching around 20,000 UK and EU traders to date. Thirdly, our *2025 UK Border Strategy* will transform how our border operates, to build the world's most effective border.

Lord Howarth of Newport (Lab) [V]: My Lords, has the Minister visited GOV.UK and read the page, "Import goods into the UK: step by step"? It could have been written by the Spanish Inquisition. The Government proclaim that they will legislate for a bonfire of EU red tape, but why did they so mess things up that they are actually erecting trade barriers and forcing up costs instead of using post-Brexit freedom to make trading easier for our businesses and cut tariffs on goods that consumers buy? Why do Ministers go around chanting that they are creating the most open economy and unleashing Britain's potential when in fact they are multiplying bureaucracy and exacerbating the cost-of-living crisis?

Lord Grimstone of Boscobel (Con): My Lords, I am grateful that the noble Lord mentioned Brexit freedoms, because there was a Statement made on that topic just yesterday, setting out what the Government intend to do to make sure that those freedoms can be available to everybody in the United Kingdom.

Lord Wigley (PC): My Lords, may I press the Minister on the import of musical instruments from the European Union? I refer to my registered interests. If instruments manufactured in Europe are sent for exhibition in the UK and sold, they have to be shipped back to France to secure a new set of paperwork and then re-exported to their purchaser. Similar problems are faced for instruments sent back for warranty or repair. This is leading to European manufacturers withdrawing sponsorship from events in the UK. Does this arise from incompetence in the department or is Brexit fundamentally flawed?

Lord Grimstone of Boscobel (Con): My Lords, I am afraid that I do not have the instrument to hand which would allow me to answer the detail of the noble Lord's questions, but I will write to him giving full details on that.

Lord Forsyth of Drumlean (Con): My Lords, can my noble friend have a go at answering the Question from the noble Lord, Lord Howarth of Newport?

Lord Grimstone of Boscobel (Con): Your Lordships are very kind to ask me to take a second bite at the cherry, but I do not have anything to add to my Answer.

Lord Purvis of Tweed (LD): My Lords, with the 12-mile queues on the A20 in Kent last week, the Commons Transport Committee took evidence from the Transport Minister, the noble Baroness, Lady Vere, who is in her place. The chair of the committee raised the concern that, with more checks and bureaucracy, there will be 17-mile queues. He asked which Government Minister is responsible for liaising with the European Union, and the noble Baroness replied:

"Not me. It is a fairly complicated picture."

The chair said:

"Assume it is the role of the Home Office, which I would have thought it would be if it is to do with borders".

The noble Baroness, Lady Vere, replied:

"And Trade. It might be Trade's role as well because it is about customs checks; it could be HMRC."

The chair said:

"It could be the Foreign Office. I suppose that is my concern."

Well, my concern is that no one is in charge. Who is in charge?

Lord Grimstone of Boscobel (Con): My Lords, first, on the queues at Dover last week mentioned by the noble Lord, it is not the case that those short-term delays to freight movements were caused by new customs procedures. I am reliably informed that the primary cause was ship refitting, which reduced capacity across the short straits, and higher than expected freight volumes. On the noble Lord's main point, I assure him that all Ministers properly co-ordinate with each other on these matters.

Baroness Chapman of Darlington (Lab): My Lords, there are clearly problems with the smooth processing of documentation at our ports, including Dover—never mind what the Minister just tried to tell us. The Government are playing this down but they must resolve these issues quickly, certainly before any new measures are introduced later this year. Nevertheless, will the Minister welcome the 9% boost in trade to Belfast Harbour, reported in the *Belfast Telegraph* this morning, which is being attributed to Northern Ireland's unique position as a result of the protocol? Can the Minister update us on conversations between the Government and the EU on this issue and will he ensure that the recent boost in trade in Northern Ireland is not jeopardised?

Lord Grimstone of Boscobel (Con): My Lords, making sure that the Northern Ireland protocol operates as smoothly as we intended will continue to be a priority for our relationship with the EU. While we have tried to operate this agreement in good faith, I frankly admit that the problems are significant and are growing. This must be resolved through a real negotiation between us and the European Union, which is why the Foreign Secretary is paying so much attention to this matter.

Baroness Wheatcroft (CB): My Lords, on Monday morning operations were under way to restore Operation Stack, apparently on a permanent footing, as soon as possible. Can the Minister tell us how long he expects the ship refitting to take?

Lord Grimstone of Boscobel (Con): My Lords, I am very confident that as traders, hauliers, importers and, indeed, exporters become increasingly familiar with the new procedures, things will operate smoothly. We have

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prepared freely available tools to assist traders with these new processes, introduced on 1 January. Of course, we want things to move smoothly, and we will continue to emphasise this.

Lord Morgan (Lab): My Lords, would not relations with the EU be enormously assisted if we could do something to clear up our relations with France, which have been needlessly made hostile by the present Administration? Should we not turn away from fantasies about global Britain to restoring our well-tried relationship —in two world wars—with the entente cordiale?

Lord Grimstone of Boscobel (Con): I agree with the noble Lord. Harmonious arrangements and harmonious affairs between nations are the way to increase trade and investment, and we all benefit from that. Let us hope that harmony is restored in these important matters.

Lord Moylan (Con): My Lords, let the European Union be as protectionist as it wishes. Does my noble friend the Minister accept that it is for the benefit of British consumers and manufacturing businesses to have access to imports from the rest of the world at the lowest cost and with the least bureaucracy and fuss? Do the Government have a plan for making this easier?

Lord Grimstone of Boscobel (Con): My noble friend raises an important point. We are absolutely committed to ensuring that businesses get the support they need. It is very interesting that, in 2021, trade with non-EU nations fared relatively better than trade with the EU. Goods imports from other countries exceeded the value of goods imports from the EU for the 10th month in a row. This is global Britain in action.

Viscount Waverley (CB): My Lords, if the Minister is so sure about the situation in Dover, would he be minded to set up a visit for Members of this House so that we can be assured of the situation on the ground?

Lord Grimstone of Boscobel (Con): My Lords, I am sure that the harbour authorities at Dover would be delighted to receive visits from Members of your Lordships' House, whenever they wished to go there.

Baroness Ritchie of Downpatrick (Lab): My Lords, will the Minister take another stab at the question asked by the Labour Front Bench? Will he provide us with an update on the negotiations with the EU about Ireland and the Northern Ireland protocol? Will he give a commitment, on behalf of the Government, to promote the benefits of the protocol in terms of access to the UK internal market and the EU single market? Businesses in Northern Ireland are already benefiting from these.

Lord Grimstone of Boscobel (Con): My Lords, I have already referred to the efforts that the Foreign Secretary is putting into this matter. My many years of experience —both in this House and outside—have taught me that giving running commentaries on negotiations rarely leads to a good outcome.

Railway Stations: Facilities

Question

2.57 pm

Asked by ***Lord Roberts of Llandudno***

To ask Her Majesty's Government what steps they are taking to ensure that facilities such as lifts and public toilets at railway stations are (1) in working order, and (2) accessible to both disabled and non-disabled passengers.

The Parliamentary Under-Secretary of State, Department for Transport (Baroness Vere of Norbiton) (Con): My Lords, the department is introducing service quality regimes into national rail contracts. These will monitor the availability and condition of station facilities, including lifts and public toilets. Operators will be required to meet challenging targets to earn their fees. We are working with the Rail Delivery Group to improve the availability of toilet facilities for disabled and non-disabled passengers and the provision of real-time information.

Lord Roberts of Llandudno (LD): My Lords, for a disabled person relying on a lift to continue their journey, it must be very depressing to come to a station and find that the lift is not working. Why? Is it because parts needed for repairs are not available? Is it because there is no staff to tackle the problem? What is being done to deal with this? With the development of HS2, there will be hundreds more lifts. Will Her Majesty's Government join rail and lift companies in helping to avoid future problems?

Baroness Vere of Norbiton (Con): My Lords, the latest information I have on lift performance is that 99.16% are currently in operation. However, that less than 1% must be returned to operation as soon as possible. We are committed to the provision of real-time information on facilities so that those who need to use a lift can know in advance whether or not one is functioning.

Lord Flight (Con): My Lords, I congratulate the noble Lord, Lord Roberts, on raising this issue. My own experience is that lavatories on train stations rarely operate. They are blocked and no one takes any interest in them. What is needed is some form of periodic inspection.

Baroness Vere of Norbiton (Con): My noble friend is absolutely right, and that is exactly what we are putting in place: inspection of lavatories and, indeed, many other facilities. We need monitoring as part of the service quality regime. We will use independent auditors, who will check stations and trains in each rail reporting period. They will look at the availability and presentation of key facilities, cleanliness, information provision, ticketing staff—all sorts of things. That will lead to an uplift in the services.

Baroness Randerson (LD): My Lords, sight loss is another form of disability. The RAIB report on the tragic accident at Eden Park underlined the urgent need

for all platforms to have tactile paving. The Government's stock Answer to Written Questions on this tells us that 60% of stations have tactile surfaces, but we know that in many cases that coverage is only partial within each station. Can the Minister tell us what percentage of stations have full coverage on all platforms? What is the Government's target date for completing this work? How much will it cost?

Baroness Vere of Norbiton (Con): Unfortunately, I do not have the figures to hand. As the noble Baroness points out, 60% of stations currently have tactile paving and we are very keen to move that to 100%. One of the key elements of *The Williams-Shapps Plan for Rail* is a national accessibility audit that will look at every single station across the network. It will have a detailed look at the facilities and the standards to ensure that everywhere is accessible.

Lord Rosser (Lab): There is huge regional disparity in disability access at railway stations across the country. As part of the new stations fund, a small number of railway stations have opened in recent years. Can the Government give a commitment that at least all new stations, opened or reopened, will always have full disability access and full access to all facilities for disabled passengers?

Baroness Vere of Norbiton (Con): I am grateful to the noble Lord for raising that. Although I would love to make that commitment at the Dispatch Box, as it is completely reasonable, I will have to write to him so that I can 100% confirm that that is the case. It is also important that we look at retrofitting the stations that we have. The Government have extended to 2024 the Access For All programme and provided £350 million-worth of funding.

Lord Foulkes of Cumnock (Lab Co-op): My Lords, I think that a lot of us have an interest to declare on the question of lifts and public toilets—think about it. The Minister was very quick with the exact statistic on the number of lifts working. Could she give us a similar statistic on the number of public toilets that are working at stations? Could she also indicate how many public toilets outside stations have closed in the last 10 years?

Baroness Vere of Norbiton (Con): Unfortunately, I am unable to give that statistic to the noble Lord, although I assure him that once the independent auditors are out there and checking on the loos, I am sure that statistic will be available. We look forward to it.

Baroness Gale (Lab): My Lords, is the Minister aware that, as well as the difficulty of toilets and lifts that do not work, the other problem is big gaps between platforms and trains, especially if you are a short person, as our legs are not as long as other people's? Can she discuss with the train companies how they can improve that position? People can slip between the lines—I believe that that is a regular occurrence—and be badly injured or die as a result. Could the Minister take that up and see what improvements can be made?

Baroness Vere of Norbiton (Con): I will certainly do as the noble Baroness suggests. When stations and platforms are refurbished we consider very carefully the gap between the train and the platform edge, and any serious safety issues it might raise. It is also the case that we have developed the Passenger Assist programme for disabled passengers much more in recent years. An app was launched in May 2021 so that disabled passengers can book their assistance online. It is used across the industry and has been very well received.

Lord Singh of Wimbledon (CB): My Lords, the Punjabi word for travel is "safara". Does the Minister think that this is an apt description of the difficulties experienced by disabled and non-disabled people travelling by rail?

Baroness Vere of Norbiton (Con): My Lords, I sincerely hope not. This Government will do whatever they can to reduce suffering.

Lord Tomlinson (Lab): Does the Minister agree that, instead of coming forward with some scheme of auditors to examine and then report more accurately the statistics of failure of lifts and toilets, the Government ought to employ some plumbers and electricians to go round, do the audit work and remedy it immediately?

Baroness Vere of Norbiton (Con): I am not sure that such multi-skilled individuals exist—

Noble Lords: Oh!

Baroness Vere of Norbiton: Well, I do not know of independent auditors who are also plumbers and electricians; it is potentially an idea that we could look at. The reality is that independent auditors have a very serious job to do because taxpayers' money is at stake here. If the train operating companies do not meet the targets for availability of services, they will not get their management fee; if there was subsequently a dispute that ended up in court, the independent auditors have to be of very high quality to ensure that such a challenge is met appropriately.

Lord Harris of Haringey (Lab): It is interesting to hear about these independent auditors. Can the Minister tell us: how many of these wonderful people will there be, how many stations a day will they be expected to audit, will their visits be announced in advance and where will they report to?

Baroness Vere of Norbiton (Con): I had not expected such interest in these independent auditors and will therefore have to write to the noble Lord.

Noble Lords: Oh!

Baroness Vere of Norbiton: I know—but, in all seriousness, it is a very serious job that they do. It will be looking not only at loos and how clean they are et cetera, but at ticketing and the availability of staff, with mystery shoppers looking at the helpfulness of staff. All this will feed in to make sure that we can hold the train operating companies to account on behalf of the taxpayer.

Lord Hunt of Kings Heath (Lab): My Lords, can the Minister say what per diem rate these people are to be paid?

Baroness Vere of Norbiton (Con): Is there no end to these fascinating questions about the independent auditors? I cannot, but I will write.

Lord Lexden (Con): Is there an effective complaints system for those like the noble Lord, Lord Foulkes, who, when travelling to Scotland perhaps, may find that the loos are not working properly?

Baroness Vere of Norbiton (Con): Now that is an excellent point; if it does not exist, it absolutely should. Actually, I suggest that anyone would get in touch with the customer services of the relevant train operating company to report a fault.

Ministers: Overseas Travel

Question

3.07 pm

Asked by ***Lord Berkeley***

To ask Her Majesty's Government what value for money criteria they use to determine the choice of overseas travel arrangements for ministers.

The Minister of State, Foreign, Commonwealth and Development Office (Lord Ahmad of Wimbledon) (Con): My Lords, foreign travel is a vital part of diplomacy. The work that Ministers do overseas ultimately delivers for the British people. We have three government planes for government business. They are used by the Prime Minister and Ministers for precisely this purpose. This is standard practice and in the national interest. Every government decision is based on "value for money" in accordance with the Ministerial Code, and the FCDO publishes the costs related to overseas ministerial travel as part of the quarterly transparency return.

Lord Berkeley (Lab): My Lords, I am grateful to the Minister for that Answer and for quoting the Ministerial Code. I shall also quote from the code, at paragraph 10.2, which says in relation to overseas visits and their costs that

"Ministers will wish to be satisfied that their arrangements could be defended in public."

The visit by the Foreign Secretary to Australia is reported to have cost half a million pounds, when there were plenty of scheduled flights. I understand that she would not want to be trussed up in economy, but she could go in business or first class. Is it really an expenditure that the Government can defend, to spend all this money—half a million—on one visit?

Lord Ahmad of Wimbledon (Con): My Lords, I am not going to get into the figures; as I have already said, the Government are already very transparent on ministerial travel. There is a serious point to this: the Foreign Secretary is the lead diplomat for the United Kingdom. Travelling on commercial transport is often an option that she considers but, in the current environment, particularly when we have a crisis in Ukraine, as well as in terms of her receiving confidential briefings and being able to work directly with her team while travelling—and let us not forget also the security that accompanies her—it is quite right that a considered decision is taken at the appropriate time for each Minister. When compared to other countries, particularly those within the G7, this is very reflective of what our partners do.

Baroness Foster of Oxton (Con): My Lords, first, I question the amount that was mooted in the press. Notwithstanding that, to wet-lease a long-haul commercial aircraft such as an Airbus A330 would cost approximately £6,000 per nautical mile. In this case, the Voyager—the government aircraft—costs around two-thirds less. In addition, we fly the flag. Therefore, does my noble friend agree that, quite rightly, the Royal Family takes precedence but it also makes sense that the Prime Minister and senior Ministers and officials should take full advantage of these facilities in the interests of the United Kingdom?

Lord Ahmad of Wimbledon (Con): My Lords, I totally agree with my noble friend, who has great insight.

Noble Lords: Oh!

Lord Ahmad of Wimbledon (Con): I repeat, just in case noble Lords opposite did not hear, that I agree with my noble friend, who, thanks to her own experience in the European Parliament, has great insight into the value and importance of diplomacy at the highest level. This is a serious business. There are many noble Lords across your Lordships' House who fully understand and comprehend the importance of ministerial travel, particularly, when it comes to senior members of the Government such as the Prime Minister and the Foreign Secretary, the importance of both security and confidentiality in the meetings they conduct.

Baroness Ludford (LD): When so many people are having to resort to food banks and are terrified about the rise in the cost of living, did the Foreign Secretary not display a rather Marie Antoinette "let them eat cake" attitude?

Lord Ahmad of Wimbledon (Con): My Lords, I know and work with the Foreign Secretary and frankly, that is not a suitable remark to make about the most senior diplomat in our country. She makes very considered decisions. We are going to have a Statement on Ukraine shortly: let us just reflect on that. There are many issues of international diplomatic importance—[*Interruption.*] The noble Baroness has asked me a question; she should do me the courtesy, at least, of listening to the response, even if she does not agree with it.

Lord Collins of Highbury (Lab): My Lords, there is another important issue here. There is the cost of this individual plane, but the Minister mentioned three planes. I have the Prime Minister's letter here, and he talks about all government departments having an

ambition on net zero. Just exactly how does the FCDO measure its ambitions on climate change when it has three planes sending a very small team across the world? No one disputes the need to travel, but surely the FCDO should take its climate-change ambitions seriously.

Lord Ahmad of Wimbledon (Con): My Lords, I have listened very carefully and let us be quite clear: this is not an FCDO plane. It is leased, as my noble friend pointed out, through the Cabinet Office and it is open to all Ministers at senior levels to make a considered decision for their department. On the important point the noble Lord makes, every flight contributes to the UK's emissions trading scheme, and we pay a voluntary carbon offset credit for each flight taken.

Lord Udny-Lister (Con): My Lords, does my noble friend agree that not only do these planes uphold the dignity of the state, but they are no more than workplaces for Ministers and their staff to discuss and manage things diplomatically and securely on long journeys?

Lord Ahmad of Wimbledon (Con): My Lords, my noble friend speaks with great insight about the serious decisions taken at the heart of government. Just for noble Lords' interest, the Royal Air Force—as I said, this is government-wide, including planes provided for the Royal Family—has one A330, one commercially operated A321 and one BAE146. The United States has two VC-25s, eight C-32As and two C-40 Clippers. France—the list goes on. In the United Kingdom, the decisions taken on travel for every Minister of course take value for money into account. However, the Foreign Office, the Department for International Trade and a number of other departments undertake vital work internationally, and sometimes, as I have already said, when the Prime Minister or the Foreign Secretary travel, they not only travel with security but conduct business on those planes. This would not be possible on any commercial flight.

Viscount Waverley (CB): My Lords, do government planes carry chargeable payloads to offset costs, thereby giving extra value for money to the taxpayer, and if not, why not?

Lord Ahmad of Wimbledon (Con): My Lords, I have already talked about the issue of the carbon footprint. In terms of the specifics, security assessments are taken. The schedules of these planes and flights can change very quickly. Indeed, when my right honourable friend was visiting Australia, she had to make adjustments to her schedule because of the crisis situation in Ukraine. These are not normal commercial flights; they have to adapt to ministerial needs and government priorities—and I know there are many noble Lords across this Chamber who know that.

Baroness Randerson (LD): My Lords, the emissions from this flight would have been 3,955 pounds of CO_2. Does the Minister believe that that is good value for money in terms of Britain's reputation? Would the best way of flying the flag not have been to have shown our environmental credentials and ensured that the Foreign Secretary flew in the most environmentally friendly way possible? Can the Minister assure us that the flights concerned were fully offset with tree planting, at the very least?

Lord Ahmad of Wimbledon (Con): My Lords, as I have said, decisions are taken on ministerial travel and when they concern those in the most senior positions, that is done with due consideration to their direct responsibilities—that includes my right honourable friend the Prime Minister, the Foreign Secretary and others—while ensuring that there is value for money.

We are leaders when it comes to climate change—we are the COP president—as has been illustrated by the UK's leadership on this agenda. On offshore wind, for example, we are world leaders. We continue to demonstrate real credentials and work with partners on this.

For the noble Baroness's interest, as she has articulated Australia so specifically, the visit led to a number of important agreements with one of our key regional partners, including a cyber partnership and an agreement on closer UK-Australia co-operation on clean, honest and reliable infrastructure investment in the Indo-Pacific. The Foreign Secretary also signed a deal with South Australia to boost businesses, and she attended vital Australia-UK dialogues together with my right honourable friend the Defence Secretary. This is important diplomacy at an important time for this country, and I am sure many noble Lords support that.

Lord Anderson of Swansea (Lab): My Lords, the reasons the Minister has given in justification—namely, security and the wish of Ministers to work while travelling—are surely applicable to all Ministers. Can we therefore expect more half-million-pound flights?

Lord Ahmad of Wimbledon (Con): My Lords, it is not the wish of any Minister but a necessity. When we travel abroad—I have just returned this morning from abroad—we are working and reading on the plane. However, I am not at the most senior level of government. I am not the Foreign Secretary. The Foreign Secretary is responsible for many agencies' work and has many papers to sign, as well as receiving confidential briefings. Therefore, a considered decision is taken. It is right that, particularly for the most senior people in government, decisions to travel are taken ensuring that security is kept in mind, but also that international affairs are the priority of the agenda.

Commercial Rent (Coronavirus) Bill

Second Reading

3.18 pm

Moved by ***Lord Grimstone of Boscobel***

That the Bill be now read a second time.

Debated in Grand Committee on 27 January.

Bill read a second time and committed to a Grand Committee.

Russia: Sanctions

Statement

The following Statement was made in the House of Commons on Monday 31 January.

"With permission, Mr Deputy Speaker, I would like to make a Statement on what we are doing to tackle Russia's aggression against Ukraine. Moscow's malign intent is clear: it has massed over 100,000 troops on Ukraine's frontier and Russian forces are continuing to arrive in Belarus. It is only eight years since Russia illegally annexed Crimea and stoked conflict in the Donbass region, so we know that the danger is real. They have been pursuing a campaign of hybrid warfare aimed at destabilising the country. Just last week, we exposed the Kremlin's plans to install a puppet regime in Kiev.

This threatening behaviour towards a sovereign, democratic, independent country is completely unacceptable. It is a clear violation of the commitments and obligations that Russia freely signed up to, from the Helsinki Final Act and the Minsk protocols to the Budapest memorandum, which guaranteed to

"respect the independence and sovereignty and the existing borders of Ukraine."

The only way forward is for Russia to de-escalate, pull back its troops and engage in meaningful talks on the basis of those existing obligations. That is why the UK is determined to lead the way through deterrence and diplomacy.

The Prime Minister will travel to the region this week, and later today the UK will be joining discussions at the UN Security Council to apply further pressure on Russia to take the diplomatic route. I will be flying out to Moscow over the next fortnight. That builds on our campaign of diplomatic engagement over recent weeks and months. I have led calls from the G7, NATO and the OSCE to urge Russia to desist from its reckless and destabilising activities in Ukraine, as well as in Georgia, the Baltics and the Western Balkans. I have raised these issues directly with the Russian Foreign Minister, Sergey Lavrov. Both the United States and NATO have set out areas where we could explore reciprocal measures to increase transparency, reduce risk and take forward arms control. The ball is firmly in Russia's court.

While we are determined to accelerate those efforts, we do so from a position of strength. We are combining dialogue with deterrence. That is why the Prime Minister is considering options for further deployments of our Armed Forces, to reassure and protect allies on NATO's eastern flank. We are preparing to offer to support NATO with additional fast jets, warships and military specialists. As NATO's biggest spender in Europe on defence, we are prepared to deploy our forces accordingly.

We have been very clear that a united alliance would meet any further Russian invasion of Ukraine with massive consequences for Russia's interests and economy. We are preparing an unprecedented package of co-ordinated sanctions with our partners, which would impose severe costs. Today, I am setting out our readiness to act. We will be laying legislation before the House that will significantly strengthen our hand in dealing with Russia's aggressive action towards Ukraine. It will go further than ever before.

Until now, the UK has only been able to sanction those linked to the destabilisation of Ukraine. This new legislation will give us the power to sanction a much broader range of individuals and businesses. We will be able to target any company that is linked to the Russian state, engages in business of economic significance to the Russian state, or operates in a sector of strategic significance to the Russian state. Not only will we be able to target these entities, we will also be able to go after those who own or control them. This will be the toughest sanctions regime against Russia we have ever had, and it is the most radical departure in approach since leaving the European Union. Those in and around the Kremlin will have nowhere to hide.

We will make sure that those who share responsibility for the Kremlin's aggressive and destabilising action will share in bearing a heavy cost. Their assets in the UK will be frozen. No UK business or individual would be able to transact with them, and should they seek to enter the UK, they would be turned back. Laying this legislation now will enable us to act in concert with the United States and other partners rapidly, multiplying our collective impact. We will use these new powers in a targeted manner, designed to damage the interests of those who bear greatest responsibility for Russia's actions and exert the greatest pressure to change course. I will not say now exactly who we may target, or with what measure, but Moscow should be clear that we will use these new powers to maximum effect if it pursues its aggressive intent towards Ukraine. Nothing is off the table.

We are also standing with our Ukrainian friends by providing vital support to help them defend themselves. That is why we are supplying the country with defensive, anti-tank missiles, and deploying a training team of British personnel. We have already trained over 21,000 members of the Ukrainian army through Operation Orbital. In addition, we are stepping up our investment in Ukraine's future, ramping up support for trade up to £3.5 billion, including £1.7 billion to boost Ukraine's naval capability. We will continue to stand united with Ukraine.

It might seem hard to believe that in the 21st century the citizens of a proud, sovereign, European democracy are living under the threat of invasion. We know from the lessons of history that this course of action would benefit no one. I do not believe that ordinary Russian citizens want to enter into an intractable quagmire of needless death and destruction that could rival the Soviet-Afghan war or the conflict in Chechnya. Indeed, we have no quarrel whatsoever with the Russian people, only with the policies pursued by its leader. It is time for the Kremlin to step back from the brink, to de-escalate and to enter into meaningful dialogue. If it does not, it should be in no doubt: we will be ready to use the powers that I have set out today to maximum effect. We will join our allies and partners to ensure that such reckless action will bring strategic consequences at a massive cost. We will defend freedom, democracy and the rule of law.

I commend this Statement to the House."

3.19 pm

Lord Collins of Highbury (Lab): My Lords, I welcome this Statement. I hope I can show a bit of unity with the Minister and he will not get so upset.

This House remains united in solidarity with the people of Ukraine, and we continue to support the principle of sovereignty in the face of aggression. Any sanctions must be targeted and extensive if they are to be the most effective. We must take aim at corrupt elites and comprehensively cover the most crucial sectors of the Russian economy. However, as much as it is welcome that the Government are preparing for these measures, I am concerned that they will not be paired with much broader measures needed to crack down on illicit Russian finance in the United Kingdom.

The noble Lord, Lord Ahmad, wrote to me on 9 December following my questions relating to the full implementation of the ISC Russia report. In that letter, the noble Lord refers to a "cross-government Russia unit" but gives very little detail. Of course, the ISC said that there appears to be a plethora of plans and strategies with direct relevance to the work on Russia by the organisations it oversees. The integrated review acknowledged the need to bring together elements of our work across the strategic framework at home and overseas, using all the instruments available to government in an integrated response. I hope that this afternoon the Minister will be able to tell us what has happened and where the details are on this strategic framework approach.

Six months ago, the Government said that they were finalising their report into how more than 700 Russian millionaires were fast-tracked for British residency via their so-called golden visa scheme, yet in response to Stephen Kinnock yesterday, the Foreign Secretary simply said:

"We are reviewing the tier 1 visas that were granted before 5 April."—[*Official Report*, Commons, 31/1/22; col. 60.]

It is shocking that the Foreign Secretary did not have a proper answer to my honourable friend's question. We have been giving out these visas to thousands of Russian oligarchs. Some £4 million has been donated to the Conservative Party by seven individuals who have deep and highly dubious links to the Kremlin. Can the noble Lord tell us what action the Government will take on the visas, and when they will do so? More importantly, when will we see the economic crime Bill, which will be so necessary to ensure a joined-up approach on these issues? When will the Government consider introducing a register of overseas entities Bill, foreign agent registration laws or new counterespionage legislation? We are still lacking detail on when we can expect Bills—which have previously been announced—to repair the gaping hole in our defence. Will the noble Lord tell the House when we can expect the promised computer misuse Bill and the counter-hostile state Bill to be brought to the House? Can the Minister say when the Government's cyber co-ordination centre will be operational to help tackle these threats? These are all actions required to be taken urgently.

I believe that, to be successful, sanctions must form part of a unified and coherent response across our allies, and I understand that the noble Lord shares this aspiration. Can he say what steps we are taking to work with the G7, NATO and the OSCE to ensure that we act in unison with all our allies on these important matters?

Sanctions are always effective deterrents, but the Government must also pursue a diplomatic solution. I mentioned yesterday, in response to the Statement on the Sue Gray report, that I found it pretty shocking that the Prime Minister cancelled his phone call to President Putin at a time when such talks are vital to peace and security. Can the Minister say this afternoon when the Prime Minister will make sure that those discussions take place? Will that call be rearranged? It is vital that we have answers to all these questions.

Lord Purvis of Tweed (LD): My Lords, I put on record my appreciation for the Minister telephoning yesterday and alerting me to the Statement. He is courteous and approachable, and it is very much appreciated. I hope that his overseas visit was a success. However, as the noble Lord indicated, a telephone meeting with President Putin was postponed and a maskless Foreign Secretary contracted Covid and was unable to travel. It is embarrassing to me, and perhaps others, that the whole world now follows what we see at home: failures in leadership and an increasingly grubby Government.

However, we support moves to shore up the ability to ensure that there is a severe economic response to unwarranted Russian aggression towards Ukraine. Two weeks before Christmas, the EU and the US reached an agreement on what expanded economic sanctions would be. Our announcement, which is welcome, is a consequence of this. But, as with most things, it has a little bit of overselling attached to it.

UK FDI stocks in Russia are currently £12.3 billion —an increase of 25% during Liz Truss's tenure as International Trade Secretary. Since the unacceptable invasion of Crimea, UK FDI stock in Russia has gone up by 50%. What actions will the Government take to stem this flow? I previously asked what contingency arrangements are in place for guidance for UK businesses that are currently conducting legitimate business that will become illegitimate as a result of any actions. The European Central Bank has done a sensitivity study with banks on exposure to Russia. Has the Bank of England done the same? What guidance is being provided to global oil and energy trading and shipping insurance with trade with Russia, which is primarily done through the City of London and will be the target of US and other sanctions?

Can the Minister explain why economic crime has been downgraded in the UK over the last few years? When Ben Wallace was Minister of State for Security, he was Minister of State for Security and Economic Crime. Damian Hinds is Minister for Security and Borders. There is no Minister for economic crime. As my noble friend Lady Ludford said yesterday, although the Foreign Secretary has said that there will be "nowhere to hide" for Russian oligarchs and their money, they have been hiding in plain sight in Chelsea, Belgravia and Mayfair.

As a December report from Chatham House indicated, the grim details of London's world centre of kleptocracy have created a wider malaise in England's legal system. Given this Conservative Government's inactivity, so clearly identified in Parliament's Intelligence and Security Committee reports over many years, it is legitimate to ask whether the Government are crying wolf again.

Yesterday, the Business Minister was unable to give details of what will be in the economic crime Bill. The noble Lord, Lord Young of Norwood Green, asked

[Lord Purvis of Tweed]

the Home Office Minister, the noble Baroness, Lady Williams, why there have been

"few, if any, successful prosecutions"

on unexplained wealth orders. She replied:

"There have been some, and as I have explained to the House, it is quite complex and sometimes these things are very difficult to secure. There is more work to be done."

Of course these are difficult and complex matters, but they will not be less so next week. Therefore, that is not an excuse for inaction.

Referring to President Putin, the noble Lord, Lord Austin of Dudley, asked:

"given that he has invaded Crimea, assassinated his opponents here in the UK and looted Russia's economy, thereby impoverishing … Russian citizens, why have the Government not considered doing this anyway?"

Under the anti-corruption regulations, those that will be in scope under the new measures are currently in scope for sanctions. The Minister replied:

"The noble Lord is absolutely right. I am not party to some of the discussions going on in the FCDO and elsewhere, but he highlights the point that we have a major problem with regard to the influence here."—[*Official Report*, 31/1/22; cols. 617-18.]

I think that the whole House welcomed that admission, after months of denials by the Government. We have a major problem, and if we are now being asked to put in place new measures, which may well be welcome, we have legitimate questions to ask about this Government's motivation to properly clamp down on those who are doing us harm.

Will the Government finally accept the case for fast-tracking beneficial ownership legislation and the Bill that has been introduced in the Commons by Layla Moran MP? Will they urgently accept the amendments on golden visas proposed by my noble friend Lord Wallace of Saltaire? If the Government are serious about this, they have two key opportunities now—will they take them?

The Minister of State, Foreign, Commonwealth and Development Office (Lord Ahmad of Wimbledon) (Con): My Lords, first, I thank both noble Lords for their support. I fully accept that it is right that we are challenged with questions as Ministers and on important issues such as the situation in Ukraine. It is important when we look towards Ukraine that the Government, together with all parties and voices across both Houses of Parliament, come together in calling out the challenging and ever-increasing presence of Russian troops, almost in a crescent shape, across Ukraine and Belarus; this is causing particular concern in the eastern part of the country. There is also the annexation of Crimea, of course.

Notwithstanding us having just done a Question on ministerial travel and where Ministers wish to work—as I said to the noble Lord, Lord Anderson, it is a requirement that we work beyond what we may be conducting in our business—I am grateful to both noble Lords. I also sought to call the noble and learned Lord, Lord Judge. I hope that he received the message I had to leave for him; I regret that I was unable to speak to him in advance.

The noble Lords, Lord Collins and Lord Purvis, rightly asked questions on various issues of illicit finance. I will certainly outline some of the steps that the Government have taken on the specific issue of the economic crime Bill, which was raised by both noble Lords. This also came up in the other place with my right honourable friend the Foreign Secretary, and my right honourable friend the Prime Minister reiterated, during the democracy summit, the Government's commitment to seeking to introduce it this year. I assure noble Lords that I have also made sure, in terms of my own responsibilities at the Foreign, Commonwealth and Development Office, of the importance of this Bill.

In terms of what the noble Lord, Lord Purvis, raised about what will be in the Bill, the Government have already, as he will be aware, produced the national economic crime plan; there are various elements within that. We created the National Economic Crime Centre in 2018 and, including previous legislation, there was the ground-breaking Criminal Finances Act 2017. In addition, the recent UK spending review announced new investment of £18 million in 2022-23 and £12 million per year in 2023-25 for economic crime reforms, as well as £63 million to reform Companies House, which will go in part towards addressing some of the issues that noble Lords have raised, on beneficial ownership in particular.

I note the Bill that the noble Lord, Lord Purvis, pointed to. Of course, the Government are committed. I took through the legislation—with the noble Lord, Lord Collins, as I recall, on the Opposition Benches—of the SAMLA Bill. We gave a commitment and continue to work, for example, with our overseas territories. We have exchange of notes operational with key members of the overseas territories family, but they are all now committed to ensuring that operational public registers are fully functional by 2023.

Sanctions were mentioned, which I also want to bring into the context of the point that the noble Lord, Lord Collins, raised about Russia. When we introduced the global human rights sanctions regime, as noble Lords will be aware, we broadened the scope. The global anticorruption sanctions regime has been used specifically to target those individuals from Russia, sanctioning 14 individuals involved in the $230 million tax fraud in Russia uncovered by Sergei Magnitsky himself.

I know that my right honourable friend the Foreign Secretary alluded to the issue of tier 1 visas. Of course, while this is a Home Office lead, it also involves the National Crime Agency, and we will continue to bring the full weight of law enforcement to those who threaten the security of the UK and our allies. More broadly, the noble Lord, Lord Purvis, asked about the current changes we are bringing and the remit—that is, which individuals and organisations they would apply to. Just to be clear, under the current regime, the UK has been able to sanction only individuals linked to the destabilisation or undermining of the territorial integrity of Ukraine. This new approach, with the governance structures—I am not talking specifically about who or which organisation may be designated—will allow us to target any company that is linked to the Russian state, engages in business of economic significance to the Russian state or operates in a sector of strategic significance to the Russian state. The noble Lord, Lord Purvis, mentioned a number of those sectors.

Of course, I will work—as I have previously—with noble Lords across the House, but particularly with the Front Benches, to bring both greater detail through direct questions in your Lordships' House and more detailed insights on the approach. The noble Lord, Lord Collins, will smile at this, but I am not going to speculate on the individuals or organisations that may be sanctioned under this broader regime. Of course, the noble Lord, Lord Purvis, is right that there are implications in certain key sectors. The issue of guidance and not just the implications for those who may be sanctioned but the wider impact on those sectors and industries is an important consideration. I assure the noble Lord that that is very much part of our thinking.

If I may, I have a final point, which picks up on some of the questions that the noble Lord, Lord Collins, asked about specific acts and specific points. I will, of course, follow up my letter to the noble Lord, Lord Collins, as well and copy in the noble Lord, Lord Purvis, and other noble Lords.

On the point that the noble Lord, Lord Purvis, raised about leadership, he may be aware—but he may not be—that my right honourable friend the Prime Minister is currently en route to Ukraine; he may well have arrived. He is having talks directly with President Zelensky. We are also announcing further support of £88 million, particularly looking more broadly at the economic and energy impacts of any steps that Russia may take. The noble Lord raised the issue of the call to President Putin. That is being prioritised, looked at and arranged. Certainly, we hope that it will happen very soon.

On the general point about my right honourable friend the Foreign Secretary, the noble Lord said that, again, it shows a lack of British leadership. I challenge him in this respect. Looking back over the last two months at the engagement of my right honourable friend the Foreign Secretary on the issue of Ukraine, on 1 December, she met the Ukrainian Foreign Minister, and on 2 December, she met the Russian Foreign Minister. I am sure I speak for all noble Lords around your Lordships' House in wishing my right honourable friend the Foreign Secretary a speedy and full recovery. She is certainly looking to undertake her responsibilities in terms of engaging directly in Moscow. She announced yesterday that she is looking to travel to Moscow within the timeline of the next two weeks; subject to her recovery and ensuring that all processes are in place, we are looking to do exactly that.

My right honourable friend has also met with the G7, as the Prime Minister has already. On 13 December, he had a call with President Putin. He had a further call with the Ukrainian president, President Zelensky, whom he is visiting. The Foreign Secretary had a phone call with members of the OSCE. She had phone calls with UN Secretary Blinken on 23 December—to name just one of them—and with the EU policy chief, Josep Borrell. On 30 December, she had a phone call with Foreign Minister Le Drian, Secretary Blinken and German Foreign Minister Baerbock, and, most recently, she had a call with the German Foreign Minister. My colleague, Minister Heaton-Harris, spoke with Deputy Foreign Minister Titov on 26 January. The Foreign Secretary had a call with the Dutch Foreign Minister on 1 February, and, as I said, she intends to visit Moscow, health permitting.

I can provide a full list of engagements. I have not counted other Ministers; indeed, I hope to be in Estonia next week as part of our responsibilities on the Media Freedom Coalition. However, part of my engagement with the Estonian Foreign Minister, where our troops are based, will be on the situation of Ukraine.

The Lord Speaker (Lord McFall of Alcluith): My Lords, the noble Lord, Lord Campbell-Savours, is taking part remotely. I invite him to speak.

3.39 pm

Lord Campbell-Savours (Lab) [V]: My Lords, during last Wednesday's Statement to the House, I suggested that, prior to supporting a proxy war military intervention, and now sanctions, all concerned should read material from the National Security Archive at George Washington University, which reveals assurances given to the Soviets on NATO expansion—an issue at the heart of the Russian case. Was my suggestion followed up or ignored? Will not those undertakings given to the Russians not go away and, in the end, become central to this whole debate on both sanctions and the potential for conflict?

Lord Ahmad of Wimbledon (Con): The noble Lord is right on his specific suggestion but, on his broader point about the importance of diplomacy, that is exactly what Her Majesty's Government are doing, along with our key partners. It is important, though, that Russia also recognises that it is about its actions. Let us not forget that Crimea was annexed—what, eight years ago?—and it has subsequently continued to take aggressive stances on the borders of Ukraine. I said earlier that we have now seen over 100,000 Russian troops amassing across three different fronts. These are not mere exercises; they are attempts to intimidate Ukraine. It is important that we stand with Ukraine and underline the support that we give to it, including what the sanction would be if there was a Russian incursion or invasion into any parts of Ukrainian territory. It is important that Russia understands that message, which is articulated not just by the United Kingdom but by us and our allies. I assure the noble Lord that the door of diplomacy, as I said in my previous answer, is very much open and the UK is at the forefront of that.

Lord Trefgarne (Con): My Lords, is it not possible to secure the involvement of the United Nations Security Council more fully in the Ukrainian situation? Is that not the formula we followed back in 1982 when, despite Russian resistance, Resolution 503 was duly passed? It authorised, among other things, the noble Lord, Lord West—Commander West, as he then was—to set sail for the south Atlantic. Sadly, 22 of his brave colleagues did not return.

Lord Ahmad of Wimbledon (Con): My Lords, I am very appreciative, as I often say, for the insights, experience and wisdom within your Lordships' House. On the specific point that my noble friend raises in relation to the United Nations, as he will note, a meeting on this very issue took place at the Security Council. On initiatives which could be taken, we should never close

[Lord Ahmad of Wimbledon]
the route to diplomacy. I believe Russia is now in the chair of the UN Security Council, so surely there is a greater onus on the presidency to demonstrate how it can bring different countries together.

Lord Alton of Liverpool (CB): My Lords, I welcome the balance that the Minister and the Foreign Secretary have struck between maximising the pain for corrupt, mafia-like elites while minimising damage for ordinary Russians, who have suffered quite enough under Vladimir Putin. Can the Minister say whether cutting Moscow from the SWIFT financial system and cancelling the Russian Nord Stream 2 gas pipeline are being given serious consideration in the event of an invasion of Ukraine? Will he also elaborate on the co-ordination of the efforts with our closest allies that he has been describing to the House?

Lord Ahmad of Wimbledon (Con): My Lords, I can certainly provide more details on the noble Lord's second question. Yes, we are working with key allies, as I indicated, over the course of the last two months and beyond. We have been working with our key European allies and directly with the EU. We have been working with the United States, as well as partners further afield, on how we can act together on the situation in Ukraine. The noble Lord, Lord Collins, mentioned the importance of sanctions and working together in a co-ordinated fashion. I assure the House that we are doing exactly that. On the first question of the noble Lord, Lord Alton, I fear that if I was to say anything further it would run to speculation. But, as my right honourable friend the Foreign Secretary said yesterday in the House of Commons, whether our approach is diplomatic or looking at the issue of economics and the cost of Russia, everything is very much on the table.

Lord Grocott (Lab): My Lords, further to the question of my noble friend Lord Campbell-Savours, can the Minister tell us, as and when the Prime Minister talks to President Putin—inevitably, the possibility of Ukraine joining NATO will be raised as a Russian concern—what precisely is the Government's position on the possibility of Ukraine joining NATO?

Lord Ahmad of Wimbledon (Con): My Lords, as the noble Lord knows, on the central point of Ukraine joining NATO, it is first and foremost a defensive alliance. A country can make an application and it is considered by all members of NATO. No country should be told specifically that it cannot be a member of a particular alliance; it is very much for Ukraine to request its membership and for members of NATO to decide.

Lord Wallace of Saltaire (LD): My Lords, the presentation in Washington has often been—as I have seen in recent days—that the United Kingdom has only really acted under American pressure. That does not look good in Washington. Can the Minister reassure us that that was not the case? While we are tackling this issue, late as we are to it, can the Government ensure that we take a broader attitude to the question of Russian influence within the British elite, which the ISC Russia report flagged up three years ago? We need now to deal with not just the immediate question of the Ukraine crisis; there is a much broader question. Lastly, have the Government done any impact assessment of, for example, the implications for the property market in London and the south-east of imposing sanctions?

Lord Ahmad of Wimbledon (Con): On the noble Lord's last point, I suppose I should declare an interest: I am a property owner in London and the south-east. In all seriousness, without going into too much detail, as I said—and I know that the noble Lord, Lord Purvis, had to leave, but I recognise the courtesy extended by his note to me—we are looking at the broader impact, as the noble Lord indicated.

On the issue of engagement in Washington, I assure the House that we have been engaging on the front foot. Let us not forget that we have been engaging on this issue longer than the current US Administration. We have always made the case as strong partners of Ukraine—one can ask Ministers present and past in the Ukrainian Government. I have sat with a number of them at the United Nations who have indicated their strong support, not through us asking them, but quite genuinely, for the leadership the United Kingdom has showed in solidarity, support and friendship for Ukraine.

Lord Walney (CB): My Lords, the House will understand when the Minister says that it is not in the Government's gift alone to remove Russia from the SWIFT financial system, but he can say, can he not, if they believe it would be a proportionate measure, if the invasion of Ukraine goes ahead?

Lord Ahmad of Wimbledon (Con): My Lords, I know the noble Lord is probing me for more details, but I shall not say any more. I am fully aware of the sensitivity and impact where such steps are taken. As noble Lords will have followed, and as I sought to inform those on the other three Benches in your Lordships' House, the broader nature of what we can do once the legislation is effected will allow us to sanction organisations and individuals much more broadly and at direct cost to those entities which are Russian or which are owned by Russian entities and operating within the UK.

Lord Bellingham (Con): My Lords, in the event of general economic sanctions being applied—obviously, let us hope that the diplomatic measures that the Minister outlined will bear fruit—given that Russia and Ukraine between them produce one-third of the world's wheat supply, we will probably see a massive hike in the price of wheat. What assessment have the Government made of the impact of that on UK food prices, and what contingencies are being put in place to find alternate supplies?

Lord Ahmad of Wimbledon (Con): My Lords, my noble friend raises a very important point. I think the implications of any sanctions and support are well recognised. I point my noble friend specifically to the

steps we have taken just now in support of Ukraine directly, which will be impacted in the first instance, and the new funding I alluded to earlier, looking specifically at the issue of Russian energy supplies. That indicates the seriousness with which the UK recognises the impact of such sanctions.

However, it is important that Russia understands very clearly and unequivocally that its actions of not just taking but retaining territory, annexing territory, as it is threatening to do now further in Ukraine are firmly unacceptable, not just to us but to our allies and the world community generally. Therefore, it is in Russia's hand to reflect on what is being said, but this is serious. This is a serious point in the crisis, and it is therefore important that we engage diplomatically and directly. That is why my right honourable friend the Prime Minister and the Foreign Secretary have said directly to their respective counterparts that they wish to meet to discuss with them. One hopes that the diplomatic channel will bear fruit.

Lord Browne of Ladyton (Lab): My Lords, like other Members of this House, I support the sanctions that were announced in this Statement. It is crucial that we do not undermine the steps that our Government are taking to get the message to the Russians. The problem is that if the Russians read the international press today, they will get a very different message. The headline in the *Washington Post* is:

"Britain, the tough-on-Russia ally, is being undermined by London".

On Bloomberg.com it is:

"'Londongrad' Undermines U.K.'s Tough Talk on Russia Sanctions".

In the *Sydney Morning Herald*—with the Secretary of State having just come back from there after a very important visit—it is:

"Billions parked in 'Londongrad' undermines Britain's tough talk on Russia sanctions".

We can impose sanctions on all of the people identified in this very welcome Statement, but we will not be able to seize their assets because we do not know who owns the assets. If we have to wait until 2023 to have a register that allows our Government to know who owns the assets, then these sanctions will deter no one.

Lord Ahmad of Wimbledon (Con): My Lords, London already operates a public register. When I referred to 2023, that was in the context of our overseas territories. We already have a scheme for OTs, called the exchange of notes, which the noble Lord will be aware of. I know directly through its operation, and through speaking to, for example, tax authorities and crime agencies, that they are able to access the necessary information. However, I agree with the noble Lord that there is more to be done on this issue. I outlined some of our plans for greater transparency at Companies House to show greater levels of ownership. I assure the noble Lord that the broadening of what we are seeking to do through the legislation proposed will allow us to target individuals and organisations quite specifically and to freeze their assets as well.

Lord Stirrup (CB): My Lords, the Minister and others have referred to an invasion of Ukraine as a trigger for sanctions. Can the Minister tell me what that invasion will look like? Does it include cyberattacks? Does it include subversion by special forces, who are already in parts of Ukraine, and other such grey activities? How are we going to identify an invasion if the 100,000 troops massed there are just there for strong-arming and for show and will not themselves actually be involved?

Lord Ahmad of Wimbledon (Con): My Lords, I alluded to the expertise and insights in your Lordships' House, and perhaps I should be posing this question to the noble and gallant Lord, who has great insight. The activities of the Russian state and those supported by the Russian state already include such things as the noble Lord alluded to. That has seen some action being taken by the United Kingdom and our key allies and partners. What is very clear is that the physical movement of troops—again, the noble and gallant Lord will know this far better than I—is a real statement of what may come next. To just pass it off as military manoeuvres when the whole of the eastern borders of Ukraine have over 100,000 Russian troops in occupancy is a great cause for concern. Therefore, what we are seeking to do through the Statement, and, importantly, through the widening of legislation and action—be it economic action—is to demonstrate to Russia the real willingness of the alliance and our partners within NATO and Europe to stand up against such further aggression.

As I said, eight years ago Crimea was annexed illegally. No further attempts were made to withdraw troops. I went to Ukraine before Christmas, and saw the anxiety. The massing of troops in Belarus, not that far from Kiev, is causing particular concern, and it is important that we make Statements accordingly. However, behind those Statements must be concerted action.

Lord Robathan (Con): My Lords, following on from what the noble Lord, Lord Browne, said, when the Soviet Union collapsed just over 30 years ago, people had very little private property. Within a decade, some people had riches beyond the dreams of avarice. Some of that was made legitimately, but a great deal was assets of the Russian state looted by gangsters. A lot of that money then came here. Why are we not pursuing unexplained wealth orders on these people? They have all the money in plain sight and we should be pursuing them now.

Lord Ahmad of Wimbledon (Con): My Lords, I praise my noble friend's impeccable timing, as my dear and noble friend Lady Williams is sitting to my right. My noble friend talked about the issue of these unexplained wealth orders and we have acted. The noble Lord, Lord Collins, asked earlier about the detail. The same applies for sanctions or any other step that we may take. There is a positive, in that even those with the most sinister motives have, within the United Kingdom, the rule of law. We need to ensure that, whether we are talking of these orders or of sanctions, due process is followed, and with a robustness which allows those sanctions or orders to prevail. The Home Office takes this very seriously, as does the Home Secretary. I assure my noble friend that we will act accordingly.

Lord West of Spithead (Lab): My Lords, the Minister will be aware that our agencies have a very good idea already about where certain money is, who has it and who it belongs to in these chains, particularly with their links to the City and the people they talk to. Can the Minister assure me that we have been monitoring very closely any movements of money and changes of pattern, because the Russians will be very aware that this is about to happen? Can he also confirm that, as a number of noble Lords have said, we are in a position to move and to hammer these people the moment that this happens, rather than having to wait two or three years for legislation? We are able to do things like that if we put our minds to it. The great joy is that, as a member of the ISC, in two years I will be able to see all the evidence of whether anyone was doing that.

Lord Ahmad of Wimbledon (Con): My Lords, of course the Government take these issues very seriously. Often when we talk about sanctions, we talk about where the Government may be looking to sanction an individual or an organisation, and we resist, for the very reasons that the noble Lord illustrates. Giving any intimation or indication of who or what company may be targeted will lead to funds being withdrawn, if assets are held in the United Kingdom. Therefore, we look to be informed by our agencies across the piece, but it is also important to look to the application of law. There are many wise heads within your Lordships' House on this very issue. We ensure that the letter of the law is applied fairly to any action that the Government may take. Before such a measure is taken, the background and supporting evidence is considered very carefully at a cross-government level. The noble Lord refers to various agencies, and we have some of the best—arguably the best in the world. Their contributions are important to any final decision that the Government take.

Lord Campbell of Pittenweem (LD): My Lords, I wonder whether the Minister can help me with the question of the breadth of sanctions which are to be sought. There is a passage in the Statement which says that:

"We will be able to target any company that is linked to the Russian state".—[*Official Report*, Commons, 31/1/22; cols. 55-56.]

Of course, every Russian company is linked to the state under an obligation to report any information which may help to advance the policies of the Russian Government. The effect of this would be that the Government are seeking power to target any Russian company, whether it has a connection with Ukraine or with the United Kingdom.

Lord Ahmad of Wimbledon (Con): My Lords, I have already talked through the broader nature of what we as a Government will be allowed to do through legislation. This is enabling legislation. When we look at each individual designation—be it an individual or an organisation—that will be considered very carefully. However, it is important that Russia recognises that its actions in Ukraine are being not just noticed but acted upon. Therefore, it is important that we are seen to act, and to act with our partners accordingly.

Nationality and Borders Bill

Committee (2nd Day)

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

4 pm

Amendment 34

Moved by ***Baroness Ludford***

34: After Clause 10, insert the following new Clause—

"Acquisition of British citizenship by birth or adoption: comprehensive sickness insurance

(1) The European Union (Withdrawal Agreement) Act 2020 is amended as follows.

(2) After section 15, insert—

15A Comprehensive sickness insurance

(1) For the purposes of any decision taken by a public authority under this Part after commencement of this section, a person is to be treated as having met a requirement to have held comprehensive sickness insurance, whenever they—

(a) had access to the NHS in practice, or

(b) held a comprehensive sickness insurance policy.

(2) This section applies in particular to any decisions taken under residence scheme immigration rules."

(3) The British Nationality Act 1981 is amended as follows.

(4) After section 1(3A) insert—

"(3B) A person born in the United Kingdom after commencement who is not a British citizen is entitled, on application, to register as a British citizen if the person's father or mother would have been settled in the United Kingdom at the time of the person's birth, if Assumption A had applied.

(3C) Assumption A is that, in assessing whether the person's father or mother met a requirement to have held comprehensive sickness insurance, this is to be regarded as having been satisfied whenever they—

(a) had access to the NHS in practice, or

(b) held a comprehensive sickness insurance policy.

(3D) Registration under subsection (3B) is free of charge."

(5) After section 50A insert—

50B Exceptions

Notwithstanding any provision of section 50A, for the purposes of an application for naturalisation or registration made under this Act, a person—

(a) is not to be treated as having been in the United Kingdom in breach of the immigration laws during a period of time that has been counted as part of a continuous qualifying period in a grant of leave to that person under Appendix EU of the Immigration Rules, and

(b) is not to be treated as not being of good character on account of a failure to hold comprehensive sickness insurance during some period of residence in the UK.""

Member's explanatory statement

This new Clause provides that a person seeking to naturalise as a British citizen, seeking to exercise family reunion rights as a naturalised British citizen, or seeking to have their UK-born children recognised as British at birth, need not have had comprehensive sickness insurance prior to naturalising or prior to the birth of their child.

Baroness Ludford (LD): My Lords, I hope not to have to detain the Committee for too long on this admittedly complicated subject of the anomalous

historical legacy of comprehensive sickness insurance—hereafter CSI—because I am hoping that the Minister will spring up, interrupt me and pledge that the Home Office will resolve all the left-over problems faced by some EU citizens today. She was kind enough to meet me virtually last week, and I detected a degree of thoughtfulness in her department on the subject. I cannot yet put it higher than that, but I am hopeful.

Attentive listeners might recall that some of us—especially, perhaps, I—banged on about the obscure issue of CSI at various points in the debates on EU withdrawal and, in particular, on the UK's EU settlement scheme. It is a long and, in my view, sorry history. I will recap as briefly as I can: in the EU citizens' rights directive of nearly 20 years ago—which I worked on as a Member of the European Parliament, hence my long-standing interest—so-called free movers were required to have comprehensive sickness insurance; that was the term used. On the continent, health systems are often covered by state insurance systems. In the UK, we have the NHS or private health insurance. Although of course we have national insurance, people do not think of the NHS as an insured scheme. So there has been a long-running problem of EU citizens in Britain who are not employed, such as students, the self-employed and homemakers, being expected—although, crucially, not usually told—to have private insurance. This was a matter of legal dispute in Brussels, which rumbled on, and I do not think it ever got resolved.

Fast forward to Brexit and the acute issue of whether those lacking private health insurance were legally resident in the UK and could seek settled status under the withdrawal agreement. Fortunately, the UK Government wisely cut through that residual red tape and said, in an admirably pragmatic decision, that they would let everyone get settled status. However, often unbeknownst to individuals, they fell into one of two groups: the true cohort and the extra cohort. The significance of this distinction arises only—indeed only becomes known—when a settled person seeks to register a child's birth, to naturalise themselves as British or to bring a family member to join them in this country. Then they face a veritable series of snakes and ladders, because any historical gap in CSI—private insurance—may make them slide down into a pit of reptilian problems. Only when they seek to register a child, bring in a spouse or become a British citizen might they be told: "Aha! Your historic lack of CSI is a bar." Noble Lords will recall that it was not a bar to them getting settled status, but it raises its ugly head at this later stage. At the risk of mixing my metaphors, it is Kafkaesque.

Certainly, in the case of bids for naturalisation, caseworkers have—but only through guidance—been given discretion to waive this historic need for CSI to meet the lawful residence requirement. On Report in the other place, the Minister, Kevin Foster, said that

"no one has been refused British citizenship purely on the basis of the CSI requirement in free movement regulations."

The trouble is that if an applicant has to stump up around £1,300, without the certainty of the outcome because of the discretion for the caseworker, that is a gamble—potentially an expensive one.

I am asking the Government to carry through the pragmatic logic whereby they decided to ignore the past lack of CSI for settled status and now to wipe the slate entirely clean for subsequent immigration applications and statuses. On 7 December, Minister Foster told the other place

"we are considering how the issues could be picked up as part of our work on simplification".

He hoped that MPs would

"be pleased to hear that we are looking closely at that work."—[*Official Report*, Commons, 7/12/21; col. 260.]

That was a bit encouraging.

Perhaps the Minister could give us a more solid basis of hope, in relation not just to naturalisation but to the other applications, such as the registration of a baby's birth and family reunion. I am sure that millions of EU citizens, resident in and contributing to this country, would be immensely grateful for the peace of mind they would thereby secure. Who knows? Their gratitude might rebound on this Government. I hope for good news. I beg to move.

Lord Paddick (LD): My Lords, I hesitate to follow my noble friend, who is an expert on this issue. I declare an interest as a British citizen seeking a residence permit in Norway, where I have lived with my husband for the last 14 years. I have always had access to the Norwegian national health system. My application for a residence permit—the equivalent of settled status—has been outstanding for over 12 months because of issues with comprehensive health insurance.

I start by thanking the Government for their generous approach to EU and EEA citizens seeking settled status in the UK. The Government have taken the general approach that, if someone has been living here for years and was legally accessing the NHS when the UK was part of the EU, they do not need to have, to have had or acquire comprehensive health insurance, even if—as with me in Norway—they are not working or studying. This goes beyond the Brexit agreement, but is entirely consistent with the principle that EU and EEA citizens living in the UK prior to Brexit should be able to continue to live here on the same terms after Brexit. It is the right thing to do. I am grateful to the Government for taking such an approach. I wish Norway would do the same.

My understanding of this amendment is that it goes a step beyond settled status—where EU and EEA citizens who have qualified for settled status seek to be naturalised as British citizens, to exercise family reunion rights as a naturalised British citizen, or to have their UK-born children recognised as British at birth. Even though they do not have to have comprehensive sickness insurance for settled status, it currently appears that they may have to have it for citizenship purposes. This amendment seeks to rectify that anomaly between settled status and citizenship. I am getting a nod, so that is okay.

What this amendment seeks to achieve follows on logically from the generous and welcome stance of the British Government on settled status in relation to comprehensive sickness insurance. We support the amendment.

Lord Coaker (Lab): My Lords, we support Amendment 34, tabled by the noble Baroness, Lady Ludford. We raised this issue in the Commons and

[Lord Coaker]
pushed it to a Division in Committee. I will not repeat all the points that the noble Baroness, Lady Ludford, and the noble Lord, Lord Paddick, have made.

I want to make a few observations. This is an opportunity for the Government to clear up an obscure, largely technical anomaly which is having real-world consequences for a number of people. CSI was not required for any EEA or Swiss citizen to live in the UK and to be able to access the NHS. However, it was not generally communicated that this was an additional requirement. Most people now being impacted by this relatively obscure provision had no idea about it.

I do not believe that this should be controversial; it is a sensible change. There are two reasons for that. First, when the Government designed the EU settlement scheme, they chose not to include CSI as a requirement, so they have already decided that this requirement was not necessary and to waive it entirely. Secondly, the Government openly acknowledge that this is causing problems because they have introduced guidance, as we have heard, for caseworkers that some degree of discretion might be exercised where there are compelling grounds for granting citizenship. The amendment simply but constructively builds on that, rather than leaving it up to a vague discretionary power, the flaws of which have been discussed.

This is a simple, clear change to the law to reflect the reality of the situation that prevails in the UK. It is very much in the spirit of rectifying obscure anomalies and barriers in our nationality law, which the early clauses of the Bill, notwithstanding those that are controversial, attempt to do.

The Minister of State, Home Office (Baroness Williams of Trafford) (Con): I thank both noble Lords for their comments and, in particular, the noble Baroness, Lady Ludford, for tabling this new clause about comprehensive sickness insurance, or CSI, which, under EU free movement law, was needed by EEA nationals in certain circumstances in order to reside lawfully in the UK. I was most grateful to have the chance to discuss this with the noble Baroness last week, as she said.

The EEA regulations set out the requirements that EEA nationals had to meet if they wished to reside here lawfully as a qualified person exercising free movement rights. Those who were working in the UK, or indeed who were self-employed, did not need CSI to be here lawfully, but students, the self-sufficient and their family members did. That requirement was set out in published guidance.

I note the noble Baroness's comments about EEA nationals being able to access the NHS. Under UK legislation, all EEA nationals here under free movement had the ability to access state-provided healthcare on the basis of their ordinary residence, but the requirement to hold CSI ensured that the financial burden of providing free state-funded healthcare did not fall on the host member state, as is the clear objective of free movement law. Therefore, having access to the NHS did not equate with the requirement for CSI, although it could include the European health insurance card, otherwise known as the EHIC, issued by the EEA national's home state.

The first part of this amendment would amend the European Union (Withdrawal Agreement) Act 2020 so that a person is treated as having had CSI if they had access to the NHS in practice or held a CSI policy. However, there is no mention of CSI in the rest of that Act, nor is there any requirement for CSI in the residence scheme immigration rules—the rules for the EU settlement scheme in Appendix EU—for an EEA national to obtain status under the scheme.

Consistent with the citizens' rights agreements and the relevant EU case law, a so-called Lounes dual EEA/British national can currently sponsor relevant family members under the EU settlement scheme where that national was living in the UK in accordance with free movement law, including any requirement for CSI, before they also acquired British citizenship. However, I am pleased to be able to inform the noble Baroness that the Government have decided that, as a matter of fairness, they will amend the Immigration Rules for the EUSS and the EUSS family permit at the next appropriate opportunity to disapply any requirement for a Lounes dual national to have held CSI in order to sponsor applications by relevant family members.

A noble Lord: Hear, hear.

Baroness Williams of Trafford (Con): I think that is one of the only times I will get a "hear, hear" over the course of this Bill, so I will milk it for one small second.

This will mean that such family members will in practice be treated in the same way as an EEA national or their family member in applying to the EUSS or for an EUSS family permit. Their eligibility will not be affected by any past lack of CSI on the part of their sponsor.

4.15 pm

The second part of this new clause would create a new registration route for children of EEA nationals. A child born in the UK will be a British citizen automatically if their parent is a British citizen or settled in the UK at the time of the birth. The suggested clause would allow a child who did not become British automatically—because their parent did not have CSI and so could not be settled in the UK—to be registered as a British citizen. The noble Baroness has also proposed that such an application should be free of charge. I note her concerns about doing the right thing for this group, but it would not be right to single out EEA nationals in this way. All those coming to the UK are expected to ensure that they meet the requirements for the route or rights on which they rely to enter and remain, including by paying the immigration health surcharge where applicable.

Nationality legislation provides routes to citizenship for children born in the UK who do not become British automatically. Like other nationals, once an EEA parent becomes settled in the UK, they can of course apply for their child to be registered as a British citizen. The EU settlement scheme allows them to be given "settled status" on the basis of five years' continuous, but not necessarily lawful, residence in the UK.

The third part of this new clause would change the requirements for naturalisation so that a person who needed but did not have CSI could still meet the lawful

residence and good character requirements. In the other place, concerns were raised that some EEA nationals did not know that they needed CSI. We introduced guidance for naturalisation caseworkers, which set out when discretion can be exercised over the lawful residence requirement. The legislation allows for discretion to be exercised

"in the special circumstances of any particular case",

which means that each application needs to be considered on a case-by-case basis.

The current guidance states that it will normally be appropriate to exercise discretion where a person did not meet an additional or implicit condition of stay under EEA regulations—rather than illegal entry or overstaying—and where they can provide sufficient evidence to justify discretion being exercised in their favour. We have been monitoring this and are confident that caseworkers are using the guidance proactively and fairly. I am pleased to say that, to date, I am not aware of anyone having been refused naturalisation solely because they did not have CSI, as the noble Baroness said earlier.

The new clause would change the naturalisation requirement for EEA nationals who did not have CSI and so had not been in the UK lawfully before acquiring settled status. We do not think that we can accept this, as all applicants are required to meet the same requirements for naturalisation in terms of lawful residence, and it would not be right to treat certain nationalities differently.

With that, I hope that the noble Baroness is satisfied with my explanation and will be happy to withdraw her amendment.

A noble Lord: Hear, hear.

Baroness Hamwee (LD): My Lords, I do not want to sound churlish at all by asking this question. The "Hear, hears" were probably not as loud as they might have been for *Hansard* to pick them up; I hope that it does. My question will display my lack of grip of the EU settled status scheme. The Minister said that the Immigration Rules will be changed at the next appropriate opportunity. Am I right in thinking that 29 March is a significant date for those with pre-settled status? As I said, I have a lack of grip of this and an even greater lack of grip in pulling the bits together in my head but, if it is a significant date, then it is a significant question to ask whether the change will be made before 29 March.

Baroness Williams of Trafford (Con): I do not have the exact detail on the date. I understand her point about 29 March being a significant date; noble Lords will all be informed in due course of when the changes will come about and I will let the noble Baroness know.

Baroness Hamwee (LD): My Lords, just to follow that up, the Minister will understand that I am concerned that some people may fail to qualify because the rules are not changed by that date, so I wonder whether she could come back to us well before then.

Baroness Williams of Trafford (Con): I will of course do that.

Baroness Ludford (LD): My Lords, I certainly welcome a great deal of what the Minister had to say, and I thank her for it. I will have to read *Hansard* just to make sure that I have mastered every detail of her response. This is an incredibly complicated subject; I think I have forgotten almost everything I thought I knew about settled status. It is one of those things that has become a bit of a blur over the last six years. Certainly, she said some very positive things, and was very clear, in particular, about family reunion rights. I was not entirely sure about the registration of a birth. The Minister maintained the need for discretion and the caseworker guidance for naturalisation. I was not really sure why that was necessary.

With the slight caveat that I will want to read in detail what she said on this complex subject, there is, indeed, room for considerable congratulations and gratitude that the Minister has grasped this issue by the horns. I had better stop the metaphor there. She has made progress, and there is cause for considerable rejoicing. On that note, I beg leave to withdraw the amendment.

Amendment 34 withdrawn.

Amendment 35

Moved by ***Baroness Hamwee***

35: After Clause 10, insert the following new Clause—

"European Convention on Nationality

Her Majesty's Government must within six months of this Act coming into force ratify the European Convention on Nationality 1997."

Baroness Hamwee (LD): My Lords, this might scramble our brains a little less than the last amendment. Amendment 35 would require the Government to ratify the 1997 European Convention on Nationality. This is a Council of Europe treaty, signed, obviously, in 1997, originally by 15 countries. It now has 29 signatories and 21 ratifications. The UK has not followed through on it. In 2002, the then Labour Government said that they planned to ratify it "in due course", but "due course" has apparently not yet arrived.

The convention sets out the principles to which each country's nationality laws should conform. The key principles are that everyone has the right to a nationality; statelessness should be avoided; no one should be arbitrarily deprived of his or her nationality; and neither marriage nor the end of a marriage, nor a spouse changing their nationality, should change someone's nationality. The key part relates to the deprivation of citizenship, preventing states making people stateless unless their citizenship was obtained through fraud, false information or concealment.

The convention sets the bar for deprivation at acts that are seriously prejudicial to the vital interests of the state. This was deliberately mirrored in our legislation in 2002, but with the test being lowered in 2006 to cases where the Home Secretary is satisfied that it is conducive to the public good to order a deprivation. Does the UK believe that, as part of a global community, it would be good to be part of a worldwide group of countries in its approach to nationality? Do we want to be an outlier? I beg to move.

Lord Coaker (Lab): My Lords, I shall be exceptionally brief as we had a number of significant debates on statelessness last week and we are only too aware of the crucial issues that we need to reach today.

As we have heard, the 1997 convention provided a series of general principles relating to nationality, including non-discrimination and governing principles on statelessness. I gently point out to the noble Baroness, Lady Hamwee, that no Government of any complexion have ratified it since 1997. The Labour Government in 2002 was referred to, but no Government since have ratified it either. That is just a general point.

It would be helpful and constructive for the Committee at this stage of the debate, if the Minister could confirm the following points. These are very detailed, so, to be fair, the noble Baroness may wish to write to us. Do the Government have any plans to consider ratifying the treaty or intend to do so in the near future, and is that under consideration? Have the Government made any assessment of the specific elements of the treaty that they may be opposed to and, if so, could the Minister tell us what they are? Lastly, what are the existing provisions in UK law that are currently outside the provisions of that treaty? It would be helpful to have a bit more detail about the convention, where it relates to existing law and where there are any gaps or points that we may wish to consider in future.

Baroness Williams of Trafford (Con): My Lords, I thank the noble Baroness, Lady Hamwee, and the noble Lord, Lord Coaker, for their brief and succinct points in speaking to the amendment.

British citizenship affords benefits and privileges; the vast majority of us enjoy the freedom that they bring, while of course respecting the rights of others and the rule of law, but there are high-harm individuals who do not share our values. The noble Lord, Lord Coaker, is right that no Government since 1997, including the coalition Government of 2010-15, have ratified the convention, and he is right that we are not going to. The convention does not address the modern threat from global terrorism, among other things, and I would add that Spain, Belgium and Switzerland have not signed it either, perhaps for the same reasons.

The convention on nationality is at odds with domestic law. The Government do not consider it right that our sovereign powers to deprive a person of citizenship should be constrained by signing the convention, as the amendment would oblige us to do. That would severely limit the ability of the Home Secretary to make a deprivation decision in relation to high-harm individuals and those who pose a threat to public safety. Sadly, we have seen too often the effect of terrorist attacks on our way of life and the impact of serious organised crime on the vulnerable. It cannot be right that the Government are not able to use all the powers at their disposal to deal with today's threats to our way of life.

It is the Government's duty to keep the public safe and we do not make any apology for seeking to do so. I hope that, with that, the noble Baroness will withdraw her amendment.

Baroness Hamwee (LD): My Lords, I shall be brief because I regard this amendment as an amuse-bouche, if you like, before the very substantial groups to come. I am sure the Minister recognised that this was a probing amendment, as I was asked to find out what the Government's view was. I think that together we have fulfilled that task. I beg leave to withdraw the amendment.

Amendment 35 withdrawn.

Amendment 36

Moved by ***Lord Paddick***

36: Before Clause 11, insert the following new Clause—

"Smuggling

(1) Not less than six months before this Act comes into force, the Secretary of State must publish a report to Parliament regarding discussions with the governments and authorities of other countries, including those bordering the English Channel and the North Sea, concerning the steps taken or proposed to prevent or deter a person from—

(a) charging refugees for assistance or purported assistance in travelling to or entering the United Kingdom;

(b) endangering the safety of refugees travelling to the United Kingdom.

(2) The report must focus on steps other than the provisions of this Act."

Member's explanatory statement

This amendment requires the Secretary of State to publish a report on the actions that are being taken to tackle people smugglers.

Lord Paddick (LD): My Lords, I shall also speak to the other amendment in this group. The group is about probing what the Government should be doing in the asylum and immigration space instead of this appalling Bill. As I said at Second Reading, the Bill does lots of things that are unnecessary, unhelpful and unreasonable—in fact, some of it is arguably legal—while it does nothing to directly tackle the real issues, one of which is people smuggling.

4.30 pm

The fact is that thousands of desperate individuals grudgingly pay people smugglers because they believe there is no other choice; in the overwhelming majority of cases, they are right. If we have learned anything from the war on drugs, for example, it is that, where demand is not allowed by or provided by the state, it will be met by criminals, with all the associated dangers that come from an absence of regulation and control. In this Bill, the Government are targeting the mere 6% of those seeking to move to the UK who are asylum seekers, the most deserving of those who want to settle in the UK in that they are seeking safety from war and persecution rather than career advancement. They are criminalising the users, the asylum seekers, rather than just the suppliers, the people smugglers, and taking away the rights of the users rather than just those of the suppliers. We need to know what the Government are doing to directly target the suppliers—the people smugglers.

This Government are actually helping the suppliers, or people smugglers, rather than the users. We should be in no doubt that by failing to provide sufficient, effective and accessible safe and legal routes, and increasing security around Channel ports, making it

almost impossible for individuals to cross the Channel on their own, the Government are helping the people smugglers increase their turnover and their profit margins.

The Government make much of the rhetoric of breaking the people smugglers' business model. I studied economics at university—back in the day when PPE stood for politics, philosophy and economics rather than personal protective equipment—and I have a master's degree in business administration. From my knowledge and experience, it appears to me that the Government do not understand business models or how to break them. These amendments aim to probe what the Government are doing to target the real criminals in all of this, the people smugglers, rather than targeting innocent, desperate seekers of sanctuary, which is what most of the Bill is actually about. I beg to move.

Lord Coaker (Lab): My Lords, I will say a little more than I have on the two previous groups. I think Amendment 36, which the noble Baroness, Lady Hamwee, has tabled with the noble Lord, Lord Paddick, and to which I have added my name, is a brilliant amendment.

Amendment 129, which I have signed with the noble Baroness, Lady Neville-Rolfe, seeks to give a practical illustration of what may be done and should be done. Frankly, most of us would believe that it is a no-brainer type of amendment that we would expect the Government to approve with the stroke of a pen. I will speak just briefly to this amendment, because I want to come back to Amendment 36, which is a better amendment than mine, to be frank; it is more wide-ranging and encompassing. I am sure that noble Lords have looked at it with the noble Baroness, Lady Neville-Rolfe, who has apologised for being unable to be with us today. The amendment proposes a new clause, headed:

"Advertising assistance for unlawful immigration to the United Kingdom".

Social media platforms are advertising how they can help illegal immigration into our country. Sky News googled it and came up with a list of the adverts.

No wonder sometimes people stop you in the street and say, "Do you know what you're doing?", because we would assume that the Government would stop illegal activity, published on a website for people to use while being exploited. The Minister should at least respond by saying, "Lord Coaker, you are quite right. Nobody condones that. We don't condone it, and this is what we're going to do about it." I know that social media companies are difficult; there are platforms and there are ways around it. But we should at least make the effort to say that we are doing everything within our power to stop social media platforms being used in such a way by these criminal gangs.

Therefore, Amendment 129 speaks for itself. The explanatory statement says:

"This amendment would provide it is an offence to advertise illegal routes to the UK."

Who could object to that? The amendment may be flawed—it may not be right or accurate or it may not meet the test of the lawyers who could look at it—I have no idea. But I do not think that anyone would disagree with an attempt to do that. So, if it is not right, perhaps the Government could tell us what they are doing or what amendment they will bring forward to do that, and we could look forward to that on Report or some other government action. I know that the Minister and the Government will disagree with that, so the question is: what will we do about it?

Having spoken to my amendment, also signed by the noble Baroness, Lady Neville-Rolfe, I will come back to that of the noble Baroness, Lady Hamwee. I apologise; I know that we want to get to Clause 11, which we will oppose and which is a shocking part of the Bill. But the noble Lord, Lord Paddick, was quite right when he spoke about Amendment 36, which deals with the people smugglers—where else in the Nationality and Borders Bill are they actually being dealt with by the Government?

I do not know whether noble Lords saw it, but, today and yesterday, the *Times*, the *Telegraph* and other newspapers reported the latest statistics on migrant crossings. I make no comment on what is causing them, but it is a statistical fact that the Home Secretary promised that she would sort this out and deal with it and the Government promised that they would be tough on the borders and said that the point of leaving the EU was that we would take back control. There is all of that, but then we look at the statistics: the number of migrants crossing the channel this January has gone up six times compared with last year. There should be a Statement by the Home Secretary in the Commons. Whatever the rights and wrongs, and whatever the causes, this is an astonishing increase. We find out that this means that there have been 46 boats, compared with 15 last year. By the way, it is also pointed out that the French stopped 29 boats last month. I know that we do not think that they do anything, but they did stop 29. Perhaps they should have stopped more, but they are doing something.

We find out something else here—this is why I am spending some time on this and why the noble Baroness, Lady Hamwee, is quite right in her amendment. We find out that part of the Government's plan, announced in the *Times* and the *Telegraph*—not here, unless it was put in a Written Ministerial Statement or Question that I cannot find; it may have been, and I apologise if it was—is locking up all single male migrants. This is according to the Secretary of State for Defence, who outlined further details of the plan for dealing with this—perhaps that is what would appear in a report that would come forward under Amendment 36. This may be the right policy, but I would have thought that that would be a subject for debate in Parliament. It is a fairly major thing to say that you are going to do—it must be a change, and it must be government policy because the Secretary of State announced it in the *Times* and the *Telegraph* today and yesterday. I saw it in the *Times* only about an hour ago—noble Lords may be better informed than me—while I was reading the sport section. I just flicked through the paper and there it was, and I thought, "Goodness me." But, seriously, that is a really serious policy initiative that will be part of the plan to deal with migrants crossing the channel. The only point that I am making is that we should debate and discuss whether we believe that this is an appropriate way of dealing with this.

I was further shocked. I also deal with defence, and I asked the Defence Minister in the Lords about this. Tom Pursglove, who is a Member in the other place in the Home Office, said in the *Times* that the Bill will

[LORD COAKER]

"strengthen the powers of Border Force to stop and redirect vessels".

This is how a Home Office Minister in the other place described what is in the Bill.

I thought that this was not the Government's policy any more. Certainly, the Defence Minister, the noble Baroness, Lady Goldie, who spoke for them on this—I do not mean to misquote her—told me that. That is push-back by another name. Redirecting boats or strengthening the powers of the Border Force to stop and redirect boats is push-back. This is simple: it is either yes or no. They are not going to use a destroyer—nobody is that stupid about this; they will not have a naval destroyer pushing a dinghy back—but is a naval commander going to be able to direct a smaller Border Force vessel to redirect a dinghy, as Tom Pursglove MP said in the papers today? I thought the Government had given up on that policy. Certainly, as I understood it, the Ministry of Defence's understanding was that it was not going to require the Border Force to do that. I apologise if I am confusing noble Lords but I am confused by the Government's policy. I thought it was one thing, but now, according to the papers, it appears to be another.

All I am saying is that you can see why the amendment in the name of the noble Baroness, Lady Hamwee, is so important, because it would require the Government to publish reports on what is going on regarding discussions with Governments and authorities, not only of our own country but of others, to tackle the smugglers. These people are not finding the dinghies themselves, collaborating with 30 other people—or whatever the numbers are—and deciding that they are all going to pile on. These people are exploited by the people smugglers, yet this is mentioned hardly anywhere in the Bill. Indeed, instead of dealing with the smugglers, the Bill changes the way we treat refugees and victims fleeing war and persecution, who are being loaded on to these boats. They are regarded almost as the criminals rather than the real criminals. That is what noble Lords will come on to when they discuss Clause 11 and other parts of the Bill. I cannot tell the noble Baroness, Lady Hamwee, how important this is. That is why I am labouring this: Amendment 36 is really important.

If noble Lords get the chance to have a look, Amendment 36 also says, quite rightly, in proposed new subsection (2):

"The report must focus on steps other than the provisions of this Act."

What sensible person, in seeking to deal with people smuggling, refugees and asylum seekers, does not also believe and understand that part of the solution lies in dealing with the situations that individuals are fleeing from? I have not spoken to the noble Baroness, Lady Hamwee, about this, but I suspect that what she is also trying to do through this amendment is say that you deal with asylum seekers and refugees not through sanctions, provisions, criminalising people and making them afraid but by addressing the problems in the countries, areas and regions they are fleeing from.

I tell your Lordships this: if I was living with my family and we were being bombed, I would flee. If my family was in a place where there was starvation, no water and poverty, and where we were threatened by criminal gangs or torture, I would flee, and I would go anywhere. I would want to protect myself, my family and my children. If you want to deal with asylum seekers and refugees, of course you must have a policy that deals with them when they arrive, but you also have to understand why they are fleeing and escaping from the country in which they were born and do something about it there.

I know that the noble Lord, Lord Russell, is on the Council of Europe; he and I have spoken about many of these things. I think I am right in saying that the noble Lord and I went to Jordan, near its border with Syria. We say about countries such as Jordan, Turkey and others, "Oh, it's about time somebody else did something". We went to a refugee camp in Jordan where there were hundreds of thousands of people; I went to a refugee camp in Angola where there were more than a million people.

Some of the poorest countries in the world are dealing with some of the biggest refugee crises, and sometimes with almost more resource and compassion than we do. There are astonishing numbers of people displaced and moving between these regions and countries. The thousands whom we deal with are a problem—I am not decrying that or saying that we should not do anything—but some of these other countries are having to deal with things in biblical proportions. I could not believe what I saw in Jordan when people were fleeing war and persecution, but I will tell you what the Jordanians did not do. When nearly 1 million people came across the border, they did not turn round to them and say, "We're going to split you into different groups" but "We're going to do what we can to help you", while recognising that the problem in Syria or elsewhere also needed to be addressed.

4.45 pm

That is why the second part of Amendment 36 says:

"The report must focus on steps other than the provisions of this Act."

It is to show that if you want to deal with refugees and asylum, and people moving, you cannot just do it through law and order provisions—by policing, criminalising and locking people up. Of course, that has to be a part of what you do but it cannot be the only way to do it because, let me say this, it will fail without a shadow of a doubt. I go back to this point: if I and my family were being bombed, I would not look up what the criminal provision was in a particular country and whether I was going to be made a group 1 or group 2, or whatever; I know that is for a future debate. What I would say is, "I'm going because I want to protect my family".

Amendment 36 is also saying "Let's deal with the people who seek to exploit misery". Too much of the Bill deals with the victims: those who are fleeing persecution or seeking sanctuary. Deal with the criminals; do not criminalise those being exploited by the people smugglers. Support the victims and deal with the smugglers. Amendment 36 seeks to address that, as does my Amendment 129. Let us go after the people smugglers and stop criminalising the victims.

Lord Kerr of Kinlochard (CB): I agree with the noble Lord—he made the point comprehensively—except that he pulled his punches. Yes, the last line of

Amendment 36 is very important, for the reason he gave, but it is a paradox because the effect of the Bill, if we pass it in its present form, will be to increase people smuggling. It will produce more deaths in the channel because, instead of opening safe routes, we are criminalising unlawful arrival. We are criminalising people who come undocumented and seek asylum. We are putting into group 2, where they are to be discriminated against, people who come indirectly even if they come by a regular route—say, on an airline. Tell me: how do you come directly from Kabul? How do you come directly from Syria, if that is your country of citizenship but you are one of the 3 million Syrians who are in Lebanon and Turkey?

It is a Catch-22 situation, since 90% of asylum seekers who come to this country do so from countries where we insist that the people coming must have visas or entry certificates, but we do not issue entry certificates to people who want to come and seek asylum. The effect of this Catch-22 is to make safe routes impossible and close them down. The only way to stop deaths in the channel is to create more safe routes but the effect of the Bill, if passed in its present form, will be to produce more deaths there. I entirely agree with the noble Lord, Lord Coaker, when he says that we do not solve the problem by passing laws but, if we pass the Bill in this form, we will make the problem a lot worse.

Lord Alton of Liverpool (CB): My Lords, I rise to briefly support what the noble Lord, Lord Kerr, has just said to the House about the importance of creating more safe routes and dealing with the Catch-22 he described. The noble Baroness, Lady Williams, will recall that I raised with her the position of British embassies in parts of the world of the sort the noble Lord has just referred to and the role they might play in sorting out genuine asylum claims, which people cannot make. I gave the noble Baroness examples of the Yazidis and others in northern Iraq, which I visited in 2019, who, if they could have gone to a British post or embassy and had the matter dealt with on the ground, would have been saved much misery. I appeal to the noble Baroness to look at this question of safe routes and how we bring about a way in which incredibly vulnerable people are able to be sorted out and given a chance to come to places of safety and sanctuary.

I want to support what the noble Lord, Lord Coaker, said as well. So much in this Bill is about what can be described as the pull factors that the Home Office always refers to, but we have failed to give sufficient attention to the push factors that bring some of those more than 80 million who are displaced or refugees in the world today. There was a Cross-Bench debate only last month where Members from all sides of your Lordships' House called for greater international efforts to be made, co-ordinating a campaign by the great nations in the way we have done over issues from COP 26 to Covid. Eighty million people displaced or refugees worldwide requires international action. We should be convening an international conference on that subject alone, and I would love to see this country taking the lead on that.

I would also like this country to take the lead in standing up to some of the internet companies that are referred to in Amendment 129, from the noble Lord, Lord Coaker, and the noble Baroness, Lady Neville-Rolfe. It is outrageous that companies believe they can be above the law and do as they wish in enticing people—the kind of people the noble Lord, Lord Coaker, described—who feel they are destitute and at risk with advertisements for illegal routes to countries such as the United Kingdom. That is against the law; it should not require a new Act of Parliament to deal with it. I hope when the noble Lord, Lord Sharpe, comes to reply to the debate, he will be able to tell us that more is going to be done about that now.

Lord Blunkett (Lab): My Lords, first, I would like to apologise to the House, the Front Bench in particular, the Minister and the movers of amendments in the next group, because I have a medical appointment, and under the conventions of the House, if I spoke in the next group, I would have to leave and be rightly reprimanded. I just want to say, under this group of amendments, just how much I have agreed with what everyone has said. I would have said something very similar in relation to Clause 11.

Lord Green of Deddington (CB): My Lords, I rise first of all, briefly, to support Amendment 129, in the names of the noble Lord, Lord Coaker, and the noble Baroness, Lady Neville-Rolfe. It is clear, necessary and relatively simple, at least in principle, so I trust that the Government will consider it very carefully.

Our asylum system is already overwhelmed, with a backlog of cases approaching 125,000, which is, I think, rather more than the British Army. So we have to do everything we can to reduce the inflow of those entering by illegal means. In brackets, I say to the Minister that I hope he will take this opportunity to deny that the Government now intend to bury the statistics and emerge only every three months to tell us what is happening.

That said, I would like to speak briefly about the points that have just been made by other noble Lords about the need for safe routes for asylum seekers wishing to come here. I think we need to be a lot more careful about how we address this. My noble friend has just referred to the 80 million refugees in the world. The numbers are huge, even if these are only a third of those who are actually going to move from one country to another. Is it really being suggested that we have a system whereby any who would like to leave his own country has only to purchase a ticket to London and will then be accommodated, et cetera, and his case will be heard? Is that really what is proposed? What about those who fail? Some 70% of the people now arriving across the Channel are young males. I suspect that they are not, in most cases, the ones who are most in need. If this is not to fly completely out of control and reach a level at which the public will react rather strongly against the sheer size of the inflow, we have to be a lot more careful.

It has been suggested that one way to tackle this would be to have missions overseas to take the applications. I am sure that is being considered very carefully, but I am sure that the outcome of that consideration will be that it just will not work. Those posts—whether embassies or some special posts set up in the third world—would be overwhelmed in a matter of weeks. Then you have

[Lord Green of Deddington]
to ask the Governments of the countries concerned what will happen to those who turned up, quite often from neighbouring countries, did not get the permission that they were hoping for, and are hanging around the embassy or wherever it is in ever-growing numbers. The host Governments would not care for that at all, and it would not achieve anything as far as we are concerned; it would simply mean that the inflow would become, in principle, pretty unmanageable. I really think we have to be careful about this talk of "safe routes". We keep hearing it all the time; we never hear what is actually meant. I would like to hear from colleagues in this Committee how they propose to organise 30 million people who would like to come here. It cannot be done; there is no public support for it on that scale, and we really need some clear and logical thought.

Baroness Ludford (LD): Can I just ask the noble Lord about his assumption—it seemed to be a stereotype—that young single men are not at risk? I do not claim to be an expert on the profile of asylum seekers, but one can imagine that, because a young man might be seen to be less vulnerable than a young woman in a dangerous journey towards safety and, perhaps, also vulnerable to recruitment into ISIS, for instance, actually it is not that surprising that it may be young single men who are arriving on our shores in greater numbers than young single women. I just think that it is probably important to avoid prejudicial stereotypes that, somehow, young men are not at any risk and therefore can be locked up—I just looked at the *Times* article that the noble Lord, Lord Coaker, mentioned. It sometimes seems to me that we are at risk of demonising young men.

Lord Green of Deddington (CB): My Lords, it is not demonising; it is common sense. The routes that now exist are dangerous and difficult, and the people who are capable of getting through them are the young. But they are by no means the only people, nor necessarily the most deserving of our help. This is why I ask that we have a little more logic and thinking before we simply rattle off about safe routes for asylum seekers.

Baroness Ludford (LD): But that is why we need family reunion routes.

Baroness Lister of Burtersett (Lab): Can I just point out that the Refugee Council, for example, has made the point that cutting back and restricting family reunion rights, which the Bill will do—this is one of the key safe and legal routes—will particularly affect women and children? Plenty has been written about what safe and legal routes might look like—it is family reunion; it is humanitarian visas. Is the noble Lord really suggesting that we have no responsibility to the kind of people that my noble friend talked about? No one is suggesting that everyone comes over here, but much poorer countries than this country are taking responsibility for asylum seekers, and we will not take any responsibility.

5 pm

Lord Green of Deddington (CB): I certainly accept the last part of that. Many countries in the third world are doing far more for people in serious difficulties than we are, and certainly far more in relation to their own incomes. But I would turn that round and say that if our aim is to help people in serious difficulty, of whom there are plenty, our money would be much better spent on the ground, on the food, shelter and medical attention that could be provided, rather than doing something fairly similar here at five or 10 times the price.

Lord Alton of Liverpool (CB): Can I ask my noble friend to return to the point about what might constitute a safe route? The specific example I gave the noble Baroness, Lady Williams, was about Yazidis and other minorities in northern Iraq who were faced with genocide. That was a category of people who could have been helped by our posts on the ground by dealing with their claims. To turn that into 80 million people all applying at British consulates and embassies around the world—that was not what anyone was suggesting. My noble friend asked for realistic proposals. Is this a proposal that he himself would be prepared to have a look at?

Lord Horam (Con): My Lords, on the question of safe routes, which has just been touched on from both sides, the point is that by definition, they tend to include the whole family: a whole group of people tend to come together. That is part of the point of safe routes. The problem with illegal, unsafe routes is that 80% of the people who use them are young men, below the age of 34. That is a fact of life we have to put up with. We hope by means of this Bill to improve the rights of people who come by safe routes, and to discourage those who come by illegal routes who, by definition, are a dysfunctional family group.

Lord Green of Deddington (CB): If I may answer my noble friend's point, my answer to the Yazidis or particular problems of that kind—you will find them in Africa as well, of course—is to examine the situation that has developed, see how many people there are, where they are and how best they can be helped. That is certainly what our aid programme should be doing and what our missions should be advising on. I do not think that is the same as saying that we should consider shifting an entire community from northern Iraq to southern London.

Lord Alton of Liverpool (CB): Before my noble friend concludes, does he also agree that instead of constantly going on about the pull factors, we should be doing more about the push factors and maybe co-ordinating the kind of international conference that I was calling for?

Lord Green of Deddington (CB): I think there probably is scope for discussion between Governments as this problem becomes an increasingly serious one for countries, certainly throughout Europe. Yes, I would not be opposed to that but what I am calling for is some realism and not slogans.

Baroness Chakrabarti (Lab): May I just suggest to the Committee that we proceed with the Committee? I occasionally have nightmares about these issues and I am probably too sensitive to engage in human rights

debates, but the die is cast—what can I say? I can think of nightmares I might have about who would be at the Dispatch Box to answer to my questions. At the moment, the little "question time" I have just heard is exceeding the worst nightmare. Can we perhaps hear from the Minister we have, rather than the potential Minister of my nightmares?

Lord Sharpe of Epsom (Con): I will take that as an invitation. Thank you very much indeed. I will try not to be a nightmare.

Baroness Hamwee (LD): I am sorry to disappoint the noble Baroness, Lady Chakrabarti. I thank those who have been complimentary about this amendment and make it clear that it is a team effort on our part. I really did not expect it to provoke such debate, but the thoughts that are teeming round people's minds are bound to burst out at some point.

I want to ask about Amendment 129, and I will return the compliment to the noble Lord, Lord Coaker. It makes an immensely important point but reading it, I wondered whether there was not already an offence—an inchoate offence, possibly, under the existing immigration legislation, or possibly even conspiracy. I do not want to anticipate Clause 40, but are there any problems in using Sections 25 and 25A of the Immigration Act 1971?

Lord Dubs (Lab): My Lords, I shall comment briefly on the discussion we have been having. Why is it young men? I talked to some of the Afghans who got to Calais—this was before the Taliban took over Afghanistan completely—and they said to me that the Taliban were trying to recruit young men into their fighting forces, so the family clubbed together to help them escape, because they were the ones who, at that time, were most vulnerable. Today, it may be that the women in Afghanistan who are more vulnerable, except that they cannot find their way out. But that is one of the reasons why more young men than young women have fled. Indeed, if one looks at the people who got to northern France, quite a few of them have connections with this country, and quite a few are seeking to establish family reunion. That is an argument why we should be able to provide safe and legal routes for people from northern France to come here: so they can achieve family reunion. We should recognise what they have fled.

My noble friend Lord Coaker described the terrible conditions. My comments are going to go a bit wide of the amendment, but I hope that your Lordships will allow me to continue. I think that if we actually explained to people in this country what it is that people are fleeing from—the awful circumstances, the terrifying persecution, war, people being killed in front of them, and so on—they would be much more sympathetic to refugees coming.

The majority of the refugees who reach France claim asylum in France. A small proportion of those claim asylum here—if they can manage to get to this country. In relation to the number of refugees in the world, we are talking about rather small numbers, but there are some very important points of principle, because we are talking about people who are very vulnerable. That is why I am keen on Amendment 36 and I do not agree with the noble Lord, Lord Green.

Lord Sharpe of Epsom (Con): I thank all noble Lords who participated in this wide-ranging and powerful debate. We did perhaps stray slightly off the subject of the amendments, and some of the debate has bled into the next group and was, I suppose, more philosophical, about the Bill in general. I will confine my remarks to the amendments, if I may, because I know that many of the matters debated will come up again—not in their "proper place", because that would be to demean the arguments, but in their more appropriate context.

I will begin with Amendment 36, a new clause proposed to be inserted before Clause 11 on the issue of smuggling, from the noble Baroness, Lady Hamwee, and the noble Lord, Lord Paddick. I will then address the amendment put forward by the noble Lord, Lord Coaker, on advertising illegal routes to the UK. As I said, I thank all noble Lords for their contributions.

The UK takes smuggling and illegal migration extremely seriously. We are absolutely committed to tackling organised immigration crime, or OIC, in all its forms. We work closely with near-neighbour countries such as France, Belgium and the Netherlands, and key international partners beyond Europe to address this exploitative crime and tackle smuggling networks. To tackle this threat, we have in place a multi-agency OIC taskforce which brings together law enforcement, border guards, immigration officials and prosecutors to tackle organised crime groups involved in people smuggling. This taskforce is currently working with partners in some 17 source and transit countries.

In addition, there are already agreements in place to tackle smuggling and illegal migration. For example, in November 2021 the Prime Minister signed an agreement with Belgium reaffirming the two countries' close partnership and commitment to tackling shared threats such as serious and organised crime, including human smuggling. The two countries are committed to strengthening the legal framework for co-operation between our law enforcement agendas with a co-operation agreement and a focus on information exchange. The UK is committed to working with France to maintain the security of our shared border and to tackle illegal migration. This relationship is long-standing, supported by the Sandhurst Treaty.

Most recently, in 2021 a bilateral arrangement was reached between the UK and France. The UK pledged to make a further financial investment of approximately £54 million in 2021-22. Last year's investment saw the French doubling the numbers of officers patrolling beaches.

Addressing the organised crime groups that facilitate illegal migration to the UK remains a UK priority. In July 2020, the Home Secretary and the French Minister of the Interior signed an agreement to create a joint intelligence cell to crack down on people-smuggling gangs. In 2021, over 23,000 crossing attempts were prevented by French law enforcement, to which the noble Lord, Lord Coaker, referred. Since the UK-France JIC was established, along with France we have dismantled 17 small-boat organised criminal groups and secured over 400 arrests.

I stress that the UK has a strong stance on smuggling and illegal migration and has agreements in place with near neighbours to reflect this. This amendment will

[Lord Sharpe of Epsom]
not be helpful in the Government's continued efforts to tackle these crimes. It may hinder the fruitful and open dialogue on these issues between the UK and its international partners, many of which would not agree to their discussions and domestic activity aimed at reducing people smuggling to be published to a domestic UK audience.

I cannot support Amendment 36 because it is not appropriate to provide a running commentary on the actions that are being taken to tackle people smugglers, much of which will be sensitive activity, particularly from an operational point of view, and based on intelligence sharing with the aim of protecting vulnerable people.

If I may be permitted a personal anecdote, I have some experience in operational sensitivities. When I served in the Royal Hong Kong Police Force, I spent much of my time on the border and was heavily involved in matters of migration. Some of it was profoundly harrowing, particularly the Vietnamese boat people, who were helped by Hong Kong and the Royal Hong Kong Police Force, but much of it was organised by criminal gangs. This was not a multinational but a multi-agency approach. However, the principles remain the same. If the smugglers, who in colloquial Cantonese were known as snakeheads, got wind of our countermeasures, they changed their methods, and changed them very quickly. Unfortunately, these people may be evil and prey on others' vulnerability but they are not stupid.

During the debate we discussed safe and legal routes, and my noble friend the Minister sent a letter to the noble Lord, Lord Dubs, outlining some of them recently. If more detail is required, we will write again. Without going into all the detail, I shall highlight the headlines of the various safe and legal routes that are available. It is slightly off-topic but, given the tone of the debate, it is worth doing.

Obviously, there is a UK resettlement scheme, which commenced in February 2021 and prioritises the resettlement of refugees. There is a community sponsorship scheme and a mandate resettlement scheme. There is a refugee family reunion scheme, which many noble Lords referred to. The Bill does not cut down on family reunion. On the point raised by the noble Baroness, Lady Lister, we have granted over 39,000 refugee family reunion visas since 2015. There is the well-known Afghan citizens' resettlement scheme, the Afghan relocations and assistance policy and the immigration route for British national overseas status holders from Hong Kong. As I said, that is slightly off-topic with regard to these amendments, but I hope that noble Lords appreciate that brief digression.

Turning to Amendment 129, I am grateful to the noble Lord, Lord Coaker, for raising this important topic. We agree unreservedly with the need to target those who assist unlawful immigration to the UK. It is imperative that we take action to prevent and prosecute people smuggling. We are taking steps to combat illegal migration and the activities associated with people smuggling by increasing the maximum penalty for facilitation from 14 years' imprisonment to life imprisonment. This aligns with the maximum penalty for human trafficking as contained in the Modern Slavery Act. By doing so, we are emphasising to the courts the gravity with which the most serious offenders should be treated.

We have also turned our attention to Section 25A of the Immigration Act 1971. Currently, Section 25A relates to helping the arrival or entry for gain—I stress that—of an asylum seeker into the UK. Clause 40 removes the current requirement for the facilitation to be "for gain". Removing the "for gain" element from Section 25A will allow for successful prosecution of those facilitating the arrival or entry into the UK of asylum seekers where the "for gain" element cannot be proven beyond reasonable doubt.

To be absolutely clear, the focus of Clause 40 is on criminals who act to exploit and endanger people. We have made it clear that persons do not commit an offence of facilitation if the act is done by, on behalf of, or co-ordinated by, Her Majesty's coastguard or overseas equivalent. This provides protection not only for organisations such as the RNLI, but for individual seafarers who respond to mayday relays.

5.15 pm

Separately, we have also provided defences for persons who show that they had to assist an individual in danger or distress at sea between the time that the individual was first in danger and being delivered to a place of safety on land. There is a defence for masters of vessels bringing stowaways into the UK, if they discover them on board after the ship has left port and reported it to immigration authorities. Finally, there is a defence for ship crew members or passengers who provide humanitarian assistance to the stowaway, as long as the presence of the stowaway is reported. This means that seafarers will be protected if they are unable to contact the coastguard for a good reason.

These defences mean that it is extremely unlikely for someone to be charged unless the authorities have concrete evidence to the contrary, such as intelligence suggesting that they are linked to people-smuggling gangs or where the same person launches multiple rescues over several days and has no good reason for being at that location.

As the noble Baroness, Lady Hamwee, suggested, the conduct which the offence outlined in the amendment seeks to capture may already amount to an offence under Section 25 of the Immigration Act 1971. Section 25 deals with facilitation of a breach of immigration law which may include behaviour linked to

"recruiting, transporting, transferring, harbouring or receiving or exchanging control over another person."

Section 25(4) already provides that the offence applies to things done whether inside or outside the United Kingdom.

In addition to this provision, we also have the benefit of Section 44 of the Serious Crime Act 2007. It is already an offence intentionally to encourage or assist another person to commit an offence, including pursuant to Section 25 of the 1971 Act.

Whether placing an advert would be captured by these provisions would depend on the exact circumstances of the case, including the precise wording of the advert. The overlap with existing statutory provisions would need to be carefully considered to see what value—if any—an additional offence would add.

There are complications around prosecutions in this area more generally. A key issue is the difficulty in identifying the defendant and the added complexity of the extra-jurisdictional nature of the problem.

In addition to the legislative measures I have already mentioned, we continue to work with partner agencies to combat illegal migration. We liaise with the French authorities and provide financial resources to aid and boost their operations. All this needs to be seen in the context of other liaison—for instance, the online safety Bill, led by the Department for Digital, Culture, Media and Sport. The online safety Bill will consider user-generated content and focus on examining the harms associated with paid-for online advertising and the role of platforms in disseminating harmful advertising content. I hope this will please the noble Lord, Lord Coaker—he is quite right.

In addition, DCMS is seeking to introduce online advertising programmes which aim to reduce harms for consumers, businesses and society as a whole. The programmes will review illegal, as well as legal but harmful, content and the placement of advertising online across all actors involved. Consultation will be launched shortly, inviting views on how the Government might best build on the regulatory framework to improve transparency and accountability in the system, with the goal of reducing harm.

To reiterate, we do not agree with the broad intent behind the proposed new clause, which is to prevent and prosecute people smuggling. Resistance to the amendment is based on the effectiveness of the offence in achieving our common aim of targeting those who assist unlawful immigration to the UK. For these reasons, I hope that the noble Baroness will feel able to withdraw the amendment.

Lord Paddick (LD): My Lords, I thank all noble Lords who have spoken in this debate. It was rather longer and broader than perhaps we expected but it was a debate that needed to be had at some stage so we might as well have had it now. I thank particularly the noble Lord, Lord Coaker, for his Amendment 129, which we of course support, and for his support for our amendment.

I also thank the noble Lord for drawing our attention to the *Times* article, which does indeed say that the Government's intention is to arrest all single male migrants crossing the channel. The newspaper estimates that, on the basis of the number who crossed last year, that would mean 20,000 people being put in prison. Now, I know that the Government have a prison-building programme, but I thought that that was to accommodate those people who would be spending longer in prison as a result of the Police, Crime, Sentencing and Courts Bill; so, this does not seem to make much sense. As the noble Lord, Lord Alton of Liverpool, said, the pull factors are completely overwhelmed by the push factors. When you are being bombed and persecuted, you do not worry about pull factors—you just want to get out of there. You want to get to safety and get your family to safety.

As far as the noble Lord, Lord Green of Deddington, is concerned, bombs do not differentiate between men and women. Young men, or families, probably feel that they stand a better chance of making this very hazardous and dangerous journey to get to the UK because there are no safe and legal routes. Of course we are not saying that every eligible refugee should make their home in the UK. We are saying that the UK should take its fair share of asylum seekers—and, by any measure, we do not do that at the moment.

Lord Green of Deddington (CB): Would the noble Lord like to say what he thinks the fair share should be?

Lord Paddick (LD): Yes, I can give the noble Lord an example. Let us look at the number of asylum claims per 10,000 people of countries across the whole of Europe, take the average and say that the UK should significantly increase the number of applications in line with the average number for European countries. That would be a good start, because we are nowhere near the European average in taking people who are seeking asylum. I hope that that answers the noble Lord's question.

Lord Hodgson of Astley Abbotts (Con): In giving that figure, will the noble Lord take into account the relative density of population of the country?

Lord Paddick (LD): The number of applications per 10,000 population, I think, takes into account the population in each country.

Lord Hodgson of Astley Abbotts (Con): I cannot have been clear. There is a relative density of population. This country is about to overtake the Netherlands as the most densely populated country in Europe. We are already three times as densely populated as France and about one and a half or two times as densely populated as Germany. All I am asking the noble Lord is whether, in giving the figure to the noble Lord, Lord Green, he will allow for relative densities in making that assessment.

Lord Paddick (LD): I am not in the Government. I do not set what the policy will be in relation to the number of asylum seekers that can be brought into this country. The noble Lord, Lord Green of Deddington, asked whether, rather than rhetoric, we could give examples of how we might set the number of asylum claims that this country handles. I gave an example of the sort of thing that could be considered in setting the number of asylum seekers that could come. The noble Lord has suggested something else that might be taken into account, and that may well be something that can be taken into account. However—

Lord Green of Deddington (CB): This will be my last intervention on this matter. We have resettled more than 25,000 people since 2015—the most in Europe.

Lord Paddick (LD): No—I am afraid that the note that the noble Lord was just passed by the Minister is not accurate. That is the number of people settled through resettlement schemes, not the number of people who have travelled to various different countries under their own steam to claim asylum. Therefore, that figure is absolutely, totally misleading.

[Lord Paddick]

As far as the Minister is concerned, he says that the Government take people smuggling seriously but do not want to give a running commentary on what they are doing, yet the first half of his response was a running commentary on what the Government were doing. I do not understand that at all. What we want to see is the strategy—the Government's overall plan—to tackle people smuggling directly. At the moment, the Government's entire focus appears to be on the victims, the asylum seekers, and not on the people smugglers. The whole purpose of this amendment is to try to refocus the Government's attention on the real villains of the piece, the people smugglers, rather than on the persecution of asylum seekers, which is what this Bill is about. However, I beg leave to withdraw the amendment.

Amendment 36 withdrawn.

Clause 11: Differential treatment of refugees

Amendment 37

Tabled by ***Baroness McIntosh of Pickering***

37: Clause 11, page 13, line 33, leave out "a refugee is a Group 1" and insert "a person is a"

Member's explanatory statement

This amendment ensures equality of treatment by removing the distinction between Group 1 and Group 2 refugees.

Lord Griffiths of Burry Port (Lab): My Lords, I speak in place of the noble Baroness, Lady McIntosh of Pickering, and welcome the opportunity to speak on the amendments she proposed. I wish she could be here to speak on Amendments 37, 38, 42 and 49. I hope to do justice to her concerns and offer a bipartisan dimension to our treatment of the Bill.

It is perhaps important for me to say before launching myself into the amendments that my clear preference would always have been to propose the elimination of Clause 11 in its entirety. Having said that, however, I respect the intention behind the amendments in seeking to eliminate the distinction between two tiers of refugees. I hope that nobody groans when we cite the 1951 convention, which prohibits the penalisation of refugees

"on account of their illegal entry or presence, on refugees who, coming directly from a territory where their life or freedom was threatened … present themselves without delay … and show good cause for their illegal entry or presence."

The Bill before us purports to change the way in which the provisions of the convention are applied, with important divergences from hitherto accepted practices.

I am a member of the Council of Europe. I was asked to compile a report to commemorate the 1951 convention; my report was endorsed by the Council just a few weeks ago. In writing it, I worked in collaboration with UNCHR officers in London, Strasbourg and Geneva. This has led to my conviction of the vital importance, in seeking a way through these critical issues, of maintaining the closest possible working relationship with UNHCR. Everyone I consulted in writing my report agreed that the key underpinning tenets of the convention are non-refoulement, non-discrimination and non-penalisation. Those are the principles that must be upheld at all costs, however much circumstances may have changed.

Although I am hugely critical of the Bill, I must, in reality, acknowledge that the United Kingdom is only one of a number of nations in search of new ways of dealing with what is undoubtedly a global crisis. A wide variety of measures has been put forward across our continent. In my report, I cited the following; some were mentioned in our previous debate. There are those who are pushing asylum seekers back, or else denying them disembarkation. Others are protecting their borders, building fences, sometimes deploying their military and even using live ammunition. Some are transferring their protection obligations to other—usually poorer—nations and isolated islands, detaining asylum seekers in poor conditions indefinitely. There are those set on criminalising solidarity and life-saving activities: making the saving of lives, the feeding of starving people and providing shelter to families in need a crime. Nor must we forget those who resort to the use of Covid-19, economic challenges or irregular arrivals of migrants as cover for disproportionate measures, restricting access to asylum and rights. The proposals in the Bill, set alongside the proposals of other nations that I just cited, would effectively undermine the very principles and obligations of the 1951 convention.

It is my view that our consideration of these important questions should seek always to be in harmony with the advice of UNHCR. That commission provides authoritative guidance in a manner consistent with the 1951 convention's ambition to ensure,

"the widest possible exercise of these fundamental rights and freedoms"

by refugees. UNHCR, incidentally, has responsibility for all the 80-plus million refugees spread around the world.

5.30 pm

The amendments we are considering are seeking what is fundamentally guaranteed by the 1951 refugee convention: namely, fair and equal treatment and, especially, non-discrimination. Not to observe these principles would set us at odds with the demands of international law. What is more, it would create a totally unworkable situation if applied more generally: 73% of refugees are hosted in countries neighbouring their country of origin. The noble Lord, Lord Coaker, mentioned one such example.

The proposals as currently put forward in the Bill would disrupt global co-operation, since no system could be built on the expectation that those countries bearing the majority of migrants do more and geographically distant countries do less. Furthermore, no system could be built on the expectation that those arriving in our country unconventionally deserve worse treatment than those who arrive via conventional routes.

In Committee, it is important to recognise the exploratory nature of our discussion. The proposal in Amendment 37 would remove the differentiation between two categories of people arriving on our shores and vest them with greater dignity and humanity.

In conclusion, I find a proposal dominated by the often-repeated slogan "Taking back control of our borders" is in direct contradiction to the spirit of those British lawyers—yes, British lawyers—who not only helped frame the 1951 convention but ensured at a subsequent meeting of plenipotentiaries that,

"governments in the countries of first refuge"

would

"grant the right of asylum within their territories with the utmost liberality,"

and that other countries would,

"undertake jointly with the countries of first reception to bear the costs arising out of"

such efforts. It went on to urge governments to

"continue to receive refugees in their territories and that they act in concert in a true spirit of international co-operation in order that these refugees may find asylum and the possibility of resettlement."

We should note the key phrases in this declaration: "utmost liberality", "bearing the costs jointly", and

"in a true spirit of international co-operation".

That was the spirit in which British negotiators reached their conclusions in 1951. Somehow, we must rediscover this generosity of spirit that moves beyond the merely contractual, beyond what might appear be mere self-interest, and towards a collective effort in our attempt to find solutions to our problems.

This seemed to be what the Minister agreed to in her summing up speech at Second Reading on the Bill on 5 January. On that occasion, after a typically spirited defence of government policy, she readily accepted the need for us to work with our international partners to tackle what really are shared global challenges. She concluded:

"All countries have a moral responsibility to tackle the issue of illegal migration."—[*Official Report*, 5/1/22; col. 668.]

It is not difficult to agree with her on that. But it is harder to accept the assurance she gave that, as she put it,

"we remain in line with our international obligations".—[*Official Report*, 5/1/22; col. 666.]

A refusal to accept the two-tiered proposals, as put forward in these amendments, would be a small but important step in the right direction. I commend these amendments to the Committee. I beg to move.

Lord Kerr of Kinlochard (CB): I would like to say a word in support of the spirit of these amendments. Specifically, I would like to speak in support of Amendments 37, 38 and 42, in the name of the noble Baroness, Lady McIntosh, introduced brilliantly by the conscience of the House, the noble Lord, Lord Griffiths. Yet, my heart is not in this game. This is what Americans call "putting lipstick on a pig"—it is still a pig.

The only element of this group which I can wholeheartedly support is that Clause 11 should not stand part of the Bill. Our Constitution Committee gave us a choice: it said that we should either remove or redraft Clause 11. I understand what all these redrafting amendments are trying to do, but it is not a good idea. This is not a case for "death by a thousand cuts"; it is a case for a "short sharp shock". We need to take Clause 11 out of the Bill.

Why? Because the refugee convention matters; it is an important plank in the international legal order. Clause 11 flies directly in the face of the refugee convention, because it creates two classes of refugees: one with convention rights, and one without convention rights. The charge that it is a breach of the convention is put authoritatively not only by our Law Society and the Law Society of Scotland, but by UNHCR in its 72-page memorandum. That is a pretty authoritative source; indeed, it is the authoritative source. When we set up the refugee convention, we asked UNHCR to be its guardian, to supervise its application, and to report to the Secretary-General on laws on refugees in the signatory states. Therefore, it was not interfering, but doing the job which we, when we wrote the convention, asked it to do. I find it a shaming thought that its report on this Bill will have been seen by all 147 signatory states.

Why is UNHCR so sure that the Bill undermines the convention? Clause 11 is the heart of the matter. UNHCR believes that creating a two-tier system for handling asylum seekers—one class legitimate, one illegitimate—conflicts with the simple definition of a refugee in Article 1 of the convention. A refugee, says the convention, is someone who,

"owing to well-founded fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group or political opinion, is outside the country of his nationality and is unable or, owing to such fear, is unwilling to avail himself of the protection of that country".

That is all: he is outside his country of origin. The definition says nothing about any requirement to seek asylum in a particular place, and nothing about regular or irregular routes; it contains no suggestion that he is out of order if he does not seek asylum in the first safe country—there is no such requirement anywhere in international law.

A refugee is a refugee is a refugee, and must be treated as such, according to the provisions of the convention, however he got there. That is what the convention says and that is what we have believed down the years. Stretching the meaning of Article 31, as the Government seek to do, cannot change or qualify what Article 1 says, or add something that it does not contain. I have set out the definition of a refugee. There are no two categories; the definition is very simple.

I am no lawyer, and here I am surrounded by eminent, terrifying legal expertise—even including the noble and learned Lord, Lord Clarke of Nottingham; as his former private secretary, I am horrified to see him there—but the definition of a refugee, and of our sin in this Bill, from the UNHCR and the law societies, must be right, because I cannot see how 147 countries would have signed up to the convention if they had thought it meant what the Government now say it means. Four in every five refugees are in developing countries adjacent to their country of citizenship. Would host countries have agreed that guests should never move on, and that they should be required to apply for asylum only in their first host country? Would the developing world have agreed that the developed world could wash its hands of the problem of looking after refugees because they were going to have to stay in the first safe country they reached on fleeing over a frontier? I do not think so. It plainly was not what those who signed up to the convention thought it meant, and the attempt to have an expansive reading of Article 31 and so change the meaning of the convention as a whole, in particular Article 1, looks quite a legal stretch. I agree with our Constitution Committee, the law societies and, importantly, the UNHCR.

[Lord Kerr of Kinlochard]

I feel for the Minister, because the case she is asked to make on the legal position and the convention seems as eccentric and unconvincing as the claim of the noble Lord, Lord Frost, that you can extinguish the role of the CJEU in Northern Ireland by using Article 16 of the Northern Ireland protocol. I will stay away from the law—this is a rash foray—but I will stick with the UNHCR, the law societies and the conventional reading of the convention, which is how 146 countries still read it, and say that we really need to get rid of Clause 11.

Baroness Hamwee (LD): My Lords, Clause 11 is the most objectionable clause in this whole objectionable Bill. It has to go, and not just because of what the convention says, our having signed and supported it and so on. It is not just because there is a convention but because the convention is right. However, we have to pick at the Bill. We will have the debate that the noble Lord, Lord Kerr, has started us off on so well on Report, but this is our opportunity to see whether there is any give in the Government's position and whether there is anything we can, quite bluntly, take apart on Report in a way we have not yet thought of.

My noble friend Lord Paddick, the noble Lords, Lord Rosser and Lord Blunkett, and the right reverend Prelate the Bishop of Durham have indicated their objection to the clause standing part. Had we been able, under the procedures of this House, to add more than four names, I think there would have been a very long list.

5.45 pm

We have a number of amendments in this group that are picking at this clause. Some of what I had planned to say—and probably will say because I cannot edit my notes as I go as quickly as I should—was covered in the previous group when we debated smuggling. The legislation's objective, as it has been explained to us, is to disrupt the criminals who smuggle people. No one in their right mind supports that "trade", but it is based on a premise about what prompts people to seek asylum with which we completely disagree.

I said at Second Reading that the Government have not attempted to walk in the shoes of refugees. I do not resile from that at all. Most asylum seekers would want to travel by a safe and legal route—they must be desperate to—but other than in a few narrow circumstances these are not available. The policy rests on deterrence, which is misconceived, because, as has been said, you do not stop to think about whether you will be in group 1 or group 2 when you get here. You do not even think about the chances of being criminalised. I am advised that Clause 11, if enforced, could mean that of those fleeing conflict and/or persecution in Iran, Iraq, Sudan, Syria and Afghanistan—the top five countries from which people arrive here, the last stage of the journey by a small boat—an estimated 9,000 to 21,000 people currently accepted as refugees would be denied protection under the convention. It will be the most vulnerable and women and children who will be affected. The noble Baroness, Lady Lister, was the first to refer to that.

I do not think there are any amendments in this group with which we disagree; we just want to get rid of the clause. However, on Amendment 39, Clause 11(2) requires that one presents oneself

"without delay to the authorities."

It is not the only instance in the Bill where there is a failure to recognise the difficulties for many asylum seekers who simply cannot tell their story instantly and coherently. The Bill is simply not trauma-informed. I suspect this might in fact be the least troublesome example, because most asylum seekers want to get into the system and to have their application approved as soon as possible, but the difficulties still need to be recognised.

Amendments 43 and 50 are to the subsections that give examples of the different treatment proposed for the two groups. The differentiation of treatment, if it should happen, should be completely clear and in primary legislation. We should not just have examples. It should not be variable or vulnerable to being changed or made worse through the Immigration Rules, which are a matter of the Secretary of State's fiat without touching either House of Parliament. I am very pleased that the noble Lord, Lord Blunkett, added his name to most of our amendments. I understand why he has had to leave, but it is significant that he did so.

Amendments 44 and 45, and similarly Amendments 52 and 53, would challenge the differentiation regarding leave to enter and remain, because how long you are able to remain has considerable consequences for the "undeserving" asylum seeker. That is on top of all the insecurity inherent in the reduction of the length of leave and increasingly frequent reassessment processes. We cannot expect people's well-being and mental health, or their ability to integrate into the community where they have found themselves, not to suffer in the absence of certainty; nor can we expect landlords or employers to be keen to take on quite short-term tenants and employees.

Currently, a refugee can apply for ILR—that is, indefinite leave to remain, or, in other words, settlement after five years. What are the criteria for group 2 refugees? What will they have to meet to achieve ILR? Will they have to wait 10 years, like people who have been here on a work visa, and make substantial payments periodically through that period? Quite apart from the impact on the individuals, is this not extra bureaucracy and workload for the Home Office? What is the estimate of the cost to the Home Office? Will that be reflected in the full economic impact assessment that I believe we are promised?

Amendments 47, 48, 51 and 53 are there because, however you travel, family is of the utmost importance. I do not think I need to spell it out; I will just say "common humanity" and "integration". Family reunion is recognised as important by the Home Office, even if it is not as extensive as we argue it should be. Perhaps the Minister can explain which family member refugees will be able to reunite with, whether that will be an automatic right and whether there will be a fee attached to this route.

Amendment 55 is different but the theme is familiar. It would require the Immigration Rules into which these appalling provisions will be incorporated at any rate to be approved by a resolution in each House of

Parliament before coming into force. As I have said, I think all these things should be in the Bill, but we have a provision in here for the rules and that point needs to be taken up. I am pleased to see that the Delegated Powers and Regulatory Reform Committee takes the same view of the need for an affirmative resolution and even more pleased to note its report, which says:

"Given the clause's significance and the controversy surrounding it, we consider that, where it is proposed to amend the immigration rules to make different provision for different groups of refugees, the amendment should be subject to the draft affirmative procedure so that it cannot come into force until approved by both Houses."

However, the short point, which others will make too, is that Clause 11 needs to go.

Lord Horam (Con): My Lords, I would like to introduce into this debate a subject about which we have heard almost nothing so far: the views of the British people. We are, after all, the upper House of the British Parliament. Their views should be heard.

I have some figures here from the latest YouGov poll on the subject of immigration. The interesting thing is that immigration is now regarded as the third most important subject after health and the economy—even more important than Covid, curiously; I am not sure about that but, none the less, that is what it says. A previous YouGov poll said that 70% of people thought illegal crossings were a serious issue, so the public are well aware of the issue; indeed, they have been seeing it every night on television, particularly during last summer. Some 63% said that illegal immigrants should not be allowed to settle here while 60% said that they should be removed. In a June 2021 YouGov poll, 60% said they thought that illegal immigrants should be banned from claiming asylum, while only 20% thought they should be allowed to claim asylum. Some 64% thought it was fair to remove people who come from safe countries, while only 15% thought it unfair. Those are opinion polls so take them for what they are worth—we all have our views about opinion polls—but they are a snapshot of opinion in the recent past.

My own view is that, on an emotional subject such as immigration, you need to develop a policy with which the British people are comfortable. If you do not have a policy with which the British people are comfortable, it will not be sustainable in the long run. I point that out to the noble Lord, Lord Kerr, who understandably made a point about our international obligations. If we had had a policy on immigration more widely that the British people had been comfortable with in the last 20 years, we might not have had Brexit. Sadly, whether we like it or not, immigration was a huge issue in the Brexit debate. I put it to the noble Lord that the extent to which people's views on immigration were ignored was a factor leading to the decision that we took. I am a remainer, so I regret that.

Baroness Chakrabarti (Lab): I wonder if I could ask the noble Lord two questions. First, obviously public opinion is always relevant, but does he concede that, by definition, someone who is a genuine "refugee convention" refugee is not and never was an illegal immigrant? Secondly—again, this goes to the comments made about opinion—does he agree that opinion is something that the people with the privilege to be in this place, and certainly those in government, play a role in shaping and leading as well as hearing?

Lord Horam (Con): My point is that we should pay regard to opinion but it is rarely mentioned in debates about immigration—almost never, in fact. There is a case for putting forward what the British people think about this, whether you think it is right or wrong. I do not think it is wholly right but, none the less, we have to take it into account. We have eventually to reach a position where the British people are comfortable with the Government's policies; in my view, that is what the Government are trying to do.

Baroness Jones of Moulsecoomb (GP): I agree that public opinion is incredibly important but, at the same time, we are meant to be leaders; even here, we are meant to lead. Quite honestly, if you asked the British public, they would probably want hanging back; that is still very popular in some parts. Then, of course, there has been a lot of scaremongering by right-wing groups of all kinds, including parts of the Tory party—the ERG and so on—that have misrepresented a lot of what is happening with the refugees who are crossing the channel.

I am one of those people who agree with the noble and learned Lord, Lord Kerr—actually, is he learned? No, sorry—that a lot of these amendments are picking at a scab and there is no point in doing that because it just makes it worse. We have to get rid of Clause 11 because it just makes life harder for refugees and, as we have heard from the noble Lord, Lord Paddick, we are not—

Noble Lords: Too long!

Baroness Jones of Moulsecoomb (GP): Sorry. I disagree with the noble Lord.

Lord Horam (Con): I think there has been plenty of leadership on this issue over the years. People who have supported a pro-immigration policy—or a relaxed immigration policy, whatever you like to call it—have been pretty vociferous over the years; they have not been quiet. We have known what they think. There has been lots of leadership. Leadership is an issue at the moment but I had better not go too far into that. None the less, the people who support an expansive and comprehensive immigration policy have been vociferous; it is the people who are against it who have had their views ignored.

I read a book about Dagenham the other day, written by a Labour activist, which pointed out the comprehensive effect of immigration in Dagenham over a 10-year period. It went from being 85% white British to less than 50% white British and the local joke was whether if you went into a shop anyone there would speak English. People appealed to the Labour Party, because it was the Labour Party that introduced these policies, and were ignored. Dagenham, a long-standing Labour seat, nearly voted Tory in the last general election—and would have done, if not for the Brexit vote—because people had been ignored on the issue of immigration. For them, immigration had simply gone too far, too fast.

6 pm

Baroness Chakrabarti (Lab): My Lords—

Lord Horam (Con): I will not take another intervention, if the noble Baroness does not mind, as I have given way twice and want to finish what I am saying. I do not want to go on too long.

This House has to take into account that the silent majority have very clear views about this which they have held consistently for a long period and which have not been heard, and this has had a major effect on the policy positions of the country. In my view, it has had a deleterious effect, unfortunately; I would rather we had stayed in the European Union, but that is the fact we have to face.

It is generally admitted that we are now dealing with a very difficult, specific problem, one aspect of the whole immigration problem, namely illegal crossings of the channel. It is a small part of the problem that creates a bigger problem. Many people have raised wholesale migration, which I understand is a huge issue which is tackled in many different ways—through international development policies, as well as immigration policies, and so forth. However, there is a specific problem here which any Government of any colour would have to tackle, namely people smuggling people—not brandy, tobacco or commodities, but people—into this country illegally, day after day, against the law. That is something that no self-respecting Government can ignore; they simply cannot.

Lord Kerr of Kinlochard (CB): The noble Lord, Lord Horam, makes a fair point: we must certainly take account of public opinion. But I think he should take account of the extent to which political leaderships affect public opinion. The history of the last decade is a history of one of our great parties swinging right on issues of immigration. It is a history of a referendum campaign, where one side argued that 80 million Turks were going to come and there was nothing we could do to stop them. It is a history of a period in which we have constantly been told that we are beleaguered and the target of innumerable people who wish to come here. As the noble Lord, Lord Paddick, explained earlier in the debate, we are well down the league table in per capita terms for hosting immigrants of any hue. It is not good enough just to say, "There go my people. I am their leader; I must follow them." We are capable of influencing public opinion and that is what we should be trying to do. I will give way in a second—

Lord Horam (Con): Can I just—?

Lord Paddick (LD): Order!

Noble Lords: Intervention!

Lord Kerr of Kinlochard (CB): I am not sure who is interrupting whom. If I am interrupting the noble Lord, I will stop.

Lord Horam (Con): With due respect to the noble Lord—I really do have great respect for him—I do not think we want to go through the whole business of Brexit again. My point is a simple one: we have to pay regard to British opinion. It is not as though people are manipulated; they have their own views. They are perfectly capable of taking a sceptical view of some of the people who have tried to make them do things in the past, frankly. They can form their own views—I am sure the noble Lord would agree. I was trying to narrow it down to this particular point on the problem of illegal immigration which, in my view, any Government would have to deal with, whatever their nature or colour.

As the noble Lord who initiated this debate said, many countries are tackling this problem in quite horrific, awful ways. In comparison with what they are doing, what we are doing is completely rational and sensible. It is trying to make a distinction. There are those who are coming in legally and properly, by the routes which are well known. We have a very good record on that, despite what the noble Lord, Lord Paddick, said, in comparison with the rest of Europe. We have not only a reasonable number of people coming in by the normal asylum-seeking routes each year but also the consequences of the Commonwealth, for example our links with Hong Kong, with up to 90,000 people having already accepted the chance to come here from Hong Kong. That is something which Germany, France and so forth do not have the same problem with.

Lord Griffiths of Burry Port (Lab): My Lords, since an illustration I gave has been added to the discourse of the noble Lord, I feel I must interrupt. While I was painting the pig with lipstick—a squirmy pig, very difficult to hold fast to—I certainly listed a number of the horrendous ways in which countries are departing from the principles of the 1951 convention, but also added our own, which are equally nefarious and certainly not to be presented in a positive way.

Lord Horam (Con): I think that is a matter on which the Government will no doubt make their position plain. As I understand it, they do not believe that they are departing from the international convention of 1951. Of course, many other countries have taken similar positions. Australia, for example, has divided people into those coming in in the normal, legal way and those coming in illegally, and that has not been denounced by the United Nations. Japan has done the same thing and, interestingly, the Social Democrats in Denmark are about to too. In Australia, they have a cross-party agreement on the immigration policy. I think the Labour Party ought to be more careful in its view of this because it may well become the Government in future and it will face the same problems which the present Government face. These are not only problems which the Government must face simply to be responsible and give people a sense that they control things and that borders mean something, which is their bottom-line responsibility, but also the issues of immigration.

With what we have here, if we can reduce it to the particular problem which the Government face on illegal immigration across the channel, the approach they are adopting helps, first, to deal with the pull factor, by pointing out the advantages of the normal asylum-seeking methods of getting into this country, on which this country has a good record; and, secondly, to dissuade people from adopting the illegal methods which they are at present forced into using.

The noble Lords, Lord Paddick and Lord Kerr, made the point that they are economists, and I am an economist too. The problem is that, if you expand safe routes, you can never expand them wide enough to take account of all the people who want to come here. That is a simple fact of demand and supply, if I may say so, well known in economics. That is the problem which the Government face. As the noble Lord, Lord Liddle, mentioned in a previous debate, you have to have some limit on the number of people coming to this country for good population control reasons. If you decide on a limit and people are comfortable with that, you can decide how many immigrants will be allowed into the country in any one year and then deal with the problem of illegal immigration. In my view, that is the right order in which this should be dealt with, and I believe the Government are following exactly that policy.

Baroness Fox of Buckley (Non-Afl): My Lords, it is interesting—

Noble Lords: Lord Clarke.

Baroness Fox of Buckley (Non-Afl): Sorry, I thought the noble and learned Lord, Lord Clarke, gave way to me.

Lord Clarke of Nottingham (Con): I am not accustomed to the practices of this place; I am quite happy to see the debate alternate between different sides. I arrived at this debate—I regret that I have not got to the earlier debates on this difficult Bill—intending to listen but not to speak. I was hoping it would help to resolve the dilemma I face, which turns out to be exactly the same dilemma that has just been addressed by my old and noble friend Lord Horam.

I dare to venture that no one sitting in this Chamber has more liberal instincts than me on the subjects of race, xenophobia, multiculturalism and so on. In fact, one of the satisfactions of finding yourself elevated to the peerage is that you can come into this Chamber, where I suspect 99% of Members have perfectly sound liberal instincts. I have seen society in this country change considerably in my lifetime in the post-war world, and I have said publicly more than once that I think the multi-ethnic and multicultural society in which I now live is a much healthier, stronger and more enriched society than the rather narrow and insular all-white society in which I was born and raised.

The 1951 convention was one of the great contributions that British lawyers and politicians made to the post-war world, and it was obviously highly desirable after the horrendous shock of finding that a European country had organised—or tried to organise—the industrial genocide of a whole race. That is the context in which it was drafted. So my instincts are of course, first, that we should comply with the convention and, secondly, that this is a suitable place to accommodate the many people who need refuge. We have done so very successfully as a country. Although race relations are a problem in some places in this country, I think that our society has handled this better than any other European country. We do not really have the serious problems that quite easily break out in other countries.

But the circumstances have changed worryingly and dramatically. As has been pointed out, because of the horrendously dangerous state of the world, about 80 million people are now displaced, are looking for a better life and would take desperate measures to get it. If my noble friend Lord Horam and I were a couple of 18 year-olds living in Nigeria, I suspect that, if we had more than averagely prosperous families, we would hope that they would raise the money for us to take the horrendously difficult journey of leaving Nigeria to make a new and better life for ourselves. We would then hope for a family reunion and that our family could come and join us once we had made our way in Britain.

Among that 80 million—an extraordinary number—the favourite destinations are probably the United States, this country perhaps second and then France and Germany. They will want to go to these countries because, in the modern world of communications, they can see and know perfectly well that they are where the quality of life is likely to be best for them, if they can get there. The tenor of the debates that I have listened to so far is that we should make sure that there are legal and safe ways in which, in one place or another, we can consider all of these applications and make ourselves at least as attractive as any other country, particularly at a time when many other, previously normally ultra-liberal countries are setting up very considerable barriers to going there.

But we have to reflect on the impact that that might have on our society and culture, because things have been deteriorating recently. The growing public reaction to immigration—albeit expressed in perfectly civilised ways by most people at the moment, fortunately—is one of the reasons why our politics is deteriorating so badly. Every democracy in the western world is seeing the rise of right-wing populist nationalism, which I deplore wherever it occurs, including within the Conservative Party. It is rising—that is the reaction—and it is leading to developments of a kind that have gone further in other countries. In France, the position of Marine Le Pen, who now even has a right-wing competitor for the vote, shows what can happen when you get the wrong public reaction.

Among the public, the overwhelming reaction to the publicised symbol of these worries at the moment—the dinghies coming across the channel and being picked up—is that the Government are failing to stop them. The Government do not have the first idea how to do so, and, actually, neither do I. Plainly, you have to rescue these people and bring them here when they are in our territory—and then they are an asylum and refugee problem.

6.15 pm

Our success in deporting the ones who are blatantly abusing their claim of asylum is very poor because it is extremely difficult to dismiss the asylum claim when there is so little first-hand evidence. The legal and practical problems of returning them have also proved extraordinarily difficult. If you believe that they have the nationality that they say they have, you then have to hope that the Government of that country will allow you to deport them back. So I even feel that we are at the beginning of this problem: I do not think that the world at the moment is in a state where the

[Lord Clarke of Nottingham]
number of displaced people in the Middle East and Africa will go down—indeed, the pressures could grow. So we are in a genuine dilemma. I came to listen to this debate hoping that my mind would be clarified and that I would be converted to the self-confident assertions of people with whom I usually agree on this subject—but I have not been yet. I still have doubts that the Bill will really make the improvements that are claimed.

I close by mentioning this business of making the crossings illegal and giving people a criminal record when they arrive. Will that really give rise to desirable developments? Our incarceration rate is ludicrously high in this country at the moment. We have an excessive number of criminals already in overcrowded prisons like Victorian slums, which are not the right place to punish or deal with them. What will happen to the tens of thousands of refugees if you are going to send them to prisons and detention centres? How will that improve matters, and what will you do when you have refused even to entertain their asylum claim?

So the debate so far has not clarified my mind, but I think that the simplistic solutions that have been offered by some of the speakers moving these amendments need to be challenged. I congratulate my noble friend Lord Horam on raising the big dilemma that faces us all. We do not want the equivalent of Alternative für Deutschland and the extreme-right parties of other countries being strengthened and provoked if we do not get this right.

Lord Brown of Eaton-under-Heywood (CB): My Lords, I speak solely as a lawyer. I did not speak at Second Reading; I would have needed to apologise for and explain that a few years ago. Consistently, we have been permitted to engage at a later stage, and that is no longer so.

I confess that I have been working hard to try to catch up with the legal appreciation of the effect of this Bill. I wish to respond to the noble Lords, Lord Kerr and Lord Horam, as a lawyer and in terms of the consistency of the Bill with our international obligations under the refugee convention. Under Article 35, we and our courts are required to have regard to what UNHCR says on the proper interpretation of the Bill in applying it in this country.

Although my views on the Bill overall are still not fully formed, as a lawyer I have come to the clear conclusion that Clause 29 and the clauses that follow Article 31 most directly for present purposes are simply impossible to reconcile with the clear jurisprudence of our courts of the most authoritative nature. For that, reason, I take essentially the same root-and-branch objection to Clause 11 and say to the noble Lord, Lord Horam, that I wonder whether this large proportion of people who, understandably, object to the problems this country has with asylum—and who would wish to exclude, so far as possible, those who are trying to gain refugee status here—would add, "And we don't care a fig if what we are doing to give effect to that policy flatly contradicts our international law obligations under the refugee convention".

Intrinsically, the group of clauses to which I refer, including Clauses 31 and 36, bear very closely on Clause 11, which is of course the subject of this group of amendments. The centre of the Bill's approach, and that of Clause 11, is to try to create a particularly disadvantaged subcategory of asylum seekers, essentially on the footing that they fall outside the protection of Article 31 of the convention. The fact is that Article 31 is addressed both in Clause 31 and, as it happens, in closely similar terms, in Section 31 of the Immigration and Asylum Act 1999. So there it is: we are talking about Article 31 of the convention, Clause 31 of the Bill and Section 31 of the preceding legislation, the 1999 Act.

Clause 36, more particularly, seeks to override well-established case law most directly. All this is explained in the series of authoritative legal opinions that have been addressed, certainly to me and probably to other lawyers in the House, by the Bingham Centre, the UNHCR and Amnesty—and by the Joint Committee on Human Rights, which is a very authoritative body of both Houses.

The Bill now seeks to overcome the effect of a divisional court case known as Adimi. I confess that, way back in the last century, I gave the leading judgment in that case but, much more importantly, it was approved explicitly on the critical questions—of coming here without delay and so forth—by the Appellate Committee of your Lordships' House, presided over by the late and much-lamented Lord Bingham of Cornhill, in a case called Asfaw. The reference is 2008 1 AC 1061. It is a compelling leading judgment and indicates that the position, authoritatively decided in accordance with UNHCR advice and all the earlier indicia, is not compatible with what Clause 11, by reference to Clauses 31 and 36, seeks to do: to create this category B, to be regarded as illegal entrants to this country. It is on that basis, and not the narrower although well understandable objections to Clause 11 from other quarters, that I shall particularly resist the inclusion of Clause 11 in the Bill.

The Lord Bishop of Durham: My Lords, in rising to support the proposal that Clause 11 do not stand part, to which I have added my name, I declare my interest in relation to both RAMP and Reset, as set out in the register. Along with colleagues on these Benches, I looked carefully at the possibility of making amendments to Clause 11 along the lines of those proposed, and reached the conclusion that the only thing we could fully support was the removal of the clause.

The proposal to separate refugees into two groups depending on how they arrived in the country, and whether it was their first country of arrival, are inimical to the whole basis on which the refugee convention is built. It is a betrayal of the letter and spirit of it. The idea that asylum must be claimed in the first country of arrival has no basis in international law; this is the view of the UNHCR and of the legal community. If imposed, it would place an unsustainable burden on a small number of nations, most of which are already under immense strain. The whole purpose of an internationally agreed convention is to recognise that the responsibility for the care and support of refugees needs to be carried by the whole global community. We recognise this as a nation by setting up and running resettlement schemes, working with the international community. So to try and declare this for those who claim asylum on arrival here, even if they have passed

through other nations, does not logically fit with our recognition of the need for global collaboration and a global sharing of the demands.

I say to the noble and learned Lord, Lord Clarke, that the danger is that we go into a wider refugee debate rather than debating the clause. The vast bulk of the 80 million refugees have no desire to go anywhere other than back into their own country. That is where most of them wish to go; I have seen that and talked to them first-hand.

However, let us for a few minutes work with the idea of claiming asylum only in the first nation of arrival, and see how this would work with the proposals in Clause 11 for our nation. We are an island nation; therefore, no one could ever make a first arrival here by land—no one in group 1. We are an island nation, so arrival by sea is a clear option, but none of us wants to see arrivals by sea in unsafe boats. So the safe ways must be via ferries, or cargo or passenger ships coming from longer distances away. The likelihood that such journeys could be undertaken in a way that is deemed legal under the Bill is very slim.

Those fleeing persecution, domestic violence, war and the impact of climate change may well have to do so without all the relevant paperwork, and certainly with no valid visa. They might just secure a paid-for passage without all this but it is highly unlikely. It is more likely that they will find themselves having to stow away in a van, lorry or container, or somewhere on the boat, so they will arrive having travelled illegally—hence they go into group 2. The number who would travel in complete fulfilment of the Bill in a legal manner would be minimal—almost no one in group 1.

We are an island nation, so arrival by air is the other clear option. Stowing away on an aeroplane is decidedly harder than on a ship but might just be possible. However, I think we all understand it is illegal, so such arrivals would go straight into group 2. Perhaps someone somehow manages to purchase a ticket and travel with their own passport but with no visa. As it happens, I was nearly refused entry to a plane when returning home from Portugal last autumn because of an issue over my Covid vaccine passport, so how one would succeed without a valid visa is an interesting question. It might just happen; however, on arrival, there is no visa so they could easily be deemed an illegal arrival, therefore in group 2.

Perhaps they have a visa as a student, so entry happens legally. But this student is not simply studying; they are fleeing because they are gay and know that they will be persecuted in their home nation if they come out. That will be made worse for them because they also come from a minority tribe who already feel put down, so on arrival they claim asylum on the basis of their sexuality and the likelihood of persecution. However, this was not the purpose of their visa. This is not theory: it is the story of Azmat, who I, along with several other Peers, met online last week. Such people do not qualify for group 1 but go into group 2.

The UK resettlement scheme and the Afghan citizens resettlement scheme are not open to all the nationalities most commonly accepted as refugees by the UK Government. Vulnerable people requiring protection will therefore become group 2 refugees. People cannot jump a queue where there is simply no queue to join.

6.30 pm

I believe that this clause will effectively make the vast majority of asylum seekers group 2 refugees. I additionally believe that every attempt will be made to reduce what is regarded as "good cause" for arriving illegally. Can the Minister set out the evidence that shows how reducing the rights and entitlements of refugees will have the effect of actually deterring dangerous journeys? Is there any evidence? Secondly, what estimate has the Home Office made of the cost of needing to reassess a refugee's protection needs every two and a half years, and what impact will that have on existing delays in making asylum decisions?

At Second Reading, the Minister challenged those of us opposed to many aspects of the Bill to say what should happen. On this matter, I believe it is straightforward: accept that, for a wide variety of perfectly reasonable grounds, some people seeking asylum want to do so in this country—although most actually choose to go to other countries. Huge numbers do not prefer us; they prefer to seek asylum elsewhere. But, for those who do, we must treat them all equally; ensure that there are adequate, well-trained staff to process applications in a timely and accurate way; have a wide volunteer force to support people seeking asylum while they go through that process; and supply good legal aid for people seeking asylum at the beginning of their asylum application. Yes, it will cost more initially, but if the right to work is also granted—we will come back to that later—and the process is handled with due speed, it will not cost more than the lengthy periods currently endured by far too many people seeking asylum, together with the costs to the Government of their reliance on the appeals process to ensure that a correct decision is made.

Additionally, far more time and energy should be put into the creation of really effective, safe and regular routes. The UK resettlement scheme should be expanded to ensure that it is open to more people who would otherwise use irregular routes. We should make it possible for people to apply for humanitarian visas in order to claim asylum and ensure that all refugees have access to family reunion, with a broader definition of family members who qualify. These all give people ways of cutting out the criminal gang in their journey to safety; we all want to cut out the criminal gangs.

The whole purpose of an internationally agreed system is to ensure that all asylum seekers find themselves treated on the basis of an equal opportunity for their case to be presented and heard. Distinguishing in the way proposed is immensely dangerous for such equal treatment and for the maintenance of an internationally agreed system. As framed, these proposals present a nation that wants to be not a global, generous Britain but a little, mean-minded Britain, determined to play less and less of a role in the world. This will not do, and I do not believe that the British public want us to play less and less of a role in the world.

I say to the noble Lord, Lord Horam, that one of the things that happens when people meet those seeking asylum and refugees, and hear their stories, is that they change their mind and heart. I have seen it time and again in Gateshead, Hartlepool, Darlington, Stockton and Sunderland: people welcome the refugees and

[The Lord Bishop of Durham]
discover that they want these people to be their neighbours and to be part of this nation. This clause needs simply to be removed.

Baroness Fox of Buckley (Non-Afl): My Lords, I feel profoundly uncomfortable with Clause 11, and I am very tempted to vote for it to be completely removed. But I wanted to listen to the debate, and I am afraid that the people who have argued for the removal of Clause 11 have given me pause for thought, which was not what I expected to happen when I arrived. The reason is the way that this discussion has taken a particular form politically.

I am somebody who voted to leave the EU from the left—in the Tony Benn tradition—and I have historically been liberal on immigration. I have fought on many anti-deportation campaigns, and I am not somebody who thinks that one should close the borders. I am, more than anything else, a democrat; even in this House, I try to stay a democrat. I appreciated, with some irony, the comments of the noble Lord, Lord Horam, and the noble and learned Lord, Lord Clarke—Conservative remainers with whom, to be honest, I have not historically had a great deal in common but who raised some important issues that should inform this debate.

My concerns about Clause 11 were very well expressed by the right reverend Prelate the Bishop of Durham, who explained in great detail where I was finding difficulties with this. But I have a problem with the solution and the way in which this debate has been conducted. I think it is important to consider the British public's opinion. It was interesting that a lot of people have asked us to walk in the footsteps of asylum seekers; I think empathy is hugely important and humane. But I also ask noble Lords to walk in the footsteps of the British public, who, if you ask them their opinion, do not all want hanging. Leadership is, broadly speaking, not the same as usurping their perfectly reasonable concerns.

What are their concerns? They are not that they do not meet any asylum seekers and, when they meet them, they change their minds; not that they lack generosity; not that they are xenophobic, mean spirited or narrow minded; and not that they want to close the borders and hate foreigners, as is often implied. Their concerns are that they would like control over the borders, which I think is a perfectly reasonable demand. A visceral illustration of a lack of control over the borders has been given to us by those arriving in boats, and we are all trying to untangle what to do about it as humanely as possible. That includes the British public, millions and millions of whom are incredibly generous of spirit towards all sorts of people and do not need lectures from here about how they have to open their hearts to people. They are full of heart-brimming generosity in all sorts of ways. Why do we have an issue here?

This is the bit that I cannot untangle. There are people who are seeking asylum legitimately, and one wants to welcome them. There are people trying to come to the country who are undoubtedly illegal immigrants, as anyone would understand them, but because there are very few ways to arrive as an economic immigrant, they may choose to describe themselves as asylum seekers. On a different set of amendments I will say that we should have more liberal immigration rules that would allow unskilled people to come as economic immigrants to this country.

We can see, and it is perfectly reasonable, that you cannot just say to people that everybody who arrives on a boat is obviously an asylum seeker, and that everybody who worries about them arriving must be a mean-spirited, horrible person who hates foreigners. That is my concern. I am trying to untangle that, because I genuinely do not know what to do. As I said, I would be liberal about economic migrants coming to the country, as much as I would about asylum seekers coming to the country, but I feel as though everyone is being forced to declare that they are asylum seekers because it is the only route in where you will not get kicked out. So I think that we are in a mess.

The Government need to answer this. What happened in relation to Brexit—for noble Lords who are interested in this—was not that people did not want any foreigners to come into the country but that they were told that freedom of movement was a non-negotiable international agreement that nobody could ever debate. So as democrats, people said, "Well, I live here; I'm a British citizen"—many of them from ethnic minorities, before anyone goes down the racist road—and they said, "Shouldn't we be able to control who are British citizens who come here?" That is what happened. Other people said, "No, we can't because we're in the EU; we've got no choice". So they got annoyed. My concern here is that if we say to the British public, "You either agree with us or you're a xenophobe", or, "You have to agree with us because we've got a refugee convention"—another international agreement from 1951, however good it is—"and it's the only thing going; there's no alternative", that will also indicate that they have no democratic power.

I cannot understand why the Government keep trying to fit in what they are doing to the 1951 refugee convention, which, although one noble Lord described it as having been written in utmost liberality by British lawyers, was written by British lawyers—not by the British public. I want the laws to be written by the British public and for the British public, not just by lawyers—and in 2022, not necessarily referring back to 1951 all the time. I have no objection to that convention, but if it is not fit for purpose in 2022 to take control of our borders, the debate about immigration and asylum seekers will become toxic, if we just keep telling people that they cannot have this discussion. I believe I can convince my fellow citizens to be more liberal on immigration, but not when they are told that they cannot have the debate or that if they want to have the debate or to express worries about people arriving in boats, they must by their very nature be lacking in generosity and xenophobic. That is not the way to go. I am still likely to vote against Clause 11, by the way.

Baroness Chakrabarti (Lab): My Lords, I think we have been having this debate all my adult life and probably all my life, but I am certainly happy to keep having it; there is nothing wrong with that. However, I do think that it is very important in the context of

Clause 11 to make a distinction in Committee between immigration and asylum. If I may say so, I do not think that Brexit is terribly helpful to an analysis of Clause 11. It used to be said that for the French, a meal without wine is like a day without sunshine. Clearly, for some people the equivalent is a discussion without Brexit, but I am not one of them.

It is important to make this distinction between immigration and asylum, which are both big and important debates, but they are too often conflated—not just in our discussions in this Committee but to some extent in Clause 11 itself. The noble Lord, Lord Horam, did not have the opportunity to reply to my question—all sorts of people intervened in his speech, to be fair—but if somebody is a convention refugee, they are not and never were an illegal migrant. That is incredibly important.

I congratulate the right reverend Prelate, who I think gave the speech of this Committee, and not just because I agree with him. I do agree with him, and also the noble and learned Lord, Brown of Eaton-under-Heywood, and, of course, the noble Lord, Lord Kerr. What was so important about the right reverend Prelate's speech was its specificity to the refugees' journey and the way that that would be affected by this differentiation. I congratulate him on that, because it is a very good way to analyse Clause 11: whether it works and whether it complies with the refugee convention.

Why is compliance with the refugee convention so important? It is not like choosing to vote in or out of something that began as a trading bloc but was always a particular grouping of countries rather than the whole civilised world. The reason why the refugee convention is so important is because, after two world wars, it was literally the world's apology for the Holocaust. That is the best way that I can sum up why the refugee convention is so important. While Britain did wonderful things, not least standing up to Hitler with lots of Americans and Russians and people from the Commonwealth too, and there are very good things to be said about Britain's contribution, there were also less noble things that have to be remembered—about the people who did not manage to get out, who did not escape the Holocaust, including people who were not allowed into this country and other countries around the world.

6.45 pm

It was through learning from that experience that we, led by Winston Churchill, decided to have a refugee convention so that in future people would be able to escape, including by clandestine means, with false documents, on little boats or whatever. That has not yet been said. I know it is a sensitive thing to say but, much as I would love to, I am afraid you cannot discuss the intentions of the drafters of the refugee convention without remembering how it came to be. The right reverend Prelate's speech was perfect in looking at somebody in that situation today, but it is not a bad idea to look at people who did not make it then either. By the way, we in this country refused refuge to none other than Albert Einstein—something I occasionally remind myself of.

Subsequent to the war, the word "refugee" became quite a noble concept, particularly during the Cold War, when refugees made us feel really good about ourselves. They were defecting spies; sometimes they were great athletes and ballet dancers, and so on. The numbers seemed relatively small, but they made us feel good about ourselves, because they were defecting—escaping totalitarianism—and this was the place to be instead. We thought that was great. But then the numbers increased because of airline travel, and we were no longer just talking about people escaping across a land border. Particularly post-colonisation, it was open to people to get on planes and come to a country that was not across a land border but with which they had some association—maybe the language, family, the common law—and suddenly, the Home Department got a little more concerned about the numbers of refugees.

By the way, this is not a partisan issue: if one looks at the history of the refugee convention and its application, Governments of both persuasions have been good and bad in their treatment of both migrants and refugees. Once the first aircraft of, I think, Tamil refugees landed at Heathrow Airport and people claimed asylum, suddenly the Home Department decided to move into territory such as "carrier's liability", and not just visas but "transit visas" and, in subsequent years, applying the transit visa regime even to countries that we knew to be either war-torn or producing genuine refugees. This happened some years ago and is something that people in both parties do not like to talk about, because it is a slightly dirty little secret that we have been closing this door on genuine refugees for some years. It did not just happen with this Bill, but the Bill is taking it to a pretty horrific conclusion.

We have the current proposals in Clause 11 for the two-track differentiation and, thanks to the announcement in the *Times* mentioned by my noble friend Lord Coaker, we have further proposals to differentiate against all men in boats. On Clause 11, to talk about "differential treatment" is horrendous in itself when you think about persecution. At the heart of all persecution is discrimination and differentiation; it is about people in a particular country who are being picked on and persecuted on some ground of difference. To then repeat that discrimination and bake it into a system supposedly of refugee protection is not just in violation of the convention—it is particularly obscene.

The way that Clause 11 mashes and contorts Articles 1 and 31 is really quite perverse. Article 31 was designed to give extra protection to the most desperate refugees and to ensure that they were not penalised for coming via clandestine means. The travaux demonstrate this. The drafters of the convention understood that some of the most genuine refugees of all—the most desperate, the most persecuted—are, by definition, those who have to come by clandestine means. Article 31 was designed to ensure that we did not refuse or penalise them automatically because of that. In Clause 11, we have almost flipped Articles 1 and 31 over, as the noble Lord, Lord Kerr, said, so that coming by clandestine means now puts you into the worst category. The noble Lord has to be right that when the UNHCR—the custodians and guardians of the refugee convention—is as concerned as it is, we are really in trouble, let alone all our domestic NGOs and other international ones.

As to the *Times* report, referred to by my noble friend Lord Coaker, the idea that all these young men are automatically, as a class, to be detained is not just

[Baroness Chakrabarti]
obvious discrimination and obviously contrary to the refugee convention—and, by the way, Articles 5 and 14 of the European Convention on Human Rights and the Human Rights Act—it also seems slightly odd from a Government who do not like people banging on about misogyny, but have no problem with a bit of misandry. Young men are now going to be discriminated against by the Government for being, perhaps, the fittest and, therefore, the ones most able to escape via these unsafe routes. It does not make them less worthy. It just means that the young women and elderly people back home did not have the means of escape; it does not make their escape any less worthy. Desperation looks like that and sometimes it is the fittest who get away.

The noble Lord, Lord Horam, talked about the views of people, as did the noble Baroness. I, like the right reverend Prelate, have worked with lots of refugees over the years. I have also conducted polling and talked to people about their attitudes to refugees. I believe in the best of people. People want fair play; people want a sense of control over their lives and, if you like, their borders. However, this is not free movement; this is not immigration policy. This is about saying to people, "These are desperate people. These are people who want to make a contribution, as so many before them did. Give people decent jobs and services and a decent quality of life and do not divide and conquer or turn people against their neighbours. Let refugees and asylum seekers work and live as neighbours in the community." When that happens, people feel positive about refugees and asylum seekers and conduct community campaigns to stop them being deported. I have seen this happen all over this country.

In conclusion, I agree with the right reverend Prelate; I am on his team and those who spoke with him. The way forward is family reunion, humanitarian visas and improving the first-tier administration in the Home Office. I once worked there, and the first-tier decision-making is appalling. By the way, seeking to avoid wars over there is quite a good idea if you are worried about the obligation under the international rule of law to give refuge over here. Noble Lords should think about the consequences. If every country—particularly every developed country—around the world adopted the approach in this Bill, would there even be a refugee convention left?

Lord Etherton (CB): My Lords—

Lord Lea of Crondall (Non-Afl): My Lords—

Lord Sharpe of Epsom (Con): The noble and learned Lord has an amendment and he wishes to speak to it.

Lord Etherton (CB): My Lords, I would like to speak to my Amendment 41. It is a very specific amendment relating to Clause 11 as it currently stands. Before I turn to that, however, I will take up the words of my noble and learned friend Lord Brown in relation to providing a legal structure for our discussion here. The first thing, which has been emphasised by a number of noble Lords, though not all, is that Article 31 is central to the discussion. This is because it is obvious that the Government, in relation to Clause 11 and the following clauses, are seeking to interpret and apply their view of Article 31.

It has been suggested that we can ignore the convention because we must have regard to what people think today, but I am afraid that we cannot do that. We are a party to this convention: if we do not like it, the Government will have to recuse themselves from it and try to get other countries to change it. At the moment, however, the convention applies.

Article 31 says that no penalty shall be imposed on account of illegal entry or presence on a refugee who satisfies three requirements. These are the three requirements set out in Clause 11. The first is that the refugee comes directly from the territory of persecution. The second is that the refugee presents themselves without delay to the authorities. The third is that the refugee shows good cause for their illegal entry or presence. That is what Clause 11 is about. However, you cannot read Clause 11 on its own because the subsequent clauses all have some impact on it. In particular, Clause 36 is critical because it seeks to give a definition of coming directly from the territory of persecution.

Noble Lords will see from what I have just described that, although Article 31 says what the Government cannot do—that is, they cannot impose a penalty if those three requirements are satisfied—it does not go on to say that, if they are not satisfied, you can have a differentiation such as that in Clause 11. That is a matter of policy, and I can certainly see the force of the argument for saying that this division that has taken place in Clause 11 is sufficiently inconsistent with the definition of a refugee to make it improper.

There is a more fundamental point: Clause 36, referred to by my noble and learned friend, in seeking to define "coming directly from another country," says that the requirement is not to be taken as satisfied if the refugee stopped in another country outside the UK, unless they can show that they could not have reasonably been expected to have sought protection under the convention in that country. There is no such qualification in Article 31, and it appears that the Government believe they can, through legislation, elaborate on the meaning of Article 31 in whatever way would best suit the current asylum policy of the day. This, I am afraid, is entirely misguided as a matter of law.

As an international treaty, the convention has the same meaning for each and every member state that signed up to it. It cannot bear different meanings for each member state, according to the policy of the Government of the state for the time being. In England and Wales, the court has, pursuant to its constitutional role of interpreting legislation and written law, held that a refugee may still come directly to a member state, within the meaning of Article 31, even if the refugee passes through one or more intermediate countries, if the final destination of the refugee has always been the state in which the asylum is finally claimed and the halts in the intermediate country or countries are no more than short-term stopovers. My noble and learned friend Lord Brown referred to his judgment in the Adimi case, which decided that very point.

On the global picture, to cut matters short—before I turn to the particular amendment—I am against the division, the separation, between group 1 and group 2 in Clause 11 because it depends on a requirement, or the failure to meet a requirement, which is directly contrary to the convention. Therefore, I certainly object to the division between group 1 and group 2 so long as Clause 36 stays in its present form, with its present definition of coming "directly", on both logical and legal grounds—quite apart from the matter of general principle, which other noble Lords have mentioned, about the demeaning nature of distinguishing between two different categories.

7 pm

On another requirement, that of presenting directly to the authorities, I think the right reverend Prelate already referred to the fact that in many of these cases—for example, wives who have fled from abusive marriages in a conservative religious country such as Pakistan—people have to flee in a clandestine way. That was the word used before. The idea that they can present themselves straightaway—for example, to a male representative of authority—and describe their situation seems unrealistic in many of these cases. Yes, it is true that we welcome large numbers of people under resettlement schemes—Afghanistan and Hong Kong are examples of those—but when we are talking about these other refugees, whom I would describe as the genuine refugees seeking one by one to escape from persecution, it seems to me that Clauses 11 and 36 as currently worded are inconsistent with the convention. For that reason, like my noble and learned friend Lord Brown, I would object to them.

Lord Faulks (Non-Afl): I am very grateful to the noble and learned Lord for giving way, and I agree with his analysis entirely. I just wanted to ask him this question, which the Committee might want to know the answer to: if his view, and the view of the noble and learned Lord, Lord Brown, is right, what would be the consequences of some of these cases—were the Bill to become enacted as it is—if they reached the courts?

Lord Etherton (CB): Strictly speaking, the legal position is that there is no basis for individuals to enforce the convention, but it is enforceable by other member states, which can complain that this country is not complying with its obligations. I would expect that that may well happen. So far as coming here illegally is concerned, my noble and learned friend Lord Brown referred to the Adimi case, which was about whether there was an illegal entry. He held that there was not, because although these refugees passed through intermediate states, they did in fact come directly. So, the individual is placed in a not very satisfactory situation, but the state can certainly be held accountable in the International Court of Justice, and that may well happen.

If I may now descend from the wider view to the narrower, I want to deal with a point I have raised in relation to Clause 11(3) and other similar clauses which impose a requirement on a refugee. The requirement, as it were, or even a breach of it can be overcome if

"they can show good cause for their unlawful entry or presence",

and there are other provisions saying that this can happen where there is a "reasonable" expectation of something happening or where something is "reasonably practicable". In all those cases, I have sought to table an amendment which says that, in deciding what is good cause, practicable or reasonable, the immigration officer should take into account any protected characteristic of the refugee within the meaning of the Equality Act which is innate or immutable. I do not want to get too involved in the legality of those terms; basically, that is relevant under decisions in our law to people who claim to be a member of a particular social group. Being a member of particular social group that is being persecuted is one of the categories of refugee in Article 1 of the convention, so I do not want to spend too much time on that. There are nine protected characteristics in the Equality Act, but only some of those will be innate or immutable.

That expression, "innate", is used in the Bill itself in describing the meaning of a particular social group. Your Lordships will find it in Clause 32, which also expressly states that a

"social group may include a group based on a common characteristic of sexual orientation".

I want to take up that point to explain why I suggest it is necessary that wherever there is a reference to reasonable cause, reasonable expectation or what is practicable—as I have said—there is an express statement in the Bill that the fact that the refugee has a protected characteristic which is innate or immutable should be taken into account.

I want to take the case of LGBTQI+ people to illustrate the reasons why. First, experience has shown that, all too often, difficulties arising from a characteristic such as that have not been taken sufficiently into account. The approach to LGBTQI+ refugees has often been woefully inadequate and misguided. It was not until the 2010 decision of the Appellate Committee of the Supreme Court in HJ (Iran) that it was established that the Home Office could not refuse an asylum claim from a gay man or lesbian simply on the basis that if they could reasonably be expected to act discreetly in their home country, rather than live openly with their sexuality, they would not suffer persecution. Therefore, it was only some 12 years ago that the Home Office, which fought HJ (Iran) right up to the highest court in the land, was obliged to accept that its approach to LGBTQI+ refugees, in the words of then Supreme Court Justice Sir John Dyson—later Lord Dyson and Master of the Rolls—frustrated

"the humanitarian objective of the Convention and"

denied LGBTQI+ people

"the enjoyment of their fundamental rights and freedoms without discrimination."

Secondly, it is well known that LGBTQI+ refugees face a large number of practical difficulties in claiming asylum. I will address these in due course, when we come to the relevant clauses in the Bill, to show why there has been a failure to satisfy a particular requirement. In the case of Clause 11(2)(b), the issue is whether they presented themselves without delay to the authorities and can show good cause for their unlawful entry. This is the question of clandestine exit. As I have said, it applies also to abused women in abusive relationships coming from a conservative religious community. They

[LORD ETHERTON]
cannot go and buy a plane ticket. They cannot indicate in any way in these countries what the reason for their seeking asylum is. The result could be honour killings, stoning or being thrown off a wall, so they keep their characteristics as far as possible to themselves. It is not surprising that they are slow to report themselves or that their routes here are clandestine.

Finally, on this point, the Home Office's own statistics show the extent to which claims by LGBTQ+ asylum seekers have been wrongly rejected by immigration officers. Experimental statistics published by the Government in August 2019 on lesbian, gay and bisexual asylum claims show there was an initial decision grant rate of 29% in 2018. However, 38% of appeals relating to LGBT asylum applications were allowed in respect of applications made in 2015-18. These published statistics are qualified in some respects but, in broad terms, they reflect the reality of a substantial proportion of successful appeals. That is why, in my suggestion, wherever we see in this Bill as currently framed any reference to good cause, those with protected characteristics that are innate or immutable must be protected by an express reference on the face of the Bill.

Lord Lea of Crondall (Non-Afl): My Lords, I think the House would be grateful if somebody, in one sentence, expressed appreciation for the speech of the noble and learned Lord, Lord Clarke of Nottingham. No one doubts that, over the past 50 years or so, he has been a beacon of liberalism within his party. The point he made in this connection is that there is a great dilemma facing us all. Apart from climate change, the dilemma is that, for governance systems in parts of the world—Africa is the continent that springs to mind—we will have to have a new arrangement for crossing the Mediterranean whereby we do not get into all these problems, which are getting worse. That speech is not easy to make, but I just want to say that the honesty and the examination of the dilemmas we all face has been a credit to this House.

Baroness Ludford (LD): My Lords, I remind everyone that Clause 11 is not only not about immigration, let alone illegal immigration; it is not even about asylum seekers. It is titled "Differential treatment of refugees"—people who have been recognised and accepted as entitled to asylum in this country. What Clause 11 means is that the Government want to penalise a certain category of people who have been accepted as refugees. On the one hand, we accept them as refugees, but then we are going to turn round and penalise them in various ways for how they arrived. I have agreed with all the critics of Clause 11, and I agree that Clause 11 as a whole needs to get the chop.

Clause 11 wants to penalise people with a much-reduced permission to stay; by requiring several frequent applications for further permission to stay; by keeping them in uncertainty for many years; by excluding them from public funds; and by delaying or denying altogether a visa for family reunion. I suggest that this is not only pernicious, as everyone has said, but costly. It is costly to that individual and it is costly to society, because it is not good for society when you have people who are unable to integrate and living with instability, isolation, possible destitution, homelessness and separation from family. They have been recognised as refugees, which means that we expect these people to be part of our society. I cannot see that it is good for society.

I had the opportunity, when the Minister was kind enough to meet me, to receive the great news on CSI. I come at this with an approach of both principle and practicality. As I say, I cannot see that it is in the interests of either society or the Home Office to have people living in this constant fear of what their futures are going to hold. We are told that the asylum system is broken. We know about the 125,000 unresolved applications. We know about the time and delays; on average, it now takes a year to decide a case. When I was an MEP, I had people who had been waiting three and a half years for an initial application, with the harm it did to them physically and mentally and to their status within their family as well. How is it going to help the Home Office to have more administration in constantly having to review these applications to decide whether it is going to deny public funds or renew the permission to stay?

7.15 pm

There is also bound to be an increase in litigation that arises as a result of Clause 11. I appreciated the comments of the noble and learned Lord, Lord Etherton, on the likely legal situation but there is bound to be strain on the legal and judicial systems from all this. I cannot see that this is going to help the problem of overload in the Home Office. It is shooting itself in the foot with all this.

I want to say something about family reunion in particular. I had an opportunity with the Second Reading of a Private Member's Bill on family reunion, which I sort of took in relay from my noble friend Lady Hamwee. That was last September; I do not know whether it will make any further progress. Penalising group 2 refugees through family reunion is going to penalise women and children in particular and remove the largest single visa route by which they have a chance of arriving. Other people have made the point that that is going to create the incentive for dangerous and unsafe routes to this country—even more business for the smuggling gangs we are told the Home Office is so keen to put out of business.

My Private Member's Bill wants to enlarge the opportunities for family reunion, particularly by allowing unaccompanied refugee children the right to sponsor their parents and siblings under the age of 25, as well as allowing adult refugees to sponsor adult children and siblings under the age of 25. Clause 11 goes completely in the opposite direction to what I and many other people want, but I do want to ask what the situation would be under Article 8 because there are no details in this Bill or any of the supporting documents on what the family reunion rights for group 2 would be, other than that the temporary protection status they would get would "restrict" those rights. In the other place, Tom Pursglove MP from the Home Office said, in writing to members of the Public Bill Committee, that

"we will not permit Group 2 refugees to reunite with families unless a refusal would be a breach of our international obligations under Article 8 of the European Convention on Human Rights (ECHR). Our policy on Article 8 is already clear."

I am grateful to the British Red Cross briefing for reminding me that, far from being clear, the Home Office's current guidance on Article 8 runs to 100 pages.

This Bill will make the family reunion process far more complicated, again going completely in the wrong direction. It is also not clear what level of evidence would need to be provided to substantiate an Article 8 claim. The Home Office has not set out under what circumstances it would consider that a refugee in the UK would not engage Article 8. If you are seeking to have your family, spouse and children come and join you, how would that not come within Article 8, which concerns the right to family and private life? I ask the Minister to give in her reply a bit more clarity about what family reunion rights group 2 refugees would have under Article 8.

Clause 11 is not only pernicious in principle: it has bad practical implications all round for the refugee, for our society and for the workload of the Home Office.

Lord Hodgson of Astley Abbotts (Con): My Lords, I listened carefully to the noble Baroness, Lady Ludford, and she quite rightly reminded the House that we are talking about asylum seekers. I have to say that, after that, our paths diverged quite considerably.

In listening to a debate covering 16 amendments and a clause stand part, I discerned three angles. The first, what I might call the ultras, led by the noble Lord, Lord Kerr, want to remove the clause completely. The second angle is to take the clause to pieces, as in the amendments from my noble friend Lady McIntosh, moved by the noble Lord, Lord Griffiths of Burry Port. Thirdly, there are the other amendments, described by, I think, the noble Baroness, Lady Hamwee, as picking at the scab. If you leave aside the point that the clause should not exist and take the other two, the inevitable result is that what we are doing, maybe imperceptibly, is widening the opportunity for asylum seekers to come to this country. How many and whether it is a good or a bad thing can be debated, but that is going to happen if we accept the amendments put forward in this group.

That, in turn, raises a couple of issues for me about fairness. First, there is fairness to those who have so far followed the scheme for tier 1 and are therefore going to find their position disadvantaged by the arrival of more people who would otherwise have been in tier 2. Once that thread is broken and the rules become more judgmental, then there are obviously issues of fairness for those who have the clearest position.

The second question of fairness is about the contract with the British public. In the debate on Clause 9 at the last meeting of the Committee, I discussed the nature of what I call "informed consent". I described it as a concept that Peter Bauer had expressed to me half a century ago in a debate at my business school. Here, I touch very much on the point made by my noble and learned friend Lord Clarke, and the noble Baroness, Lady Fox. There is a question of informed consent. The informed consent is not absolute; it is conditional. One of the reasons I think we have had reasonably satisfactory race relations so far is the point made by my noble and learned friend Lord Clarke that the public have felt, though stretched, often badly stretched, their consent is still there. But, as I say, it is not absolute and we need to make sure that the British public is able to see rules that are clear, unequivocal and comprehensible in their impact on them, their families, their communities and the society in which they live. The more complex the rules become, the greater the chances of cases emerging that will endanger and maybe break that informed consent.

My second point of concern about this is what I call "foreign shopping". For a number of years I was a trustee of a charity called Fair Trials International—the name is self-explanatory—which does excellent work in many areas but in particular as regards extradition. We came across the extremely unattractive practice of people seeking extradition going round looking for the best jurisdiction, the best legal system or the best court to enable them to be successful. I think we have to be very careful to ensure that similar practices, which may already exist now, do not grow further as regards asylum seekers.

Again, my noble and learned friend Lord Clarke referred to it. He said, "If I was in Nigeria with my noble friend Lord Horam and we were deciding we were a couple of likely lads and we thought the future looked better outside Nigeria, we would look around at all the jurisdictions that might offer us the best prospects." Now, I think the United Kingdom is an extremely attractive place to go to. We have had a long debate tonight and I am not going to go through the reasons why I think it is. They include a series of things, not least that people can see that the Parliament of the United Kingdom spends time talking and thinking about it and is concerned about it. What better way to try and find your way into a country that has the interest and the focus to make sure that even the lowest person is looked after and their rights are protected?

When my noble friend the Minister comes to wind up, I hope she will be able to say that the Government are going to look very carefully at the impact of more asylum seekers of variable abilities, perhaps—more people who may risk breaking the informed consent of the British people. For all these reasons, we need to be very careful before we widen the aperture and widen the opportunities any further than proposed in the Bill as presently drafted.

Baroness Lister of Burtersett (Lab): My Lords, I oppose Clause 11 and simply want to pose four questions, the answers to which I hope might help clarify the mind of the noble and learned Lord, Lord Clarke of Nottingham—my home city.

First, how is it possible to decide a priori whether someone is an economic migrant or a refugee on the basis of how they arrive in the country? It appears to be a key assumption on which Clause 11 and much of the Bill is based. The evidence—in particular the Refugee Council's analysis of channel crossings—shows that most of those crossing the channel irregularly, and therefore deemed illegal, are likely to be recognised as in need of refugee protection. That does not support the assumption.

I recently met virtually with members of the Baobab Centre for Young Survivors in Exile and was told that, in their 32 years of work, they had never met an

[Baroness Lister of Burtersett]
unaccompanied young person who had arrived by a safe and legal route, yet all had been fleeing danger, with many having seen family members killed and many traumatised. A constant refrain among the young survivors themselves was that they wished Ministers would put themselves in their shoes—a refrain we have heard before this evening—and that they felt the proposed policy was based on a lack of compassion and trust.

Secondly, what assessment has been made of the likely impact on integration—an issue raised by the noble Baroness, Lady Ludford, which Ministers claim is still a goal—of creating a second-class group of refugees with no security and only very limited rights?

Thirdly, what assessment has been made of the case made by a number of organisations, including the UNHCR, that placing restrictions on the right to family reunion for this group will, in the words of the Refugee Council, "all but destroy" the

"main safe route out of conflict for women and children at risk".

Fourthly, and finally, why should we accept the Government's interpretation of the refugee convention over that of the body with global supervisory responsibility for it? The UNHCR has provided detailed legal observations in support of its claims that the Bill is

"fundamentally at odds with … the United Kingdom's international obligations under the Refugee Convention".

Likewise, Freedom from Torture has published a joint legal opinion from three chambers which states that

"this Bill represents the biggest legal assault on international refugee law ever seen in the UK"

and

"is wrong as a matter of international refugee law."

To my knowledge, the Government have not published the legal advice on which their claims that Clause 11 is compatible with international law are based. Will they now do so, particularly in light of the very important speech from the noble and learned Lord, Lord Brown?

Lord Green of Deddington (CB): My Lords, I shall be extremely brief; this has been a long debate. I just want to commend the noble Lords, Lord Horam and Lord Hodgson, and the noble Baroness, Lady Fox. They all pointed out the need to take full account and understanding of public opinion. I agree with that; I do not need to repeat it. As for Clause 11, it is clearly a legal problem. I suspect that it will also be a policy problem, but we will come to that later.

7.30 pm

Baroness Jones of Moulsecoomb (GP): My Lords, this part of the Bill has a very simple purpose: it is designed by the Government to make life harder for refugees. The two-tier refugee system is designed to give the illusion of there being a proper way of being a refugee, but it will inflict huge suffering and injustice on desperate people.

It is probably not the normal tactic to plan what we are going to do next in front of the Government Front Bench, but although I applaud the intentions of noble Lords who tabled the 16 amendments to the clause, the only way is to take it out of the Bill. It is so vile, so obnoxious, that it really should not be in here.

This has not been mentioned very much but we must remember that, to some extent, we have a moral duty to take refugees. A lot of these refugees are coming from countries we have invaded, or where we have interfered or done all sorts of things, whether it is burning too much fossil fuel, causing climate change, or destabilising their Governments. Please can we remember that there is a moral duty? It is all very well referring to population density and so on, but we owe these people and we should never forget that.

Lord Rosser (Lab): My Lords, I shall resist the temptation to offer a view on what public opinion is. What I do remember is that a lot of people expressed a view on what public opinion was over climate protesters and people who threw statues into the water at Bristol, but when cases came up before a jury, they reached some very interesting decisions on guilt or otherwise. That suggests that some of those who profess to know what public opinion is may not necessarily be right when the public have a chance to hear the arguments presented to them and are then asked to make a decision.

Clause 11 is about differential treatment of recognised refugees and its impact and implications. We believe that it contravenes the 1951 refugee convention. It sets a dangerous precedent by creating a two-tier system for refugees, and it is also inhumane. Under the Bill, the Home Secretary will be given sweeping powers to decide asylum cases based on how someone arrives in this country and their mode of transport, not on the strength of their claim—contrary to the 1951 refugee convention, of which Britain was a founding member.

Under the clause, only those refugees who meet specific additional requirements will be considered group 1 refugees and benefit from the rights currently granted to all refugees by the refugee convention. Other refugees who are not deemed to meet those criteria will be designated as group 2 refugees, and the Secretary of State will be empowered to draft rules discriminating against group 2 refugees with regard to the rights to which they are entitled under the refugee convention, as well as their fundamental right to family unity. The different ways in which those two groups could be treated is not limited in any way by the Bill. Clause 11 does, however, provide examples of ways in which the two groups might be treated differently, even though they are nearly all recognised as genuine refugees. Those who travel via a third country, who do not have documents or who did not claim asylum immediately will routinely be designated as group 2 refugees. The clause goes on to set out how the length of limited leave, access to indefinite leave, family reunion —that is, whether family members, mainly women and children, are entitled to join them—and access to public funds are likely to become areas for discrimination against group 2 refugees.

The government policy paper, the *New Plan for Immigration*, proposed that instead of fully fledged refugee status, group 2 refugees will be granted "temporary protection" for a period of no longer than 30 months,

"after which individuals will be reassessed for return to their country of origin or removal to"

a safe third country. Temporary protection status

"will not include an automatic right to settle in the UK, family reunion rights will be restricted and there will be no recourse to public funds except in cases of destitution"—

in other words, a state, deliberately created, of complete uncertainty over their future for group 2 refugees.

Clause 11 would therefore make a significant and unprecedented change in the law, resulting in the UK treating accepted refugees less generously, based on the journey they have taken to reach the UK and the timeliness of their asylum claim. This attempt to create two different classes of recognised refugee is surely inconsistent with the refugee convention and has no basis in international law. The refugee convention, which was enshrined in UK law in 1954, contains a single unitary definition of "refugee". It defines a refugee solely according to their need for international protection because of feared persecution on the grounds of their race, religion, nationality, membership of a particular social group or political opinion. Anyone who meets that definition and is not excluded is a refugee and entitled to the protection of the refugee convention.

The Commons committee considering the Bill heard in evidence from the United Nations High Commissioner for Refugees' representative to the UK that this clause and the Bill were inconsistent with the UN convention and international law. If the Government disagree with that—an issue raised by my noble friend Lady Lister—no doubt they will spell out in some detail in their reply their legal argument for saying that the clause does comply with the convention and international law.

This is, however, not just a matter of law but of fairness and humanity. By penalising refugees for how they were able to get to the UK, the Bill builds walls against people in need of protection and shuts the door on many seeking a safe haven. Most refugees have absolutely no choice about how they travel. Is it really this Government's intention and desire to penalise refugees who may, for example, as a matter of urgency, have had to find an irregular route out of Afghanistan? Are the Government saying that people are less deserving if they have had to take a dangerous route to our shores? Is an interpreter from Afghanistan who took a dangerous journey to our shores less deserving than a refugee who was lucky enough to make it here on one of the flights out of the country?

The Government acknowledge that such journeys are very dangerous and sometimes fatal, yet they do not seem to appreciate the compulsion—that the alternative of not doing so is even worse—which drives people to make such journeys. If people truly had a reason to believe that they would be safe where they are, they would not make the journey. Simply making the journey more dangerous or the asylum system more unwelcoming will not change that. Of the first 5,000 people who came in 2020 by boat, well over 90% were deemed by the Home Office to be eligible to apply for asylum: they were genuine asylum seekers. They were not here illegally—but they will become illegal if the Bill is enacted.

Penalising people for how they arrived in the UK has particular implications for already vulnerable groups of refugees such as women and those from LGBT communities. Women are often compelled to take irregular routes to reach safety, as we see only too clearly in Afghanistan. There are simply no safe and legal routes. Under the proposed changes, however, women who arrive irregularly, including through a safe third country, will be penalised and could be prosecuted, criminalised and imprisoned. The same obstacles will apply to those from LGBT communities.

Unless the Government can provide safe routes, penalising people for making unsafe journeys is simply inhumane, although, even then, not everyone would have the time or ability to access a safe route, even if one existed. By not providing safe routes, the Government are also fuelling the business model of the people smugglers they claim their proposals will destroy, and then penalising the victims they have had a responsibility for creating. The Conservative-led Foreign Affairs Committee, of which the Home Secretary was then a member, warned in 2019:

"A policy that focuses exclusively on closing borders will drive migrants to take more dangerous routes, and push them into the hands of criminal groups".

The Government's impact assessment warns that increased deterrence in this manner

"could encourage these cohorts to attempt riskier means of entering the UK."

As has been said, Clause 11 also says that group 1 refugees must have

"come to the United Kingdom directly from a country or territory where their life or freedom was threatened".

In other words, the Government are setting an expectation that, to be recognised as a refugee supposedly deserving of the support usually afforded, the UK must be the first safe country in which they have sought asylum. Commenting on the Bill, the United Nations High Commissioner for Refugees said:

"Requiring refugees to claim asylum in the first safe country they reach would undermine the global, humanitarian, and cooperative principles on which the refugee system is founded."

It was pointed out in oral evidence to the Joint Committee on Human Rights that it was unlikely that

"any country close to the main countries of origin of refugees would have ever considered signing a convention if that meant that they would assume total and entire responsibility for all the refugees."

In addition, when the refugee convention came into being in the early 1950s, there was little or no commercial air travel, so any refugee reaching this country would have to have crossed land borders from safe states. Yet there was no view then that such a refugee should be seen—as under this Bill and the Government's interpretation of the refugee convention in international law—as a criminal liable to up to four years in prison and to being sent back to France, and with any claim for asylum being regarded as inadmissible.

Even within Europe, most of the countries that refugees pass through on their way to the UK already host significantly more refugees and asylum seekers per population than the UK does. According to the Home Office's own statistics, the UK is 17th in terms of the numbers it takes, measured per head of population. Unless safe routes are developed, all that will happen is that there will be an increase in dangerous crossings, because that will be the only way in which people can reach the United Kingdom.

[Lord Rosser]

As it is, France takes three times more asylum seekers than the UK, as does Germany. Global provision for refugees could not function if all refugees claimed asylum in the first safe country they came to. As my noble friends Lord Griffiths of Burry Port and Lord Coaker have pointed out, most refugees are hosted in developing countries and the UK receives fewer asylum applications than most other European countries. Under international law, the primary responsibility for identifying refugees and affording international protection rests with the state in which an asylum seeker arrives and seeks that protection.

Clause 11 sets out a non-exhaustive list of the ways in which refugees who arrive irregularly and become group 2 refugees may be treated differently. The Explanatory Notes to the Bill state that the purpose of this is

"to discourage asylum seekers from travelling to the UK",

and to encourage

"individuals to seek asylum in the first safe country they reach after fleeing persecution."

It is not clear, since the Government have provided no explanation, how the stated aim will result from the policy; perhaps the Government in their response will provide that explanation.

Evidence from many refugee organisations suggests that refugees seek asylum in the UK for a range of reasons, such as proficiency in English, family links or a common heritage based on past colonial histories. In addition, refugees do not cite the level of leave granted or other elements of the asylum system as decisive factors. The Home Office's own study from 2002—I do not think there has been one since then—noted that there was little evidence that respondents seeking to come to the UK had a detailed knowledge of UK asylum procedures, benefit entitlements or the availability of work in the UK. There was even less evidence that the respondents had a comparative knowledge of how these conditions varied between different European destination countries.

Given that individuals have little knowledge of the asylum systems of the countries they end up in, it is not clear that differential treatment will dissuade individuals from coming to the UK via safe countries. However, what the Government are proposing will certainly result in a refugee population that is less secure, and it will punish those who have been recognised through the legal system as needing international protection, such as women and girls fleeing the Taliban or Uighurs fleeing genocide in China.

The Explanatory Notes also state that 62% of asylum claims in the UK up to September 2019 were from people who entered irregularly. This means that the policy intention is to impose strictures on the rights and entitlements of the majority of refugees coming to the UK, even though we take fewer than comparable countries. Those penalties would target not just those who have entered the UK irregularly or have made dangerous journeys but all those who have not come directly to the UK, regularly or irregularly, from a country or territory where their life or freedom was threatened, those who have delayed claiming asylum or overstayed, and even those who arrive in the UK without entry clearance and who claim asylum immediately.

7.45 pm

I repeat that Clause 11 envisages that group 2 status will be imposed on recognised refugees and will stigmatise them as unworthy and unwelcome, maintain them in a precarious status for many years, deny them access to public funds unless they are destitute and restrict their access to family reunion. We are talking here about recognised refugees. A number of studies have shown that that precarious status itself is a barrier to integration and employment Yet, despite these challenges, the Bill will specifically empower the Secretary of State to attach a no recourse to public funds condition to the granting of leave to group 2 refugees. The adverse consequences of no recourse to public funds conditions will fall not only on the refugees themselves but on their families, including children who travel with them, who are able to join them later, or who are born in the UK.

Those consequences have been documented in numerous studies. They include difficulty accessing shelters for victims of domestic violence, denial of free school meals where those are linked to the parents' benefit entitlement and de facto exclusion from the job market for single parents who have limited access to government-subsidised childcare, as well as significant risk of food poverty, severe debt, substandard accommodation and homelessness. Yet the Home Office's own indicators of integration framework identifies secured immigration status as a key outcome indicator for stability, which is

"necessary for sustainable engagement with employment or education and other services."

On that issue, in paragraph 58 of its report relating to secured immigration status and the idea of safe routes, the JCHR said:

> "The Government's New Plan for Immigration contains a commitment to provide an unspecified number of refugee resettlement places, review support for eligible refugees to come to the UK through the points-based system and consider a new process to enable people in urgent need of protection to travel directly to the UK from their country of origin."

While we welcome the commitment to safe and legal routes, we were disappointed that, in his evidence to us on 1 December 2021, the Minister was unable to give any update or detail on how the Government will fulfil those commitments. In their response tonight, can the Government now tell us how they will fulfil those commitments, as the Minister was unable to do on 1 December 2021?

There must, frankly, be a suspicion that, more than any other consideration, Clause 11 is about saving the political skin of a Home Secretary and Government who have previously promised their supporters that they would stop people crossing the channel irregularly, only to see the numbers subsequently increase. As a result, Clause 11 is largely silent on addressing the continuing and apparently expanding horrendous activities of the people smugglers and instead concentrates on hitting their victims, nearly all of whom are recognised as genuine asylum seekers.

There appears to be little in this Bill that addresses reducing or stopping this awful traffic of people smugglers and in that way reducing or stopping the level of trafficking. That would surely be one of the best ways to address the issue of people crossing the channel in the unsafe way that they currently do.

As my noble friend Lord Coaker pointed out, we now find that the Government apparently intend to arrest and lock up all single males crossing the channel. This casts even more doubts on this Government's true intentions and motives as far as these proposals are concerned. I hope that the Minister will be able to tell us in her reply that what appeared in the *Times* today —to which my noble friend Lord Coaker referred—is just not true and is not what the Government intend to do. Frankly, if we do not have this clear statement, this really will be a very sorry reflection on the motives behind the Bill.

We now have a clause and a Bill under which individuals who have been recognised as refugees would be given inferior treatment, based on the way in which they came to the UK. This is contrary to the UK's obligations under the refugee convention and inconsistent with the right to private and family life and the prohibition against discrimination under the ECHR. That is why Clause 11 should be removed from the Bill.

Lord Paddick (LD): I am sorry to disappoint noble Lords, but I am the lead signatory on the Clause 11 stand part proposal. The noble Lord, Lord Rosser, has kindly allowed me to speak last from this side.

The United Nations High Commissioner for Refugees—the UN Refugee Agency—leads international action to protect people forced to flee because of conflict and persecution. As many noble Lords have said, a 1951 convention and a 1957 protocol together make the refugee convention, which sets out the UK's and other signatories' international obligations.

The UNHCR's considered view—as well as that of the noble and learned Lord, Lord Brown of Eaton-under-Heywood, from what I understand—is that the Bill is fundamentally at odds with the Government's commitment to uphold the United Kingdom's obligations under the refugee convention. Clause 11 is at the heart of this considered view.

The Government seem to misunderstand the purpose of international conventions, such as the refugee convention. They have recently adopted the phrase "different countries will interpret the convention differently". Is not the whole purpose of an international convention and its protocols for there to be a shared understanding of what an international convention means, to ensure that each signatory interprets the convention in the same way and acts accordingly? I think that was the view expressed by the noble and learned Lord, Lord Etherton. I will address his concerns about protected characteristics in a future group.

More honestly, some Conservatives—and the noble Baroness, Lady Fox of Buckley, who has apparently given up—have called the refugee convention outdated. They say that we should renegotiate or withdraw from it. That is not the Government's position. They say that they can treat asylum seekers differently, depending on their circumstances, and that this is in compliance with the refugee convention.

Much has been said—and we have had many briefings on this clause—but I will restrict my comments to the primary concerns of the custodian of the refugee convention, the UNHCR. It says that the "first safe country" principle does not exist in international law, is unworkable and would undermine global co-operation. This is obviously the case. With most refugees—at least before the fall of Afghanistan—making their own way to safety from the African continent, only Turkey and those countries bordering the Mediterranean Sea would be legally able to take refugees, if that were the case. The UNHCR says that already three-quarters of refugees are hosted in countries neighbouring their own. Some 85% are hosted in developing and middle-income countries. As other noble Lords have said, almost all the countries through which refugees pass on their way to the UK already have more refugees and asylum-seeking applicants than the UK does.

This is a global crisis, requiring a global response in which every country plays its part and where every country, including the UK, takes its fair share of genuine asylum seekers. A disproportionate burden should not be placed on border countries; nor should it be that the further north and west you go, the fewer asylum seekers you have to take.

The UNHCR says that the claims of refugees seeking safety in the UK need to be considered solely on the basis of whether the circumstances from which they have fled justify their refugee status. If a refugee is entitled to the rights given to him or her by the refugee convention, all those rights should be exercisable in any convention country, including the UK. This clause would deny recognised refugees the rights guaranteed to them under the refugee convention and international law. That is why it should not stand part of the Bill.

The noble Lord, Lord Horam, described me as an economist. I think my tutor at Oxford, Dieter Helm, would disagree with that. In a previous group, I purposely said that I studied economics at university, but I still have no clue about it. The noble Lord talked about illegal immigrants. Other noble Lords tried to correct him. Genuine refugees are not illegal immigrants.

The noble Lord, Lord Horam, and other noble Lords talked about public opinion. That is all very well, provided that opinion is informed. Some 94% of immigrants to the United Kingdom are not refugees. If the British public understood that this Bill is only talking about 6% of the people who come to this country, I think they would have a very different view of it.

The noble and learned Lord, Lord Clarke of Nottingham, said that the public were concerned about people coming across the channel in dinghies. What the public do not understand is that we do not have record numbers crossing the channel in order to claim asylum by clandestine means. So many are now coming across the channel in dinghies because we have been so good at stopping them getting on the Eurostar and entering lorries and because of security around the ports. It is just that the problem has become a lot more visible than it ever was before. It is not out of control compared with the past.

Lord Green of Deddington (CB): The noble Lord is absolutely right. Asylum has accounted for about 40,000 people a year for the last 10 years. Net migration has been about 250,000. The problem is that immigration is much greater than asylum. I shall be saying more about this

Lord Paddick (LD): The noble Lord, Lord Green of Deddington, and I agree. This Bill has totally the wrong focus. It is all about asylum seekers. If there is a problem with public opinion on immigration, it should be focused on the 94%, not the 6%.

As the noble Lord, Lord Kerr of Kinlochard, said, with the best of intentions, amendments in this group that attempt to improve this clause are doomed to failure. Any kind of differential treatment of those who are genuine refugees is totally unacceptable and questionably legal. To say that the revising amendments are putting lipstick on a pig—equating Clause 11 to a pig—is insulting to pigs.

8 pm

Baroness Williams of Trafford (Con): My Lords, I thank all noble Lords who have spoken in this debate. I have been requested to confirm that I did not send a note to the noble Lord, Lord Green of Deddington. I confirm that I did send him a note. There is no law against it, and I am not sure why I was asked. I sent him a note to tell him that he was right.

I welcome my noble and learned friend Lord Clarke to this debate; I am very pleased to see him here and welcome his comments. The Committee will be very well served by listening to him, to my noble friends Lord Horam and Lord Hodgson of Astley Abbotts, and to the noble Baroness, Lady Fox, although she concluded that she was not sure that she could support Clause 11. The points that they made around how generous, warm and welcoming this country is and how we must be careful to take public opinion into account are pertinent. The noble Baroness, Lady Jones of Moulsecoomb, said that if you asked the British public, they would bring back hanging; actually, it was because of public opinion that hanging was abolished in this country, so I do not agree with her premise.

As the noble Baroness, Lady Ludford, said, this group is not, largely, about the 1951 convention but about the point on differentiation. There will be three groups further on dealing with the 1951 convention, but I will answer a couple of points on it now. The noble Lord, Lord Griffiths of Burry Port, said that we should be working with UNHCR. Other noble Lords have made the point that UNHCR disagrees with us. We do not think that there is only one interpretation of the refugee convention. It is for Parliament to decide, and I say to the noble Lord, Lord Kerr, that I do not think that is eccentric. It is democracy. It is for Parliament to decide, subject to the general principles of the Vienna convention on the law of treaties.

The noble and learned Lord, Lord Brown of Eaton-under-Heywood, referred to Article 31 flowing from Asfaw and Adimi, and asked why we were altering that. Parliament's original intention regarding Article 31 is clear in Section 31 of the Immigration and Asylum Act 1999 that a refugee will not be determined to have come directly if they stopped in a third country outside the United Kingdom unless they can show that they could not reasonably have been expected to be given protection under the convention in that country. The courts have interpreted this more generously and we are therefore taking the opportunity to reset the definition to the original intention of Parliament.

The noble and learned Lord, Lord Etherton, made a point about the proposed interpretation of "coming directly" under Article 31 of the convention in Clause 36 not being how it was intended by the convention. We have been very clear that people seeking protection must claim it in the first safe country they reach. That is the fastest route to safety. We will not tolerate criminal smugglers exploiting vulnerable people to come to the UK when a claim could easily have been made in another safe country. The convention does not explicitly define what is meant by coming directly and therefore, it is ultimately for our sovereign Parliament to set out its interpretation of international obligations subject only to the principle of treaty interpretation of the Vienna convention.

The noble and learned Lord also talked about LGBT+ communities, which again we will come to later. We know that they can have difficulties in making and evidencing a claim. That is why our policies and training are designed to support claimants in being able to explain their claim in a sensitive and safe environment.

Lord Kerr of Kinlochard (CB): If I understand the noble Baroness aright, there is nothing to stop this sovereign Parliament setting out how it interprets the refugee convention in future. She enumerated four Members of the Committee who had spoken supportively. I think it is the case that none of them argued that the Bill was not a breach of the convention. We had some powerful legal advice that it was a clear breach of the convention. I ask her to remember that the last time this House was asked to pass a Bill that broke an international commitment was on the internal market Bill, and it took the very clear view that pacta sunt servanda mattered and that we should stick to our word.

Baroness Ludford (LD): I was not clear about the noble Baroness's reference to me. The fact that I did not actually say that I believed Clause 11 breaks the refugee convention does not mean that I do not think that it does, because everybody else had said it. I was not quite clear what she meant.

Baroness Williams of Trafford (Con): I think what I was trying to say, maybe clumsily, was that the noble Baroness was trying to get back to the amendments.

Baroness Ludford (LD): The clause breaches the refugee convention, in my opinion. I agree with many people who said that.

Baroness Williams of Trafford (Con): I was not making that point, but I accept the noble Baroness's point.

The noble Lord, Lord Kerr, just said that the four Members did not argue that the clause is not a breach of the convention. The four Members I singled out for mention were trying to explain public opinion in the round and the need to take note and do something about their concerns, notwithstanding the fact that the British public are warm and welcoming. We are a nation of immigrants. I think my noble and learned friend wants to intervene.

Lord Clarke of Nottingham (Con): Yes, as I am having various motives attributed to me. As I said, I came here with a dilemma. I do not think we will turn British public opinion round to the views I personally would like to support if I thought we could. I wait to be persuaded that the Government's package will actually work and make the problem any easier. I reject the simplistic solution that all we have to do is provide safe and easy routes and accept that many more people will come, because they undoubtedly will if some of the things that have been proposed are accepted. That would cause very nasty further damage to our society and the level of our political debate. I am not convinced that Clause 11 and Clause 9 are a satisfactory solution to that yet. That is what I hope to hear my right honourable and noble friend persuade me of the course of this winding-up speech.

Baroness Williams of Trafford (Con): Unfortunately, I am not right honourable, although you never know. I hope to persuade my noble and learned friend, but no one piece of legislation will be the silver bullet to solve all the problems. I do not think I have ever made any secret of that, but I thank him very much indeed for his points.

To get back to the LGBT+ community, it can have particular issues with claims. There is sensitivity about this. Our guidance on sexual orientation and gender identity was developed to take these issues into account. The UNHCR, Stonewall and Rainbow Migration contributed to its development and we are most grateful to them. We will review and update our training and guidance where necessary to support people who are LGBT+.

I would like to get back to the first safe country principle, which is internationally recognised. In fact, it underpins the common European asylum system, particularly the Dublin system, which I note that a number of noble Lords are separately seeking to replicate through the Bill. Broadly speaking, the first safe country principle defines countries which are presumed safe to live in, based on their stable democratic system and compliance with international human rights treaties. Dublin therefore functions on a twofold logic: first, that first countries of entry are safe and should normally be responsible for determining an asylum claim; and, secondly, that burden sharing can then take place where there is a family connection in another safe country. In essence, the first safe country principle removes asylum seekers' ability to choose where to go—and undertake dangerous journeys in the hands of criminal smugglers to do so—in favour of safe, orderly, and regular management of flows. That is a reasonable approach.

To demand that the UK do more to share the burden, but also to hold that asylum seekers have the right to choose where to claim—the point that my noble friend Lord Hodgson of Astley Abbotts made, this concept of forum shopping—is simply contradictory. On this logic, the number of people who claim in the UK is exactly the right number and there is nothing more that the UK needs to do. Conversely, the reason that the Bill enshrines the idea that asylum seekers ought not to choose where they claim, by setting out various measures in defence of the first safe country principle, is precisely because removing that choice enables us to do more on burden sharing from regions of origin. In what is decidedly a more ambitious approach than anywhere in the EU, such a policy would provide far more generosity, fairness, and control in managing global asylum flows. Can I turn now to pull factors?

The Lord Bishop of Durham: The Minister has not addressed the UNHCR's point that if every country insisted on the first point of entry as the sole thing, it would completely undermine the entire international system.

Baroness Williams of Trafford (Con): As I have said, we disagree with the UNHCR on that point. If I can turn to pull factors—

The Lord Bishop of Durham: Excuse me, why? Why do you disagree? I am sorry but it is not enough to simply say "We disagree".

Baroness Williams of Trafford (Con): I hope that, through the course of my response here, I will lay out the rationale for why we are doing what we are doing. We disagree with the UNHCR and we feel that, as a sovereign nation, it is up to us to interpret the 1951 convention.

Baroness Lister of Burtersett (Lab): If the Government's argument is to be that they have a different interpretation, it is not clear why we should accept their interpretation over the UNHCR's interpretation. I asked if the Government would publish the legal advice on which their interpretation rested. Then we can judge against other interpretations.

Baroness Williams of Trafford (Con): I think the noble Baroness knows that we do not do that. I am not going to commit to publishing the legal advice. I am, however, going to come to her questions later if the Committee will be patient.

Can I get on now to pull factors? They are complex, but it is reductive to claim that asylum seekers do not ever make decisions about their destination based on policy calculations. They are like the rest of us; they do not simply respond to one or two factors such as family or language in making a choice. Many more factors come into play in this respect, as my noble friend Lord Hodgson of Astley Abbotts mentioned, and one of those will very naturally concern how to rebuild the life they lost after being forced to flee their country of origin. But to defend the first safe country principle for the reasons I have set out, we must do everything we can to deter dangerous secondary movements from countries that are already safe and provide perfectly good means for a flourishing life.

Noble Lords have mentioned Denmark, Australia and Japan. We have seen large reductions in spontaneous intake in both Denmark and Australia, following similar approaches to that which we intend to take. In fact, Australia resettles the single largest number of refugees in the world.

8.15 pm

My noble and learned friend Lord Clarke asked about prosecutions of asylum seekers coming here by small boat. We seek prosecutions only where there are aggravating features, such as major costs and disruption to shipping, or repeated efforts to cross.

[Baroness Williams of Trafford]

I categorically reject the contention that the UK does not do its fair share. As the noble and learned Lord has pointed out, since 2015 we have resettled more than 25,000 people, half of whom were children, and that is the most in Europe. That is under national resettlement schemes. We are the fourth highest in the EU in terms of asylum applications to the EEA, EU and Switzerland in the year to June 2021. Our family reunion scheme has seen a further 39,000 people settle in the UK. I want to hold up a prop—

Lord Kerr of Kinlochard (CB): I apologise to the Minister, but it will not do. The noble Lord, Lord Paddick, corrected a misapprehension earlier. The numbers she is citing for resettlement are the numbers from the resettlement schemes run by UNHCR. She is not citing the number of people who have come to Turkey, to Lesbos, to Italy or to Spain and have been settled across Europe. It is a narrow definition of "resettlement" that is most misleading. We are taking relatively few, relative to our size, compared to others across Europe.

Baroness Williams of Trafford (Con): My Lords, I was at pains to say that this is under national resettlement schemes. I have not tried to mask the figures. I have been very clear about how many people we have taken under national resettlement schemes.

I was about to hold up a prop, although I know that is not done in your Lordships' House. I wrote to the noble Lord, Lord Dubs, who had to go, as did the noble Baroness, Lady Fox; she apologised for that. I wrote to noble Lords about the safe and legal routes, and I think the reason that some noble Lords do not want to acknowledge it is that they do not accept what we have done. I have looked at how many different family reunion schemes we have. We have four, including refugee family reunion. I will spend a moment to really spell this out, because some noble Lords just seem to not want to hear it. We have granted over 39,000 refugee family reunion visas since 2015, of which more than half were granted to children. Comparing that to the Dublin scheme, under the Dublin regulation, we transferred 714 people to the UK in 2019. In the same year, we issued 7,456 visas under our family reunion rules. It does not take a genius to work out that is 10 times the amount. Part 8 of the Immigration Rules—paragraph 319X—allows relatives to sponsor. We also have paragraph 297 and Appendix FM. Under Appendix FM, in 2020 there were 40,255 family-related visas granted. Please do not keep talking about us undermining family reunion, because we just have not. It is not true. I ask noble Lords to refer back to the letter that I sent to the noble Lord, Lord Dubs—I think that was last week.

Baroness Ludford (LD): I hope the Minister would acknowledge that—speaking only for myself—what I was doing was objecting to the restriction. I did not criticise the existing record, although my proposed Private Member's Bill would expand the scope. The objection is to the poor proposed treatment of group 2 refugees under family reunion. I was not talking about the numbers to date.

Baroness Williams of Trafford (Con): My Lords, noble Lords have repeatedly talked about undermining family reunion. I confirm to the noble Baroness, and for *Hansard*, so that noble Lords do not come back at me again and again to make this point, that group 2 refugees will be afforded the entitlements in a way that is compatible with the refugee convention, including family reunion, compatible with the ECHR. Most importantly, they will be provided with protection against refoulement. I make that point again: group 2 refugees will be afforded the entitlements in a way that is compatible with the refugee convention, including family reunion. I hope noble Lords will not come back to that point—well, they will do so, but I have made my point, I hope.

If I can, I will continue on the generosity of the great British public and this Government. Over 88,000 BNO status holders and their family members—almost 90,000, as my noble friend said—have chosen to apply for the BNO route, with over 76,000 granted it so far. Meanwhile, we led Europe in airlifting some 15,000 people out of Afghanistan to the UK from mid-August under Operation Pitting. If any noble Lord wants to stand up and say we were not generous in that situation, I beg them to do that now. That is over and above the earlier transfers of around 2,000 locally employed staff and their families under the Afghan relocations and assistance policy. Our new Afghan citizens resettlement scheme also aims to welcome a total of 20,000 people. These people, who noble Lords were talking about earlier, are the most vulnerable people in the world today and our generosity has been exemplary.

Lord Rosser (Lab): Can I just clarify a point? The Minister has said it is not true that family reunion rights are going to be restricted. But as I understand it, the Government's *New Plan for Immigration* did give a detailed indication of what different treatment might look like for group 2 refugees. I am perfectly willing to stand corrected if what I am saying is wrong, but as I understand it, the *New Plan for Immigration* said, in relation to group 2 refugees who will be granted temporary protection:

> "Temporary protection status will not include an automatic right to settle in the UK, family reunion rights will be restricted and there will be no recourse to public funds except in cases of destitution."

Is that quote from the Government's new plan wrong? In other words, is it not correct that family reunion rights will be restricted?

Baroness Williams of Trafford: It is not correct to say that family reunion rights will be restricted for group 2 refugees. They will be afforded the entitlements in a way that is compatible with the refugee convention, including family reunion. If someone, be they a group 1 or group 2 refugee, is deemed a refugee, they will be afforded family reunion rights compatible with the ECHR.

Lord Rosser (Lab): My Lords, I—

Baroness Williams of Trafford: Can I just carry on? I will then of course allow an intervention from the noble Lord; he is always courteous to me.

I want to further reassure the noble Baroness that, even where a refugee or a family member is a group 2 refugee, "reasonable discretion" will be exercised with respect to the determination of differentiated entitlements. We have built this notion into current drafting by ensuring that the determination of whether a refugee is in group 1 or group 2 will depend on whether they could have been reasonably expected to claim asylum in another safe country, and their asylum claim in the UK was made as soon as is reasonably practicable. Our view is that these standards provide adequate discretion to take into account particular facts of an individual case when determining tiering and therefore whether they are granted differentiated entitlements. Would the noble Lord like to intervene now?

Lord Rosser (Lab): I would because I am getting thoroughly confused, which is something I perhaps do quite frequently, I accept. I will read out again from the JCHR report. It says:

"The policy paper that preceded the Bill, the Government's 'New Plan for Immigration', gave a more detailed indication of what different treatment may look like, as it proposed that instead of fully fledged refugee status, Group 2 refugees would be granted 'temporary protection' for a period of no longer than 30 months 'after which individuals [would] be reassessed for return to their country of origin or removal to a safe third country.' Temporary protection status 'will not include an automatic right to settle in the UK, family reunion rights will be restricted and there will be no recourse to public funds except in cases of destitution.'"

Those are quotations from the Government's *New Plan for Immigration* policy statement. In relation to group 2 refugees, who are being created by Clause 11 —that is the new bit and what the Bill is doing—it quite clearly states:

"family reunion rights will be restricted".

I ask again: is that correct or incorrect? If it is not, why is it written in the JCHR report? If the Minister is going to tell me that the JCHR has got it wrong, please say so clearly now.

Baroness Ludford (LD): Before the noble Baroness responds, I add that I do not think that the noble Lord, Lord Rosser, is confused: I fear that the Minister is being mildly disingenuous with us. Can she confirm that there is a difference in the intended treatment of group 1 and group 2 refugees as concerns family reunion? Otherwise, what is the point of Clause 11(6):

"The Secretary of State or an immigration officer may … treat the family members of Group 1 and Group 2 refugees differently, for example in respect of … whether to give the person leave to enter or remain"

et cetera? What is the point of this being in the Bill if there is no intention to treat group 2 refugees differently? The Minister told us about how this will not breach the refugee convention and so on. I asked specifically about the comments on Article 8, and I look forward to her replying specifically on that. But can she confirm whether their intention is to treat group 1 and group 2 refugees differently in terms of rights to family reunion?

Baroness Lister of Burtersett (Lab): May I just add to that? Clause 11(5) says:

"The Secretary of State or an immigration officer may treat Group 1 and Group 2 refugees differently, for example in respect of … whether leave to enter or remain is given to members of the refugee's family."

Baroness Williams of Trafford (Con): My Lords, I hope that I can clarify: everyone gets ECHR-compliant family reunion rights. Having clarified that, on the points made by the noble Baroness, Lady Ludford, on Article 8, family reunion will be permitted only where refusing would be a breach of our international obligations under Article 8 of the European Convention on Human Rights.

On how the restrictions for all group 2 refugees will look and whether they will be indefinite or will not apply in certain circumstances, the power under Clause 11(5)(d) of the Bill enables the Secretary of State to differentiate in respect of leave to remain for the family of group 2 refugees. The power is flexible and there is no duty to impose such a condition. Policy will be set out in guidance in the Immigration Rules in due course, but family reunion will be granted to group 2 refugees where a refusal would breach our international obligations under Article 8 of the European Convention on Human Rights.

8.30 pm

Baroness Chakrabarti (Lab): To comply with the ECHR means complying not just with Article 8 but with Article 8 read with Article 14, which means respecting the right to family life but also not discriminating in that context. How can it not be discrimination when the whole purpose of Clause 11 is discrimination between group 1 and group 2? It is blatantly a breach of Articles 8 and 14 read together.

Baroness Williams of Trafford (Con): It is differentiation rather than discrimination. The two are quite different.

Amendments 44, 45, 47, 51 and 52 seek to remove the powers to differentiate entitlements. As we have noted elsewhere, these powers are broad and flexible; they do not require the Secretary of State to act in a particular way. Equally, there is ample discretion available in respect of whether a person is granted group 1 or group 2 refugee status. While the detail will be set out in rules and guidance in due course, suffice it to say that the exercise of the powers in question will be sensitive to vulnerabilities and individual circumstances. That enables us to balance the need to take a tough approach with the need to protect the most vulnerable.

We have been clear that our starting point in respect of the length of leave will be a grant of no less than 30 months. Similarly, settlement will be available by virtue of our long-residence rules. We have gone further in our defence of refugee family reunion, noting that we will continue to uphold our international obligations under Article 8, but in any event, there is no requirement to apply such entitlements in each and every case. I repeat that we fully intend to be sensitive to vulnerabilities and individual circumstances in that respect. That is why we have retained a considerable amount of discretion in the drafting.

Turning to Amendment 55, I do not think it would be appropriate or right for us to step outside of the existing power to make immigration rules under the Immigration Act 1971. This is the same power that we use to implement most other aspects of UK immigration policy, including but not limited to asylum policy. Indeed, areas in which we regularly use Immigration Rules to administer the system include the type of leave to remain,

[Baroness Williams of Trafford]
the length of leave to remain, the routes and conditions of settlement, and family reunion. It would be inappropriate to do otherwise in this case. The rules are the appropriate vehicle: they have a long-standing and clear procedure, with the appropriate level of scrutiny built in. As I have noted, however, I am absolutely committed to this policy being exercised sensitively with a view to protecting the most vulnerable. There will always be discretion in our policies to make the right decisions in each case, and that extends to the Immigration Rules.

I cannot agree to Amendment 39, which would remove the requirement for a person to claim without delay to be a group 1 refugee. That means that anyone claiming asylum, regardless of whether that was done at the last moment to defer removal, could be a group 1 refugee. That would undercut the entire purpose of the policy and embolden those seeking to abuse our rules. There are already safeguards within the legislation enabling discretion to be exercised, such that a claim should be made as soon as reasonably practicable.

Amendments 43 and 50 would amend the list of ways in which we can differentiate from a non-exhaustive list to an exhaustive one. We must keep all options on the table to prevent dangerous journeys from safe countries, and we can do that only by retaining flexible powers to respond to situations as they arise.

Amendment 48 would prevent the ability to differentiate in respect of family members. This is primarily about coherent policy. We should ensure that, where appropriate, family members of refugees are not treated more or less favourably than the lead applicant, but the flexibility that we wish to retain will also enable us to respond sensitively to particular circumstances as appropriate, including in respect of how we treat family members. For example, let us say we discover that a child has been a victim of abuse by their parents and needs to be taken into care. The flexibility in the powers would enable us to respond to such a tragic situation by granting a more generous entitlement to that child compared to their parents, in order to sympathetically reflect the need in those individual circumstances.

Amendment 53 would remove the ability to differentiate in respect of requirements for settlement for family members. We must keep all options on the table to prevent dangerous journeys from safe countries, and we can do this only through retaining flexible powers to respond to situations as they arise. That said, I anticipate that many if not most families will receive the same length of leave to remain to ensure that all qualify for settlement on the same terms at the same time. However, we want to retain the ability to respond flexibly to challenging situations that might require us to do otherwise in respect of length of leave for a refugee and their family.

I turn to Amendment 41, in the name of the noble and learned Lord, Lord Etherton. I hope I can offer some reassurance that his concerns have already been accounted for in the policy, so there need be no further amendments to the Bill in this respect, as I outlined earlier. We envisage that the provision will apply in cases where a refugee meets the first two limbs of Article 31—that is to say, they came direct and claimed "without delay"—but, at the time of the claim, they had entered or were present in the UK unlawfully, having, for instance, overstayed an economic migrant visa.

To illustrate, let us say a person overstayed their visa and then lodged an asylum claim. Because they had entered the UK directly and ostensibly claimed without delay, they might be eligible for group 1 refugee status but, due to having overstayed, we would also check whether they had

"good cause for their illegal … presence"

at the point of claim. If they had no good reason for having been in the UK illegally, they might be liable for group 2 status. An example of where good cause could be shown might be if a person had overstayed their visa and then lodged an asylum claim—a very similar situation to that described by the right reverend Prelate the Bishop of Durham. If their reason for overstaying and lodging an asylum claim while in the UK illegally was on the grounds that they feared presenting to the authorities because they were homosexual, in such a case this may well amount to a good cause.

Suffice it to say that the powers in the Bill are broad and flexible and therefore enable us to exercise discretion where appropriate, including with respect to "good cause", which will be reflected in guidance to caseworkers.

I turn my attention to Clause 11 as it currently stands. These powers are primarily intended to uphold the "first safe country of asylum" principle. Clause 11 provides a power, as noble Lords have pointed out—they are not very happy about it—for the UK to differentiate according to whether people satisfy certain criteria based on those in Article 31.1 of the refugee convention. The Government have set out their interpretation in Clause 36. I will not distract the Committee from the issue at hand by going through the provisions of Clause 36, because they will be debated in full.

If I may just pick up the points made by the right reverend Prelate the Bishop of Durham, and the noble Baronesses, Lady Ludford and Lady Chakrabarti, on Article 31, the criteria we use as the basis for differentiation are not based expressly on one's method of arrival. Instead, they are based on the criteria within Article 31 of the convention: whether someone came directly and claimed without delay, and, where applicable, had

"good cause for their illegal entry or presence".

The clause acts on our commitment to do everything we can to deter individuals, as I have said, from making dangerous and unnecessary journeys through safe third countries, often putting lives at risk. I hope I have fully explained the Government's rationale and addressed noble Lords' questions. If I have missed anything out, I am very happy to follow up in writing but I hope that noble Lords will feel happy to withdraw or not press their amendments.

Lord Griffiths of Burry Port (Lab): My Lords, what a debate this has been. I thank all those who have contributed to it. It has certainly laid bare the points of difference that are going to have to be resolved at a later stage in the consideration of this Bill. I say to the noble Lord, Lord Kerr, that the lipstick is back in my pocket and the piglet is running free.

I appeal to the noble and learned Lords who have so helpfully intervened in this debate. I made the case at Second Reading that I was hearing two legal positions established that I, as a non-lawyer, could not reconcile. I was hoping that noble and learned Lords would bring all their pals in to help us see the basis on which the Government's legal judgment is reached, since the Government do not choose to reveal this; perhaps they do not do so habitually. I said that this would help those such as me to understand. The UNHCR statement I read—all 72 pages of it—is very clear, it really is. I have not heard what convinces me that an opposite case can equally be true. I think we are going to need some help. I implore noble and learned Lords not to go on holiday before Report, please.

So we come to the end of this long debate. I thank the Minister for her spirited response. It is no joke standing there and defending yourself against what you perceive to be the slings and arrows of outrageous fortune, but she did it with some courage. I also thank all those who intervened on her because, in this way, we have opened matters up. Before Report, some of us are going to have to do some serious thinking and come back in a focused way to take this matter further in a way that satisfies all of us.

Is it not incredible that the Prime Minister is, this very day, in Kiev in Ukraine, arguing that Britain honours its international agreements directed towards those at the far-flung edges of Europe? I would that he come back in his plane via Turkey, Greece, Spain and Italy to show how he is equally committed to the international agreements and treaties we have entered into in respect of the way we treat refugees. With all that said and a little bluster on my part, I am glad to put the piglet running and out of the way. I beg leave to withdraw the amendment.

Amendment 37 withdrawn.

Amendments 38 and 39 not moved.

House resumed. Committee to begin again not before 9.25 pm.

Ambulance Response Times

Question for Short Debate

8.44 pm

Asked by ***Baroness Barker***

To ask Her Majesty's Government what assessment they have made of the current ambulance response times; and what actions they are taking to reduce ambulance response times.

Baroness Barker (LD): My Lords, there were a few moments during the last hour when I thought that some Members of your Lordships' House might need medical attention and that my debate might be a welcome move on that part. In starting this debate, I welcome the noble Baroness, Lady Penn, back to the Front Bench. She has been otherwise occupied for the past few months; it is very good to see her back and looking so well.

I make no apology for returning to the subject of ambulance services. Not a week goes by when ambulance services are not in the headlines. Inevitably, when there are stories of distress and patients being left unattended, they do grab the headlines, but I hope that this evening we can do the job that this House really should do: go behind the headlines and look at the underlying factors, which are of enduring importance in determining the problems of and solutions for our ambulance services.

I am aware that a number of noble Lords are here again, having taken part in many debates on the Health and Care Bill. That piece of legislation is somewhat puzzling, frankly. Your Lordships' House is now several days into Committee on that Bill, the purpose of which, so the Government tell us, is to lead to the better integration of health and social care in order to overcome health inequalities, as well as to move the National Health Service away from being a service that is largely reactive and acute to one that is much more about prevention and the promotion of well-being in communities. Yet we are considering the legislation without having seen either the White Paper on social care or the White Paper on integration, so it is all a bit Alice in Wonderland. If that feels confusing to us trying to do our job, as we have this debate, we might well hold in our minds those people in the ambulance service who are trying to build sustainable services that meet all its objectives and yet are having, sometimes day to day, to deal with competing demands and policy directions that are unclear.

We know that, at the moment, the ambulance service has a national framework and national targets. We also know that those are not being met. We know that national standards were set in 2017. Calls to the ambulance service are triaged into four categories, depending on the level of urgency. All ambulance trusts must respond to 90% of category 3 calls in two hours and category 4 calls in three hours. Nationally, ambulance waiting times have more than doubled in the past two years.

Very recent statistics from NHS England say that, on the level of demand in December 2021, per day, 29,800 calls to 999 were answered. That is 2% more than in November 2021, 9% more than in December 2019 and 22% more than in December 2020. On response times, in December 2021, the England average response time for category C1—the most urgent incidents—was 9.13 minutes; in the C1 90th centile, it was 16.12 minutes. So neither of them met the seven-minute mean or the 15-minute 90th centile standards that they were supposed to meet. For C2 in England, the average response time in December 2021 was 53.21 minutes and the 90th centile was one hour and 59 minutes, so the 18-minute and 40-minute standards were not met. The next statistics are due in February but it is unlikely, I suggest, that things will have changed dramatically in that time. The Government say that the NHS is under sustainable pressure, but I put it to noble Lords that these figures show that the pressure is not sustainable.

My colleague in another place, Daisy Cooper, met the British Heart Foundation last week, and it made a really interesting point. Not only are ambulance times slow but it had examples of heart patients who called the hotline because paramedics had turned up to stabilise them on site and then left them for an even

[Baroness Barker]
more important job, asking family members to take them or leaving them at home so as not to take them into hospital at all. Were we to drill down, we would find a lot more of that kind of statistical manipulation going on behind those average national statistics.

My friend Helen Morgan, who I am delighted to say is the new MP for North Shropshire, has been doing a lot of work on the problems in her constituency. It is a large rural constituency in which four ambulance hubs have been removed and there have recently been waits of over seven hours to hand over patients at Shropshire hospitals. That is not unusual, but it is unacceptable.

We know what the problems are because organisations such as NHS Providers have told us. Problems with admissions to A&E are most often because A&E beds are blocked by people who cannot be moved out into the rest of the hospital, because beds in other wards are being blocked by people who are well enough to go home but for whom there are no social care packages.

There are three things that the Government could and should do. First, they should make sure that the data on hospital waiting times is much more rigorous, timely and defined. At the moment we are being given average national data, which is not helping us to plan and, most importantly, to configure services.

Secondly, we need to increase social care funding. Everyone knows across the NHS that, although money has gone into the NHS—as indeed it should—it is absolutely clear that unless and until there is investment in social care all these blockages in the NHS will continue to happen.

Finally, rather than continuing to treat the ambulance service as an afterthought—a simple way of getting people between one acute service and another—the Government should look at a paper that was recently produced by Public Health England and the Association of Ambulance Chief Executives. It is about developing the ambulance service as a public health service by equipping and training ambulance staff to note what is happening when they go on site to find people and the causes of incidents. They could then develop that dataset, some of which they already have from call centres, and use technology that is coming online, such as AI, to begin to predict with much more detail the demands on the ambulance service. That would enable it to work not just with acute hospitals but social services departments, the police and others and to become much more refined at predicting incidents and demand. It is only by managing demand and bringing it down that we will build an ambulance service that is sustainable in the longer term.

I would love to talk about the use of the ambulance service for mental health, but I do not have the time.

One final thing: during the last two years of Covid, the ambulance service has been kept afloat by St John Ambulance. What are the Government doing to make sure that St John Ambulance remains sustainable over the coming months?

8.54 pm

Lord Scriven (LD): I declare my interest as a non-executive director of Chesterfield Royal Hospital NHS Foundation Trust. I too welcome the Minister back to the Front Bench. I hope that this first outing is not as difficult as the last set of amendments was for her noble friend Lady Williams.

I thank my noble friend Lady Barker for securing this debate, which is important and necessary, considering the issues that many people and communities face with their ambulance services at present. This is despite the dedicated professionalism of so many people who work to try to save lives and deal with some of the most vulnerable people. Rather, it is a reflection of the way in which our healthcare system is struggling to meet the demands of the population it serves.

This debate must not be about just statistics but people—those who require the services of the ambulance service and those many thousands of individuals who work for the ambulance service and do their best in providing professional first response and medical services when people are in their greatest need. I want to bring to the attention of the House one such family and the distressing phone call a man in his 20s had to make when he woke up and found his mother struggling for breath. In that call, he can be heard telling ambulance call handlers that his mother, from Ashton-under-Lyne in Greater Manchester, was struggling to breathe after she woke up screaming his name in the early hours of the morning. He describes how her situation is critical, only to be told that he may well have to wait for one and a half hours for an ambulance to arrive because the service is busy.

The man rings back later and says that his mother's mouth has gone white and pleads for immediate assistance, but emergency service personnel can tell him only that help is on the way. Another call is made after his mother collapses and becomes unresponsive. Her heartbroken son can be heard venting his anger that an ambulance did not arrive in time to save her. He tells the call handlers, "I rang an hour ago for an ambulance. She's had difficulty breathing, and now she's dead. My mother is dead." When paramedics finally arrived at nearly 3.30 am, almost an hour after his initial call, they tried to revive his mum but attempts, sadly, failed. Unfortunately, this is not a one-off tragic event but is happening to many families across the country.

Therefore, I ask the Minister what she would say, on a human level, to those families who see a loved one die or see serious health implications for members of their family when an ambulance does not arrive. We must not hide behind statistics: these are real people and the effect of not having an effective ambulance service is that people are dying and families are shattered.

This debate is not about a quick fix for the ambulance service but indicates that the Government must move to a more person-centred approach to the care system. It is no good looking at why ambulances are not able to respond speedily without dealing with why they have to wait up to 10 hours outside hospital admissions doors because people in A&E cannot move into a hospital bed as 10% to 30% of those beds are occupied

by people who are medically fit to be discharged but do not have a care package in place, so they cannot be discharged out of the discharge door of the hospital.

Just putting more money into the ambulance service, as welcome as that is, will not solve this crisis in a sustainable way. A key question around this systematic issue is: when are the Government going to bring forward well-thought-out and fully costed long-term plans to deal with the social care issues that keep over half a million bed days a year blocked due to people not being able to move when they are ready for medical discharge?

Another knock-on effect, which would help solve the ambulance crisis, is caused by the problems in general practice. The Government know that many GPs feel burned out and are working incredibly long hours, but many are retiring because of the workload. General practice is becoming the first port of call for many medical and social problems. When people find it hard to get a GP's appointment in a timely manner, they ring the ambulance service, knowing that they will receive some form of medical intervention. So the question is: what are the plans for dealing with GP services so that people can get a timely appointment and GPs do not feel that they have to retire because their work/life balance is not in kilter?

The University of Sheffield, in March 2020, produced a very good paper: *Reducing Avoidable Ambulance Conveyancing in England: Interventions and Associated Evidence*. That paper comes up with many solutions, and a lot of them are about integration, which my noble friend Lady Barker talked about. I will ask some questions. If we are seriously talking about intervention, what is the Government's thinking about doing away with individual ambulance trusts? Why are they not part of health provider trusts so the innovation can come and the walls between those who are part of first responder services in health and those who provide care services are removed and they are integrated rather than seen as separate legal entities? Would the Government be open to that kind of integration and to saying that it does not have to be a separate ambulance trust?

What is the Government's working—particularly in line with that paper from the University of Sheffield—on mental health issues? The evidence shows that quite a lot of the conveyancing of people with mental health issues via an ambulance took place only because there were not community services for those suffering from mental health issues. Where is the investment? Where is the government thinking on that? This is not an ambulance crisis but an issue to do with our health service not being able to meet demand or not being prepared for dealing with the requirements of the modern healthcare system.

These issues will take time, so there has to be a much more immediate response. It is clear that the £55 million that the Government introduced in July is not enough to tackle the problems. So, finally, let me ask the Minister: what plans above the £55 million do the Government have, and when will they be implemented, to ensure that in the interim enough staff, ambulances, equipment and expertise are available for responding paramedics so that no one else has to make a heart-wrenching phone call that ends with a loved one dying, as the young man in Greater Manchester had to do, seeing his mum take her last breath because an ambulance was not able to get to them in time?

The Deputy Speaker (Lord Lexden) (Con): My Lords, the noble Baroness, Lady Brinton, is taking part remotely. I invite her to speak now.

9.02 pm

Baroness Brinton (LD) [V]: My Lords, I too congratulate the noble Baroness, Lady Barker, on securing this important debate and welcome the noble Baroness, Lady Penn, back to her place on the Front Bench.

The subject of tonight's debate is literally a matter of life and death for too many people at the moment, and while most of our debate so far has been about statistics, health policy and hospitals, and much of the debate will refer to those strategic issues, at the heart of it is the key ambulance service that we have all come to expect by our sides at the worst times in our lives to rescue us and get us emergency help. This debate is all about how our paramedics and their colleagues save lives day after day, and I pay tribute to them.

However, it is also about patients and how they have come to expect that their ambulance service will be there for them. I thank the Library for its excellent briefing and also the TUC for its report on *The NHS Workforce Crisis—a Decade in the Making*, which has a couple of interesting facts about the current pressures that paramedics and ambulance service personnel are under.

As we have heard, the national standards were set in 2017. Calls are triaged into four categories, and I want to make a further point on response times for categories 1 and 2, which my noble friend Lady Barker alluded to. For most levels of injury and illness in categories 1 and 2, there is a golden hour in which treatment needs to be started at hospital to help survival. Strokes used to be in category 1, along with heart attacks and cardiac arrests, but were moved into category 2 after, fairly recently, paramedics were allowed to administer clot-busting medication en route to hospital. Unfortunately, however, even with that extra bit of time, now there is extra queuing time outside hospitals, ensuring that patients are delayed in getting into A&E.

Before Christmas, I asked Questions on the crisis in the Cornwall Ambulance Service. At one point, there were more patients queuing in ambulances outside A&E at the Royal Cornwall Hospital in Truro than there were beds in A&E—all of which were already full. Five days ago, once again more than 20 ambulances were queuing. The consequences for patients and ambulance service staff of working under such permanent pressure are difficult. For patients in the middle of a major medical crisis, seeing ambulances arrive and paramedics assisting and then, sometimes, having to watch them depart again to leave for a more urgent case is very distressing.

For staff, as outlined in the TUC report, there are intense frustrations and stress at not being able to do properly the job that they love and have trained for. Once admitted to A&E, patients have been left on trolleys for hours while staff waiting with them are unable to get on with other jobs. Steve, aged 21, a clinical care manager in the ambulance service, said:

> "Ten years ago, paramedics would do between 12-14 jobs in one shift, but now many paramedics have to stand in corridors with patients for hours. I've known"

[Baroness Brinton]

ambulance service

"staff to wait in a corridor for up to four hours."

On delayed discharges, Cornwall recently sought to solve its problems by paying families £1,200 to take their loved ones home because there were no social care beds available either. The TUC report confirms the stress to staff. It says:

"In the NHS, anxiety, stress, depression and"—[*Inaudible*]

But it is really important to understand that the stress and depression are absolutely appalling and result in time being taken off on sick leave by ambulance staff and others.

My noble friend Lord Scriven talked about the problems of delayed discharges and workforce—[*Inaudible.*] In another place, MPs Daisy Cooper and Helen Morgan jointly wrote to the Health Secretary on the crisis in our ambulance services. They wrote:

"This year the Association of Ambulance Chief Executives found that 160,000 people a year are coming to harm, of whom 12,000 have experienced 'severe harm', because of the issues impacting ambulances."

Helen Morgan, the new MP for North Shropshire, has also asked the Government to commission an investigation into the ambulance service crisis in Shropshire, where strategic decisions to close ambulance stations have led to severe problems. There have been deaths among those kept waiting. Before Christmas, one man who lived just three miles from the hospital waited 10 hours for an ambulance that did not turn up.

Yesterday, an Answer from Health Minister Edward Argar to a Written Question from Daisy Cooper about the number of ambulance services at REAP level 4 in England said that

"nine ambulance services were at Level 4 REAP."

That rather emollient Answer means that all but one of the ambulance services are still under the highest levels of pressure. In responding to recent Questions in your Lordships' House, the Health Minister has repeatedly told noble Lords of the funding that will come to increase the workforce. But this problem is more complex. As with other clinical and healthcare professionals, recruitment and training does not solve an emergency overnight. Care homes, hospitals, delayed discharges—as we have heard—and pressures on A&E are all causing pressures on ambulance services.

Along with the exceptional work of St John Ambulance volunteers, many of our service personnel have been assisting ambulance services during recent months, but this was always intended only as a temporary measure. My noble friend Lady Barker outlined four key actions that would help, so I ask the Minister: what urgent actions will the Government take to reduce the logjam in our hospitals and care homes so that A&E and ambulances can once again come to the aid of people in an emergency, whether accident or illness? This is a real crisis for our ambulance services that needs help now.

9.09 pm

Baroness Merron (Lab): My Lords, I too extend a welcome back to the noble Baroness, Lady Penn, and offer congratulations to her and her family. I hope she finds her return to the House as positive an experience as I am sure the new addition to her family has been. I am grateful to the noble Baroness, Lady Barker, for securing this important debate and for emphasising the importance of integration in our health services, of which ambulance services are a key part.

I start by paying tribute to the staff in the ambulance services, not just those in the ambulances themselves but those who support the ambulance crew—from those in the control room, who use their skill to answer calls, reassure the caller and get the service to the right place, through to those who support the ambulance services to do their job by maintaining the vehicle fleet, cooking, cleaning and supporting in so many other ways. I also add my thanks to the volunteers of the St John Ambulance brigade and members of the Armed Forces who were deployed to alleviate ambulance staff shortages related to Covid-19.

As we have heard throughout this debate, there is intense pressure on ambulance services, and staff are struggling and patients suffering. Our health and care services were already weakened and exposed by inadequate levels of funding when the pandemic hit. As a result, the NHS now faces unprecedented challenges. Just last week, the Royal College of Emergency Medicine warned that patients will come to "avoidable harm" in A&Es across the country, estimating that over 4,500 patients are likely to have died during 2020-21 after waiting more than 12 hours in emergency departments.

As we have heard in this debate, the NHS in England has set a national target for ambulances to respond to the most life-threatening incidents within seven minutes on average. However, NHS figures show that the average response time in December for ambulances dealing with the most urgent incidents—defined as calls from people with life-threatening illnesses or injuries—was nine minutes and 13 seconds. This comes in at just under the average response time of nine minutes and 20 seconds in October, which was the longest since current records began in August 2017.

Ambulances also took an average of 53 minutes and 21 seconds to respond to emergency calls dealing with matters such as burns, epilepsy and strokes, which was the second longest time on record. Response times for urgent calls such as late stages of labour, non-severe burns and diabetes averaged two hours, 51 minutes and eight seconds—again, the second longest time on record. NHS England also said that staff dealt with the highest ever number of call-outs relating to life-threatening situations last month, averaging one every 33 seconds. One can only imagine what it is like for someone in pain and distress, and for those standing by, to wait for an inordinate length of time. After all, ambulances respond when there is an urgent need, whatever the grade of the urgency.

Unsurprisingly, the College of Paramedics has said that apologising to patients for long waits is the first thing paramedics are doing when they walk through the door. The latest figures show that nearly one in four patients arriving at hospitals in England by ambulance waited at least 30 minutes to be handed over to A&E departments. NHS England figures show that 18,307 delays of half an hour or more were recorded across all hospital trusts in the seven days to 9 January, which represents 23% of all arrivals by ambulance.

When asked what can be done to relieve the pressure, the College of Paramedics said that, in the short term, there are a number of ambulances that wait outside hospitals to hand over the care of a patient and are therefore not available in the community, as we have heard in this debate. What joined-up action is there to reduce handover delays? Has the Minister reviewed whether there is a need for more paramedics?

NHS workers have been warning for many months that the service is under strain due to a combination of waning workforce, Covid, respiratory infections, a backlog of patients and a build-up of health problems over lockdown. The Royal College of Emergency Medicine has been calling for months for a response from Ministers to provide short-term and long-term solutions. We have debated during the passage of the Health and Care Bill the vital need for workforce planning. What planning is there to ensure that the ambulance service has the right number of properly trained staff?

I am absolutely sure that the Minister will refer to the additional funding announced in July last year by NHS England to improve response times. I note that NHS England said at the time that the money would be shared by NHS trusts

"based on the number of patients they serve locally",

with trusts being given discretion on how best to use the funding to increase staff numbers. What assessment has been made of what has happened across the country, and to what effect? What assessment has been made of the difference in response times that the additional funding has made? I understand that the Minister will need to write to me on this point, but I would be interested to know, on a trust by trust basis, how many additional staff are in control rooms and on the front line. How many additional ambulances were on the road during the winter as the result of this increase in funding?

Lastly, may I press the Minister on a matter which the noble Lord, Lord Scriven, raised, regarding prevention rather cure? What steps have been taken to avoid unnecessary ambulance calls and visits to A&E? How has NHS 111 done in respect of recruiting additional staff? How have GPs expanded their capacity, particularly in view of what we know about low morale and GPs leaving the service?

The Opposition wrote to the Secretary of State in August of last year outlining some of the terrible situations this pressure on ambulance services is leading to, and asking what the Government were doing to support the ambulance service to do its vital work. That question remains, and I look forward to the Minister's response.

9.17 pm

Baroness Penn (Con): My Lords, I thank noble Lords for their warm welcome; it is great to be back. I also thank the noble Baroness, Lady Barker, for securing a debate on such an important topic, as my first debate back in this House. I join all noble Lords in expressing my gratitude for the outstanding work done by ambulance service staff and the wider NHS in what are often difficult circumstances.

Before we get into the details of statistics, funding and plans, it is important to address the question, asked by the noble Lord, Lord Scriven, of what I would say on a human level to those who have been affected by delays, often in tragic circumstances. All I can say is that I am sorry and that, while I will explain in more detail the circumstances in which these delays occurred and what we are doing to address them, the Government are clear that, while the delays are explicable, they are certainly not acceptable and we are doing all we can to improve the situation we face.

As noble Lords have acknowledged, ambulance services have faced extraordinary pressure over the last 18 months. The pandemic has placed significant demands on the service. In December 2021, the service answered almost 1 million calls, an increase of 22% on December 2020. While 999 calls tend to highlight demand related to more serious medical conditions, many ambulance services are also responsible for 111 calls, which, in November 2021, increased by just over 20% compared to November 2019.

Infection prevention and control measures, higher instances of delays in the handover of ambulance patients to A&E, as many noble Lords have noted, tying up ambulances in queues and delaying the response to new calls, and high workforce sickness absence rates, are all affecting the service. This combination of factors has placed unprecedented stress on the service and driven increased response times to patients in the community. Despite these pressures, performance for category 1 calls—the most serious calls, which are classified as life-threatening—has now been largely maintained at around nine minutes on average over several months, despite a 16% increase in these calls compared to before the pandemic. However, there have been significant increases in response times against the other categories, and even in category 1 we are not meeting the targets that we have set ourselves.

We must improve performance, and therefore we have put in place a number of measures. We have invested £55 million in staffing capacity to manage winter pressures up to March. All trusts are receiving part of this funding, which will increase call handling and operational response capacity, boosting staff numbers by 700. The noble Baroness, Lady Merron, asked about a breakdown of some of those figures on a trust-by-trust basis. I do not have them to hand, but I will see whether they exist and I can get them for her. The noble Baroness, Lady Brinton, referred to the pressure on ambulance staff in these circumstances. We recognise that and have put in place improved health and well-being support from NHSE and NHSI for ambulance trusts, with £1.75 million being invested to support the well-being of front-line ambulance staff during these pressures.

Almost all noble Lords noted that delays in handover are a big part of this picture. Targeted support to the most challenged hospitals to improve their patient handover processes has been put in place, helping ambulances swiftly to get back out on the road. This is focused on the most challenged hospital sites, where delays are predominantly concentrated. The 29 acute trusts operating the most challenged sites are responsible for 60% of the 60 minute-plus handover delays. As several noble Lords have said, it is not a uniform picture across the country and more data on a trust-by-trust level will help us to draw that picture out further.

[Baroness Penn]

We have also made a £4.4 million capital investment to keep an additional 154 ambulances on the road this winter, and a £75 million investment in NHS 111 to boost staff numbers by 1,100, boosting call-taking and clinical advice capacity to better help patients at home and avoid unnecessary ambulance calls and trips to A&E. There is continuous central monitoring and support to ambulance trusts from NHSEI's national ambulance co-ordination centre, and we have also made significant long-term investments in the ambulance workforce. The number of NHS ambulance staff and support staff has increased by 38% since July 2010.

It is also right to recognise the contribution of the ambulance service in managing the demands of the pandemic on the wider health service. Ambulance services link the whole of the NHS, providing an interface between primary, community and secondary care. At a time when the NHS is facing unprecedented demand, ambulance services are absorbing some of that increase, treating more people over the phone and finding ways to reduce the pressure on other services. With clinical support in control rooms, for example, the ambulance service is closing 12% of 999 calls with clinical advice over the phone, which is up from 7.4% in December 2019, saving valuable ambulance resources to respond to more urgent calls.

The noble Baroness, Lady Barker, raised a number of points in her opening speech, reflected in the comments by other noble Lords, about how the challenges that the ambulance service is facing are symptomatic of wider challenges, not just within the NHS, but in social care, and looking at what we are doing to address that integration.

The Government published their plan on social care in December last year, and the integration White Paper is expected early this year, so those pieces of work will be updated. However, progress on those issues is not waiting for further White Papers to published.

In September last year, we committed to investing an additional £5.4 billion over three years to begin a comprehensive reform programme on social care. That is on top of funding in previous years, particularly to address—for example, through the better care fund—delayed discharges, which are having a knock-on effect across the NHS.

We have talked a bit about the statistics, and noble Lords said that there was not much sign of hope. I would not overstate the signs of hope we can take from some of the statistics, but one noble Lord mentioned the REAP status of ambulance trusts, and I have some updated figures on that since the Parliamentary Answer that was provided in the Commons. Since 22 January, the West Midlands Ambulance Service has moved to REAP level 3 and has remained there. The North East Ambulance Service moved to REAP level 3 on 25 January and remains there. Also, in the week to 19 January, category 2 responses have improved to an average of 31 minutes.

That performance is still significantly longer than the current target but might be a sign that some of the investment we have been putting since we announced further support last summer is having an effect on the ground. We are continuing to recruit and improve the numbers of call handlers and 111 handlers, for example.

I have addressed handover delays. There were three things on the wish list of the noble Baroness, Lady Barker, speaking for those who work in the service and, more widely, those who are close to the pressures they are facing. On more rigorous and timely hospital data, I have committed to write to the noble Baroness, Lady Merron, if I have any more trust-by-trust data on the resources being put in. I undertake to look if there is anything further I can say on that.

Increasing social care funding and social care reform is getting under way. I am sure the Government will look closely at the great point about developing the ambulance service as a public health service, which sees the causes of incidents on site. Ambulance service trusts have sophisticated demand modelling processes to look at some of those issues.

The noble Baroness also mentioned the excellent work done by St John Ambulance during the pandemic, to which I pay tribute. NHS England and NHS Improvement have contracted St John Ambulance to provide support to ambulance trusts throughout the pandemic, and they continue to work with St John on its continuing role in the future.

The noble Lord, Lord Scriven, raised the question of whether individual ambulance trusts might be reformed as part of the wider reform picture. I am not aware of any plans to do that, but it is an interesting point that I will take back to the department. He also mentioned mental health; the Government have put increased investment into that in recent years. There is more to do, but one example is community crisis cafes, an alternative place where people who may be in a mental health crisis can go that is not A&E and does not involve calling out an ambulance. They are safe spaces where people can get the help they need. The Government have put more funding into those kinds of services, and I am sure that they will continue to do so.

I am short on time, so I will close by reiterating the Government's support for the ambulance service. Ministers are in regular contact with NHSEI on the performance of the emergency care system, including the ambulance service, and will continue to provide the support the NHS needs to ensure that patients receive the help they need, when they need it.

Once again, I thank the noble Baroness, who has rightly raised this important issue and secured such a thoughtful and interesting debate, if a shorter one than that on the Bill to which we will return.

Nationality and Borders Bill

Committee (2nd Day) (Continued)

9.29 pm

Amendment 40

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

40: Clause 11, page 13, line 44, at end insert—

"(2A) For the purposes of subsection (2)(b), the following will be regarded as having presented themselves "without delay"—

(a) people who have experienced sexual violence;

(b) people who have made a protection or human rights claim on the basis of gender-based violence;

(c) people who have made a protection or human rights claim on the basis of sexual orientation, gender identity, gender expression or sex characteristics;

(d) people who are a victim of modern slavery or trafficking;

(e) people who are a victim of torture;

(f) people who are suffering from a mental impairment;

(g) people who are suffering from a serious physical disability;

(h) people who are suffering from other serious physical health conditions or illnesses;

(i) people who were under 18 years of age at the time of their arrival in the United Kingdom."

Member's explanatory statement

This probing amendment seeks to ascertain whether and to what extent certain vulnerable groups would be covered by the "without delay" condition.

Baroness Lister of Burtersett (Lab): My Lords, I am grateful to the noble Baroness, Lady Neuberger, and my noble friend Lord Cashman for their support and for hanging on in there, as well as to Women for Refugee Women for its help with the amendment. The amendment sets out a number of groups in vulnerable circumstances who should be deemed to meet the condition that they have presented themselves to the authorities to claim asylum without delay. This is a probing amendment, which does not imply acceptance of Clause 11, which, as I made clear earlier, I totally oppose; rather, it addresses one specific aspect of it that was not interrogated in the Commons.

As the UNHCR advises:

"There is nothing in the Refugee Convention that defines a refugee or their entitlements under it according to … the timing of their asylum claim."

At present, the Bill does not provide any exceptions to the "without delay" condition relating to their potential vulnerability, although, if I understood her correctly, I think the Minister said on Amendment 39 that there is some flexibility, so I look forward to hearing more about that.

The amendment covers a range of groups who could be adversely affected by the clause. It reflects a warning made by Freedom from Torture that:

"Penalising refugees who do not present their claim 'without delay' following arrival risks further punishing the most vulnerable. It is clinically recognised that an experience of torture or trauma will lead to avoidance behaviours and interfere with the person's ability to disclose."

I shall focus mainly on women fleeing gender-based violence. The "without delay" condition is one of a number of provisions that will, contrary to ministerial claims, disproportionately adversely affect women, as more than 50 organisations warned the Home Secretary in a letter in which they argued that more women will be wrongly refused asylum, re-traumatised and placed at risk of violence and abuse. LGBTQ+ asylum seekers will also be at particular risk as a result of the "without delay" condition. I think my noble friend is going to say more about that.

Women for Refugee Women's research has documented how many women seeking asylum in the UK have fled gender-based violence in their countries of origin, including rape, female genital mutilation and forced prostitution. Many were abused again on their journeys to safety. In the organisation's experience, many of these women are heavily traumatised when they arrive and need time to feel safe before they feel able to share their experiences with a government official. This is endorsed in a legal opinion from Garden Court Chambers, which states:

"there may well be very good reasons to explain why … their claim was delayed … which relates to the particular forms of persecution to which women are subject, and their experience of gender-based violence and inferior social status."

British Red Cross research published just last week reinforces the point and demonstrates how insensitive the asylum system already is to gender-related trauma and women's needs. The Bill will only make this worse. In Women for Refugee Women's experience, survivors, many of whom have experienced serious trauma, move at their own pace with regard to disclosure. No amount of legal or mental health support can guarantee a willingness to disclose without delay.

Preliminary findings from research into LGBT+ women carried out by Rainbow Sisters, a group supported by Women for Refugee Women, found that 20 out of 25 women did not claim asylum within the first month of entering the UK. The great majority of those who gave reasons said they were too traumatised by past experiences of persecution or scared to come forward, and many had not even realised that they could claim asylum on the basis of their sexual orientation.

The Home Office is well aware of such barriers to disclosure, because it acknowledges them in its own current guidance, which gives a number of reasons for reluctance to disclose information at the outset, including

"feelings of guilt, shame, and concerns about family 'honour', or fear of family members or traffickers, or having been conditioned or threatened by them."

It notes the impact sexual assault can have on the ability to present one's case. The same policy guidance says that late disclosure should not automatically prejudice a woman's credibility.

The same considerations apply to failure to present oneself without delay. So, why does the Bill not reflect this clearly? On Second Reading, the Minister acknowledged these arguments in relation to the provision of late evidence, saying:

"We will set out in guidance what can constitute good reasons"—[*Official Report*, 5/1/22; col. 668.]

for late evidence. But no provision seems to have been made for good reasons for failing the "without delay" condition. Why is that? I know the "without delay" phrase is carefully taken from the convention—an example of what the UNHCR calls "selective echoes" from it—but that does not obviate the point. So, do the Government intend to protect the groups covered by the amendment in the guidance?

Can the Minister also provide some information about statistics, if necessary, in a subsequent letter? First, do the Government collect statistics on the number of women who claim asylum based on sexual or gender-based violence in their country of origin? If yes, what proportion of overall claims did these represent? Secondly, do they collect statistics on when survivors of gender-based violence make an asylum application?

[Baroness Lister of Burtersett]
If yes, what do those statistics show? Thirdly, do they collect statistics on the number of women subject to sexual abuse on their journeys to the UK? Again, if so, what do they show?

I hope the Minister will be able to provide some clarity and, better still, an assurance that the "without delay" condition will be applied in a way that does not impact adversely on those in vulnerable circumstances—if Clause 11 survives. I beg to move.

Baroness Neuberger (CB): My Lords, I rise to support the amendment in the name of the noble Baroness, Lady Lister of Burtersett, supported by the noble Lord, Lord Cashman. I would have said almost everything the noble Baroness has said, so I will just add a few other points.

One is that we have to recognise the nature of asylum seekers arriving in the country and the evidence presented by Doctors of the World and others. Asylum seekers often arrive suffering from considerable ill health. It is important we realise that, because that makes them the sort of people who ought to be included in the list provided in the amendment. According to Doctors of the World's experience of running a clinic, 70% of patients with an outstanding asylum claim have at least one chronic medical condition, 30% have a psychological condition, almost a quarter present with an acute condition, and over 40% report their health as being "bad" or "very bad". These are therefore people whom one might class as vulnerable, and this is the issue we are probing. Like my noble friend Lord Kerr, I am a bit worried about lipstick on pigs. Nevertheless, I think we will need to tease this out a little more, and we know the health conditions of asylum seekers are considerably worse than those of the general population.

I also want to pick up on what the noble Lord, Lord Coaker, said about the piece in the *Times*, which I also saw, and I want to reflect on some personal experience. We run a very small charity in memory of my parents. My mother was an asylum seeker, a refugee from Nazi Germany, and in my parents' name we run this small charity to provide opportunities for education for asylum seekers who are not entitled to get student finance. I have therefore interviewed, over the last 20 years, quite a large number of asylum seekers, the majority of whom have been young men.

Without exception, they report being traumatised. They do not come as dangerous would-be criminals; they have seen their parents be killed before their eyes, have been forced into armies of appalling dictatorships, have been involved in civil wars and have been persecuted because they are bisexual—whatever it may be. None of them come and apply for a scholarship in the first period after they arrive in this country. We probably do not see them until a year, 18 months or two years in, and only then are they beginning to be able to talk about their experiences. Therefore, because they are clearly vulnerable, would they be classed as people who could be regarded as making an application "without delay"?

The Home Office's guidance on gender-based violence and women who have suffered that kind of issue being treated favourably, if you like, and being allowed to wait until they are able to speak out is moderately generous—perhaps I would not go that far but would just say "possibly" generous, but whatever. I want to know whether we can extend that principle to those who have been traumatised in all sorts of other ways and have major mental health issues, often brought on by the trauma of what they have experienced.

Would the Minister be willing to entertain the prospect of those who are vulnerable for a whole variety of reasons being treated in the same way, if you like, as the Home Office guidance? We cannot see it within the Bill, but it would be wonderful if that were the case.

Lord Cashman (Lab): My Lords, it is a pleasure to follow the noble Baroness, Lady Neuberger, who has added her name to the amendment in the name of my noble friend Lady Lister of Burtersett.

The earlier debate on the clause was illuminating and displayed this House at its very best. The speeches and interventions on all sides sought to give a voice to those who are often not heard—the voiceless, the vulnerable and the persecuted. I will not rehearse the arguments that were put before your Lordships during the debate on the previous group but I echo this: it is our duty to stand in the shoes of others and imagine. I revisit that often when dealing with subjects such as those that we are dealing with today, but never more so than when we are dealing with those who seek refuge and asylum.

I am particularly grateful for the number of briefings that I have received, in particular for an online briefing that I managed to attend with others, including the right reverend Prelate the Bishop of Durham, who referred to this earlier. I thank Stonewall, Rainbow Migration, Safe Passage and others who have expressed their concern about the negative consequences for LGBTQI asylum seekers.

This probing amendment is extremely important. I am concerned, as are others, that the "without delay" criterion would affect large numbers of traumatised people, including, as my noble friend Lady Lister said, survivors of gender-based abuse and people who have fled persecution based on their sexual orientation and who are unable to claim promptly, as well as other vulnerable groups and the individuals who make up those groups. At the moment, the Bill does not provide any exceptions to the "without delay" conditions. Therefore, this amendment, to which I am proud to have added my name, seeks to ascertain whether and to what extent certain vulnerable groups would be affected by the "without delay" condition. Indeed, the Minister probably feels that she has already referred to this to some extent in her earlier contribution.

The amendment seeks to protect refugees with specific histories or characteristics from the adverse effects of Clause 11. The amendment rightly highlights personal characteristics that are relevant to why many refugees are not able to comply with the implicit demand underpinning Clause 11 and Clause 36, to which it is connected. I am grateful to the noble and learned Lord, Lord Etherton, who made the case earlier for the inclusion of protected characteristics in relation to those cited in the Equality Act.

9.45 pm

It is stated that asylum claims must be made by those coming directly to this country and presenting their claim immediately but, as we heard in the previous

debate, that demand is made especially improper because the UK makes no visa available for anyone to come to this country for the purpose of claiming asylum here, whatever the strength of their family or other connections to the UK may be, and refuses to consider any claim for asylum unless it is made in the UK. To claim asylum in the UK, someone must therefore get here first of all; in the great majority of cases, people take unsafe routes and are dependent on smuggling gangs—or, as I experienced in testimony that the right reverend Prelate was also privileged to hear from a young Pakistani man who had done so, make an initial false claim in order to get here to make a claim for asylum.

I turn to the evidence presented by Rainbow Migration and Safe Passage. The introduction of a punitive regime around late claims will penalise asylum seekers who do not come forward straight away as LGBT+. However, many claimants do not know that they can seek asylum on the basis of their sexual orientation or gender identity. People who have been deeply closeted in their home country are often unwilling, or indeed find it hard, to proffer this information, especially because they fear that it may make their life harder if they are returned home. The Home Office and the investigation process are not environments that make confession comfortable or easy; I have heard that in personal testimony from many.

Presentations of sexuality or gender identity can vary significantly from what the Home Office or people in the UK typically understand. Some people may simply not know the right language but, sadly, the Home Office presumes that failures of language are indicative of deceit. However, that can be resolved through appropriate cultural sensitivity training, which can be as simple as awareness of distinctive cultural norms. I look forward to hearing from the Minister about this because there is Home Office training in the asylum training school that currently deals in part with LGBTQI issues. However, as I have said, Stonewall and other LGBT organisations have expressed serious concerns about this clause in particular and the Bill in general.

It must also be remembered that, for someone fleeing persecution, collecting evidence is not their first priority. For someone who is worried about persecution, activities that garner evidence showing their status as an LGBTQI person are more of a threat. More than that, there are structural disparities. If you are poor, you are less likely to go on dates, own a camera or have the kind of privacy that would allow you to have a relationship or gather evidence from it. I would like to hear from the Minister in relation to situations such as that. Equally, people are not always reliably or properly informed; they do not know about the organisations that can help them. Indeed, even now, there is always a concern that living out and open, even in the UK, could affect their relationships back home and their ability to return.

Sadly, for those and many other reasons, Clause 11 will inflict greater harm and injustice. I look forward to clarification from the Minister.

Baroness Bennett of Manor Castle (GP): My Lords, I offer very strong Green group support for this amendment, although I acknowledge the questions about whether it might be easier just to throw the whole thing out. It is a great honour to follow three such powerful speeches from such distinguished campaigners.

I want to pick up one point in the proposed new paragraph (c) on the experience of LBGTQIA+ people. Like the noble Lord, Lord Cashman, I am drawing on the very important briefing from Rainbow Migration. In that is the story of Samir, a gay man from Kosovo. We are obviously talking about someone who sought asylum some years ago. He knew that there was no way that he could live openly as a gay man in Kosovo at that time and, even now, it is recognised as an incredibly dangerous place for LBGTQIA+ people. Samir said:

> "I felt like every day I had to look over my shoulder because you never knew what could happen."

Samir was attacked. He came here under a different visa category. He did not know that he could apply for asylum, but he eventually found his way through the system. Then he spoke about the experience of talking. He said:

> "It was the first time talking about my sexuality ... just saying aloud the word gay in Albanian, it was very surreal. I knew that although I was scared, this was my only chance".

I ran through that story because in the previous group the Minister said that there will be guidance that "without delay" might allow for circumstances such as this. I want to point the Minister—and if she has not seen it, I would be very happy to share it with her—to another report from Rainbow Migration, *Still Falling Short*, that talks about how difficult it still is for LGBTQIA+ people to prove their sexual orientation or gender identity to the Home Office. If people are finding it very difficult to "prove", how difficult is it going to be to get this consideration the Minister referred to before?

I want to make one other brief point that draws on a briefing from the Law Society. It would perhaps be an additional clause to the amendment from the noble Baroness, Lady Lister. The Law Society points out that often people will not talk about what has happened to them because they fear what might happen to family or associates back in the country that they have fled. That is something we really have to consider. If you have been subject to persecution, you almost invariably will know people still who will be in grave danger if you tell the story and the story gets out. There really should also be consideration of that in the guidance.

The Lord Bishop of Durham: My Lords, I support this as a probing amendment and support everything that has been said. If I was to add anything, I would say that this could apply equally to some people who are facing religious persecution: so Sikhs, Hindus and Christians in Afghanistan would say that they are under serious threat at the moment, for example. I wonder whether I can put some words in the Minister's mouth. Without delay, can she undertake that the guidance that is to come states categorically that it will be from a trauma-informed basis rather than simply circumstantial?

Lord Hylton (CB): My Lords, in very few words I would like to welcome and support Amendment 40, moved by the noble Baroness, Lady Lister. I do so

[LORD HYLTON]
from the experience of asylum and immigration Bills over the last 20 or 30 years, and for the reason that what used to be known as the Medical Foundation, and is now called simply Freedom from Torture, has repeatedly pointed out the necessary delay before people who pass through traumatic experiences are willing to reveal what has happened to them. To do so, they need relationships of trust and confidence with those with whom they are dealing. So if, perchance, Clause 11 survives in some form or other, I hope that the principles of the noble Baroness's amendment will be somehow incorporated.

Baroness Hamwee (LD): My Lords, this will not be the last time we talk about the need for a trauma-informed approach. I think the expression "necessary delay", used by the noble Lord, Lord Hylton, is very useful and applies much better to this situation than "without delay", which is what we are faced with.

Even without the background and experiences referred to in this amendment, I cannot imagine undertaking the sort of journey that most people fleeing from the situations they are in will have undertaken. Any asylum seeker will be in a pretty awful state. Many will be anxious about authority figures. It is incumbent on us to ensure that they are not retraumatised. We should not require them to present a coherent explanation and make a claim so quickly.

The noble Lord, Lord Hylton, talked about the possible survival of Clause 11. I would add Clause 36 to that. I do not think this provision can be read without looking at Clause 36, which deals with Article 31 of the convention. Clause 36(2) says:

"A refugee is not to be taken to have presented themselves without delay"—

"presented themselves" is the phrase used in Clause 11—

"unless … they made a claim for asylum as soon as reasonably practicable after their arrival in the United Kingdom."

I do not think it is necessary to read the whole clause.

I hope the Minister can explain how, in practical terms, given the life experiences that we are suggesting, "present" and "make a claim" relate to one another. Does making a claim

"as soon as reasonably practicable"

mean presenting the substance of a claim? If I read these two clauses correctly, we now have "presenting oneself" and "making a claim". Failure, under Clause 11, to present not just oneself but one's claim takes one straight into the territory of late evidence and all the horrors of criminality and second-class status.

Baroness Ludford (LD): My Lords, I will speak very briefly. The remarks by the noble Baroness, Lady Neuberger, made me reflect. She was talking about how it takes a year, 18 months or two years for the people whom she has met in the course of her admirable-sounding charity, to be able to fully open up and explain themselves. This makes me think how similar this is to grief. For asylum seekers who have been forced to flee everything that is familiar to them—their home, country, family and links—and arrive in a strange place, this is a form of grief and bereavement.

I am not the only person in this Chamber who has suffered a relatively recent bereavement. I would not say that I have fully recovered after a year, 18 months, two years—even two and a half years. Indeed, I never will be. Given the disorientation and the inability to fully function, a year, 18 months or two years is not wide of the mark for how long you need to get your act together to handle an asylum claim.

10 pm

Lord Paddick (LD): My Lords, I thank the noble Baroness, Lady Lister of Burtersett, for putting my mind at rest. I initially hesitated to support Amendment 40 as it highlights particularly vulnerable asylum seekers, potentially giving the false impression that we do not believe that all asylum seekers are vulnerable, as my noble friend Lady Hamwee just said. Nor do we want to give the false impression that we on these Benches support in any way, shape or form what we believe to be the illegal practice of differentiating asylum seekers, as Clause 11 attempts to do, for any reason. This amendment only probes the requirement of Clause 11(2)(b) that asylum seekers must

"have presented themselves without delay to the authorities",

which might be an issue whether Clause 11 remains part of the Bill or not.

Amendment 40 lists examples of those who may have suffered particular trauma that may cause them to hesitate in claiming asylum. I can talk only about my personal experience as a gay man, trying to conceal my sexuality for fear of being found out for the first 40 years of my life, even in a country that decriminalised homosexual acts between consenting men aged 21 and over when I was nine. The point is this: just because it is legally safe to be gay in this country does not mean that it feels safe to be gay in this country. Even Dame Cressida Dick—the person of the moment—did not feel able to be publicly open about her sexuality until she became Commissioner of the Met, and it has never been illegal to express your sexuality as a lesbian in the UK. I can only imagine what it might be like, coming from a country where you can still be executed if you express your sexuality, to come here and then be expected to claim asylum "without delay" because of your sexuality. It is so clearly and obviously unreasonable.

As the noble Lord, Lord Cashman, said, it is also less likely that those fleeing persecution will be able to produce evidence of their sexuality, be open about it or overcome the fear of being open about it because of concerns about family members who remain in their home country. The noble Baroness, Lady Neuberger, spoke compellingly, from personal experience of helping particularly vulnerable refugees, of how long it takes asylum seekers to recover, as my noble friend has just highlighted. There is compelling evidence of the need for this amendment and we support it.

Lord Rosser (Lab): As my noble friend Lady Lister of Burtersett said in moving this amendment, Clause 11 provides that to be a group 1 refugee you must have presented yourself to the authorities "without delay". This amendment would provide that vulnerable groups are not subject to this time constraint. As one sees from reading the amendment, this would include, though

not exclusively, children, survivors of torture, sexual violence and gender-based violence, LGBT refugees, victims of modern slavery and disabled refugees. This is a probing amendment to find out more about how the "without delay" provision will work in practice. As has been said, traumatised people, for example survivors of sexual or gender-based violence, who are largely, but certainly not exclusively, women, do not always feel —to put it mildly—in a position to unburden themselves to the first complete stranger or border, immigration or other government official that they meet on arrival.

The position of single men and sexual orientation has also been raised. The noble Baroness, Lady Neuberger, referred to the article in the *Times* about single men who arrive from across the channel being detained and locked up. In a previous debate, I asked whether the Minister could say whether that *Times* article was true. I ask again: is that article true or false? It is important that we get an answer because it relates to this amendment as well.

As well as answering that question, I hope the Minister will give some indication of how the "without delay" provision will work in relation to the vulnerable groups covered by the amendment, what kind of leeway or otherwise the Government intend there to be and what exactly "without delay" means in this context.

The Minister of State, Home Office (Baroness Williams of Trafford) (Con): My Lords, I thank all noble Lords who have spoken in this debate for what have been very thoughtful contributions. I will directly address the question that the noble Lord asked me in the previous group about locking single males up. I have not seen the *Times* article. If he will allow me, I will look at it and respond in due course.

Although the policy is intended to deter dangerous journeys and encourage people to claim asylum in the first safe country, I assure noble Lords that we have been very careful to strike the right balance between how the policy achieves its aim and protecting the most vulnerable, which is what noble Lords have spoken about this evening. Before I explain why I think statutory exemptions are probably not needed, I will offer a few thoughts in relation to how the "without delay" element of Clause 11 is anticipated to operate.

There are two broad categories under which I envisage the exercise of discretion is most likely to be appropriate. The first is where a person finds themselves unable or unwilling to present themselves to the authorities for any reason that pertains to their proposed asylum claim. In such instances, there will need to be very careful consideration of whether it was reasonably practicable for that person to have claimed without delay. For example, if they had been tortured—noble Lords have given this sort of example—suffered sexual violence at the hands of state authorities or, indeed, feared admitting their sexual orientation due to state persecution on those grounds, this sort of situation would trigger very careful consideration.

The second category is where a person was simply not in control of their actions. In such circumstances, we would also be very careful to consider the facts of that case when determining whether it was reasonably practicable for that person to have claimed without delay. I think primarily of victims of human trafficking, unaccompanied children, and those suffering serious physical or mental disabilities.

The noble Baroness, Lady Lister, asked about statistics. I do not have them to hand, but I will try to get them.

On the guidance and training, one of the things that I looked into in great detail way back, when we talked about LGBT people in the detention estate, was how practitioners went about establishing claims made on the basis of a person's sexual orientation. It is fair to say that, back in the day, "clunking" would probably have been a charitable word to use—some of the ways people were questioned were on the verge of being inhumane. We really went to extraordinary lengths to try to change that and make it a much more humane process. It is now about establishing the reasons why someone is making a claim, not proving it, so our policies and training are now designed to support claimants in being able to explain their claim in a very sensitive and safe environment. Our approach, I can confirm, is trauma informed.

Our guidance on sexual orientation and gender identity, as I said previously, was developed to take these issues into account—UNHCR, Stonewall and Rainbow Migration contributed to its development—and we will review and update our training and guidance where necessary to support people who are LGBT+. I confirm again that this will take people's experiences into account, including the trauma that they have suffered. I thank those organisations, particularly Stonewall, Rainbow Migration and UNHCR, that have helped to make the process far more humane so that people's very difficult journeys and experiences are eased somewhat by our attitude and approach.

Baroness Lister of Burtersett (Lab): I thank noble Lords very much for their support for this amendment—their willingness to apply some lipstick to the pig that I think we would all like to be rid of. Some very powerful speeches made the case very strongly for why the groups which are listed may well have good reasons for delay. I take the point that any asylum seeker is, by definition, likely to be vulnerable, but we are talking here about those who have particular vulnerabilities.

I thank the Minister for giving more of a sense of what will happen. It is late and I need to read what she said, but I think that the powerful speeches from noble Lords and the Minister's response justified our taking this as a separate amendment. As I have said, it was not interrogated in the Commons; this has given us a chance to do that.

I thank the Minister for saying that she will look into the statistics—it was I, in fact, who raised it; I think Women for Refugee Women would value having whatever statistics are available. However, just last week, the British Red Cross produced research suggesting that, for all the better training and guidance, women asylum seekers are still treated very badly, with a lack of gender sensitivity and trauma sensitivity. I would encourage the Minister to read this research, think about it and see what more needs to be done.

Baroness Hamwee (LD): I apologise—I was not quick enough to my feet. I wanted to get in before the noble Baroness withdrew her amendment to ask the

[Baroness Hamwee]
Minister if she might be able, after today if not tonight, to answer my question about how Clauses 11 and 36 work together. That could inform our debate when we get to that later clause. Again, I apologise to the noble Baroness.

Baroness Lister of Burtersett (Lab): There is no need—I am glad that the noble Baroness said that. I had made a note to mention it and then, of course, completely forgot or could not read my handwriting, or both. Anyway, it is late, and I realise that people want to get on. I beg leave to withdraw the amendment.

Amendment 40 withdrawn.

Amendments 41 to 45 not moved.

10.15 pm

Amendment 46

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

46: Clause 11, page 14, line 13, leave out paragraph (c)

Member's explanatory statement

This probing amendment, along with another amendment to Clause 11, would amend the list of examples of ways in which refugees, or their family members, can be treated differently depending on whether they are in Group 1 or Group 2 by removing reference to the attachment of no recourse to public funds requirements so as to probe when this requirement would be attached.

Baroness Lister of Burtersett (Lab): My Lords, it is me again, I am afraid. I rise to move Amendment 46, and I am grateful to the noble Baronesses, Lady Jones of Moulsecoomb and Lady Stroud, my noble friend Lord Blunkett—who had to leave—and the British Red Cross and Praxis for their support.

Again, this is a probing amendment. Together with Amendment 54, it would delete reference to the "no recourse to public funds" condition from the listed ways in which group 1 and group 2 refugees and their families could be treated differently under Clause 11. In other words, it would remove one source of potential discrimination from the list of examples of the discriminatory treatment of group 2 refugees. It is a probing amendment because while I am totally opposed to Clause 11 standing part of the Bill, it is important that we have more information about how the "no recourse to public funds" condition will be applied.

In fact, questioning the application of the no recourse condition reinforces the case against Clause 11. UNHCR makes it clear that denying refugees recourse to public funds is a clear violation of Article 23 of the refugee convention, which states in unambiguous terms:

"The Contracting States shall accord to refugees lawfully staying in their territory the same treatment with respect to public relief and assistance as is accorded to their nationals."

Given that Ministers constantly claim that the Bill is compatible with our international obligations, does the Minister believe that UNHCR is wrong, and if so, on what grounds?

Similarly, the JCHR points to a violation of Article 24 of the convention, which specifically cites the right to social security. It argues that the differentiation policy, including specifically restrictions on recourse to public funds

"raises serious questions of compatibility with Article 14 ECHR—the prohibition on discrimination in the enjoyment of other Convention rights."

It concludes that the policy is

"arguably disproportionate to achieving the stated aims."

In fact, as the committee notes, the aim of dissuading asylum seekers from travelling to the UK other than by safe and legal routes ignores all the research, including that of the Home Office, which indicates that it is rare for asylum seekers to know what support is available.

To repeat something that my noble friend Lord Rosser said, UNHCR warns:

"The adverse consequences of a 'No Recourse to Public Funds' condition will fall not only the refugees themselves, but also on their families, including on any children who travel with them, are able to join them later, or are born in the UK. These consequences have been documented in numerous studies as well as in the context of litigation. They include difficulty accessing shelters for victims of domestic violence, denial of free school meals where these are linked to the parents' benefit entitlement"—

—although this is currently suspended, and a very long review is taking place; this policy has been under review for 15 months now—

"and de facto exclusion from the job market for single parents (largely women) who have limited access to government-subsidised childcare, as well as significant risks of food poverty, severe debt, sub-standard accommodation, and homelessness."

It also notes that public funds include payments specifically for children, such as child benefit, and for those in particularly vulnerable circumstances, such as carers and disabled people. It warns of the adverse consequences for integration and for local authorities which may have to pick up some of the tab for children and those with care needs.

Its conclusions chime with evidence from a range of organisations, including a recent Citizens Advice survey that documents the severe poverty and destitution caused by the rule, with children, women and people of colour disproportionately affected and with what it describes as a "devastating impact" on mental health. Likewise, the BMA has raised concerns that the rule's effects can compound physical or mental health conditions among those with particular vulnerabilities fleeing violence or trauma.

There are real fears now that the Bill will increase significantly the numbers affected by the "no recourse" rule. There is also a lack of clarity as to whom among group 2 refugees it will be applied, both in the short term and each time their status comes up for renewal. I hope that the Minister will provide some clarity and not fob us off with the response that details will be set out in the guidance and rules that follow, as was said in the Commons.

What was made clear in the Commons was that those already in receipt of Section 95 asylum support will not face restrictions on access to public funds. However, this is not made clear in the Bill itself. Can we be confident that most asylum seekers will have been in receipt of Section 95 asylum support? What about those refugees who face destitution but were not receiving Home Office support, such as those who choose not to enter the asylum support system and rely instead on informal networks of support because of accommodation being allocated on a no-choice basis? What about those who fall into destitution after being granted refugee status, which will be a greater risk as a result of this clause?

It is currently difficult to get the "no recourse" rule lifted on the grounds of destitution because the concession applies only to a minority of those affected and involves a difficult, complicated process. Citizens Advice warns that

"in our experience these limited exemptions for destitution give too little help too late",

with a decision typically taking more than four weeks, according to the Minister in the Commons. Can the Minister tell us who exactly among group 2 refugees will in practice not be subject to the "no recourse to public funds" rule? What is the Government's estimate of the proportion of group 2 refugees who will be subject to it? What will happen when their status is up for renewal? Will the destitution exception be open to any group 2 refugee or only to certain groups, as is the case now? Will access to the concession be made easier than it is currently?

In recent oral evidence on the "no recourse" rule to the Work and Pensions Committee, the Minister, Tom Pursglove, refused to answer questions about the Bill's implications, stating that policy work is ongoing. This elicited the response from the committee chair that, given that the Bill had already completed its passage through the Commons, surely we ought to know what its implications are—indeed. Surely by now the Home Office should be able to answer what are some pretty basic questions about how Clause 11(5)(c) and (6)(d) will work. It is crucial that we have this information should Clause 11 continue to stand part of the Bill, although I fervently hope that it will not, not only because it contravenes the refugee convention but also because it will spell hardship and insecurity for many group 2 refugees—who will be very much class 2 refugees. I beg to move.

Baroness Stroud (Con): My Lords, I want to take the opportunity afforded by Amendments 46 and 54 in the name of the noble Baroness, Lady Lister, to which I was pleased to add my name, to probe the Government's exact intention regarding the outworking of Clause 10 and the application of NRPF.

I have long been concerned about the NRPF policy, but I have profound concerns about its application to group 2 refugees. According to the Home Office's own guidance, the NRPF condition must not be applied in circumstances where a person is destitute or at risk of becoming so. Can the Minister confirm that this understanding is correct, or would group 2 refugees not be able to receive asylum support and be subject to NRPF? Can the Minister also clarify what would happen should such a person qualify for the destitution test?

There are a number of areas where I would encourage the Minister to consider the impact of applying NRPF to group 2 refugees. I know that Members of this House would be happy to work with her if that is helpful. First, on the impact on local authorities, if the NRPF condition is extended to refugees subject to the new temporary protection status, the increase in the number of individuals subject to NRPF would increase the pressure on already overstretched local authorities. Such increased pressure could lead to more families with NRPF being wrongly refused assistance by local authorities. This would have a devastating impact on the health and development of children in these families and would counter any efforts to develop integration. In addition, it would affect already vulnerable families who have the same characteristics as those who are permitted to access public funds. This is an area of concern to me: they have just arrived here via different routes, but there is no difference in their vulnerability.

Imposing an NRPF condition will cause refugees to live without access to welfare benefits and housing support. When we are considering NRPF, we often think of out-of-work benefits, but this also affects in-work benefits. You could have the extraordinary circumstance of two auxiliaries working in a hospital, one being able to claim in-work support, and the other not. He or she would not be able to survive in those circumstances, even if they were doing everything right. There is also evidence from those already subject to the NRPF condition that this restriction can cause destitution and lead children to experience homelessness, hunger and mental health conditions.

If, as seems to be the case, group 2 refugees would be subject to NRPF, this policy may not achieve its intent. I would value the Minister setting out the exact policy intent of NRPF, as I have found it hard to find what the intent of no recourse to public funds is.

My work as chair of the Social Metrics Commission, a cross-party commission which measures poverty in the UK, finds that no recourse to public funds is a significant cause in driving poverty, homelessness and destitution. NRPF has been shown to have significant mental health consequences, including for children. It makes finding stable work more difficult, accessing education harder, and securing stable housing a challenge. These are all things we want to see for this community of people.

It is important for us to really understand who we are talking about. We are not talking here about asylum seekers or economic migrants. We are talking about people the Government recognise as bona fide refugees—that has already been decided—who have fled conflict, war or famine and arrived in Britain hoping to find a place of refuge. By tabling this probing amendment, I want to ensure that, purely by virtue of the route by which refugees arrive here, they will not be subject to profound insecurity, at a time when we are committed to ending rough sleeping, levelling up the UK and defining the character of the nation we want to be.

As this is a probing amendment, I ask the Minister to clarify whether group 2 refugees would or would not be able to receive asylum support. Would they be subject to NRPF, even when qualifying for a destitution test? If so, what is the exact policy intent of NRPF for this group of people? How would group 2 refugees have been provided for during Covid, when they would not have had access to furlough or universal credit? Finally, in what way is the Government's commitment to ending rough sleeping, and NRPF for group 2, compatible?

10.30 pm

Lord Bethell (Con): My Lords, I also support Amendment 46 and the amendment in the names of my noble friend Lady Stroud and the noble Baronesses, Lady Lister, Lady Prashar and Lady Ludford. I support the call for asylum seekers who have waited six months for an official decision to be allowed the right to work.

[Lord Bethell]
We have heard some really persuasive arguments for that, and there are a large number of them, in terms of both principle and the law. I will make the argument in terms of pragmatism.

This policy would strengthen integration by allowing asylum seekers to participate in society rather than leaving their lives in limbo. That means that people who come to this country can be treated fairly and be integrated on reasonable terms, sparing themselves a large amount of disruption, which would eventually lead to some kind of social impact. Currently, without the right to work and receiving less than £6 per day to live on, many people in the asylum system will lose hope—

Lord Sharpe of Epsom (Con): I think that my noble friend might be speaking to the next group of amendments.

Baroness Bennett of Manor Castle (GP): My Lords, I rise to speak on behalf of my noble friend Lady Jones of Moulsecoomb, who signed both Amendments 46 and 54, in the names of the noble Baroness, Lady Lister, and others, about no recourse to public funds. The question has been clearly set out by the noble Baronesses, Lady Lister, and the noble Baroness, Lady Stroud, added a great deal to this debate, which has been very rich thus far.

I must admit to a certain sense of déjà vu, in that we have had much the same cast as in debates on the Domestic Abuse Act, discussing much the same issues around the absolute horror of no recourse to public funds. We are talking about a particular group of people in that situation now, but I state loudly and clearly: no one who is here as part of UK society should have no recourse to public funds. That is inhumane, unjust and damaging to our society for some of the reasons that the noble Baroness, Lady Stroud, just set out.

It is interesting that it is almost two years since Boris Johnson claimed not to know that this status existed—that he did not know that there was such a thing as no recourse to public funds. At that time, he promised to review the policy, but I understand that there has been no overall review of no recourse to public funds, although I would be very pleased if the Minister could tell me that I am wrong about that.

But I want to add one point, which goes back to the group that we discussed before the dinner break. The Minister tried to clearly draw a line between differentiation and discrimination. I think that no recourse to public funds is very clear cut and obvious: you either have access to money, as the noble Baroness, Lady Stroud, said, if you are in work and need extra support to survive and feed yourself, or you do not. How can it be anything but discrimination if you do not have access to that money, despite being in exactly the same situation as the person beside you, doing the same job?

Lord Hunt of Wirral (Con): My Lords, I will respond to my noble friend Lady Stroud's request to know the policy intent. Declaring my interests as set out in the register, as noble Lords may know, I have a lot of interest in what happens in our neighbouring country of France. I have been following the debates there reasonably closely over the last few weeks. In recent months, we have received more than our fair share of criticism from our French friends, who say that our asylum system is so much easier to navigate because there are so many pull factors—I recall my noble friend talking about these in her speech at Second Reading. This means that, in effect, we are a more attractive country to apply for asylum in than France, and this generates a huge amount of criticism.

My question to my noble friend the Minister is: when you look at no recourse to public funds, is that not one of the pull factors that is causing so much of this problem? I think that Clause 11 is designed to reduce those very pull factors that the French suggest are in fact causing the problem, so those of us who are for open borders should try to work this out. I always have been for open borders; I rejoice that we probably have one of the finest global multiracial societies in the world. Sadly, we do not appear to be proud of it. As the noble Lord, Lord Alton, knows, I was brought up in Toxteth and went to school in Penny Lane. I love Toxteth and I am so proud of the community there, which he will know very well, because it is a viable, strong, multiracial society.

Lord Alton of Liverpool (CB): My Lords, I think the noble Lord is giving way to me, and I am grateful to him. He is right: I know those communities well; I represented them, as he knows, for very many years. The question I put to the noble Lord—because I am surprised at the case that he, of all people, is putting forward—is: will he remind the House precisely how much someone has in their hand when they have recourse to public funds? What is it that they are supposed to survive upon? How much money do they actually have? If it is such an attractive pull factor, as he has described, surely we should be reminded how much money someone is expected to live on.

Lord Hunt of Wirral (Con): It is the principle that I am seeking to deal with. The noble Lord is quite right to ask the question, and perhaps my noble friend the Minister can do some comparisons, but there is no doubt that our colleagues in France feel that one of the key perceived pull factors causing people to get involved in these very dangerous crossings is this subject of no recourse to public funds. That is the only question I am raising. We are being heavily criticised by our French colleagues for allowing ourselves to encourage pull factors to grow and escalate, and that is causing the problem to be much more serious than it was.

Baroness Ludford (LD): My recollection of the French criticism is that they were criticising the ability of asylum seekers to work in the black economy—not the ability to be idle and live off the taxpayer. I imagine that any welfare possibilities in the UK would be less than in France. What they are criticising is the relative unregulated state of our employment market. Some of that criticism is valid; some is not, but we are all sometimes worried by illegal employment. That is what the French were talking about.

Lord Hunt of Wirral (Con): When I look into the detail of the criticism, it is much wider than the noble Baroness is suggesting. Part of it must be NRPF—I am not saying it is the whole problem—and I just wish that we would address—

Baroness Chakrabarti (Lab): My Lords—

Lord Hunt of Wirral (Con): I will just finish dealing with the point raised by the noble Baroness. We must ourselves try to identify what these pull factors are that cause people to risk their lives in the way that they do. It may well be that both the noble Baroness and I are right to identify certain parts of the pull factors, but of course we have to recognise that there are those pull factors.

Baroness Chakrabarti (Lab): Given that the Government's position is that they are right about the refugee convention; given that they disagree with the UNHCR but have their own interpretation under which they are honouring the refugee convention; and given that the Government's position is that it is about parliamentary sovereignty and not the sovereignty of people elsewhere, why should we be forming our interpretation of the refugee convention on the basis of French criticism? If we are worried about pull factors, perhaps we should reinstall "Go Home" vans and a hostile environment for people seeking asylum.

Baroness Stroud (Con): My noble friend said that it would be good to identify what some of these pull factors actually are. At Second Reading, I sought to try to outline what I believed the pull factors were, and they are not things that we would want to destroy or diminish at all. My understanding of the pull factors—why people want to come to this country—is that they include our language, our culture, the rule of law, democracy, historic ties through the Commonwealth, family connections and liberty. These are the sorts of reasons why people want to come here. The small, pitiful amount of money that somebody gets to survive on is not something, when they are leaving Eritrea and thinking of the hellish journey that they are going to take, that is going to make them want to come here. It is much more likely that they experience push factors, which are war, famine and devastating impacts on their lives. We really need to understand the lives that are lived by these men and women who risk all to come here. We know that every system has elements that get exploited, but we have to make laws for the majority of people and the majority of cases, and to be the sort of nation that we actually want to be.

Lord Hunt of Wirral (Con): Well, I agree with every word that my noble friend has just said. What I am seeking to persuade colleagues to focus on is that surely the objective—the policy intent to which she referred—is to focus our efforts on helping people via safe and legal routes. If we can deter people from coming here in small boats and by other illegal means, we can instead focus our efforts on those people who are genuinely in need. Okay, if we are not prepared to countenance NRPF, what is our answer to reducing deterrent factors—or do noble Lords simply think that this is not an issue? If that is the case, what do we say to the French, who really do strongly believe that it is a problem?

Baroness Bennett of Manor Castle (GP): The noble Lord talked about focusing on people genuinely in need and compared them with people coming by irregular routes, such as across the channel. Does the noble Lord acknowledge that more than 70% of people coming across the channel have been granted refugee status, therefore they clearly are in genuine need?

Lord Hunt of Wirral (Con): I am not disagreeing with the noble Baroness; I am just trying to get us to focus on what the Government are now putting forward as a policy intent, which is to reduce pull factors, push factors or whatever we call them. Surely, our whole objective in all this must be to help those who are really in need and to encourage them to come by safe and legal routes. That is surely what Clause 11 is all about.

Baroness Stroud (Con): I absolutely agree with my noble friend that the objective should be to encourage people to come by legal and safe routes. However, I think that what we have at the moment is a situation whereby people are coming across in small boats because there is no other way for them to come. We have to accept the fact that the small amount of money is not the pull factor that is bringing them across. We should really consider whether we would put ourselves at risk for that small amount of money coming across the channel.

What other ways are there of doing this? My noble friend the Minister gave this House a good challenge at Second Reading when she said that all she was hearing were problems and asked: where are the solutions? At that time, one of the solutions I put on the table was a negotiated settlement with the French post the French election. Most of us would agree that, prior to the French election, we are unlikely to get a negotiated settlement, but are we really saying that, post the French election, there might not be a possible breakthrough? The diplomatic route is one that I would still be seeking to use. We as a House must be putting creative solutions on the table.

10.45 pm

Lord Hodgson of Astley Abbotts (Con): My noble friend Lord Hunt made a valuable distinction but, with respect, he did not take it through to the logical conclusion, which is that this is only an interim measure. What is attractive is our very flexible labour market. Once you are through the system, you can easily get a job—much more so than in France and continental European countries where the labour market is much more rigid. The issue that my noble friend picks up is an interim issue that will make the ultimate objective of entering the labour market flexibly once you are through the system much easier; he is therefore right that the House is unfair to say that it is not a factor. It is a factor, but one in conjunction with the other issues, particularly the flexible labour market.

The Lord Bishop of Durham: If it is so much more generous here, why, in 2020, did the French have roughly 150,000 asylum claims while we had 30,000?

Lord Hunt of Wirral (Con): As with all questions affecting our colleagues in France, it is very difficult to answer that.

Baroness Lister of Burtersett (Lab): My Lords, what evidence are the French basing this view on? The academic evidence that I am aware of, and certainly the evidence that the JCHR draws attention to, does

[Baroness Lister of Burtersett]
not support the view that public funds, or welfare more widely, somehow acts as a pull factor. The pull factors were set out by the noble Baroness, Lady Stroud —family commitments, language and so on—and the evidence shows that the push factors are much more important. I would be very interested to know what evidence the French base this on because it may well be just reading our newspapers, which is probably not very good evidence.

Lord Hunt of Wirral (Con): Would the noble Baroness, Lady Lister, please ask the French?

Lord Paddick (LD): My Lords, after the emotionally draining Police, Crime, Sentencing and Courts Bill, I told myself not to get so involved with this one, but how can noble Lords not get so involved when we are dealing with measures such as this? I cannot believe that it is not also taking a toll on the Minister, who, at all times and in every circumstance, tries everything she can personally to meet and persuade noble Lords. I wanted to put that on the record in case there was any misunderstanding of my remarks on the other Bill.

Again, we reiterate that we believe that the sole determinant of how an asylum seeker should be treated by the UK are the circumstances that forced them to seek sanctuary in the United Kingdom. If they genuinely have fled war or persecution, they should be treated as refugees, with all the rights associated with that status, regardless of how they arrived in the UK. These amendments seek to clarify in what circumstances a second-class refugee, as defined by Clause 11, would have no recourse to public funds, and what would happen to those individuals in such circumstances, as the noble Baroness, Lady Lister of Burtersett, explained. The noble Baroness, Lady Stroud, articulated the consequences of having no recourse to public funds. In short, do the Government intend to make group 2 refugees—a dreadful and, we believe, illegal term—destitute and homeless, or just for them to suffer grinding poverty?

I assume these measures are supposed to be a deterrent, but I ask noble Lords to put themselves in the position of a genuine asylum seeker in a migrant camp in northern France, considering what their next move should be. Would they feel that they would be better off destitute and homeless in France, or destitute and homeless in the United Kingdom, where they speak the same language, for example, or have friends or relatives? Would they believe, despite the Government's best efforts, that they would still be better off in the United Kingdom than in France, for the reasons that the noble Baroness, Lady Stroud, listed so clearly?

Can the Minister answer this question? Are the Government really on a race to the bottom with other countries, such as France, to see who can make life more intolerable for genuine asylum seekers? The noble Lord, Lord Hunt of Wirral, raised the issue of France. I agree with my noble friend Lady Ludford: my understanding was that the French were complaining that it was easier to work illegally in the UK than in France, which was why people were coming to the UK. My understanding is also that the benefits given to refugees in France are higher than in the UK, but I stand to be corrected. Having asked the Minister that question, with some trepidation I await the Government's response.

Lord Rosser (Lab): My Lords, one of the ways that the Government can differentiate under the Bill between group 1 and group 2 refugees is to apply "no recourse to public funds". The two probing amendments in this group would remove that provision. I listened with interest to what the noble Baroness, Lady Stroud, had to say, as I did to my noble friend Lady Lister of Burtersett in moving the amendment. The noble Baroness, Lady Stroud, asked what the policy intent of NRPF is—I think she asked that twice during her contribution. Having heard the view of the noble Lord, Lord Hunt of Wirral, I will be interested to hear what the Government's view is of the policy intent behind no recourse to public funds being applied to group 2 refugees.

We fully agree with these amendments, which are probing. A question was put to the Minister, and I simply want to support that ask of the Minister to set out in detail when the Government would consider this an appropriate differentiation to use, and in what cases. To whom within group 2 refugees do the Government expect this differentiation on no recourse to public funds to be applied, and in what circumstances? Against what criteria will that decision be made?

We are not talking about applying no recourse to public funds to persons without a valid refugee claim or economic migrants. Clause 11 applies solely to people the Government recognise as refugees with a valid right to be here and to seek safety. Bearing that in mind, it would be interesting to find out in what circumstances they think it appropriate to apply no recourse to public funds to people in the group 2 category.

Baroness Williams of Trafford (Con): My Lords, I thank noble Lords for explaining their Amendments 46 and 54. As I have said elsewhere, I hope I can reassure the Committee that the powers under Clause 11 are both broad and flexible.

To come first to the question of the noble Lord, Lord Rosser, there is no obligation to exercise the provisions and, where they are exercised, there is no requirement to do so in any particular way. We will of course produce guidance and rules in this respect in due course, but those products will reflect the flexibility in the clause by providing appropriate discretion to take into account people's individual circumstances.

The same therefore applies to no recourse to public funds. Details will be set out in due course, but I reassure noble Lords that we will take particular care to take into account relevant factors when considering the imposition of the condition, if it is imposed at all, including the impact on families, children and other vulnerabilities that have been raised elsewhere. In addition, we are mindful of potential impacts on local authorities and wider civil society. The policies in the Bill are of course subject to an impact assessment in any event. I stress that no one will be NRPF if they would otherwise be at risk of destitution. If they are, they can apply for a change of conditions to remove the condition.

I shall pick up on a few points. The first was about the policy intent, which is to disincentivise dangerous journeys. My noble friend Lord Hunt of Wirral is right: we have to disincentivise people from risking their lives.

My noble friend Lady Stroud talked about safe and legal routes. She was probably not in the Chamber when I laid out absolutely all of them. I refer her to the letter I sent to the noble Lord, Lord Dubs, setting all of them out, including several routes for family reunion; I hope she will take a look at that. I commend her on coming up with the solution, yet again, of working with the French. I agree that we need to work not only with the French but with other countries because this is a global problem that now requires a global solution from each and every state on the globe.

I turn to push factors versus pull factors. Push factors do not explain secondary movement, there is no doubt about that. If push factors were all, people would stop in the first safe country that they reached—that is an absolute fact. We must keep all options on the table to stop illegal migration. I hope, but doubt, that I have reassured the noble Baroness that I appreciate and understand her concerns, and the requisite levels of discretion and sensitivity will be exercised with respect to—

Baroness Stroud (Con): I thank my noble friend for giving way. I would like to clarify one point. I think she is saying that the removal or application of, or access to, public funds is discretionary. If that is the case, who has the discretion to apply or withdraw them? It is unusual for the welfare state to be quite so discretionary and, in effect, subject to subjective judgment. It would help to have clarity as to who can say this person will have access to public funds and that person will not.

Baroness Ludford (LD): Before the Minister answers—I am sorry to prolong the debate; I was going to leave this point until group 8 on the right to work—she talked about pull factors being an absolute fact, but the Migration Advisory Committee said in its annual report in December:

> "To the extent that the Home Office has robust evidence to support a link between the employment ban and a pull factor, they should of course make this evidence publicly available for scrutiny and review. That is how good policy is made."

Baroness Williams of Trafford (Con): I thank the noble Baroness, but I disagree.

To answer my noble friend's intervention about who decides, it is caseworkers.

Lord Rosser (Lab): I may have misunderstood the thrust of what the Minister has said on behalf of the Government, but it came over to me that the reason why we have no recourse to public funds is to disincentivise dangerous journeys—that is, people will know that there is no recourse to public funds, and if they know that it may make stop them making those journeys.

If that is the case, why cannot the Government tell us the circumstances in which no recourse to public funds will apply? Their response has been, in effect: "Someone will draw up guidelines later on, but we do not know at the moment what they will say or the circumstances in which there would be no recourse to public funds." In that situation, it just is not credible to say that something where the Government do not know how it will be applied would act as a disincentive on dangerous journeys.

Lord Hunt of Wirral (Con): It removes the guarantee.

11 pm

Baroness Williams of Trafford (Con): Yes, my noble friend is absolutely right. It is not unusual for guidelines to be drawn up after legislation has been brought in.

Lord Rosser (Lab): It is true that it is not unusual for guidelines to be drawn up subsequently but, presumably, in including the provision in the Bill, the Government had at least some idea of the circumstances in which it would be applied. The answer I am getting now is that they cannot tell us any circumstances in which it will definitely apply.

Baroness Williams of Trafford: It might be helpful to the noble Lord if I outlined situations in which it might be applied, as opposed to putting them in the Bill. I am very happy to go away and look at that and write to him with some examples of where it might be applied—I get his point on that.

Baroness Lister of Burtersett (Lab): I thank all noble Lords who have spoken. There have been some very powerful arguments for the amendment. I am particularly grateful to the noble Baroness, Lady Stroud: she put it better than anyone else could, drawing on her knowledge of these issues. I thank the Minister but I must say that I am disappointed. The whole point of the amendment was to try to get a bit of clarity—my noble friend Lord Rosser has been trying, without success—but, to be honest, I am none the wiser now than I was at the beginning as to who will and will not be subject to the "no recourse to public funds" rule.

The noble Baroness, Lady Stroud, made the point that discretion involves subjective judgment. I have been involved in social security for a long time. There was a reason why we reduced the element of discretion in it: because subjective judgment may be used in ways that we do not feel very happy with. It can be negative as well as positive. All that we know about the culture of disbelief in the Home Office, the refugee system and so on does not fill me with great hope.

I am glad that the Minister said that she will write to my noble friend; I hope that she will copy it to everyone who has taken part in this debate. I hope that she will look at *Hansard* and the questions I asked to see whether she can answer some of them. If she cannot, it suggests that, as my noble friend said, this has been put in the Bill without a clue as to what it will actually be used for—and that is not good.

Lord Paddick (LD): I am sorry to intervene, but will the Minister include in the letter to noble Lords how this measure, which will be broad and flexible—I think that is what she said—and at the discretion of the Home Office, will amount to a deterrent?

Baroness Lister of Burtersett (Lab): That is a very good question, but it has taken away my train of thought. What I wanted to say was that this really is not good lawmaking. The noble Baroness, Lady Ludford, quoted the Migration Advisory Committee, which I was planning to quote as well in relation to the right to work, and pointed out that it is not good policy-making not to provide evidence. The Minister said she disagreed, but I hope she did not disagree with the fact that one should provide evidence for policy, which is what I challenged the noble Lord, Lord Hunt, about. I would be very interested to see this evidence the French are using. I do not think it exists.

Anyway, it is late. I am disappointed, because I am none the wiser as to how this potentially very dangerous power, which could cause immense hardship if we are not careful, is going to be used. But I hope that the Minister's letter will show some clarity about how the Government are thinking about how they plan to use this power. With that, I beg leave to withdraw the amendment.

Amendment 46 withdrawn.

Amendments 47 to 55 not moved.

Clause 11 agreed.

House resumed.

Advanced Research and Invention Agency Bill

Returned from the Commons

The Bill was returned from the Commons with a reason.

Dormant Assets Bill [HL]

Returned from the Commons

The Bill was returned from the Commons agreed to with amendments.

House adjourned at 11.06 pm.

Grand Committee

Tuesday 1 February 2022

3.45 pm

Arrangement of Business

Announcement

3.45 pm

The Deputy Chairman of Committees (Lord Geddes) (Con): My Lords, it is now 3.45 pm. The Grand Committee is in session. I remind Members that they are encouraged to leave some distance between themselves and others—quite difficult in this Room—and to wear a face covering while 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. I think the likelihood of that is just about zero.

CPTPP (International Agreements Committee Report)

Motion to Take Note

3.45 pm

Moved by ***Baroness Hayter of Kentish Town***

That the Grand Committee takes note of the Report from the International Agreements Committee *UK accession to the Comprehensive and Progressive Agreement for Trans-Pacific Partnership (CPTPP): Scrutiny of the Government's Negotiating Objectives* (10th Report, HL Paper 94).

Baroness Hayter of Kentish Town (Lab): My Lords, I am delighted to open this debate, which covers the UK's application to join the Comprehensive and Progressive Agreement for Trans-Pacific Partnership. It is a trade agreement between 11 countries, stretching from Vietnam to Peru. It includes countries such as Japan, with which we already have bilateral deals, and others with which we are currently negotiating such deals.

The International Agreements Committee report before us was the first parliamentary report on negotiating objectives for a post-Brexit agreement. It, and indeed this debate, reflects our commitment to ensuring that Parliament has the opportunity to inform the negotiations. The debate takes place in the light of the Government's application and their objectives, our report, which was based on hearing from 16 witnesses and 43 written submissions, and the Government's somewhat disappointing response to it. International Agreements Committee staff and members worked hard to scrutinise the Government's objectives, and we will hear shortly from five of our members, including the noble Lord, Lord Udny-Lister, the most recent recruit to our committee.

There are three key points that I would like to make in opening. First, those we heard from were broadly supportive of accession, many keenly so. Secondly, where there are worries, these arise largely from this being a pre-cooked agreement to which we will simply have to accede and may not be able to amend so as to answer some very real questions posed by a number of sectors.

We would be the first joiner after the founding 11, so it is unclear whether those 11 will allow some carve-outs from existing obligations, whether by side letters or waivers. Such exemptions will be vital for some of our sectors, so it is important to know whether the Government will prioritise these, whether they would have the force of a treaty, and whether they would therefore be subject to scrutiny under CRaG. The extent to which the agreement can be changed, at the very least by carve-outs to reflect UK interests, will be key, such as in the case of the European Patent Convention, whose requirements CPTPP rules directly conflict with. Accepting existing CPTPP rules on this could jeopardise the UK's continued membership of the European Patent Office.

There are similar questions over drugs for the NHS, and whether the car industry would be able to take advantage of rules of origin prioritising supply chains in the Pacific region. I therefore hope that the Minister will set out the Government's assessment of whether the UK will be able to negotiate such reservations and side letters, and whether the Government are actively pursuing such options.

Thirdly, some advise that the potential economic gains from accession are very minor. My own arithmetic reckoned that it would be about £2 per head in Wales over seven years. The Government themselves estimate a mere 0.08% increase in GDP over 15 years, and even that is dependent on new trade with Malaysia, which has yet to ratify the agreement.

Whatever the arguments about the potential economic gains from accession, any such benefits will be realised only with considerable help from government to assist businesses to take full advantage of the new trade freedoms. Yet we hear from the UK Fashion and Textile Association that it has not seen much export development going on. The NFU suggested that

"the government should put more energy and resource into export promotion and marketing".

Our report welcomed the announcement of a new food and drinks export council to support farmers, and food and drinks businesses, to maximise export potential. However, we have yet to hear anything about its establishment. Could the Minister outline the progress in setting this up and indicate, perhaps, when it will be operational? Could he also indicate what export support will be available to businesses beyond the agri-food and drinks sectors?

We also know that there are continuing concerns from the devolved nations, including about the lack of any granular impact assessment; the promised one is due after the final treaty is signed, so clearly too late to influence anything. The devolved Governments are worried partly about the cumulative impact of the New Zealand deal, the Australia deal and now the CPTPP deal on their economies, and partly about the continued insufficient involvement of their Governments, who probably reacted rather badly to the Government's assertion in their response to our report that as

"Negotiation of goods market access is a reserved matter … DIT protocol restricts information sharing around the compilation of these sections of the mandate and progress".

[Baroness Hayter of Kentish Town]
That really is not involving the whole of the UK in the negotiations, so a little more assurance would be welcome that when the UK Government negotiate for the whole of the UK, they really do involve the other Governments in a meaningful and trusted way.

As our report makes clear, there are a number of other questions, some of which my fellow committee members will cover, that need to be resolved before accession is decided on ISDS, rules of origin, climate and environmental protection, food and animal welfare standards, and intellectual property. I leave those to others.

I shall finish on one important question as to Parliament's role in scrutinising our accession to CPTPP. The Government have said in their response that there will be "ample time" for us to scrutinise the final text, which they hope will be at least three months before the text is formally laid under the CRaG requirements. Could the Minister confirm that this will include market access schedules and any side letters?

The Minister, we know, is well aware of our committee's demands, on behalf of Parliament, for adequate information of proposed deals, along the lines that he promised during the Trade Bill, which also covered relevant MoUs and amendments to treaties. I know that he is very open to facilitating the work of our committee, and therefore to Parliament's input, so he will perhaps share our disappointment that our comments on this in our working practices document and now on the proposed deal were not properly answered.

On this deal, for example, we asked the Government to set out the implications of the agreement for existing agri-food supply chains that are integrated with EU member states and which could, over time, experience disruption as standards diverge. That has nothing to do with the Government's negotiating position or any need for secrecy, yet that is what is being used as an excuse for not providing further information. Indeed, I always worry when Ministers reach for the royal-prerogative excuse, as they do in their response, as this simply means, "Leave it to us to decide".

Similarly, we asked how the Government plan to address the contradictions between the UK's precautionary approach and the CPTPP's science-based approach to food standards. Again, it was nothing to do with their negotiating position or with secrecy, yet the response from the Government only mentioned the option of

"provisionally adopting SPS measures where relevant scientific evidence is insufficient",

but gave no further detail.

We also asked for the Government's plans for ensuring that CPTPP membership does not incentivise greenhouse gas-intensive agricultural practices in other CPTPP countries. That point was not addressed at all in the Government's response.

The whole point of our committee is to raise questions with, and to get answers from, the Government so that we are able to report accurately and meaningfully to Parliament on proposed treaties. It is my belief, and I think that of the whole committee, that we will get better outcomes from the countries if there is a more constructive dialogue. We hope that on this first occasion it will lead to much better dialogue in the future. I beg to move.

3.55 pm

Lord Lansley (Con): My Lords, I am very pleased to follow the chair of our committee, the noble Baroness, Lady Hayter, and thank her for so ably presenting the issues that are raised by our report. As the International Agreements Committee, we have taken on new responsibilities. This is a first example of where we have reported on negotiating objectives and the House has an opportunity to debate them. This forms part of a process by which, in due course, when the Government, one hopes, successfully negotiate an agreement and presents it under CRaG, we will be able to look back and say that we were very clear about the nature of what was being sought by way of this agreement and to measure the extent to which the Government have been able to achieve their objectives.

That is an essential part of our scrutiny processes. In my personal view, we are not at this stage debating whether accession to the CPTPP is a good thing or a bad thing; our starting point was simply that it was the Government's policy, and it was essentially a good thing. The issue at this stage is whether we can be clear about what the Government are seeking to achieve. The noble Baroness, Lady Hayter, quite rightly raised a number of the issues on which we want clarity. I shall raise a couple more, and I know that colleagues from the committee will have others.

I want to say a word about the big picture. I should register an interest, as recorded in the register, that I am the UK chair of the UK-Japan 21st Century Group. The big picture seems extremely positive. Not only is the CPTPP one of the leading plurilateral trade agreements, but it is an immensely ambitious proposal on the part of government to accede to it. There was a degree of misplaced comment about why we were trying to join a Pacific agreement. The point is that that is where trade happens; it is where our prospects for growth in trade perhaps lie; it is where, when one looks at the shape of international trade growth and economic activity in the decades ahead, we need to be. Given that on current evidence we shall not have another multilateral round in the WTO, the ability of countries such as us to enter into a major regional agreement and increase the scope of it geographically and otherwise is a central way in which we can promote free trade generally across the globe and encourage others to do the same—perhaps even encourage America to do the same at some point.

Our chair raised the question of the impact assessment. I am somewhat sceptical about the value at this stage of such impact assessments. They rest essentially on the assumptions underlying them. An agreement of this kind, with the scale of growth in digital economies and in the provision of digital services and digital trade that it provides for, enables the UK to escape from the otherwise simple fact that we are very long way away from these markets and trade tends to diminish with distance. That may not necessarily be true to the same extent and in the same way for digital trade in the future, and it certainly is not the same in respect of services trade. We are an economy increasingly built on services and digital trade, so, for us, the CPTPP seems to create really serious opportunities.

As a remainer in the Brexit context, I obviously take the view that we should never think of the CPTPP as being, in some sense, a counterpart to reduced trade with the European Union. I want us to have both, and I am sure that we can and should aim to.

We should never underestimate the leverage that the United Kingdom is able to bring to the negotiations ahead. We are major importers. Maybe we would like it a different way, but we are net importers of goods, particularly agricultural goods. The European Union has benefited from that overwhelmingly in the past; many other countries might examine it and have ambitions on that agricultural trade. That is leverage in the negotiations. As we will debate at a different stage in relation to Australia, we should not let the opportunity for others to sell more agricultural goods to the United Kingdom pass without taking our opportunity to ensure that we can sell services and some of our leading manufacturing activities to them, and to have digital trade with them.

I have two points on our report and the Government's response where more clarity is required. First, the Government have expressed their objective on medicines as being that their cost should not be "on the table". The trouble is that their cost is on the table; the question is how the Government will manage to take it off. We heard from the British Generic Manufacturers Association that Article 18.53 of the treaty has a process requiring mandatory notification to the patent holder of a marketing authorisation application being submitted for a generic or biosimilar medicine. This would give scope and time for a legal challenge on the use of that intellectual property. That can delay the introduction of a generic or biosimilar medicine; we do not need to speculate about that, because you can see it happening in America and some other jurisdictions. That is important to the National Health Service. We are probably the most successful major health system in substituting generics for branded medicines at an early stage. The reduction in price at the point at which they come off patent is generally something of the order of 80%, so potentially it is of immense importance that this process works smoothly. We do not want delay. We share the concern of the generic manufacturers, as the Scottish Government clearly did, too.

The Government's response is essentially to say, "Don't worry. We'll negotiate our way out of this", and the implication is that there will be a set of comprehensive side letters. We are reaching the point where the Government should be very clear that this is what we should look for by way of the subsequent negotiation. Frankly, this is one of the areas where our negotiating partners in the CPTPP should not be surprised. They should expect and accept it, and our negotiators would find it easier if we were very clear that this was an absolute requirement.

The second issue is about the investor-state dispute settlement. We essentially asked the Government to tell us their negotiating objective, as it is not in their strategic approach. The implication of their response was simply, "Trust us; whatever we sign up to will, by definition, be in Britain's best interests and therefore it will be okay". But we do not know what it is. As a committee, we did not take a view on what the negotiating objective should be. Strictly from a personal view I know from my conversations with colleagues in Japan, who are much governed by the decades of investment activity in this country, that they want investor-state dispute settlement to be incorporated into the agreement. In fact, they may even require it for the agreement to go ahead.

We have been major investors around the globe for generations. We still have major investments, including in a number of CPTPP countries. I am not clear what we are frightened of. We have a right to regulate; there are already very clear provisions in the treaty about the ability to regulate our environmental, health, social and labour laws. As long as those are clear in the treaty, we should go down the path of a dispute settlement process like those being devised under UNCITRAL.

Those are the two issues on which the Government ought to give us greater clarity. Difficult though the ISDS debate is, this is the moment—and the agreement—where the Government need to get off the fence and start telling people what our approach in free trade agreements is to investor-state dispute resolution.

Finally, colleagues in the committee sought clarity in our report from the Government about China and Taiwan. Others may say more about that. Personally—I may need to apologise to members of the committee—I think it would probably not be in the Government's or British interests for us to say much about China and Taiwan. I think our best interest is to accede to the CPTPP and be on the inside making decisions about this—hoping to do so before the other CPTPP members have made any progress whatever in considering the potential for China or Taiwan to accede. I would rather we were in there talking to the others than outside pontificating about it before we have entered, potentially making difficulties before we have joined the agreement.

This is the first debate of this kind. I hope it will be an opportunity. I encourage my noble friend the Minister to use it not only to restate the Government's response to our report but perhaps to clarify some of these issues, which we will have to look at in a more challenging way when we see the agreement. I hope that we can say then that the Government have secured their negotiating objectives and that we can commend them under the CRaG process.

4.07 pm

Lord Oates (LD): My Lords, I am pleased to follow the noble Lord, Lord Lansley. I very much welcome the introduction of the noble Baroness, Lady Hayter; I am particularly pleased about the emphasis on how our committee can work and properly help to inform the House. It is really important that the Government give us some clarity on that and do not simply reserve it such that they decide what and when they will tell us whenever they feel like it.

I very much agree with the noble Lord, Lord Lansley, that the negotiating objectives are one of the most crucial points in our work in the committee, and for the House as well. By the time an agreement is signed, it is too late. This is the moment where we get to put our views. I hope the Minister will not only listen and respond but take on board some, if not all, of the points—if not mine, perhaps at least those of the noble Lord, Lord Lansley.

[Lord Oates]

I will focus on the climate aspects, but the issue about medicines is critical; it goes back to the role of Parliament in the process. I would much prefer that Parliament, particularly the House of Commons, had to agree the negotiating objectives, because it would be very clear to our negotiating partners what they were. In the absence of that, on an issue as critical as this it is essential that the Government speak clearly and categorically, so that there is no doubt in the minds of our negotiating partners.

As I said, I want to speak principally on the climate-related aspects of the negotiating objectives set out in *The UK's Strategic Approach*. I am afraid that the document seems to lack any positive ambition to combat climate change and to protect nature. There are just nine references to climate change in the whole document. Two of those simply state that, as a significant collection of nations, CPTPP has a potentially important role in tackling climate; I am sure that is true. In another reference the Government say that

"the UK will work with partners to support our mutual objectives to tackle climate change"—

I hope that was not in doubt. Another reference says that

"the UK will advocate for clean growth and cooperation in the global fight against climate change".

Again, there are no details of how and there is no specific reference to the CPTPP. The fifth and sixth references, on page 60, simply state the generalised overall commitment of the Government to their climate change commitments and the statement that

"Climate change is a threat that requires an urgent global response".

The urgent response is definitely not found in these negotiating objectives. The final references simply refer to the impacts of climate in this regard.

Nowhere—not once in the whole of this 67-page document, as far as I can find out—is there a single concrete negotiating objective. As our report points out at paragraph 140:

"The Negotiating Objectives … do not include any commitments or red lines to ensure that the UK's right to regulate is maintained in support of climate commitments and environmental standards."

Nowhere in the document will you find an indication of the overall approach that the UK will take to ensuring that membership of the CPTPP leads not only to regression in our climate ambitions, but actually to some ambition for a net-positive outcome in tackling climate change and driving down carbon emissions. Indeed, far from tackling emissions, the document concedes that UK greenhouse gas emissions will rise as a result of the agreement, according to the impact statement. Even then, the real impact of UK accession on greenhouse gas emissions is of course likely to be in partner countries, not in the UK. Regrettably, *The UK's Strategic Approach* cannot give us any useful information about that at all. It says that it is all too complicated, and it may well be. Nevertheless, as the carbon intensity of production in almost all those countries is greater than in the UK, it is likely that any significant increase in trade will result in a significant increase in emissions. We noted, in particular at paragraph 141 of our report, that there is a danger that the CPTPP will incentivise

"greenhouse gas intensive agricultural practices in CPTPP member countries with lower environmental production standards."

That has the potential to undermine the UK agricultural sector's commitment to net-zero greenhouse gas emissions by 2040.

The Department for International Trade needs to step up to the plate here and recognise that UK trade policy has to factor in our climate ambitions, otherwise it will simply end up exporting jobs to countries with higher carbon-intensive production, causing economic damage at home and climate damage abroad. Regrettably, however, the Government seem to lack coherence on climate and trade. BEIS, Defra, the Treasury and the Department for International Trade all seem to be pulling in different directions, and it seems that there is confusion even within the department, between the department and the Board of Trade and within the Board of Trade about what this is all about.

The Board of Trade's report last July stated:

"Climate change and nature loss are among the most complex issues of our time—they will touch every aspect of life and require all the tools at our disposal to resolve them, including trade tools."

Yet this document on the strategic approach to one of the most important partnerships that we are likely to form in the coming years, if we go ahead, has nothing at all to say about our ambitions. I really think that the Department for Trade needs to start internalising; if we are serious about the Paris targets and serious about those commitments, they have to be taken into account in our trade negotiations.

Personally, I think we need a few rules about this. First, we could start prioritising trade agreements with countries that are willing to take ambitious steps with us on carbon emissions and wider issues of biodiversity and nature loss. We could insist that all trade agreements that we are prepared to sign up to will have to include zero tariffs and the removal of non-tariff barriers for certified green products and services. We could say that we do not intend to sign any trade agreements unless the overall impact from them can demonstrate a net reduction in greenhouse gas emissions and a net increase in biodiversity.

The challenges we face in reaching the Paris climate targets are already herculean; we cannot go on adding to them, however modest the Government may argue this is. Whatever the scale of the greenhouse gas emission increases arising from accession to the CPTPP, the Australia FTA or any other trade agreement that there turns out to be, they are too much. Trade policy is one of the tools that we have to drive down greenhouse gas emissions and drive up biodiversity. The strategic approach suggests that the Government are unwilling to use that tool. I really hope that the Minister can go back to his department and reinforce how important this aspect of trade policy is.

4.17 pm

Lord Astor of Hever (Con): My Lords, I very much support the Government's aspiration to join the CPTPP and the strategic importance of working more closely with allies in the Asia-Pacific region. It is good news that there was also a clear wish by our witnesses to join a group of countries that constitute one of the largest and most dynamic free trade areas in the world. My noble friend Lord Lansley set out very well the benefits of trading in this area, and I support what he said.

When it comes to Britain being an outward-facing global trading nation, our intellectual property sector is a jewel in the crown. In 2021, the UK ranked second for the second year running in the US Chamber of Commerce's global IP index, credited with its strong and sophisticated national IP environment. Much of the UK's international reputation for excellence in IP can rightly be attributed to its membership of the EPC, the European Patent Convention, an international agreement independent of and separate from the European Union, which has enabled the UK to develop a strong, influential and internationally efficient patent regime.

I have recently spoken to the CIPA, the Chartered Institute of Patent Attorneys, which represents 4,000 members working across the IP sector. The CIPA welcomes the Government's progressive international trade agenda and ambition for accession to the CPTPP. It is pleased to have received assurances from Ministers and officials that the Government do not intend to put membership of the EPC at risk.

Despite this positive recognition of the prime importance of the EPC, there remains a concern that the IP chapter in its current form could be found to be inconsistent with the terms of the UK's membership of the EPC. The CIPA has cautioned that this could have serious unintended consequences for the United Kingdom and its reputation as an international leader in the field of IP, SMEs, patent professionals and UK GDP.

I was pleased to see the Government's recognition of the value of the EPC and their pledge to remain a member of the convention as set out in their strategic approach. Following on from that commitment, I ask my noble friend the Minister what measures the Government will take in their approach to the negotiation process to ensure that they honour that fundamental commitment to the EPC. Specifically, will the Government commit to negotiating carve-outs or setting aside the grace period and patent term adjustment provisions that the CIPA and others have flagged with them? Will they agree to consulting the IP sector on other viable alternatives should they encounter difficulties in securing the appropriate carve-outs?

4.21 pm

Lord Bilimoria (CB): My Lords, in a speech on 19 November 2021 at the University of Birmingham, where I am proud to be chancellor, His Excellency George Brandis, the Australian high commissioner, announced that in September the US, the UK and Australia had signed the AUKUS trilateral security partnership. He said:

"The Indo-Pacific has become a centre, perhaps the global centre for strategic competition, certainly it is one of the principal global centres of strategic competition today. Prime Minister Johnson has acknowledged that 'the world is tilting on its economic axis and our trade and relations with the Indo-Pacific region are becoming ever more vital than before'. The United Kingdom Government's recently released Integrated Review demonstrates that this country recognises the geopolitical and economic centre of gravity is moving to the south and to the east, to the Indo-Pacific region … the momentous trilateral partnership will promote security and prosperity in the region for decades to come. As will other arrangements in the region like, for example the CPTPP (the Comprehensive and Progressive Trans-Pacific Partnership), which Australia hopes the United Kingdom will accede to next year."

On 21 January this year, the Australia-UK Ministerial Consultations, AUKMIN, took place. There, Australia

"welcomed the progress made by the UK toward its accession to the … CPTPP … as a priority of the CPTPP membership. Both sides looked forward to continuing to work at pace on the accession process, reflecting the importance of advancing the CPTPP's high-standard rules and promoting free trade and open and competitive markets."

This country makes up under 1% of the world's population, yet we are one of the six largest economies in the world. The UK has always been a great trading nation. We are the second or third-largest recipient of inward investment at any time. We are the second-largest services exporter in the world. We punch well above our weight. The reasons for joining the CPTPP are to increase trade and investment opportunities, to diversify trading links and supply chains, to secure the UK's future place in the world and to advance our long-term interests. It will be an important part of our strategy to place the UK at the centre of a modern, progressive network with dynamic economies and, in that, to live out this global Britain mantra for businesses and investors.

Joining the CPTPP will help us to forge a leadership position in a network of countries and send out a powerful signal to the world. It will also be about championing free trade and liberalisation, fighting protectionism and removing barriers all the time.

In July 2020, Liz Truss, then Secretary of State for International Trade, said:

"But of all the opportunities I've seen, I think CPTPP is one of the greatest. It covers 13% of the global economy—if you had the UK that would be 16% … Membership of CPTPP would hitch the UK to the fast-growing Pacific region. It also helps us strengthen our ties with some of our key international allies like Canada, Singapore and Australia … We would be able to accede to this agreement in ways that don't damage our national sovereignty … What it allows us to do is to be part of a modern, rules-based free trade area."

There are huge benefits: modern digital trade rules that allow data to flow freely; eliminating tariffs on UK exports more quickly, such as on whisky, down from 165% duties to 0% in Malaysia; and reducing car duty to 0% in Canada by 2022 if we finish the negotiations—two years earlier than through the UK-Canada trade deal. When it comes to market access, the CPTPP provides for the almost complete liberalisation of tariffs among the participants; tariffs are retained in only a few sensitive areas—I can give examples. Here is the good news: it provides a single set of rules of origin, allowing content from all CPTPP countries to be cumulated, meaning that if goods have at least 70% CPTPP content they qualify for preferential tariffs. That is great; that 70% can come from any combination of CPTPP countries.

The agreement covers 11 countries, and I congratulate the noble Baroness, Lady Hayter, and her committee on their report. For completeness, the countries are: Australia, Canada, Japan, Mexico, New Zealand, Singapore, Brunei, Chile, Malaysia, Peru and Vietnam. We formally made our request to join on 1 February 2021, and the Minister for Trade Policy, Penny Mordaunt, said that the Government hoped to have negotiations concluded by the end of 2022. Could the Minister confirm that it is very much the objective to do that? We of course signed the Australia free trade agreement on 16 December 2021.

[Lord Bilimoria]

The committee raised various concerns about food standards, climate regulations, intellectual property and the protection of data, and the Government responded. On personal data, for example, they said that the CPTPP would not affect the current position, which is that

"individuals' data protection rights are protected and upheld when their data is transferred overseas".

Could the Minister confirm that?

Could the Minister also confirm that we are making the most of our relationship now, having completed the Australia free trade agreement, which I will come to soon? We already have bilateral agreements with eight of the 11 CPTPP countries—nine if we add New Zealand, which we will hopefully conclude soon. Could he update us on how soon he thinks the New Zealand agreement will be concluded? Then it will be only Malaysia and Brunei that we do not have bilateral free trade agreements with.

With these 11 countries making up 13% of global trade, according to the World Bank, as I said earlier, that amounts to £110 billion of trade for the UK as things stand. That is higher than the amount of trade with China, which is just under £100 billion. This is one of the largest free trade agreements in the world. The first phase of the negotiations, from September to November 2021, covered the UK's compliance against each of the CPTPP chapters. We have submitted our evidence, which the members are currently reviewing before giving the green light to progress on the second phase. Could the Minister update us on where we are on that?

We will then negotiate market access. There are, of course, political sensitivities that we have to accept around China and Taiwan both announcing that they want to join the CPTPP, and Thailand and South Korea wanting to join as well. China will require significant work to meet CPTPP rules. The good news—I would like the Minister to confirm this—is that this could add momentum to the UK's accession bid because bids are looked at one after the other and not in parallel.

The CPTPP is key for the success of global Britain. Globally, as I said earlier, the axis is shifting. The world economy is thriving to become greener, more services-orientated and tech-driven. Asia is taking centre stage to become a key export destination of the world. CPTPP members are the fastest-growing economies in the world, with an expanding middle class that has an appetite for British goods, products and services. They respect brand Britain. For the UK to remain globally competitive it must position itself as a trading partner of choice in the region.

Membership of the bloc has potential to deliver new opportunities for British business across many different sectors. The CPTPP could enable UK businesses to make products for all different markets without the need to change processes, parts, suppliers or components. This would be a critical enabler of UK supply chains, allowing companies to import and export components more easily and making investments more competitive. A deal could free up data flows, the lifeblood of the modern economy, for UK business across the Pacific, cutting across the UK service sector.

There is also a chance—a tantalising prospect—that the deal might help UK-US trade. The US helped shape some of the provisions under this trading bloc and, although it is not a member, the decision to rejoin may still be up in the air. Could the Minister acknowledge whether this is the case?

Central to the success of this deal is to make sure that it works for business. It is key that negotiations are not rushed and that the necessary carve-outs are made to protect UK business interests. As president of the CBI, I was personally involved in the rollover of the EU bilateral trade deals of 66 countries; we played a crucial role to help that happen on time. We also played a major role in the Australia-UK free trade agreement, working alongside the UK and Dan Tehan, the Australian Trade Minister, who was the vice-president of the accession committee of the CPTPP, and George Brandis, the high commissioner I mentioned earlier. We also have the New Zealand deal, working with High Commissioner Bede Corry. Now, of course, we have just launched the formal negotiations of the India free trade agreement with the UK.

Businesses must have a seat at the table, particularly as the UK progresses towards more in-depth second phase negotiations with members bilaterally. Could the Minister assure us that business will be around the table? The CBI stands ready to help. The UK will need to think how it uses its existing bilateral deals with individual countries to facilitate the access. Dan Tehan of Australia has said very openly that he will help in every way to try to complete this by the end of this year.

This deal will contribute to the levelling-up agenda as well. For example, the east Midlands alone exports £3.1 billion of goods to these markets. Joining the agreement could further facilitate this trade and contribute to us closing the gap in regional disparities. But this will require supporting more businesses to export, particularly those that are new to it. To this extent the Government's export strategy is welcome, but superstar exporters—that is, companies that export more than 10 products to more than 10 countries—make up 14% of our exporters. In Germany it is 40%.

The CPTPP is worth £8.4 trillion in GDP. It is a gateway to the Indo-Pacific region, which is going to account for the majority of global economic growth between 2019 and 2050. We are at the front of the queue. Let us make this happen very quickly. To conclude, I quote from George Brandis's Birmingham speech again. Remember that the term has changed—it is no longer Asia-Pacific; we refer to the Indo-Pacific. George Brandis said in his conclusion:

"The future of the Indo-Pacific will impact all our futures. It will impact the future of Atlantic nations as well as Indo-Pacific Nations because increasingly it will become the fulcrum of world politics."

4.34 pm

The Lord Bishop of St Albans: My Lords, I declare my interest as president of the Rural Coalition. I have to say I rise with a certain hesitation, because so many noble Lords speaking in this debate are either part of the International Agreements Committee, and have been working on this for so long and know so much of the detail, or indeed have been involved in international trade. I have none of that experience at all.

My particular reason for wanting to speak are two areas that I would like to focus on for a few moments, to do with the whole issue of environment and climate change, as we are seeking to trade internationally—although I note that the noble Lord, Lord Oates, has powerfully laid out much of that. So, I will not actually say much more on that; I will ditch that bit of what I was going to say. Let us keep going.

What I would like to do is to talk a little bit about agriculture and farming. I come from that background, and it is something that I am absolutely passionate about. I believe it is crucial, as we think about our future in the world—a world that we have seen dramatically, over the past two years, is sometimes vulnerable and susceptible to shocks and things that we could not possibly have conceived would have affected us—to highlight the importance of food.

In one sense, I am stating the absolute obvious, and please forgive me if I am just being really simplistic. I often hear it said in your Lordships' House that the primary duty of government in the defence of the realm. That is certainly very important, but actually feeding the realm is pretty much up there, because if we have not fed people we will not have a nation within a very short time. We only have a few weeks of food in the country at any one time, and yet we are one of the most prolific producers of food. We have some of the best agricultural land in the world, and we have some of the best farmers. I am privileged to live and work in Hertfordshire and Bedfordshire. We have people who are absolutely at the forefront, in the world, or what is going on in agriculture. We have Rothamsted, and we have some fascinating new work going on with some of the most advanced forms of caring for soil, precision drilling and precision farming. It really is quite remarkable what is going on.

Let me return, for a few moments, to the whole issue of food. It is absolutely right that this is going to be part of our future trade agreements. It is very exciting that we are now looking at developing further trade agreements in the Indo-Pacific—I am personally very committed to that; I think it is excellent that it is going ahead—but we must have some special pleading for our farmers and our basic food security. Within days of a shortage, in a climate crisis, we can suddenly find that food supplies dry up. We have to ensure that we have a good, solid supply of food. Of course, we will never be entirely self-sufficient, because many of the more exotic foods that we want have to be grown elsewhere. It makes sense to have them come in, but our basic farming capacity is absolutely crucial. In the post-Brexit environment, there is no doubt that there is a gulf and growing mistrust between many members of the agricultural community and the UK Government, when it comes to negotiating trade deals. The president of the NFU recently described British food producers as pawns in post-Brexit trade agreements and was particularly critical of the FTAs signed with Australia and New Zealand. I hope, with the new Trade and Agriculture Commissioner officially up and running, there will be the heightened security of the cost-benefit analysis of trade deals and so on, of our agricultural sector. This will, I hope, ensure the interests of domestic food producers are protected.

The UK has, in principle, agreed to begin meaningful negotiations with Canada on a more comprehensive trade agreement in April this year. Canada, being one of the largest food producers in the world will, no doubt, have reviewed the terms offered to Australia and New Zealand on agricultural products, and I am sure that it will push for very similar access, or even better access. What is worrying is, as part of the CPTPP negotiations, Canada will have every right to delay ratifying our entry until we have offered them a similar status to Australia and New Zealand on agricultural products as part of the bilateral FTA due to be negotiated. Of course, this is hypothetical, but while it would be nice to believe these negotiations will be conducted in good faith, as a realist I know, from having spoken to people who have been involved in these negotiations, just how tough they will be and the sort of access to our agricultural markets that others will demand.

We have very high standards for animal welfare and how we grow our crops, and there is a really important issue here, as many of our farmers are concerned that some of those standards will be compromised. The fear in the long run is that, for our agricultural products to be competitive in trade deals that we will have voluntarily entered into, farms will be forced to consolidate into much larger commercial units. That is going on fairly steadily anyway, but is likely to speed up much more. The danger is that it will affect this country's rural communities and rural sustainability. Our rural communities depend on the agricultural industry; they are rooted in it and gathered all around it.

Should we join the CPTPP, we might well have to deliberate and negotiate on China's accession. Regardless of the economic issue surrounding state-owned enterprise—the obvious barrier to China joining in the near future—it is vital that the UK can retain an effective and moral approach to foreign trade and policy. The Government were not keen on the various iterations of the so-called genocide amendment to the Trade Bill, which many of us engaged with, which would suspend trade with a country where it was determined that genocide was being committed. These issues are hypothetical, but we have to think carefully about them. My fear is that, via the CPTPP, we could undergo a greater economic integration with China and absolve ourselves of the right—or, more worryingly, the ability—to criticise the actions of the Chinese Government.

I hope that, when the Minister responds, he might be able to set his comments in the slightly broader context of issues of food security and the environment as we look to these future trade partnerships.

4.42 pm

Lord Hannay of Chiswick (CB): My Lords, the case for the UK joining the CPTPP seems an entirely convincing one. That of course is one of the findings of the report that we are debating today, which was so excellently introduced by the noble Baroness, Lady Hayter. The case for joining would be all the more convincing if it was not overlaid by hyperbole which overlooks the fact that we are already in a free trade relationship with seven—soon to be nine—of the CPTPP's 11 member states; and that the crude figures of our

[Lord Hannay of Chiswick]
trade with all these countries, both imports and exports, provide no measure of the benefits that the UK could expect from joining the group.

I add, referring to my noble friend Lord Bilimoria's quotation from the Foreign Secretary, when she was Secretary of State for International Trade, that a trade agreement of a bilateral kind such as accession to the CPTPP cannot be free of limitations on our sovereignty; every trade agreement is a limitation on our sovereignty, as I am sure the noble Lord knows. Also, there is the hard fact is that the CPTPP is neither the first nor the second of our principal markets. They are the EU and the US, and with neither of them are our trade relations in particularly promising shape.

I will focus my remarks on the implications for our accession to the CPTPP of the applications to join that group by China and Taiwan, which were referred to in paragraphs 33 and 34 of the report, and by several speakers in this debate; and on the consequences of our joining the CPTPP for Northern Ireland. Neither issue was properly addressed in the Government's negotiating objectives. I hope that the Minister will be able to cast some light on both when he replies to the debate.

The applications by China and Taiwan are clearly relevant to our application, although they are quite separate from it. Their relevance is that if either or both is successful—as it is hoped ours will be—our trade relations with those two countries will in future be regulated by the terms of the CPTPP and not, as now, by our shared WTO status. Put clearly, we would be in a free trade area relationship with China—surely a major development indeed. The right reverend Prelate has referred to some of the problems that would arise in that situation.

It is clear too that the sequencing of the handling of these three bids for CPTPP membership, over which we have virtually no control, could present some really tricky challenges. The least likely eventuality, I suggest, is that either China or Taiwan, or both, join ahead of us, in which case they would have a say over our terms of accession. I do not honestly think that very likely. Slightly but not much more likely is that two or three of us join simultaneously, in which case we will have no say over the terms under which the others join, nor they over ours. Most likely, we will join first, in which case we will, presumably, have an equal say with other CPTPP members over the terms of accession of both China and Taiwan.

If I have those three alternatives right—I would be grateful if the Minister could say whether I do—it is easy to see that each of them bristles with choices of a considerable geopolitical significance that will have to be made further down the road. I am not stepping into the mistake of asking him to tell me what the position of the British Government will be in any of those three cases, merely whether I have correctly adduced the three possibilities.

With the implications for Northern Ireland of UK CPTPP membership, referred to in paragraph 37 of the report, we are on rather more familiar ground, alas, although experience in other contexts has shown that there are great complexities and difficult choices to be made there too, of which the negotiating objectives give no hint. While it is clear that the EU has no say over whether we join the CPTPP, will we ensure that the Commission is properly briefed during the negotiations to join the CPTPP, with a view to avoiding unpleasant surprises as far as possible in implementing the provisions of our CPTPP membership in Northern Ireland, which, for trade in goods, as the Minister knows very well, is part of the EU's single market? Can he say whether such a precautionary approach of briefing the Commission will be undertaken or is in hand?

I will leave most of the other, more detailed aspects of our CPTPP accession negotiations referred to in the report to others more knowledgeable than I. But since several noble Lords have touched on patents and intellectual property, I hope the Minister can give a clear assurance that the UK will accept no CPTPP provisions that could be incompatible with or prejudicial of our continuing membership of the European Patent Convention and its European Patent Office.

I conclude with a comment on assertions being made that all this will be wrapped up within the current year. Given the complexities and sensitivity of many of the issues at stake, and the rather cumbersome nature of a negotiation that will require unanimity of all concerned at every stage, I seriously doubt whether that estimate is realistic. Setting it out now, however much it fits a desire to achieve it, will come back to bite the Government in the ankle when it is not achieved.

4.49 pm

Lord Gold (Con): My Lords, first I join those noble Lords who support the Government's plan to seek entry into the CPTPP. As the Government state, it will
"put the UK at the heart of a dynamic group of countries"
as global economic growth centres on the Pacific region. The Government claim that accession could see 99.9% of UK exports being eligible for tariff-free trade with its members and will "facilitate services trade."

While I welcome the boost that joining the CPTPP is predicted to give to our export market, in this speech I want to focus on services, especially financial and professional, which the Government claim will be boosted by our accession. DIT figures show that from 2014 to 2016 financial services provided the largest exports from the UK to CPTPP members, primarily to Japan, accounting for 28% of service exports to member countries. So we already have a strong foothold, which we should be well placed to strengthen.

I am sure that I do not have to remind my noble friend the Minister, formerly chairman of Barclays Bank, how important the City of London and financial services are to the wealth of this country. I do not wish to open up old wounds, but the risk that Brexit posed to the financial services industry—not answered by the 2020 EU-UK trade and co-operation agreement, in my view—remains real, even though our worst fears prior to Brexit thankfully do not appear yet to have materialised and hopefully will not. Just as the Government contemplate in their Brexit freedom Bill how we might take steps to benefit from Brexit, hopefully boosting the strength of the City of London and financial services, I trust that in negotiating our proposed entry into the CPTPP, the Government will ensure that this sector is not left behind, as the opportunities are great.

Of course, in joining we would be acceding to a treaty already approved by 11 member countries, so our scope for change is somewhat limited. In their response to the IAC's report on UK accession, the Government stated that in 2020 UK service suppliers exported £25.1 billion worth of services to member countries and that our joining will provide

"benefit from modern rules which ensure non-discriminatory treatment and increase security, protection and transparency."

It is the case that treaty members must abide by non-discriminatory obligations so must not treat financial institutions or investments from another member country less favourably than similar domestic investors. If we join, we benefit from that. Treaty members are also barred from imposing restrictions or conditions on suppliers from another member, such as limits on the number of subsidiaries or nationality requirements for senior management. However, the Government do not provide a specific negotiating objective for UK financial services.

In its evidence to the IAC, the Law Society stated that the aims of UK legal professionals are

"unlikely to be realised via CPTPP".

The London Market Group, which represents the insurance industry, told the committee that

"there is nothing specific that we will get from this agreement".

The evidence the IAC received was, as the noble Baroness, Lady Hayter, said, universally supportive of membership and anticipated potential economic benefits for the future, but not for now.

So how are we to maximise our gain from joining CPTPP? One way is through the negotiation of side letters, a subject already raised by the chair of the IAC, the noble Baroness, Lady Hayter, and my noble friend Lord Lansley. Leaving aside issues of legal enforcement and whether each member country must agree the side letter in order to be bound by it, unless we enter into bilateral agreements with each member—we have already entered into a number of agreements, with, I think, seven of the member countries—side letters seem to be the only way, pre-entry, to improve the terms of the treaty. It is imperative therefore that the Government take every step they can to negotiate side letters or bilateral treaties that assist our services sector. Accordingly, will the Minister confirm that every attempt will be made in the forthcoming negotiations to agree with each member country side letters or bilateral agreements that boost our ability to compete and enhance our financial services and professional skills in the CPTPP world? Can he also give us now an idea of what we will specifically be seeking in our negotiations? I realise that he will not want to say anything that might prejudice the negotiations, but I am not asking him to tell us what we might give up in our discussions, only what our starting position might be.

Assuming that our application to join is successful, we then have a great opportunity to influence the way in which the financial services industry can operate. TheCityUK noted in its evidence to the IAC:

"Most barriers to trade in FRPS"—

or financial and related professional services—

"are regulatory and require regulatory co-operation to resolve them."

Being a member of this "club" enables us to work with other members to liberalise regulation which is holding us back.

An example is the recognition of professional qualifications, the failure of which, at present, prevents professional services firms fully operating and expanding in member countries. In their negotiating objectives, the Government state that "further liberalisation" could be achieved through the recognition of professional qualifications, but the agreement does not provide for this. Each country member is to

"encourage its relevant bodies to establish dialogues with the relevant bodies of other Parties, with a view to recognising professional qualifications, and facilitating licensing or registration procedures".

In closing, I ask the Minister to confirm that on our joining the CPTPP every possible step will be taken to liberalise regulations that hold us back and to further the recognition of professional qualifications.

4.57 pm

Viscount Waverley (CB): My Lords, this Pacific partnership is potentially the most important regional trade agreement that the UK will negotiate, with the potential for wide-ranging repercussions, strengthening ties with international allies and signalling commitment to free trade.

Feedback from the supporter network organisations around the United Kingdom of the Trade and Export Promotion APPG, which I co-chair, suggests that they broadly support accession to the CPTPP. The noble Lord, Lord Lansley, whom I am delighted to see and who is a colleague on the APPG, was spot on when he said that the Pacific region is where we need to be, with serious opportunities. I share the points he made regarding the NHS.

There is clear value and opportunity for the UK in joining, working with members in the bloc to shape economic issues and be at the forefront of innovation when it comes to digital and trade provisions. However, the Government should explain how they will protect UK food, environment, IP, climate and data protection, and further explain how this FTA will promote human rights, international development and union rights.

The content of negotiations also has important implications for consumers—the choices they make, the prices they pay, the standards they can expect and the rights they can rely on. Consumers require the strengthening of four priorities: maintaining health and safety standards of food and products, maintaining data security regulations that protect consumers' digital rights, maintaining the environment and using trade to address inequalities.

However, the report before us states:

"Immediate economic benefits are limited, but the Agreement may open opportunities for collaboration",

which confirms that the UK sees this as a means by which to extend influence beyond purely increasing trade.

There is a concern among some as to whether CPTPP negotiations might become bogged down in a political quagmire. CPTPP's economic provisions, particularly on governance, relate to state-owned enterprise. The question is: how does the UK expect to achieve our

[Viscount Waverley]
goal if it does not have the right policy with China? I was pleased to hear the remarks of the right reverend Prelate the Bishop of St Albans and the noble Lord, Lord Hannay, on the timetable issues.

The situation could become complex resulting from fear of retribution from Beijing against WTO members Taiwan and South Korea. Plainly there will be geopolitical implications, with Taiwanese accession opposed by China. Beijing's regional influence might become the catalyst for a policy reversal by the United States also to apply to join the pact. That could become a game-changer.

This is an opportunity to request that the Minister help me. Given that the WTO has primacy over regional trade agreements and that China has a complex relationship with the WTO, what is the situation regarding the WTO membership criteria, which state that when a member enters into a regional trade agreement through which it grants more favourable conditions than for trade with other WTO members, it departs from the guiding principle of non-discrimination?

Australia has filed a formal complaint to the WTO over various duties imposed by China, with Australia seeking to be included in consultations about a trade dispute between the European Union and China, launched by the EU. Additionally, at a meeting on Monday past, Canada sought to further a trade dispute with China over imposed restrictions. Is it considered that these have implications for CPTPP?

In conclusion, what do the Government believe are the consequences of China applying, and how will we achieve our trade goals without, at the very least, pragmatic relations with that country?

5.03 pm

Lord Udny-Lister (Con): My Lords, it is a pleasure to be a new member of the International Agreements Committee, and I start by thanking our chair, the noble Baroness, Lady Hayter, and the other noble Lords for their warm welcome and introduction to the committee's important work. I also draw your Lordships' attention to my declaration in the register of interests as an advisor to HSBC bank.

Since joining the committee, I have had the opportunity with interest to familiarise myself with both the previous Sessions, the 10th report of this Session and, of course, the Government's recent response to that report. Like many today, I welcome the Government's commitment and action in ensuring that our accession to the CPTPP is both smooth and beneficial for all concerned. It will send a powerful message that the United Kingdom stands ready to champion free trade and fight the protectionism that has held back this country for far too long.

I turn to the impact of rules of origin on UK manufacturers. The Government are right to highlight the many benefits that the CPTPP rules of origin may provide to UK manufacturers in the long term. However, I fear that some industries may suffer unless the Government take bolder action to secure more generous local content thresholds. I would be grateful if the Minister could provide the Committee with an update on what work, if any, is being done to mitigate the concerns of the industry itself.

Furthermore, and without wanting to labour that point, while I gladly acknowledge that Her Majesty's Government have made it abundantly clear that they will accede to CPTPP only on terms beneficial to the UK, are they able to provide the Committee with an update on whether any further consideration has been given to the use of side letters and/or other instruments to clarify certain policies or exclude certain provisions? I raise that point as I know it is of huge concern to those in the UK automotive industry. I hope that my noble friend will be able to put minds at rest in his summary remarks today.

It is further apparent that, when considering rules of origin, specifically in cases where we have existing FTAs in place, UK businesses may find it challenging to ascertain whether there is more benefit in their trading under localised bilateral agreements or the CPTPP. I fear that in such circumstances we could see businesses make costly misjudgments. Are the Government planning to introduce any measures to simplify that process or to put in place additional guidance so that UK businesses may have the confidence to know that they are always operating on the most favourable terms?

On consumer rights, it is of course important to acknowledge that the UK is acceding to an existing agreement, and with that come very limited options for the Government to seek the type of amendments that some would have. That said, I find myself reassured by the Government's commitment to ensuring that standards, protections and consumer rights are protected.

Thanks to the sterling work of the Government, trade deals are already in place with the major economies of Australia, New Zealand, Canada and Japan, and the CPTPP is the next natural part of the nation's onward-looking journey. I hope that the Government are seeking to enter the CPTPP not as a static partner but with the determination, innovation and energy that will be needed to help it evolve to meet the challenges and opportunities of tomorrow.

Having now left the European Union, the UK faces an unrivalled opportunity to unleash the benefits of free trade. With the EU itself acknowledging that 90% of future growth in global GDP will be outside the EU, and with the UK economy now surpassing pre-Covid levels and with stronger than expected growth, there could not be a better or a more exciting time for the UK to embrace this important partnership.

5.08 pm

Lord Purvis of Tweed (LD): It is a pleasure to follow the new member of the committee. I happily restate what I said on previous occasions: that this committee does the House a great and important service. This has been an important debate and I commend the noble Baroness on how she introduced it and the members of the committee on their thorough assessment. I appreciate also that they have taken by necessity an almost agnostic position while analysing the Government's accession aims.

The Committee and the Minister will know that this House on a number of occasions has resolved that we would prefer that negotiating objectives were put to a resolution of Parliament, primarily the House of

Commons. That would allow the very points raised in the helpful box 1 in the committee report to be attached to consideration of a resolution which improves the Government's negotiating objectives. However, we have been round this course on a number of occasions, and I will not rehearse it.

As the committee indicated, and I will put on the record again, the Minister in particular is unfailingly accessible and helpful—as helpful so far as he can be in many regards—and he and his office are always very approachable, which is greatly appreciated.

The noble Lord, Lord Oates, and I are from the Liberal Democrats and our founding principles as a party are supporting free, fair and open trade. To that we now can add "sustainable". That is why he made points about this being an opportunity for tackling climate change, and one we should not miss. It is to be noted, with regret, that even the Government's own document suggests that acceding to this in the current way could increase emissions. That would be a retrograde step. I will return to that towards the end.

There have been a lot of column inches about the UK's potential accession to the CPTPP. We heard a little from the noble Lord, Lord Udny-Lister, about this being a Brexit opportunity. The Minister is not known for hyperbole, which is welcome in this Committee. Nevertheless, we saw a glimpse in Questions of part of this narrative when he said that reductions in trade with the EU were being offset by growth from non-EU trade, primarily from the Indo- and Asia-Pacific area.

On the one hand, this could be seen as positive, but we need to analyse where that growth has been. It has been imports from China and Chinese trade that have seen that growth. It has not necessarily offset the reductions. But that trade with China in 2021, according to the Department for International Trade, was £92 billion—up 8.6% and double what it was a decade ago. The fastest period of growth of imports from China has been during Liz Truss's tenure as Trade Secretary. Of that £92 billion, £66 billion was imports, representing a trade deficit with China of over £40 billion. That is unprecedented in our trading history and strategically worrying given that we now have a trade in goods dependence on China in many sectors. The Government have placed us in this situation. Our trade deficit is more than twice that of France with China, and Germany has a trade surplus in exports to China. Therefore, I question the narrative selling this application as one of the strands of an alternative to trade with China.

I have a further slight question mark over the net opportunity of growth in the UK's trade with the region, because we tend to assume that the CPTPP's trading growth in recent years has somehow not been connected with its growth of trade with China directly too. We could have seen the growth in that region simply as a result of the growth of trade with China. If we deduct that, we get a more realistic view of what the real opportunities for our growth are likely to be.

I agree with the noble Lord, Lord Lansley, when he counselled Liz Truss to stay quiet on China and CPTPP. He did not use those exact words; I am putting some words in his mouth in order for me to agree with them. But he hit a good point because he suggested, as the committee did, that we would probably stay a little quiet and wait and see. However, by having a quick look at elizabethtruss.com on 28 June 2021, I can see that she was far less reticent than the noble Lord. I can quote:

> "By joining the CPTPP, we would strengthen it as a bulwark against protectionism and unfair trading practices from nations like China."

It is some bulwark if we are dependent on the goods from that; it is even less of a bulwark if China is applying to be a member itself.

What also frequently goes unnoticed, and it has not been mentioned in the debate today, has been the creation of the world's largest trade deal: 15 Asia-Pacific countries, including China, Australia and New Zealand, are members of the Regional Comprehensive Economic Partnership. According to UNCTAD, that represents 30.5% of global GDP in comparison with the US, Mexico and Canada agreement of 28% and the EU of 18%. The RCEP's growth alone is estimated to be $200 billion to the world's economy by 2030, according to UNCTAD. So, we would have a benefit from this growth regardless of whether we accede to any agreement.

Apart from the trade dependency aspect, China has applied to accede to the CPTPP itself. Furthermore, separate to those two agreements, there have been 16 rounds of negotiation between China, Japan and South Korea, for a CJK FTA. It seems as if China has prioritised the RCEP and has the CJK—if I get all of these correct during this debate, I will be impressed with myself. I cannot judge the respective prospects of China or Taiwan. As the noble Lord, Lord Hannay, indicated, we do not know whether they will indeed join the CPTPP, but the fact that there are common areas between those three is significant. It is significant to the terms that we want to have when we have to fit their rules. As the noble Lord, Lord Hannay, indicated, in many respects, that integration is already there. Therefore, we are acceding to a separate set of rules, over which we will have very little leeway if we accede to it, unlike the bilateral agreements we are a member of.

It already means that Liz Truss's geopolitical assertion, that there will be a bulwark against China is plainly nonsense. First, we are dependent now on imports from China, and we are increasing our trade barriers with the EU, distorting our trade patterns over the coming years. It means that our strength, to try to secure carve-outs on any area of CPTPP, will be more important, but potentially weaker. So, I would be grateful if the Minister could say, during the discussions that are under way, what openness there has been to any UK carve-outs. My understanding of meeting the benchmarks on application is that we meet their rules—we simply demonstrate that we meet their rules. So, what areas and scope are there for specific UK carve-outs?

Secondly, taking up the point made by the noble Lord, Lord Hannay, with regard to accession, I looked at the accession rules. Rule 3.2 states that the commission of the CPTPP

> "can take a decision as to whether separate Accession Working Groups are needed for individual aspirant economies or the processes can be combined into a single Accession Working Group."

[Lord Purvis of Tweed]
So, what is the position? Is there an accession working group that is unique to the UK accession, or are we part of the accession of other members? Is there clarity on the scope for the UK to deliberately state that it will not meet the rules?

It is the case, in the Government's own estimates, that we are likely to see a very modest £800 million benefit to UK GDP over 15 years. I think it is worth reminding the Grand Committee that in one year we increased our imports from China by £18 billion. That is the comparison of the situation with our trade.

Before I conclude, returning at the end to what some of these areas of concern or carve-outs may well be, I note in passing a similar geopolitical argument has been made by the Minister in good faith, and by others, about our trading relationship with the GCC and the Gulf—because we also have other trade negotiations with other trading blocs, such as the Gulf. I know the noble Lord, Lord Udny-Lister, is very experienced in this regard as well. It is also worth noting that with the recent meeting between President Xi and the GCC Secretary General, after the fifth round of talks, there is a new impetus into that area too. The narrative of the UK geopolitical basis being a bulwark to China really is not the case at all.

Finally, returning to the very helpful box 1 of what the UK red lines may be, my noble friend Lord Oates indicated the concern about net-zero and the right reverend Prelate raised issues of standards. We will no doubt return to these areas with great focus, as we have done in all our previous trade discussions. It was very depressing to see two omissions in box 1; it is not the fault of the committee, but it is how the committee discerned what the red lines would be. We have raised many times the need for there to be a trade and human rights policy. One of the deficiencies of this agreement is the lack of a robust element on labour rights, human rights and the triggering of processes. That omission in the box is of great concern. Furthermore, as we raised in our debates on the China agreement, there is an omission on gender focus on those trade opportunities as well.

I agree with the Minister that trade agreements mean nothing if they cannot be operationalised and we cannot take up their opportunities. We have not needed a trade agreement to see some of the growth with some of our key competitors in these areas, and our dependence on China has been a result of there being no agreement. If we are part of a bloc over which we have little say, and if China is also a member, geopolitically we are weaker. That is an area of great concern, and I hope that the Minister will be able to reassure me.

5.21 pm

Baroness Chapman of Darlington (Lab): My Lords, it is a real pleasure to follow an excellent speech from the noble Lord, Lord Purvis, and to acknowledge the work of the committee. This is the second of these debates in which I have taken part since my noble friend Lady Hayter took over the chairmanship of the committee, and I have found both occasions incredibly enlightening and helpful. The principal demands of the committee in this case centre on a desire for clarity in how we intend to deal with joining an existing agreement. Our priorities and concerns will need to be accommodated in an already complex set of arrangements.

Can the Minister say something about how our food standards are to be protected? There are different approaches to animal welfare, environmental protections and the use of antibiotics and pesticides across the CPTPP, and there is already considerable concern here about the UK Government's intentions. Perhaps it is not their intentions we should doubt, but we are concerned about how steadfast they are in their determination not to bend on these issues. Ministers have often repeated promises that we will not see any reduction in our food standards and animal welfare provisions in particular, yet there remains doubt. That doubt arises because there can be a tension between the promise to keep our standards and the desire to open up our market in return for access to other markets, although the two are not incompatible. The more that Ministers can say now on the record to reassure producers and consumers on these points, the better.

Particular concern comes from the devolved Administrations, as responsibility for many of the issues is devolved. The picture is complex and requires the fullest engagement with decision-makers in Scotland, Wales and Northern Ireland. That has not always been forthcoming from the Government. What will be done differently in future to make sure that we can move on with unity and confidence?

How future trade arrangements interact with the Northern Ireland protocol will be complicated but vitally important. In the Government's own admission, we have seen what happens when they sign up to agreements without fully understanding them. The noble Lord, Lord Frost, says now that he recommended the protocol almost under duress given the political tensions at the time. There is clearly political pressure to move forward with our membership of the CPTPP, but we cannot have another situation where an agreement is entered into by the British Government, only for them to seek some sort of renegotiation a number of months later because consequences occur that we had not foreseen. We will lose all credibility as a trusted negotiating partner, and we cannot afford that.

I would welcome the Minister's thoughts on how to improve the involvement not just of the devolved Administrations but of relevant sector bodies. In their response to the report from the IAC, the Government say:

> "The negotiation of FTAs is conducted by the Executive under the Royal Prerogative. Full disclosure for some of our most sensitive positions would lead to worse negotiated outcomes."

I agree with my noble friend Lady Hayter on the use of that phrase. It might help if the Minister could give us an example—just hypothetical, obviously—of how this might happen and what the huge disadvantage would be. In not being transparent and inclusive, there is clearly a danger that detrimental impacts can be overlooked in the negotiations, so the Government need to balance their desire for confidentiality with the benefits of involving others. Does the Minister think that at the moment the Government are getting this approach right?

How are the devolved Administrations being involved, as well as consulted, as negotiations progress? The committee suggests that this needs to be timely, detailed and transparent, and I agree. Ministers need to consider how obligations we may enter into as part of the CPTPP ease or make more difficult our trade with our nearest neighbours or even within the United Kingdom, particularly in the case of Northern Ireland.

The committee correctly draws our attention to the impact on and potential benefit to our motor manufacturing industry that could be achieved by coming to a specific arrangement with Japan. Can the Minister indicate whether this is his intention?

We welcome commitments from the Government that alignment with the European Patent Convention is a priority. The Government also confirm that they will not join the CPTPP on terms that make medicines more expensive or less accessible. This is reassuring. Can the Minister guarantee a blanket exception for our NHS and other essential public services?

On food standards, the Government say they will not sign deals that compromise our high environmental protections, animal welfare or food standards. This is reassuring, but it is also slightly confusing. An SPS agreement with the EU would do so much to alleviate friction at our ports, especially in trade between Great Britain and Northern Ireland, but the Government turn their face away from that option, saying they want the freedom to alter their standards. Why seek this freedom, at considerable cost to our producers and retailers, when the Government say they do not intend to use it and, given their statement about the CPTPP, do not need it for this trade agreement?

The Government repeatedly say that they will accede to the CPTPP only on terms beneficial to the UK—I should hope so—but are they seriously asking us to believe that there will not be winners and losers? Welsh Minister Vaughan Gething said of the deal with Australia that

"we continue to have significant concerns around the increased market access included in this agreement, the impact this may have on our producers and the precedent it may set for future deals. I am disappointed that my views on this element of the deal appear to have not been taken on board. My officials and I made this point very clear to UK Government during negotiations."

The devolved Administrations are concerned—with some justification, given what we have seen so far—that the UK Government are not sufficiently mindful of the impact of deals across all sectors and all regions and nations. The detrimental impact of the Australia deal on British farmers has been discussed at great length and has clearly frustrated the Welsh Government and the farming community. This approach of signing up without listening to those directly affected will not end well.

Given where the UK now sits, we are keen to ensure that our membership of the CPTPP is seen as strengthening the agreement. It is a major agreement, and our membership should strengthen us and the existing 11 participants. This is an opportunity to use our economic power and influence, through this agreement, to make progress on workers' rights and climate change, but whether the Government are going to be ambitious enough in their negotiations to deliver on these important priorities is still to be seen.

5.30 pm

The Minister of State, Department for Business, Energy and Industrial Strategy and Department for International Trade (Lord Grimstone of Boscobel) (Con): My Lords, I thank the noble Baroness, Lady Hayter, for tabling today's Motion, and congratulate her on the 10th report of the International Agreements Committee regarding our planned accession to the CPTPP. As always, it is a highly detailed piece of work, and I have ensured that my department has considered each of its recommendations in detail, as we will the valuable points raised in today's debate. Also importantly, I shall make sure that our negotiators are fully aware of the points raised today. I thank those who have contributed to today's excellent debate and will endeavour to respond to the points which have been raised. If I miss some points out, as I surely will, I will of course write to noble Lords.

I welcome my noble friend Lord Udny-Lister as a new member of the IAC. I have no doubt that his experience and wisdom will greatly inform our debates on these matters going forward.

Membership of the CPTPP is central to the Government's trade strategy and key to ensuring future prosperity at home and influence in the Indo-Pacific. As we have heard today, the CPTPP represents one of the largest trading blocs in the world, covering a population of over 510 million. It includes some of the world's largest and fastest-growing economies, including Japan, Malaysia and Vietnam. As my noble friend Lord Lansley and the noble Lord, Lord Bilimoria, put it so clearly, the wider Indo-Pacific region is the world's growth engine, home to half of the global population and 40% of the world's GDP. We truly believe that accession to the CPTPP will allow the UK to engage more deeply with this part of the world, both through trade and on wider foreign policy issues.

It is pleasing that there is already considerable demand for UK goods and services in the region. UK trade with CPTPP members between 2016 and 2019 increased by an average of 8% annually, and by 2019 the overall value of UK exports to the bloc was a remarkable £110 billion. Trade with the region is already supporting jobs and prosperity at home and projecting UK influence overseas. Membership of CPTPP will consolidate this. As we level up the country, every region and nation of the UK stands to gain from UK accession to CPTPP. The West Midlands and Scotland are set to enjoy the greatest relative gains, through long-run increases to output of £177 million and £163 million respectively, as a direct result of CPTPP membership. Key industries such as food and drink, services and digital trade are particularly likely to benefit. I welcome the reference by the noble Baroness, Lady Hayter, to the food and drink council. No starting date is yet confirmed for that council, but we hope that it will be in action as soon as possible.

CPTPP membership offers something fundamentally different to our bilateral agreements with existing members, which have often been referred to in today's debate. The agreement's advanced provisions on services, investment and digital trade will deliver new benefits for British businesses, and its rules of origin provisions will allow companies to cumulate originating content

[Lord Grimstone of Boscobel]
from an £8.4 trillion free trade area, allowing more resilient supply chains to develop. I agree with the noble Lord, Lord Purvis, that the resilience of supply chains is so important and, frankly, something we have not paid enough attention to in the past. The CPTPP further offers increased opportunities for collaboration across vital areas such as climate change, sustainability and women's economic empowerment.

Expansion to other like-minded market economies is a key purpose of the CPTPP—we hear this directly from its members. The UK is at the front of that queue. It is right that the UK does not offer a running commentary on any other applicants while we are still negotiating the terms of our membership. However, I will return to that point later, particularly the question of China and Taiwan. Looking beyond that, if just Thailand and South Korea joined the agreement, it would treble the long-run economic benefit from £1.8 billion to £5.5 billion.

The CPTPP will bring us together with a group of economies promoting free trade and high standards in a region where, frankly, the contest between rules-based trade and unfair practices is particularly intense. It would send a powerful signal that the UK, as an independent trading nation, will continue to champion free and fair trade, fight protectionism and remove barriers to trade at every opportunity.

In answer to the noble Lord, Lord Bilimoria, I am afraid I cannot give a timetable for completion of these or other negotiations which are currently under way—other than to say, unhelpfully, as soon as possible, consistent with reaching a successful outcome.

I will now address some of the concerns raised by the IAC's report and your Lordships in this debate. The noble Lord, Lord Hannay of Chiswick, asked whether we will consult the EU on our negotiations. I am afraid we will not—

Lord Hannay of Chiswick (CB): The noble Lord is very kind to have replied to my point, but he happens to have replied to the wrong one. I never suggested we should consult the EU; I suggested we should brief it.

Lord Grimstone of Boscobel (Con): I apologise to the noble Lord. I should have said "brief"—I misnoted it as "consult". However, I can equally confirm to him that we will not brief the EU on our negotiations. However, I can also confirm that our top priority is to protect the Good Friday agreement and the gains from the peace process, and to preserve Northern Ireland's place in the UK. When we negotiate, the Government are negotiating on behalf of the whole UK, representing the interests of all the UK's nations, including Northern Ireland.

I will say more on China, Taiwan and other economies seeking to accede to the CPTPP. As I have explained, as a non-member, the UK is not commenting—it would be inappropriate to do so—on the specifics of other economies' interest in the agreement. The noble Lord, Lord Hannay—I hope I do not misquote him again—set out three theoretical scenarios. I will not give him my views on these in detail other than to confirm that we are the only country in negotiations with the CPTPP at the moment. It may also help the noble Lord if I note that there must be a full consensus between existing members to admit any new applicant. Once we are party to the agreement, the UK will have the same rights as other parties in respect of future applicants, which amounts to an effective veto. I hope noble Lords will understand that it is not appropriate for me to comment further at this stage on what are hypothetical situations.

CPTPP members and the UK rightly share the intention to be part of an agreement that embodies high standards in areas such as intellectual property, investment, procurement, rules on state-owned enterprises and data flows. Any applicant will have to satisfy CPTPP members that it can and will meet these standards. My noble friend Lord Gold and I share a common interest in financial services, and I welcome his comments on that topic. CPTPP has a dedicated chapter on financial services, which we believe will open up new opportunities for British businesses. The provisions in that chapter include matters such as non-discrimination obligations and liberalising cross-border flows of financial information. There is also an annexe on professional services that encourages mutual recognition of professional qualifications, which I think will be very helpful to us going forward.

It is a very good thing that more and more economies want to sign up in due course to the high standards of CPTPP, with Ecuador being the latest country to indicate an interest in doing that and submitting an application shortly before Christmas.

The right reverend Prelate the Bishop of St Albans certainly gave us food for thought in his speech. Of course, I have heard both his and other noble Lords' concerns about potential impacts on UK food standards through the agreement. Let me be crystal clear: there are no provisions in this trade agreement that will force the UK to lower food standards in any area. I can give the noble Baroness, Lady Chapman, complete reassurance on that matter. I am pleased to be able to put that firmly on the record.

The Government's strong position is that there is no inconsistency between the approach set out in the agreement and our existing domestic regulatory system. In other words, nothing in the agreement will change or lower the standards of food that we let into our country. The Trade and Agriculture Commission will no doubt be carefully studying that and will report to the House in due course on that matter.

Our wider environmental, product, labour and animal welfare standards will be protected too. CPTPP explicitly affords members the right to regulate for their own desired levels of domestic protection and thus will not undermine the UK's objectives—on net zero, for example—in any way.

The noble Lord, Lord Oates, spoke eloquently about climate change. CPTPP retains the rights of members to regulate for their own levels of environmental protection and contains commitments to protect the environment. The system robustly protects the right of members to achieve their own ambitious net-zero goals. Of course, other CPTPP members, such as New Zealand, are also world leaders alongside us on climate action.

On the NHS and in answer to the noble Baroness, Lady Chapman, I do not think we could be clearer: protecting the NHS is a fundamental principle of our trade policy. During our negotiations to accede to CPTPP, the NHS and the price it pays for its medicines will not be on the table. The sustainability of the NHS is an absolute priority for the Government. We could not agree to any proposals that would put NHS finances at risk or reduce clinician and patient choice. This includes—and I say this categorically—making changes to our intellectual property regime that would lead to increased medicine costs for the NHS. I hope that reassures my noble friend Lord Lansley.

The Government have been listening closely to feedback from your Lordships and the wider business community about the importance of the European Patent Convention to the UK services and creative sectors, including today from my noble friend Lord Astor of Hever. I can once again confirm that accession negotiations will be consistent with the UK's existing international obligations, including the European Patent Convention.

Regarding scrutiny, we remain committed to transparency. I wrote to the noble Baroness, Lady Hayter, about this yesterday evening in response to correspondence that the noble Baroness and I have been having. I can reassure the noble Baroness and other members of her committee that we will ensure that parliamentarians, businesses and the public have access to the information they need on our trade negotiations. The same transparency and scrutiny commitments we put in place for bilateral FTAs with Australia and New Zealand will apply to CPTPP.

The noble Baronesses, Lady Hayter and Lady Chapman, emphasised the importance of engagement with the DAs. I assure noble Lords that our approach to engaging DAs on trade policy is very comprehensive. We have engagement structures at all levels to make sure the DAs' voices are heard. These include a quarterly ministerial forum for trade, regular bilateral ministerial meetings and the six-weekly senior officials' group. The chief negotiators have regular calls running parallel to each negotiation round to keep the DAs fully informed of what is going on. Additionally, there are our six-weekly chapter-specific policy round tables and weekly working level engagement.

Your Lordships enquired about the potential for us to seek changes to the CPTPP text. I think that noble Lords recognise that this is an accession process, not a new negotiation, so it is not feasible to be seeking significant changes to the agreement. In this context, our negotiation objective is to be a part of a high-standard agreement, not to change it radically.

We are aware that other CPTPP parties have used side benefits to clarify certain specific policies. Let me reassure the noble Baroness, Lady Hayter, that this may be an option that is appropriate to explore in some cases. However, I hope noble Lords understand that the precise nature of that solution will be determined by negotiations. Offering a running commentary or setting out our intentions for side letters in public will undermine our negotiators' leverage to secure any such solutions. It would be undermining the very thing we would seek to achieve through the side letters. I hope that the noble Lord, Lord Purvis, will accept that that is why I cannot be any more helpful in this regard. I can confirm that all such letters will be published before the CRaG process and thus will be open to the same full scrutiny as the agreement itself.

I will turn to a couple of other themes raised in the report. Regarding the sequencing of further applications, we have been repeatedly assured—this comes back to a point I made earlier—that our accession will be dealt with first, and interest from China or any other economy will not slow us down. In answer to my noble friend Lord Lansley's question about ISDS, the extent of its coverage will be subject to negotiation during the agreement, but I am clear that we have nothing to fear from its use going forward.

On the expected economic benefits for the UK, our modelling does show—

Lord Purvis of Tweed (LD): The Minister may not have anything to fear but the House does, and it has debated ISDS on a number of occasions. I recall from when we scrutinised the Canada agreement that it supports moving away from ISDS towards a multilateral approach, whereas the Japan agreement was neutral on it. Does that mean that the Government are now off the fence, as the noble Lord, Lord Lansley, asked us to be, and that we have landed squarely in favour of ISDS? I remain confused.

Lord Grimstone of Boscobel (Con): My Lords, let me try to clear up that confusion, which I probably unwittingly added to. I know from my contact with investors that they all welcome some form of arrangements which allow investor protection to be secured. Many investors believe that the exact format of ISDS—one uses it often as a shorthand for how disputes should be settled—is not always necessarily the correct format. As the noble Lord will know, there are discussions about that in various multilateral organisations. When I talk about ISDS, perhaps it would be better if I said that appropriate forms of investor protection, with the right arbitration mechanisms agreed either bilaterally or multilaterally, are the way forward.

I thank noble Lords again for giving me the opportunity to speak on this topic today. I apologise for replying at probably too great a length, but I was anxious to deal with the points raised. CPTPP accession will boost prosperity and help to level up the country at home. It will deepen ties with key partners in the Indo-Pacific. I thank the noble Baroness, Lady Hayter, and the International Agreements Committee once again and look forward to further engagement with your Lordships, as I am sure we will have, on CPTPP in the future.

5.52 pm

Baroness Hayter of Kentish Town (Lab): I thank the Minister for his reply. We certainly do not mind long replies, because getting those is why we are here. It has been a really useful debate. As someone who has been involved, the noble Lord, Lord Bilimoria, is an enthusiast and a great champion of business, and I take all that he said, including that business needs to be at the table and that must continue. That came also from other speakers, and particularly in respect of the interests of

[Baroness Hayter of Kentish Town]
the farming community, as the right reverend Prelate the Bishop of St Albans stressed. Agreements of this sort are key to society, and we must listen to everyone, even if they do not appear to be quite as obvious as business. That goes also for the devolved authorities and the consumer voices, as mentioned by the noble Viscount, Lord Waverley.

There are obviously issues that we will watch as negotiations continue. Our Liberal Democrat colleagues, the noble Lords, Lord Purvis and Lord Oates, helpfully reminded us that their party's historical view about free trade has morphed completely into one about sustainable trade. Our regret that there is still not enough about countering climate change in this agreement is one that I can promise that the committee will continue to raise.

Other issues were raised. The noble Viscount, Lord Waverley, the noble Lord, Lord Purvis, and my noble friend Lady Chapman stressed human rights. These trade agreements cannot stand apart from human rights, workers' rights, consumer rights and gender issues. They are about the future of our society.

We also heard about some of the details: the noble Lord, Lord Udny-Lister, spoke about the rules of origin and the noble Lord, Lord Astor, about IP. I hope we will continue with some reassurance about the EPC; let us promise that we will keep a close eye on this. The noble Lord, Lord Gold, stressed how important it is that if this is to work, it must work for the financial and professional services. It is already the gold in the crown—not the pearl in the crown in this case—but it has to be made to work.

I am not sure that the Minister quite answered the whole of the points the noble Lord, Lord Lansley, made on medicines. It was not just about price but about speed of access, of the move from branded to generic, so that will be important.

I think we will be reassured that the Minister said that any side letters will indeed be part of the treaties so to speak—the documents—and that they would come here. I think his words on side letters were, "This might be an option in some circumstances." That sounded a little unambitious to me. I am not sure that putting down red lines on what we want undermines the negotiating position, so I hope there will be a little more strength to his elbow there.

I will finish with two important and quite broad points. One is about China. The figures cited by the noble Lord, Lord Purvis, of, I think, a £40 billion trade deficit—I got it right—and the wise words of the noble Lord, Lord Hannay, are a context that we must not forget. The second point is the Northern Irish issue. It is not simply, as the Minister said, that we will keep to the protocol; it is whether we have undermined trust in our negotiations. As my noble friend Lady Chapman said, we appear to be threatening to tear up something we so recently signed, and I hope that will not undermine the good faith of the negotiations that the Minister and his colleagues are now taking forward.

With that, I thank everyone for contributing to this debate, which will continue the work that our committee does.

Motion agreed.

Committee adjourned at 5.57 pm.