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PARLIAMENTARY DEBATES
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HOUSE OF LORDS
OFFICIAL REPORT

ORDER OF BUSINESS

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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

Wednesday 2 March 2022

3 pm

Prayers—read by the Lord Bishop of Exeter.

Music Education in State Schools
Question

3.07 pm

Asked by ***Lord Black of Brentwood***

To ask Her Majesty's Government what steps they are taking to support music education in state schools.

Lord Black of Brentwood (Con): I beg leave to ask the Question standing in my name on the Order Paper. I declare interests as chairman of the Royal College of Music and a governor of Brentwood School.

The Parliamentary Under-Secretary of State, Department for Education (Baroness Barran): My Lords, the Government are committed to high-quality education for all pupils and music is integral to this. We are working with experts to refresh the national plan for music education for publication later this year. This follows the publication of the *Model Music Curriculum* last year. We will also invest around £115 million a year, for the next three years, in music, arts and heritage education, including the network of music hubs working across England.

Lord Black of Brentwood (Con): My Lords, I thank my noble friend for that Answer. The sad, blunt truth is that music education in state schools is on life support. The number of pupils taking A-level music is down by a third since 2014—sadly, often because it is simply not available as a subject. GCSE applicants have come down by 17% over the same period and 29% of state schools have seen a reduction in the number of qualified music teachers, while the number of trainees is falling inexorably. Is my noble friend aware that while 50% of pupils in private schools get sustained music education, just 15% of state school pupils do so? Should this not be at the top of the levelling-up agenda? We need a national plan soon, so can she tell us more precisely when that is coming? Can we also be assured that practitioners and musicians will be able to have their say before it is implemented?

Baroness Barran (Con): The Government share my noble friend's concern about the importance of music education in all of our schools. We see it, along with other arts subjects, as integral to a good, strong curriculum. In relation to the numbers that my noble friend quoted on the music GCSE, I point out that while he is right that uptake of the GCSE has declined, uptake of the VTQ—the vocational qualification—has increased, so actually there are almost 53,000 children today taking either the GCSE or the VTQ, compared to almost 50,000 in 2016. On the timing of the announcement of the plan, as I said, it will be later this year. I will take his recommendations on further consultation back to the department.

Baroness McIntosh of Hudnall (Lab): My Lords, I will follow directly from the question of the noble Lord, Lord Black. The Minister may be interested to know that my daughter is a professional musician who spends part of her working life, like so many of her colleagues, teaching in an independent school where the list of peripatetic and full-time music education staff takes up half a page on the school's website. This shows that parents value music education and, in that case, are prepared and able to pay for it. Does the Minister think that parents of state school pupils care any less about music education? I am sure that she does not. None the less, she will be aware that my daughter's own children, who attend state schools, do not have access to anything like the provision which my daughter is part of providing in an independent school.

Baroness Barran (Con): I agree with the noble Baroness that parents in every school care about the richness and breadth of the curriculum which their children undertake. The music education hubs that were created in 2012 now work with around 91.4% of primary schools in this country and almost 88% of secondary schools. Since 2018, there has been a sharp increase in both music tuition and whole-class ensembles.

The Earl of Clancarty (CB): My Lords, the effect of the accountability measures on the arts is becoming increasingly clear as the years pass by. The narrowing of the curriculum at key stage 3 has led to a reduced uptake in music courses at key stages 4 and 5. In some cases, courses are not even being offered. If the Government truly believe in a broad and balanced education, then the EBacc and Progress 8 measures will need to be fundamentally reassessed.

Baroness Barran (Con): I cannot agree with the noble Earl. The EBacc was designed to be limited, absolutely to allow for the study of other subjects—many of which I know the noble Earl rightly cares a great deal about.

Lord Wallace of Saltaire (LD): My Lords, does the Minister have any figures on the number of schools without qualified, musically trained teachers attached to them? I declare my interests as a former chair of the Voces8 Foundation, which has been going into primary schools, particularly where there is no teacher present with any musical training, to introduce some basic singing.

Baroness Barran (Con): I do not have that specific figure to hand, but I am happy to write to the noble Lord with it.

Lord Cormack (Con): Would my noble friend agree to receive a small group from the Royal School of Church Music, which reaches out to children in all parts of the country, many of whom go to state schools where they are not properly tutored in music? It does enormous work.

Baroness Barran (Con): I would be delighted to meet the group.

Viscount Stansgate (Lab): My Lords, could the Minister join me in congratulating Nicola Benedetti on becoming director of the Edinburgh International Festival? Bear in mind that she is on record as saying that

"Music teaching is vital to a child's education."

Moreover, is the Minister aware of the concerns of musicians, such as Julian Lloyd Webber, that music is being squeezed out of state school syllabuses and is increasingly coming to be seen as the preserve of only the rich? Music has the ability to enrich all children's lives, throughout their lives.

Baroness Barran (Con): I remind the noble Viscount, as I am sure he knows, that music is compulsory in all maintained schools from the ages of five to 14. After the age of 14, all pupils in maintained schools must be offered the opportunity to study at least one subject in the arts.

Baroness Butler-Sloss (CB): My Lords, my granddaughter went to a splendid primary school, Eleanor Palmer, in Camden, where every child aged nine had to learn a musical instrument—whatever it might be; the recorder or anything else—for a year. Does the Minister think that is something that could be pushed in primary schools?

Baroness Barran (Con): We believe that the network of music hubs we have set up gives children choice, including specialist individual music tuition in an individual subject, and for other children perhaps group singing or other activities.

Lord Winston (Lab): My Lords, unfortunately, the noble Lord, Lord Black, has had the same answers in the same kinds of debates for many years, since he has been asking this really important question. It is very clear that music education enhances memory, improves dexterity, includes collaboration and is a major part of learning. Indeed, it has been shown repeatedly that it improves and facilitates learning in other subjects. However, not even sufficient instruments are available in primary schools, despite what the noble Baroness asserts. There should be far more done to ensure music is an essential part of the curriculum. Does the noble Baroness agree?

Baroness Barran (Con): I absolutely agree that it is an essential part of the curriculum: that is why it is compulsory in all maintained schools. I go back to the work of the music education hubs, which have had fantastic outreach into schools but have also linked schools and the children in those schools with music groups in their communities, so they can expand their interests.

Lord Lingfield (Con): My Lords, is my noble friend aware, following my noble friend Lord Black's point, that whereas 85% of independent schools have school orchestras, only 12% of state schools do? While the music hubs she has mentioned indeed do a good job in providing individual instrumental tuition, the best way of encouraging young people to love music is to give them the opportunity to play in school-based orchestras and ensembles. Will the new national plan please take this into account?

Baroness Barran (Con): The new national plan is being led by my noble friend Lady Fleet, leading a team of experts from the industry, education and other relevant fields, with a focus on making sure that music education is available to all those children noble Lords have referred to, both regionally and in terms of disadvantage and diversity.

Lord Watson of Invergowrie (Lab): My Lords, the figures enunciated by the noble Lord, Lord Black, are indeed compelling. They are very largely the result of the English baccalaureate being introduced and will not be offset by the updated national music plan, to which the Minister referred. In the 2019 Tory manifesto, there was a pledge to introduce an arts premium in all secondary schools, with the aim of "enriching" the experience of all pupils. That was reinforced in 2020 in the Budget by the Chancellor, offering a £90 million arts premium. Both of these promises have been reneged on. Should we be concerned that the man who, as Education Secretary, introduced the English baccalaureate is now the man entrusted with delivering the so-called levelling-up agenda?

Baroness Barran (Con): I think we should be extremely comforted that the man who introduced the English baccalaureate and has been one of the leading energetic forces of reform is leading the levelling-up agenda.

Cryptocurrencies

Question

3.18 pm

Asked by ***Lord Haskel***

To ask Her Majesty's Government what steps they are taking to regulate and supervise the use of cryptocurrencies.

Baroness Penn (Con): Her Majesty's Treasury and UK authorities have taken a series of actions to support innovation while mitigating risks to stability and market integrity. These include launching a new anti-money laundering and counterterrorist financing regime for crypto assets in 2020, and consulting on a proposal to ensure that crypto assets, known as stablecoins, meet the same high standards expected of other payment methods. The Government will issue our response to this consultation shortly. In January, the Government announced our intention to legislate to bring certain crypto assets into the scope of financial promotions regulation, requiring them to be fair, clear and not misleading.

Lord Haskel (Lab): I thank the Minister for her response, which certainly deals with the marketing and promotion of crypto but does not deal with its

actual use. For example, as reported in today's *Financial Times*, crypto is being used as a way round the financial sanctions against Russia and can be used to get round the controls of the proposed economic crime Bill. Does the Minister agree with the Financial Stability Board that this poses a risk to the stability of traditional currencies and public security? Will the Government listen to these concerns and apply strong, prudential controls? Most importantly, will they give agencies the resources and powers to enforce controls, and, for example, call on the G20 to co-ordinate international regulation and supervision?

Baroness Penn (Con): In my original Answer I did not only talk about the financial promotion of crypto assets; I also talked about the regulation of stablecoin. In response to the noble Lord's point about the anti-money laundering regulations and counterterrorist financing regulations which apply to crypto assets, I would like to reassure noble Lords that the regulations imposing sanctions on Russia apply to crypto assets. Legislation being introduced this week in the economic crime Bill will give the Office of Financial Sanctions Implementation the powers it needs to enforce financial sanctions.

Lord Forsyth of Drumlean (Con): Does my noble friend not think that the point made by the noble Lord, Lord Haskel, is very important in the current context of sanctions? Is it a practical proposition to ask the providers of cryptocurrency facilities to remove from their list anyone with a Russian email address?

Baroness Penn (Con): I absolutely agree on the importance of this issue. On firms placing blocks on Russian transactions, the Government and the FCA have communicated with crypto firms to ensure that they understand their obligations with regards to sanctions, which include applying risk-based controls to mitigate the risk of sanctions evasion. However, we do not require that all Russian persons have their accounts suspended or frozen; that would not be in line with our current approach.

Lord Cromwell (CB): Does the Minister agree that cryptocurrencies, which are unfortunately named, and all digital assets are widely misunderstood? Does she further agree that they are here, we have them—more than 3 million people in this country already hold them—and when they are properly regulated, as the noble Lord, Lord Haskel, would have us do, they will be an important and innovative growth opportunity for the UK economy? Cryptocurrencies were referred to by another noble Lord this week as "the beast". Will the Minister be "the beauty" whose good offices turn the beast into a handsome prince?

Baroness Penn (Con): I agree with all the points that the noble Lord makes. Earlier this week I tried to emphasise that, while we are cognisant of risks from certain types of crypto assets and will regulate appropriately, we are also keen to see the opportunities for the technology that lies behind these and want to promote innovation in a secure way.

Lord Browne of Ladyton (Lab): My Lords, I cannot resist the temptation to engage a Minister on this issue for the third day in a row. From January 2020 firms carrying out crypto asset activities in the UK have had to comply with the money laundering, terrorist financing and transfer of funds regulations and to register with the FCA. The FCA helpfully publish a list of 220 or more businesses that appear to be, in its words,

"carrying on crypto asset activity that is not registered with (the FCA)"

for anti-money laundering purposes. I have given the Minister notice of my question, which is: why are we allowing—if we are—non-compliant crypto asset businesses to trade with impunity, and when can we expect that they will be put out of business?

Baroness Penn (Con): I hope the third time is at least in part the charm. It is a criminal offence for a crypto asset exchange provider or custodian wallet provider to operate in the UK without anti-money laundering registration, and the FCA is empowered to take enforcement action against such a firm and its offices. The FCA is contacting firms on this list to establish whether they are operating in the UK, and it will take appropriate follow-up action.

Lord Bridges of Headley (Con): My Lords, I would like to pick my noble friend up on the Answer she gave to the noble Lord, Lord Haskel. My understanding is that the Government have consulted on the Financial Action Task Force's recommendation that international standards be brought in to clamp down on crypto-currencies being used for money laundering, terrorist financing and sanctions busting. There was a consultation last summer, and my understanding is that it ended on 14 October. Can she be very precise, given the current international situation and crisis we are in: when will the Government implement these recommendations?

Baroness Penn (Con): My Lords, I will have to write to my noble friend with the precise answer to that question, but I can say that there were discussions at the G7 yesterday, in part on this issue, following which we are considering how the UK along with its allies can prevent crypto assets emerging as loopholes to evade sanctions. Also, at an international level we will seek to intensify our lobbying efforts to drive improved anti-money laundering and counterterrorist financing regulation, licensing and supervision across other jurisdictions, as well as the UK.

Baroness Kramer (LD): My Lords, at this moment, thanks to economic sanctions, ordinary Russians effectively cannot transfer from roubles into currencies such as dollars and pounds, but they can move into crypto if they are not one of the named sanctioned individuals. There are exceptions: the exchange Coinbase has shut Russia out entirely, and so have some others. Binance has not and, notably, is registered in the Cayman Islands. On Monday, the Minister said she would look to talk to those exchanges and make sure that they understood that they had to follow the advice of the Ukrainian Government and shut out Russia. Has she done so, and why are the Cayman Islands not co-operating?

Baroness Penn (Con): My Lords, I did take the point that the noble Baroness raised back to the Treasury. As I said in an earlier answer, on blocking Russian transactions, the position is that firms are currently obliged to apply risk-based controls to mitigate the risk of sanctions evasion, rather than taking a blanket approach.

Lord Young of Cookham (Con): My Lords, further to the question from the noble Lord, Lord Cromwell, I do indeed believe that this is a beast that needs to be tamed. Has my noble friend read the comments of the Governor of the Bank of England, who said of cryptos:

"It's not a financial stability issue today, but it has all the potential to be one, particularly if the system starts getting leverage into it"?

Does this not underline the need for some sort of regulation if we are to avoid the problems we saw in 2008, when financial institutions and others dealt with products that were not fully understood and not properly regulated, leading to a major recession?

Baroness Penn (Con): My Lords, I have indeed read those comments by the Governor of the Bank of England. My noble friend is absolutely right that the situation is dynamic and the market in crypto assets is growing. That is why the Bank of England is monitoring crypto assets' financial stability. It is also why the Cryptoassets Taskforce, the Treasury, the Financial Conduct Authority and Bank of England are taking an approach to regulate aspects of crypto assets, particularly those that pose the greatest threat to our financial stability.

Lord Sikka (Lab): My Lords, there is no specific tax legislation relating to cryptocurrency assets, so holders of them are instead covered by broader tax rules, which is highly unsatisfactory. How long do the Government need to deal with this problem?

Baroness Penn (Con): My Lords, profits from trading in and gains from disposing of crypto assets are taxed in the same way and at the same rate as those from other assets, as the noble Lord says. HMRC's *Cryptoassets Manual* is one of the most detailed publications from any tax administration and explains the tax consequences for different types of transactions involving crypto assets, for both businesses accepting them and individuals using them.

Investments: Environmental, Social and Governance Criteria

Question

3.28 pm

Asked by ***Baroness Bennett of Manor Castle***

To ask Her Majesty's Government what assessment they have made of the level of demand for investments that are advertised as meeting Environmental, Social, and Governance (ESG) criteria; and what steps they are taking, if any, to ensure that such investments are in line with (1) the United Nation's Sustainable Development Goals, and (2) the Paris Agreement on climate change.

Baroness Penn (Con): My Lords, demand for sustainable finance is growing rapidly. Some 49% of UK-managed assets now integrate ESG factors, and there is strong demand from consumers and investors for such assets. The Government are committed to ensuring that this growing market is well regulated and that the UK is the best place in the world for sustainable finance. That is why the Government have taken world-leading action to green our financial system, safeguard consumer interests and prevent greenwashing.

Baroness Bennett of Manor Castle (GP): I thank the noble Baroness for her Answer. I know that she is aware of the recent article in the *Financial Times,* entitled "ESG: the next mis-selling scandal?" This suggested that there were strongly misleading claims being put on financial products labelled as green, sustainable, ESG, et cetera. Does the Minister agree that no product should be so labelled if it is not compliant with the Paris and, indeed, Glasgow climate agreements, international biodiversity treaties and the sustainable development goals? Given that report and many others, do the Government not need to act urgently to ensure that there is adequate regulation or legislation to make sure that people are actually getting what they believe they are putting their money into?

Baroness Penn (Con): The noble Baroness is absolutely right. That is why the UK is developing an economy-wide regime for ESG disclosure, focusing in the first instance on those requirements related to climate change. Alongside that, the FCA is creating a consumer-facing label, so that consumers seeking to invest in ESG products know what they are investing in and that it meets the high standards that they would expect.

Lord Oates (LD): My Lords, is the Minister aware of the comments made yesterday by the chair of the US Securities and Exchange Commission? He said of the ESG funds:

"When I think about these questions, I'm reminded of walking down the aisle of a grocery store and seeing a product like fat-free milk … in that case you can see objectives figures like grams of fat … Investors should be able to drill down and see the ingredients underlying these funds."

What activity is the FCA taking to ensure that such detail is provided? Is there co-ordination with the Securities and Exchange Commission in the United States?

Baroness Penn (Con): On the point about co-operation with the United States, I will have to check and write to the noble Lord. On the FCA, in addition to developing this consumer-facing label so that people can, with transparency, understand what they are investing in, it is also looking at the question of regulating the firms and providers that look at ESG ratings and providing that information also.

Baroness Altmann (Con): My Lords, I commend the Government on their commitment to green finance and on encouraging sustainable investing. Following on from the previous Question by the noble Lord, Lord Haskel, will the Minister tell us what assessment the Government have made of the impact in terms of

climate change of the so-called mining of cryptocurrencies like bitcoin, which, in itself, seems to have caused more greenhouse gas emissions per annum than many countries over the last year or two? Are the Government concerned about the sustainability of crypto from that perspective?

Baroness Penn (Con): The noble Baroness is absolutely right. We are aware of the huge energy use that can be involved in these currencies. The UK is developing a green taxonomy, which will make us the first country in the world to make disclosures aligned with our Paris and other commitments mandatory economy-wide, including the financial-services sector. That will bring transparency over the climate impacts of firms' activities and allow the market and consumers to respond accordingly.

Lord Tunnicliffe (Lab): My Lords, in recent days, we have seen a variety of organisations announce their intention to divest from investments in, or associated with, Russia. This is a welcome response to Vladimir Putin's ongoing and flagrant breaches of international law in Ukraine. While it is not for government to dictate how private organisations invest their money going forward, what steps are Ministers taking to promote investment opportunities that are greener, socially responsible and likely to be of long-term economic benefit to the UK, as well as our friends and neighbours?

Baroness Penn (Con): The work that we are doing to green finance and green our economy means that there will be far greater transparency on the impact of firms on climate change and the wider environment. This will allow firms to make those kinds of decisions. The noble Lord talked about divestment. In terms of our approach or view on that with regard to climate activities, we expect investors to use SDR disclosures to integrate climate into stewardship activities. That may eventually lead to divestment, but beforehand, they may use their position as investors in major companies to encourage them to greener positions before considering divestment altogether.

Lord Bridges of Headley (Con): My Lords, I declare my interest as an adviser to Banco Santander and apologise because I probably should have mentioned that when I spoke on the previous Question. Can my noble friend clarify, in the Government's approach to the green taxonomy and ESG, how nuclear and certain types of gas power stations will be classified? Will they be classified as green and environmental?

Baroness Penn (Con): My Lords, the Government set up a specific panel to look at those very questions, and I cannot pre-empt the outcome of its work.

Baroness Hayman (CB): My Lords, I declare my interests as set out in the register. I understand that the noble Baroness cannot prejudge what the panel will say on the green taxonomy. However, does she agree that it is essential, if that taxonomy is to be useful both in this country and internationally, that it is both science-based and free of vested interests?

Baroness Penn (Con): Yes, I agree with the noble Baroness on that point. I think the approach that the UK has taken to date to this whole area meets that test and will continue to do so.

Baroness Sheehan (LD): The director of the think tank InfluenceMap said about the same *FT* article to which the noble Baroness, Lady Bennett, referred, that if you label something that invests in fossil fuels "sustainable", and there is a whole body of scientific opinion that new gas, oil and coal production is incompatible with net-zero targets, there is probably quite a good chance that the fund is being mis-sold in some way. Does the Minister agree that a legal definition of greenwashing is urgently needed to prevent mis-selling of financial products?

Baroness Penn (Con): My Lords, I do not think we will be taking quite that approach to a legal definition of greenwashing. We will, through the green taxonomy, provide a clear way by which firms are transparent and what counts towards their sustainability claims, accompanied by regulation from the FCA on the consumer-facing label, but we will also look at whether firms that provide ESG data and ratings should be included in regulation.

Lord Lexden (Con): The noble Baroness who asked the Question referred to the case for fresh legislation in this area. Do the Government believe that further legislation is required; and, if so, when will it be introduced?

Baroness Penn (Con): My Lords, I believe much can be done under existing powers in FCA regulation and the UK's green taxonomy, but if any legislation is needed, it will be put forward in the usual way.

Baroness Kramer (LD): My Lords, many investors are saying that with the EU, the UK, the US and other countries choosing different definitions for their green taxonomy, it is becoming almost impossible to work around and through this confusing, complex system. What are the Government, together with other centres, doing to try to come to a single, clear definition that the world can rely on?

Baroness Penn (Con): My Lords, the noble Baroness makes a good point. The UK is working with the International Sustainability Standards Board to develop global sustainability reporting standards. We are also signed up to an initiative that combines the UK and China to create a globally recognised approach to the green taxonomy that will be common across different jurisdictions.

National Farmers' Union

Question

3.39 pm

Asked by ***The Lord Bishop of Exeter***

To ask Her Majesty's Government what assessment they have made of the remarks by Minette Batters, president of the National Farmers' Union, on 23 February, about the challenges facing farming.

The Parliamentary Under-Secretary of State, Department for Environment, Food and Rural Affairs (Lord Benyon) (Con): My Lords, I declare my farming interests as set out in the register. Defra continues to actively engage with the farming industry to deliver the changes we are implementing to support a strong and thriving agricultural sector, including measures to support productivity, raise standards and deliver environmental public goods. The NFU president raised many interesting and wide-ranging points during her keynote conference speech on 22 February, and we welcome them as a constructive contribution to the ongoing debate on the future of our agricultural industry.

The Lord Bishop of Exeter: I thank the Minister for his reply. What assessment have Her Majesty's Government made of our nation's food security in the light of the current conflict between Ukraine and Russia, mindful of the fact that those two nations between them produce 30% of the world's wheat? In anticipation of the loss of that harvest, the conflict will have a catastrophic impact. Does he agree that now is the moment for us to give active encouragement and increase support to our hard-working farmers as they try to guarantee our nation's food supply, particularly given that household bills are going up?

Lord Benyon (Con): The right reverend Prelate makes some good points. It is now a requirement under the Agriculture Act for the Government to publish where we are on food security in this country, which we did a few weeks ago. It shows that the position has been more or less static for at least two decades, and we want to make sure that we increase the amount of food that we produce locally. It is obviously too early to say what the impact will be on wheat imports as a result of the conflict in Ukraine, but we want to make sure that we are working with other departments so that we are as prepared as possible and that the market is able to adjust itself.

Lord Cunningham of Felling (Lab): My Lords, will the Minister protect British farmers and consumers by ensuring that those companies that have manipulated falsely markets in their own financial interests, as we have discussed before, are not allowed to operate in the United Kingdom market? I point out to him, as I am sure he knows, that one of those companies with a terrible track record of abuse of market opportunities owns two subsidiaries in the United Kingdom.

Lord Benyon (Con): The noble Lord is right to point out that it is vital that we protect the agricultural and food supply chain. We have powers in the Agriculture Act that allow us to introduce statutory codes of conduct that increase the transparency of business relationships and protect farmers and others from imbalanced commercial terms. We are currently exercising that in a number of sectors.

Baroness McIntosh of Pickering (Con): Will my noble friend join me in celebrating livestock farming in this country? He will be aware that much livestock production is conducted by tenant farmers in upland and common land areas. What future does he envisage for tenant and livestock farming?

Lord Benyon (Con): I and my ministerial colleagues are keen to sustain jobs in agriculture in our uplands and make sure that the support incentives that we give to farmers are accessible to tenant farmers, freeholders and all the varying degrees of the tenanted sector, that there is a future for livestock farming, and that we continue to produce at high standards in a way that the consumer will want.

Lord Deben (Con): Is my noble friend aware that the National Farmers' Union still believes that Defra has been extremely unable to explain to it the full programme that will follow the removal of production subsidies? Is he also aware that the NFU is fed up with a Government who promised to protect farmers and are now signing trade deals that mean that the farmers will be competed with by countries that are not meeting our climate change obligations?

Lord Benyon (Con): We as a sovereign nation are negotiating trade deals with other countries. We recognise that some concerns have been expressed around the impact of new trade deals on our farming and food sectors. I reassure the House that our recent agreements with Australia and New Zealand, and, indeed, those with any future partner, will not compromise our high standards. All products imported into the UK will have to, as now, comply with our import requirements.

Baroness Jones of Whitchurch (Lab): My Lords, already over 40,000 healthy pigs have been culled and the meat thrown away. A further 200,000 pigs are stranded on farms awaiting slaughter with no one available to slaughter them. Does the Minister agree with Minette that the disaster in the pig industry

"should have, and could have, been avoided",

and that the situation with pig farmers truly is an utter disgrace?

Lord Benyon (Con): The situation for pig farmers affected by this is serious. That is why we continue to work very closely with the industry. There was a perfect storm of a loss of exports to the Chinese market, disruption to CO_2 supplies and a temporary shortage of labour in the processing sector. We have been working hard on that with the private storage aid, the slaughter incentive payment and a package of measures to address these unique circumstances. On 10 February, my colleague Victoria Prentis chaired a pig summit and she is doing another one on 3 March. We are working really hard to resolve the problems in this sector.

Baroness Boycott (CB): I speak as a member of the Environment and Climate Change Committee and, in fact, in relation to a letter that Minister Prentis sent us in relation to ELMS. She says that the Government are exploring how they can best support leverage of private finance into ELMS. The recent spending review set an ambitious target to raise £500 million in private finance every year to support nature's recovery to 2027, rising to £1 billion by 2030. Exactly how will the Government commercialise the environmental land management scheme?

Lord Benyon (Con): I should explain to the House that this is not as part of ELMS. In addition to the support we are giving through the environmental land management scheme, which is ring-fencing the £2.4 billion to the end of this Parliament, we are seriously encouraging green finance similar to the points made in the Question earlier. That is a responsibility I have in Defra. We are taking the publishing of the Treasury's green taxonomy extremely seriously and making sure that we are focusing what Minette Batters talked about in her speech—the trillions of pounds floating around in the ESG markets—on nature's recovery and benefiting farmers' incomes by getting them access to that green finance.

Baroness Bakewell of Hardington Mandeville (LD): The call to increase wages for seasonal workers is causing concern among fruit and vegetable growers. While it is important to pay a decent wage, this will lead to food inflation. Given the increase in fuel prices already heralded and those likely to arise from the invasion of Ukraine, does the Minister believe that this is the right time to put added strain on the growers and increase the cost of food?

Lord Benyon (Con): I think there is a bit of confusion, which again was pointed out by Minette Batters in her speech, in relation to the minimum basic payment and the amount of hours a week that seasonal agricultural workers will be working. We are working hard to resolve that with the Home Office and I am very happy to write to the noble Baroness with information on that.

Baroness Butler-Sloss (CB): My Lords, where I live in Devon almost every small farmer has given up farming. What are the Government doing to help small farmers?

Lord Benyon (Con): The common agricultural policy and the basic payment scheme were, and to an extent still are, not small-farmer friendly. We want to make sure that the environmental land management scheme is much more focused on supporting smaller farms. I have visited farmers on the edge of Dartmoor who rent 100 or 200 acres and have grazing rights on Dartmoor. I realise the difficulty they have in gaining a living from their activities. We want to make sure that they have a living, and that the whole support network that we are providing and the addition of green finance will help them as much as it will help other farmers.

Baroness Mallalieu (Lab): My Lords, does the Minister agree that what has happened in Europe in the last week should be a warning for us, because the environmental schemes that we have just passed through this House in two Bills are inevitably going to lead to a reduction in the amount of land actually used for farming for food? What is happening indicates that we cannot rely simply on being able to buy cheaper food from other countries. Will he commit to maintaining the amount of land still used for farming and to encouraging food as the primary enterprise of farmers?

Lord Benyon (Con): The noble Baroness makes a very good point and it was well made in Minette Batters's speech at the conference. I entirely agree with her that we do not want to create some sort of idyllic garden in the countryside and export our carbon and other footprints to other countries with worse livestock and environmental standards. We want to continue to see farmers producing food of the highest possible quality, and that is what underpins our reforms.

Coroners (Determination of Suicide) Bill [HL]

Order of Commitment

3.50 pm

Moved by ***The Lord Bishop of St Albans***

That the order of commitment be discharged.

The Lord Bishop of St Albans: My Lords, I understand that no amendments have been set down to this Bill and that no noble Lord has indicated a wish to move a manuscript amendment or to speak in Committee. Unless, therefore, any noble Lord objects, I beg to move that the order of commitment be discharged.

Motion agreed.

Cigarette Stick Health Warnings Bill [HL]

Order of Commitment

3.50 pm

Moved by ***Lord Young of Cookham***

That the order of commitment be discharged.

Lord Young of Cookham (Con): My Lords, I too understand that no amendments have been set down to this Bill and that no noble Lord has indicated a wish to move a manuscript amendment or to speak in Committee. Unless, therefore, any noble Lord objects, I beg to move that the order of commitment be discharged.

Motion agreed.

Onshore Wind Bill [HL]

Order of Commitment

3.51 pm

Moved by ***Baroness Hayman***

That the order of commitment be discharged.

Baroness Hayman (CB): My Lords, I understand that no amendments have been set down to this Bill and that no noble Lord has indicated a wish to move a manuscript amendment or to speak in Committee. Unless, therefore, any noble Lord objects, I beg to move that the order of commitment be discharged.

Motion agreed.

Occupational Pension Schemes (Collective Money Purchase Schemes) Regulations 2022

Motion to Approve

3.51 pm

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

That the draft Regulations laid before the House on 17 January be approved.

Relevant document: 28th Report from the Secondary Legislation Scrutiny Committee. Considered in Grand Committee on 23 February.

Motion agreed.

Mesothelioma Lump Sum Payments (Conditions and Amounts) (Amendment) Regulations 2022

Pneumoconiosis etc. (Workers' Compensation) (Payment of Claims) (Amendment) Regulations 2022

Motions to Approve

3.52 pm

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

That the draft Regulations laid before the House on 13 January be approved.

Considered in Grand Committee on 23 February.

Motions agreed.

Nationality and Borders Bill

Report (2nd Day)

3.52 pm

Relevant documents: 7th and 9th Reports from the Joint Committee on Human Rights, 11th Report from the Constitution Committee, 18th and 19th Reports from the Delegated Powers Committee

Clause 15: Asylum claims by persons with connection to safe third State: inadmissibility

Amendment 31

Moved by ***Lord Rosser***

31: Clause 15, leave out Clause 15

Lord Rosser (Lab): My Lords, Clause 15 puts into the Bill an existing immigration law on inadmissibility that makes any asylum claim inadmissible in a number of circumstances, including if the claimant has passed through, or has a connection to, a safe third country. The result of a finding of inadmissibility is that, unless the Secretary of State decides that there are exceptional circumstances, the claimant will be denied access to the UK's asylum system for a "reasonable period", currently defined as six months in Home Office policy, while the UK seeks to transfer them to "any other safe country". With the huge backlog and delay currently in the system, it is impossible to understand how adding another six months to the asylum process will help an already dysfunctional system.

Clause 15 as it stands is neither acceptable nor deliverable in practice. We also have concerns on the definitions of "safe third state" and "connection", and on the lack of relevant international agreements. Serious concerns have been raised by the UNHCR and the cross-party Joint Committee on Human Rights, among others. There is an absence of adequate safeguards against returning individuals to countries to which they will be denied rights owed to them under the refugee convention.

Safe returns as part of an international asylum system are not new and are accepted under agreed conditions, but this clause does not provide for safe reciprocal return agreements. Even as it stands, the Government do not have returns agreements with EU member states, namely the safe third countries that refugees are most likely to have passed through. Instead, this provides for cases to be stalled and unilaterally declared inadmissible, without a requirement for a relevant returns agreement but on the basis of dubious connections to another state, where a person may or may not be able to enter an asylum system. We are talking here about asylum, not general immigration.

The clause provides that a claim is inadmissible if a person has a connection to a third state. It then clarifies that a connection can be made with a state that a person had never been to. It further clarifies that a person can be removed to a completely different state other than the one that they have been deemed to have a connection with. The UNHCR has described this as

"a significant and highly problematic departure from international practice and UK case law."

I will endeavour to be brief. I appreciate that this is Report and not a rerun of Committee, but in Committee the Government accepted on more than one occasion that we needed to have returns agreements in place. There was no direct answer given to a question asked by my noble friend Lord Dubs, who sought confirmation that to date we do not have an agreement with any country for the return of the people whom we are now talking about. This is about asylum. The answer no doubt is that we just do not have any such agreements. Despite saying in Committee on more than one occasion that we needed formal returns agreements in place to return people, the Government later went on to claim that we do not necessarily need formal return agreements in place, and that we could have

"formal and informal, diplomatic and otherwise."—[*Official Report*, 3/2/22; col. 1106.]

The reality is that we need formal return agreements in a situation where the number of people the Government intend to deem inadmissible will be high. In that situation, you cannot address this through unstated, unclear, ill-defined, informal ad hoc arrangements, as the Government seek to suggest. This clause is clearly based on the presumption that the Government can persuade other countries who already take greater asylum responsibility than the UK to accept people from the UK and agree to relieve us of a substantial part of the modest responsibility we currently take.

The reality of Clause 15 is that no such agreements are likely to materialise in the foreseeable future, as was clear from the debate in Committee. Dublin III has now gone and not been replaced. That is why my Amendment 32 provides the much-needed safeguards that Clause 15 can come into force only if the UK has safe returns agreements with third states and not before. I beg to move.

Lord Paddick (LD): My Lords, Clause 15 allows the Secretary of State to declare an asylum claim inadmissible if the person has a connection with a "safe third

state". Because it is a declaration of inadmissibility, there is no appeal other than judicial review, and there is nothing to stop the Home Secretary from removing the person to another third state with which they have no connection in the meantime, as the noble Lord, Lord Rosser, has explained. A connection to a safe third state includes where a claim for asylum in that country has been refused, a country where they could have claimed asylum but failed to do so, or where the Home Secretary thinks that it would have been reasonable to expect them to have claimed asylum in another country.

4 pm

By that definition, any refugee who has travelled through a so-called safe third state could be considered to have a connection with that country and therefore risks having their claim for asylum in the UK being ruled inadmissible, and therefore not even being considered by the Home Office. My understanding is that currently inadmissibility creates a six-month delay in processing an application while the Home Office tries to deport the person, and that if the Bill is passed that delay will become indefinite.

The likelihood of the UK Government being able to send back an asylum seeker to any third country that the Government have no agreement with appears unlikely, as the noble Lord, Lord Rosser, has said. The other place may be bored with too many take-out amendments. As an alternative, therefore, Amendment 32, in the name of the noble Lord, Lord Rosser, to which I have added my name, would ensure that the powers in this clause would be brought into force only once the Government have agreed a formal returns agreement with the third country that the Government claim the asylum seeker has a connection with and to which they intend to send them. Amendment 32 is not as good as taking out the clause but it is better than no change at all, so we will support this amendment in the event of a Division.

Lord Etherton (CB): My Lords, the provisions for an admissible asylum claim, where there is a connection —as defined in new Section 80B, which is to be inserted into the 2002 Act—are quite plainly contrary to the refugee convention and a breach of the UK's obligations under it. In particular, the conditions in new Section 80C(4), which is where a claim could have been made to a third state—the claimant was present in a state eligible to receive and offer a safe space for him or her—and new Section 80C(5), where the claimant should have made a claim to a safe third state whether or not he or she had ever visited or been associated with it, are both plain breaches of the convention and find no place in its wording.

Condition 4 in new Section 80C is really another way of stating the coming directly from the country of persecution requirement in Clause 11 and Clause 36(1). On Monday this House rejected the Government's interpretation of Article 31 of the convention in relation to that requirement, by rejecting Clause 11 as part of the Bill. With regard to condition 5 there is nothing whatever in the convention to justify rejecting as inadmissible a claim to asylum by a refugee as defined by the convention in the circumstances specified there. The only explanation, or example, given in the Explanatory Notes, is where the asylum seeker has close family members in the safe third country, whether or not there is another connection of any kind whatever.

Both these conditions are a rewriting of the convention and not a legitimate interpretation of it. The fact that Clause 15 provides, in new Section 80B of the 2002 Act, that a decision that a claim is not admissible because of an asylum seeker's connection to a safe third state is not subject to a right of appeal, makes Clause 15 an all the more egregious breach of the convention. There is, in effect, no legal redress for the refugee if the Secretary of State has declared the asylum claim inadmissible under the proposed safe third state provisions.

Logically this leads to the conclusion that Clause 15 should be left out of the Bill. I am content, however, to support the alternative approach of the noble Lords, Lord Rosser and Lord Paddick, in Amendment 32, which is to fix a start date for the Clause 15 provisions if a formal returns agreement has been reached between the United Kingdom and a third state to which it is said the asylum seeker has a connection.

The Minister of State, Home Office (Baroness Williams of Trafford) (Con): My Lords, I thank noble Lords for their contributions. I say at the outset that the Government have been consistent and clear about their belief that people who require international protection should claim asylum in the first safe country they reach, rather than make dangerous and unnecessary journeys to the UK to claim asylum here.

Inadmissibility processes, in particular the first safe country principle, are well established, both in the UK, through long-standing measures in the Immigration Rules, and internationally, including as part of the Common European Asylum System. For example, the procedures directive recognised at recital 22 that

"Member States should not be obliged to assess the substance of an application for international protection where a first country of asylum has granted the applicant refugee status or otherwise sufficient protection and the applicant will be readmitted to that country."

An overriding objective of these processes is to prevent secondary movements by those who have already reached safety. By definition, that is not about denying safety to those who need it but about having rules which aim to reduce unnecessary travel across borders by those who are already safe.

Amendment 31 seeks to remove third-country inadmissibility powers from primary legislation altogether. It would weaken our ability to deploy inadmissibility processes appropriately and decisively within a strong legal framework, and with that, erode our ability to deter unsafe migration and focus our resources on those most in need of our help.

We are confident that the measures in Clause 15 are fair, appropriate and fully in line with our international obligations. The clause sets out the strict circumstances in which a person's behaviour or circumstances could lead to inadmissibility action. It requires decision-makers to take account of exceptional mitigating factors that may apply when considering those circumstances. It sets out minimum criteria that must be met by any country before it can be regarded as a safe third country of return, including it being one where a

[Baroness Williams of Trafford]
person would not be at risk of persecution, would not experience a breach of Article 3 ECHR rights, and would not be sent to another place where they would be persecuted.

The primary protection afforded refugees under the refugee convention and its protocol is non-refoulement, including no onward refoulement. It is therefore clear that non-refoulement is the primary requirement of "safety". The same is true for protection afforded under Article 3 of the ECHR. Furthermore, an individual may not meet the definition of refugee under the convention but still require protection. A state may still be safe for them where they will not be refouled, even though they are not a refugee. Therefore, our criteria for determining whether a country is safe, and for subsequently making a claim inadmissible, upholds the UK's obligations under international law.

Nothing in Clause 15 requires extensive delay in processing inadmissibility decisions. It is right that we consider inadmissibility action and, where appropriate, seek the agreement of the relevant third country, or countries, for the person's admission there. In some cases, particularly where we are reliant on case-by-case requests to partners, this may take some time, but we have not operated, and will not operate, the inadmissibility system in a way that puts someone in indefinite limbo, as the noble Lord, Lord Paddick, talked about—able to access neither the asylum system in the country of proposed removal nor the UK system. That would be contrary to the object and purpose of the refugee convention. Our existing processes, which Clause 15 strengthens, are clear that where return cannot be arranged within a reasonable period, the person's claim would be admitted to the UK asylum system for substantive consideration. That ensures compatibility with the refugee convention.

Individuals will have an opportunity to explain their actions and circumstances prior to claiming asylum in the UK, and that explanation will be carefully considered in deciding whether an inadmissibility decision is appropriate. They will also be able to make representations on why any safe third state is not safe in their particular circumstances. Any decision to declare a claim inadmissible and remove an individual will be subject to the standard principles of public law, including rationality. The inadmissibility provisions are therefore compatible with the refugee convention. For these reasons, I do not agree with the amendment seeking to leave out the clause.

Turning to Amendments 32 and 86, as we have stated on previous occasions, the UK-EU joint political declaration made clear the UK's intention to engage in bilateral discussions with the most concerned member states to discuss suitable practical arrangements on issues around asylum and illegal migration. We continue to do that with EU member states on these issues. We have been clear that formal agreements, though valuable, are not the only way in which an inadmissible asylum seeker may be accepted for removal by a safe third country. I think it is right to seek removals on a case-by-case basis where appropriate and, with the consent of the relevant country, make that removal. This approach has formed part of our inadmissibility process since the changes to the Immigration Rules in December 2020—and, until the Bill's provisions come into force, we will continue to rely on the Immigration Rules.

The structure of case-by-case removal arrangements will not be uniform for each country of removal. A wide range of factors will still affect the formality and administration around such removals, not least the diverse organisational structures in place in the third country, the levels of centralised and decentralised decision-making, and other circumstances that may be specific to the individual. These arrangements will inevitably vary, but the framework in which cases are considered, within which third countries are assessed for safety and claimants are progressed to removal, will not. We have a clear and consistent approach to these fundamental and important issues, and we stand by our international obligations.

I do not agree that these provisions are unworkable without formal agreements in place. We aim to make the process work as a whole and to return people where appropriate. Where it becomes clear that an individual cannot be removed to a safe country, either because we do not have formal returns agreements in place or because a case-by-case removal cannot be agreed within a reasonable period, the individual's asylum claim will be considered in the UK. To go back to the assertion made by the noble Lord, Lord Paddick, I say that this will ensure that we do not keep people in limbo, in accordance with our obligations under the refugee convention. I do not think this amendment is required and ask that it be withdrawn.

Lord Paddick (LD): Before the Minister sits down, can she clarify? She insists that the Government's intention is not to put asylum seekers into indefinite limbo; in other words, if the Government attempt to send them back to a safe third country and fail to do so, at the moment there is a six-month time limit on that. Can the Minister confirm that there is nothing in the Bill to prevent an indefinite status of limbo?

Baroness Williams of Trafford (Con): Given what I have already stated about an indefinite state of limbo, surely the Minister's words would have some sort of weight. I have also said that any decision to declare a claim inadmissible and remove an individual will be subject to standard principles of public law, and that we will consider their obligation within a reasonable time.

Lord Rosser (Lab): I thank the noble Lord, Lord Paddick, and the noble and learned Lord, Lord Etherton, for their contributions to the debate. I also thank the Minister for her response. I appreciate that there are two amendments down: one takes the clause out and the other seeks to amend the clause to provide for safe return agreements to be put in place. I appreciate that other noble Lords can ask for a vote, but I will not be seeking a vote on taking the clause out. Instead, I intend to seek a vote on the amendment we have put down.

4.15 pm

I appreciate what the Minister has said about Clause 15 and the arguments she has made as to why it should remain in the Bill. I will, however, come back to the

issue of return agreements, which is essentially what our amendment seeks to address. Those safe return agreements must be in place before Clause 15 is brought into effect. There was no argument from the Government about this in Committee. I appreciate that the Minister was speaking on behalf of the Government, but what she said was:

"I am not disagreeing with the need to have formal arrangements in place to return people. On that we are at one."

She then said:

"I think it is both. We need to assess people on a case-by-case basis and we need to have return agreements in place."

Subsequently, she said:

"I do not accept that Clause 15 is meaningless. I am agreeing that we need to have return agreements in place. I do not think anyone would disagree with that point."—[*Official Report*, 3/2/22; col. 1104.]

This is all that my amendment is seeking to say. Before you bring it into effect, have these safe return agreements in place in respect of one or more states. So clearly I will have to put my amendment to a vote, since I am not confident the Government actually agree with it, despite what they said in Committee. All my amendment is seeking to do is put on the face of the Bill what, as far as I am concerned, the Government were agreeing with in Committee.

I have made clear what my intentions are, and I will not be seeking to put the stand part Motion to the test. However, when reference is made to Amendment 32, I will be seeking a vote on that.

Amendment 31 withdrawn.

Amendment 32

Moved by ***Lord Rosser***

32: After Clause 15, insert the following new Clause—

"Safe third State: commencement

(1) The Secretary of State may exercise the power in section 83(1) so as to bring section 15 into force only if the condition in subsection (2) is met.

(2) The condition in this subsection is that the United Kingdom has agreed formal returns agreements with one or more third States.

(3) A "formal returns agreement" means an agreement which provides for the safe return of a person making an asylum claim (a "claimant") to a State which is party to the agreement, where the claimant has a connection to that State."

Lord Rosser (Lab): I wish to test the opinion of the House.

4.17 pm

Division on Amendment 32

Contents 221; Not-Contents 172.

Amendment 32 agreed.

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Sanderson of Welton, B.
Sarfraz, L.
Sassoon, L.
Sater, B.
Seccombe, B.
Selkirk of Douglas, L.
Shackleton of Belgravia, B.
Sharpe of Epsom, L.
Sheikh, L.
Sherbourne of Didsbury, L.
Shinkwin, L.
Shrewsbury, E.
Smith of Hindhead, L.
Stedman-Scott, B.
Sterling of Plaistow, L.
Stewart of Dirleton, L.
Stowell of Beeston, B.
Strathcarron, L.
Strathclyde, L.
Sugg, B.
Suri, L.
Taylor of Holbeach, L.
Thurlow, L.
Trenchard, V.
Trimble, L.
True, L.
Truscott, L.
Tyrie, L.
Udny-Lister, L.
Vaizey of Didcot, L.
Vaux of Harrowden, L.
Vere of Norbiton, B.
Verma, B.
Walney, L.
Wei, L.
Wharton of Yarm, L.
Whitby, L.
Willetts, L.
Williams of Trafford, B.
Wolfson of Tredegar, L.
Wyld, B.
Young of Cookham, L.
Younger of Leckie, V.

4.37 pm

Clause 18: Asylum or human rights claim: damage to claimant's credibility

Amendment 33

Moved by ***Baroness Neville-Rolfe***

33: Clause 18, page 22, line 36, at end insert—

"(6C) This section also applies to failure by the claimant to produce identifying documents when entering the United Kingdom or when intercepted in the territorial waters of the United Kingdom."

Baroness Neville-Rolfe (Con): My Lords, I rise to move my Amendment 33 and thank my noble friend Lord Green of Deddington for his support. This amendment would add the failure to produce identifying documents as a factor that could be taken into account in an asylum or human rights claim and might damage a claimant's credibility.

The background to this is my concern that migrants, especially those coming across the channel in boats, are destroying any documents they have because they believe—usually on the advice of the people smugglers—

that they will secure better treatment under the asylum system. I fear that the system we operate makes this a reality.

My concern increased when I saw the results of a freedom of information request by Migration Watch UK, which showed that just 2% of the thousands who have made their way to the UK in small boats across the channel are in possession of a passport. Between January 2018 and June 2021, there were 16,500 such arrivals, and only 317 were found to have a passport at the time of being processed in the UK. This figure also dropped from 4% to 1% during that period, so something was happening.

Asylum claimants found to have destroyed their documents can be prosecuted under a 2004 law passed by the then Labour Government, but there were only two prosecutions in 2019—a sharp decline since 2013, when there were 49 prosecutions, 44 of which were successful. The fact is that by destroying their documents, migrants make it harder for the authorities to identify the claimant and assess their claim.

In responding to a similar amendment in Committee, the Minister, my noble friend Lord Wolfson of Tredegar, emphasised the case-by-case nature of decision-making, which I think was welcome to noble Lords. Clause 18 of the Bill before us adds two new behaviours to Section 8 of the 2004 Act: providing late evidence without good reason and not acting in good faith. He hinted that the destruction of documents would be an example of the behaviour that a deciding authority might think was not in good faith and concluded that my amendment was not necessary. However, when pressed by my noble friend Lord Green, he refused to confirm the documentation example and wished to leave the matter to decision-makers and the courts. This is not always the safest or cheapest approach.

Against the worrying factual background that I have been able to set out today, I believe that this is much too uncertain and likely to lead to a continuation of the current deplorable practice. The lack of clarity is an invitation to the people smugglers to persist with their wicked advice, and their wicked and dangerous trade. My Lords, what are the Government going to do about it?

Baroness Jones of Moulsecoomb (GP): This is a thoroughly nasty amendment. That is all I have to say about it.

Lord Green of Deddington (CB): My Lords, I will not be quite as brief as that, but I will try to be brief.

I rise to support Amendment 33 in the name of the noble Baroness, Lady Neville-Rolfe, which I have co-sponsored. It is surely right that the failure to produce identifying documents should be a factor—I put it no stronger than that—in assessing the credibility of a claimant. The destruction of identity documents has long been a means of undermining our asylum system. As I mentioned in Committee, we overcame a similar problem for those arriving by air simply by photographing the documents before they got on the plane, so if they stuck them down the loo, it was not going to help them, and that had been going on for some considerable time.

It is no accident that today, 98% of all cross-channel arrivals, whether by truck or boat, have no documents. Indeed, it is not in dispute that people smugglers instruct them to destroy any documents to reduce the risk of being returned to their home countries. In many cases, the applicants are making fools of us. Surely, the least we can do is to specify in law a requirement to take into consideration the absence of documents as a factor in judging the applicant's credibility. I can think of no reason why that should not be the case and I strongly support the amendment put down by the noble Baroness.

Lord Hodgson of Astley Abbotts (Con): I rise briefly to support this amendment. I had an opportunity years ago, when we were part of the European Union, to participate in an inquiry about FRONTEX and to go to Heathrow Airport to see the issues that the noble Lord, Lord Green, has just addressed. We were asked to be there at 8.30 in the morning to see what happened when people arrived at Heathrow on the overnight flights. Issues that have since been cured, largely, were then putting the immigration officers under enormous strain.

For example, on the day that we were there, a young man from Australia arrived who claimed to be British, but he came without any documentation; and a man from Brazil arrived for a holiday but without any money, so he was obviously going to work. Most significantly, a man on a flight from Nigeria claimed that he could not speak any of the languages available through interpreters at terminal 3, which is quite a wide range. I asked the reason for that, and they said that he will not speak until the flights back to Nigeria have left, and then he will start to speak, because otherwise he will be put back on the next flight to Nigeria. This was a prevalent issue, but I think it has now largely been tackled for the reasons given by the noble Lord, Lord Green. It was a huge gap in our ability to provide control. Those measures are not applicable to channel crossings, but we do need to find ways to tackle this issue, just as the noble Lord, Lord Green, described how we tackled it at airports. In the absence of that, we need to make it clear in law that the lack of clarity referred to by my noble friend when she moved the amendment should be taken into account by immigration officials.

4.45 pm

Lord Hylton (CB): My Lords, I invite the noble Baroness who moved this amendment and her supporter to consider the actual conditions of refugees who have passed through Europe and managed to get somewhere near our shores. They usually face closed frontiers. They probably live rough over a considerable period, being chased, for example, by the French police and the garde républicaine de sûreté. They are tear gassed, pepper sprayed and so on. Can they always be expected to have retained their correct documentation?

Lord Davies of Stamford (Lab): My Lords, I have been following this Bill since its inception. I have not spoken up to this point, but I have been increasingly concerned about the effect of this particular legislative initiative and its potential impact on our reputation

[Lord Davies of Stamford]
internationally, which had been very good in this area up to now, largely because of our role as one of the founding signatories of the refugee convention.

The present situation is one about which the Government are clearly not being frank with the public and the House. My noble friend Lord Rosser quoted chapter and verse very effectively just now when he quoted the Minister saying that at one point she was in favour of, and at another point against, having reciprocal return agreements with other countries. If she wants me to give way to her, I am happy to do so. We should know the answer to that. We should know the answers to things we do not know the answer to. For example, in this country, are we committed to not breaking up families? Can we assume it is a guiding and regular principle that we will not break up families? If we do break up families of asylum seekers or otherwise, we shall be acting completely outside the pale of civilised behaviour. That would be extremely worrying to an awful lot of us.

The Government are known, in international rumour, to be in negotiation with a number of African countries—Rwanda, for example—on establishing some sort of camp or facility to take failed asylum seekers from this country, but we do not know what the terms of such an arrangement would be. The Government have not been frank enough to tell us. There are a lot of rumours going around, most of which are very unattractive. I hope the Government might do something about that.

There is a fundamental weakness at the root of what the Government are trying to structure here. People who have come in small boats and hidden in lorries have been accused of coming here illegally. Logically, one can see the reason for that accusation, but there is no way in which they can come legally, as far as I can see. The Government should think about setting up an office in, say, Dunkirk, Calais and Boulogne-sur-Mer so that there will be some direct contact with these potential illegal immigrants. It would not cost that much. They could make some progress in filling out forms and getting an initial reaction from the bureaucracy to their claim. That might be helpful all round.

The fact is that the Government are proceeding in their own way and have not always been very straightforward with us. I hope that changes. I think all of us remember from our school days the Spartans in ancient Greece. They led a terrible life and were third-class citizens.

Lord Sharpe of Epsom (Con): My Lords, with great respect, is the noble Lord actually referring to the specific amendment under discussion?

Lord Davies of Stamford (Lab): I am endeavouring to do so but I shall not stand here for very long.

The ancient Spartans were helots. Their problem was that they had no rights—they had a growing population but no rights at all. I am very much afraid that if we take on board illegal immigrants and send them to some place in Africa, they will have no legal rights. It would be very worrying to have a population with no rights at all in a country that believes that that is firmly based on the law.

Lord Green of Deddington (CB): My Lords—

Lord Paddick (LD): Order.

Lord Green of Deddington (CB): If I may—

Lord Paddick (LD): No. My Lords, this is Report. First, we are allowed to speak only once during a debate. Secondly, even if noble Lords were not here for Second Reading or Committee, they should not be making Second Reading or Committee speeches on Report.

We cannot support this amendment because there is no differentiation between documents that are genuinely lost or stolen. We know that people smugglers control the people they are smuggling, including stealing and taking their documents away from them deliberately, so it may not be the fault of the asylum seeker that they do not have a document. This amendment and the other provisions in the Bill seem to ignore the fact that officials and tribunals are quite capable of deciding, on the basis of the evidence, what weight they place on the evidence that is provided to them and what should be considered in terms of the credibility of the claimant, without what is contained in the Bill or in this amendment.

The noble Baroness, Lady Neville-Rolfe, said, on the basis of a freedom of information request, that only 2% of asylum seekers were in possession of a passport. Only four in 10 Americans have a passport. Is it any wonder that those fleeing war in less developed countries, often when normal government services have completely collapsed, do not have passports? If you are fleeing war, if you are being bombed, if you are being persecuted because of your sexuality or your political views, the first thing on your mind is to get out of that country, not to go to the Government and ask for a passport.

This amendment and the related clauses in the Bill that seem to be telling officials and tribunals what interpretation they should put on evidence should not be supported by this House.

Lord Coaker (Lab): My Lords, under Clause 18, where an asylum seeker provides late evidence, this should damage their credibility. Amendment 33 in the names of the noble Baroness, Lady Neville-Rolfe, and the noble Lord, Lord Green of Deddington, would provide that a person's credibility should also be damaged where that person fails to produce ID documents when they enter the UK or are intercepted at sea. We do not support the clause or believe it should be part of the Bill, so we do not support the addition to it. A person's credibility should be based, as it always has been, on the full picture and the worth of the evidence that is submitted.

As we have just heard from the noble Lord, Lord Paddick, where people are fleeing the horrors of war and risk to life, they may not bring the right documentation, or it may have been lost or stolen along the route. As we can see from recent horrors around the world, I am not sure that it would be anybody's first priority to go back to wherever they were to find any documentation they might have—it would be to get out of danger. However, under the amendment of the noble Baroness, Lady Neville-Rolfe, and the noble Lord, Lord Green, they would be penalised: it would

be a failure by the claimant to provide identifying documents. Such a carte blanche failure to produce identifying documents would mean that such people seeking asylum would automatically be excluded from doing so. I do not think that that would be something that the country or, indeed, this Chamber would want.

There are other issues I wish to raise that are more relevant to the next amendment; however, if this amendment is put to a vote, we will vote against it.

The Parliamentary Under-Secretary of State, Ministry of Justice (Lord Wolfson of Tredegar) (Con): My Lords, I am grateful to my noble friend Lady Neville-Rolfe for raising the issue and of course I understand the concerns that lie behind it.

Clause 18 adds two new behaviours to the existing credibility provisions in Section 8 of the Asylum and Immigration (Treatment of Claimants, etc.) Act 2004. It introduces the principles that providing late evidence without good reason or not acting in good faith should be damaging to the claimant's credibility. Where, conversely, there are good reasons for providing evidence late, that would not affect the claimant's credibility.

The concept that certain conduct should be damaging to credibility is not new. Decision-makers must already consider the claimant's conduct. It is then open to the Home Office or the courts to decide the extent to which credibility should subsequently be damaged. The focus of Clause 18 is, therefore, the Home Office and then the judicial decision-making process. It is intended to address the issue of late evidence raised in unfounded protection and human rights claims and put beyond doubt that behaviour designed to abuse the system will be taken into account. Clause 18, therefore, is intended to apply to those individuals who have made a protection or human rights claim and have been issued with an evidence notice as per Clause 17. It is not intended to apply, for example, to individuals immediately when intercepted in the territorial waters of the United Kingdom.

Against that background, I suggest that Amendment 33 is unnecessary. The destruction, alteration or disposal of a passport without reasonable explanation, or the failure to produce a passport on request to an immigration officer or to the Secretary of State—again, without reasonable explanation—are behaviours to which Section 8 already applies. The good faith requirement in the Bill is intended to address behaviours such as those mentioned in the amendment, as well as any other behaviours that a deciding authority thinks are not in good faith. Specific instances of a lack of good faith are necessarily caught by the broader provision that refers to good faith: the greater includes the lesser. Therefore, there is no need to single out the behaviours prescribed in this amendment.

As to the detail of the amendment, I say that verification of someone's identity normally takes place on land. However, should a claimant be in possession of their passport or identity document and fail to provide this when requested by an immigration officer, Section 8 will apply, as I said. Moreover, where evidence is provided late following receipt of an evidence notice in a protection or human rights claim—again, without good reason—this should be taken into account as damaging the claimant's credibility.

As this amendment refers to specific examples of behaviour designed to abuse the system, and that type of behaviour as a whole is already caught by the provisions of the Bill, I respectfully suggest that the amendment is necessarily unnecessary. For those reasons, I respectfully invite my noble friend Lady Neville-Rolfe to withdraw it.

Baroness Neville-Rolfe (Con): My Lords, I thank those who have spoken in this brief debate. The very real problems of refugees, noted by the noble Lord, Lord Hylton, and of course the fact that some people do not have passports are very well understood by me. That is why my proposal is to add an extra factor that needs to be taken into account, not least to reduce the power and profiteering of the traffickers. As has been said, tribunals and officials can then take a fair view.

Having said that, I think that there seems to be a chink of light in some of the comments from my noble friend Lord Wolfson on how this would work. Perhaps we could discuss further before Third Reading what the Government's approach will be, the associated regulations and so on. I am very conscious that we need time for many votes today, especially as the electronic system seems a bit slow, so for today I beg leave to withdraw my amendment.

Amendment 33 withdrawn.

Clause 25: Late provision of evidence in asylum or human rights claim: weight

Amendment 34

Moved by ***Baroness Coussins***

34: Clause 25, page 30, line 25, at end insert—

"(2A) The deciding authority must treat evidence provided late as provided late for good reason where the applicant is a child, or where it is reasonable to attribute its lateness to the applicant's experience of, but not limited to —

(a) torture,

(b) trafficking or modern slavery, or

(c) sex or gender based violence, abuse or exploitation."

Baroness Coussins (CB): My Lords, Amendment 34 is in my name, and I thank the noble Baroness, Lady Lister, for her support. I am also extremely grateful to the Minister for meeting me last Friday to discuss this amendment and for agreeing to follow up our discussions with the Home Office. I am hopeful that this is going to lead to a positive outcome.

Clause 25 authorises the deciding authorities to give minimal weight to late evidence submitted by asylum applicants unless there is a good reason for it. My amendment would require the authorities always to assume that there was a good reason for late evidence in certain circumstances: where the applicant is a child or where the reason for lateness could reasonably be attributed to their experience of torture, trafficking or modern slavery, or sex or gender-based violence, abuse or exploitation. I have based that on the evidence to which I referred at Second Reading: that it is widely acknowledged that the trauma associated with sexual violence or trafficking can lead to significant problems with memory and recall, as well as a reluctance to

[Baroness Coussins]
share details which could bring shame, fear or humiliation. Critically, I rely also on existing Home Office guidance, which acknowledges all that and says that an application should not be disadvantaged in those circumstances.

5 pm

However, in Committee, the Minister explained why he could not accept the amendment, which was admittedly drawn much more widely at that stage. I accept that one of the flaws in that version of the amendment was that, as he pointed out, there are unintended consequences which are undesirable—for example, the lateness of the evidence could be completely unrelated to the categories of situations that I listed. In addition, he pointed out that listing some categories and not others could, in principle, tie the judiciary's hands and result in unfairness—for example, treating an applicant who is two days short of an 18th birthday differently from somebody who was 18 two days previously. Other circumstances could equally have resulted in an asylum seeker's trauma which were not listed—for example, faith-based persecution.

I have tried to adapt and amend the wording of my amendment to accommodate those reasonable objections, and I have done so by not listing the categories of person but by listing experiences and linking directly the attribution of late evidence to those experiences. I have also inserted the words "but not limited to" to try to encompass some of the other circumstances, which would otherwise have resulted in a list as long as the Bill itself.

Another way of coming at the problem of late evidence which the Minister and I discussed is by looking at the crucial role of Home Office guidance, which currently refers to some but not all of the criteria listed in my amendment. It refers to trafficking and sex and gender-based violence, but not to the other conditions or experiences which could equally lead to good reason for late evidence, such as torture, modern slavery, mental health issues or faith-based persecution. With that in mind, the Minister kindly undertook to consult Home Office colleagues over the weekend to see what scope there might be to expand, strengthen and update the Home Office guidance to cover a much broader range of those contingencies. The aim was to see whether that would, in practice, provide sufficient reassurance for asylum seekers suffering the kind of trauma which could account for late evidence, but which would avoid the need for an inevitably selective list being included in the Bill—which might at first sight look like the right thing to do, but which could arguably have the effect of disadvantaging some refugees not caught by the stated categories.

I hoped that my inclusion of the words "but not limited to" could overcome that concern, but I shall be interested to hear what the Minister can report from his discussions with the Home Office to see whether we can find an acceptable way forward through new strengthened and updated Home Office guidance rather than an amendment which, I agree, could risk unintended consequences. I beg to move.

Baroness Lister of Burtersett (Lab): My Lords, I shall speak briefly in support of the amendment, which I hope the Minister will be able to respond to positively, given that it has been revised to take account of concerns that he raised in Committee about its wording, as the noble Baroness, Lady Coussins, said.

I want to come back to the question of children. I welcome the publication last week of the factsheet on the Bill's impact on children—better late than never—although it was only by chance that I found out about it, even though I had raised a number of concerns in Committee about the Bill's failure to protect children. That point was made strongly by children's organisations such as the Children's Society. The factsheet, not surprisingly, echoes what the Minister said in Committee about guidance setting out how decision-makers will exercise their discretion with regard to children and more generally on a case-by-case basis.

However, as the Children's Society warns:

> "Assurances that children will be looked after in guidance are not sufficient. Guidance and case-by-case determinations do not provide the legal protection children desperately need. As highlighted in the recent inspection report of Asylum Casework, guidance is often neither followed nor implemented by Home Office caseworkers. Home Office staff themselves stressed 'they did not have time to consider each case on its own merits, contrary to the guidance they receive'. Leaving decisions that will have a profound impact on a young person's life to case-by-case determination can trigger further trauma for young and vulnerable claimants."

Moreover, when the factsheet states:

> "The best interests of the child are a primary consideration in every decision taken in respect of the child",

forgive me if I am sceptical, given that the Court of Appeal last year ruled that the Home Office had failed to take account of the child's best interests when setting the fee for citizenship registration—an issue to which we will return on day three.

Therefore, I am afraid that I am not reassured by what has been said about guidance and a case-by-case approach. Can the Minister tell us when that guidance will be published? Will organisations working with children seeking asylum be consulted on it? What opportunity will there be for Parliament to consider and provide views on the guidance? I realise that those questions may need to be referred to the Home Office but, if so, I should be grateful if the Minister would undertake to pass them on and request that the Home Office writes to me with the answers.

Lord Paddick (LD): My Lords, we support the amendment as far as it goes, particularly the emphasis on those subjected to sex and gender-based violence, abuse or exploitation. However, there are many others, such as those from sexually and gender-diverse communities, who will hesitate to bring forward all the evidence that they rely on in support of their claim. As I said in the last group, and as the noble Lord, Lord Wolfson of Tredegar, said, officials and tribunals already weigh evidence and credibility but if, in the Bill, the Government insist on leaning on decision-makers in relation to the weight that they should place on late evidence, then this or an expanded amendment should be included; that should also include children.

Lord Coaker (Lab): My Lords, I do not want to add much to what the noble Baroness, Lady Coussins, and my noble friend Lady Lister said in support of this important amendment. They outlined some of the problems well.

The amendment relates to Clause 25(2), which says:

"Unless there are good reasons why the evidence was provided late".

It bedevils any Government that as soon as you state, "Unless there are good reasons", the argument then becomes, "What do you mean by good reasons?" Then you produce a list and people complain that the list does not include everything. So you state that there will be guidance and then the Government do not produce guidance for people to look at to see whether it is worth it or needs to be improved. I appreciate what the noble Baroness and my noble friend said about engagement with the Minister, but these are real issues because people will be excluded from asylum claims on the basis of late provision of the evidence—and we do not know what the good reasons are that will prevent those claimants being excluded as a result of being classified as having given late evidence. It is not satisfactory.

At this stage, on Report, there is this question for the Minister. The list has been produced. The Minister will say, exactly as the noble Baroness, Lady Coussins, said, that by having a list, you will miss people out. That is why the amendment is trying to insert "but not limited to". This is quite an unsatisfactory situation. Can the Minister not say a little more about what the guidance will say? Can he not give us a little more, in consultation with the Home Office, about whether there could be a draft of some sort, even at this late stage, to give some indication of what the guidance will be on what "good reasons" actually means? I appreciate that this is an ask for the future but the amendment tabled by the noble Baronesses, Lady Coussins and Lady Lister, is extremely important and goes to the heart of the problem with Clause 25 —notwithstanding the fact that many of us do not agree with the clause anyway. In seeking to improve the parts of the legislation that we do not agree with, what "good reasons" means is absolutely fundamental to our understanding.

As I say, I support the amendment; I appreciate that it seems to be a probing amendment. However, these are important issues and the Minister will need to go further to deal with them, I think.

Lord Wolfson of Tredegar (Con): My Lords, I thank the noble Baroness, Lady Coussins, for her engagement with me, as the House will have heard, on the amendment, which she has redrafted since Committee, for the reasons she set out in her speech. I am also grateful to the amendment's co-sponsor, the noble Baroness, Lady Lister of Burtersett.

We have a proud history of providing international protection to those most in need. This is a responsibility that we take seriously, but we need a system that is efficient as well as effective. By introducing a statutory requirement to provide evidence before a specified date, the Bill redresses the current balance. It is right that decision-makers have regard to the principle that minimal weight is given to evidence that is late following the receipt of either an evidence notice or a priority removal notice without good reason. The House will appreciate that Clause 25 is therefore essential to the architecture of this part of the Bill. However, at the same time, it is important not to tip the balance too far. Decision-makers in the Home Office and the judiciary will maintain their discretion as to whether, having considered the principle and in the absence of good reasons for lateness, it is appropriate in all the circumstances of the particular case to apply minimal weight to late evidence, taking into account the claimant's particular claim and any specific vulnerabilities.

I have been asked to define "good reasons". This has not been defined in the Bill for, if I may say so, a good reason. We cannot legislate for every case type where someone may have good reasons for providing late information or evidence in relation to their protection claim. To do so would be impractical and would detract from the important principle that decision-makers are best placed to consider an individual's particular vulnerabilities on a case-by-case basis. I say this because "good reasons" can include both objective factors, such as practical difficulties in obtaining evidence—for example, where the evidence was not previously available—and subjective factors, such as a claimant's particular vulnerabilities relating to their age, sexual orientation, gender identity or mental and physical health. Decision-makers must be able to respond on a case-by-case basis.

I contrast that with Amendment 34, which would place an obligation on decision-makers not only in the Home Office but in the judiciary to accept that there were good reasons for late evidence in all asylum and human rights cases where either the claimant or the claim type fell into one of the listed categories. I suggest that this would undermine the principle that we want decision-makers and the judiciary to apply their discretion on a case-by-case basis. By setting out a non-exhaustive list—I appreciate that it includes the words "not limited to"—of potential experiences or categories of claimant, it is true that this amendment does not exclude those not listed in the amendment from having good reasons. However, in any non-exhaustive list, there is a risk of focusing attention on the factors in the list, thus putting other applicants with different issues at a relative disadvantage.

5.15 pm

I suggest that the amendment is unnecessary because Clause 25 already provides sufficient safeguards to all individuals captured by the amendment and, indeed, further individuals not covered by it. I have indeed followed up on the undertaking I gave and can confirm to the noble Baroness and the House that guidance on good reasons will set out how decision-makers should make an assessment of reasons for lateness. I can specifically confirm that the guidance will cover all those categories of claimant and types of experience listed in this amendment as well as others. As to the timing, I can also confirm that the guidance will be published at least two months before it comes into effect.

I will make some other short points in response to the amendment. The noble Baroness, Lady Lister, referred to children in particular, so let me say a word about that. Where a child raises a protection or human rights claim, decision-makers will take into account the age and particular characteristics of the child before deciding whether to issue them with an evidence notice. Where evidence is thereafter provided late, it

[Lord Wolfson of Tredegar]
will be, as I have said, for the Home Office and the judiciary to decide on a case-by-case basis whether there are good reasons.

In that context, guidance will be published, and I have set out the timing, setting out how decision-makers should take into account the age of the unaccompanied asylum-seeking child in the exercise of their discretion. The evidence provided by a child will be considered in the light, therefore, of their age and their degree of mental development and maturity, both currently and at all relevant earlier material times. Where there are good reasons for late evidence, there will be no penalty or adverse consequences for the claimant and decision-makers will not therefore need to have regard to the principle that minimal weight should be given to the late evidence.

I point out, as I think the noble Baroness accepted, that there is a problem with Amendment 34 because it can create a different statutory approach to individuals who may be equally vulnerable—for example, where a claimant is suffering from severe anxiety or depression or other mental health-related issues that are not included in the amendment. The noble Lord, Lord Paddick, referred to other categories and it is essentially the same point. I invite the House to accept that the approach in Clause 25 is the better one because that preserves the discretion for the decision-maker.

Finally, there is a risk as well of perverse outcomes. The amendment would possibly encourage claimants. There would be incentive to claim that you fall into one of the listed categories when you do not if there a hard cut-off, for example at the age of 18. That would incentivise somebody who is 18 and a half to claim that they were just about six months younger than they were. That would increase the burden on the authorities and act to the detriment of those under 18 and any others who need a high level of support.

I hope I have set out—

Baroness Lister of Burtersett (Lab): Just before the noble Lord sits down, can he say whether there will be any consultation on the guidance? Can someone write to me on that point?

Lord Wolfson of Tredegar (Con): My Lords, I do not have the detail at my fingertips, but I can certainly undertake to write to the noble Baroness. I was just about to sit down after inviting the noble Baroness, Lady Coussins, to withdraw the amendment for the reasons that I have set out.

Baroness Coussins (CB): My Lords, I thank the Minister for his reply and all other noble Lords for their support on this amendment.

I was very happy to hear the Minister's commitment, having discussed it with the Home Office, that there would be new guidance. Assuming that this new guidance on late evidence is genuinely expanded and strengthened, this has the potential to go a long way towards meeting my objectives. However, I underline the point just made by the noble Baroness, Lady Lister, that it would be very helpful to be consulted on a draft before the two-month cut-off point when the new guidance would come into force. I would be very grateful if Home Office colleagues could take that on board. Although the noble Lord is an MoJ Minister, can he please keep on this as well, and ensure that the Home Office does not lose sight of this guidance in the greater scheme of things?

Assuming that this will be on track, it amounts to a satisfactory way of meeting my objectives and would give vulnerable and traumatised refugees some of the comfort that they deserve. On that basis, I beg leave to withdraw the amendment.

Amendment 34 withdrawn.

Clause 28: Removal of asylum seeker to safe country

Amendment 35

Moved by ***Baroness Stroud***

35: Clause 28, page 33, line 20, leave out paragraph (a)

Member's explanatory statement

This amendment is linked to the amendment to leave out paragraphs 1 and 2 of Schedule 3.

Baroness Stroud (Con): My Lords, in the absence of my noble friend Lord Kirkhope due to Covid, I will be moving Amendment 35 in his name.

It is disappointing that the concerns expressed by many noble Lords in Committee have gone unheeded and the practical questions that were posed are yet to be answered. My noble friend Lord Kirkhope is a former immigration Minister, who speaks with authority on this matter. Many years ago, after carefully examining this policy of offshoring, he rejected the proposal to offshore asylum seekers on the basis that it was impractical and ineffective. The reasons that he did so still apply today.

There is still too much that we do not know about this policy, even at this late stage. How would the powers given be used by the Government? Whose legal system would be used to assess asylum seekers that we have offshored—Britain's or the third country's? Once assessed, would these asylum seekers be returned to the UK? How would the Government exercise their safeguarding responsibility for families thousands of miles out of UK jurisdiction? How much would each case cost? The numbers from Australia suggest up to £2 million per year just to keep one person who is in need out of this country.

All this fails to fit in with our legal and international obligations, let alone our constitutional principles. Today, we see this clearly, more clearly even than when we were discussing it last time, through the events in Ukraine. This tragic and unnecessary unfolding humanitarian crisis will certainly play out through the European continent. Many refugees fleeing Ukraine may well attempt to come to the UK. Last Saturday evening, the Prime Minister clearly stated that we would welcome refugees from Ukraine here. By Sunday, that commitment had become that we would support refugees in neighbouring countries to Ukraine. Today, we can see that the approach has moved again and that the Government are committed to expanding their family visa scheme and introducing a new community sponsorship scheme for Ukrainians, both of which are significant and welcome steps.

However, are we still saying that every other Ukrainian refugee who reaches these shores would fall into tier-2 status, have no recourse to public funds and be subject to potential offshoring? How would this work practically? How are we going to apply an operation that would be, at the best of times, excruciatingly complex to execute on a potentially huge scale? Of course, there is the irony of people seeking safety only to find themselves in a position of renewed vulnerability, potentially held indefinitely in detention abroad. Instead of designing a structure that draws a proper distinction between economic and humanitarian motivations for migrants trying to reach our shores, it seems that the Government are muddying the water and resorting to this extraordinary measure of offshoring.

As we have learned more about the realities of life in the Australian processing centres, many noble Lords have become increasingly concerned by the reports of what children have been forced to endure. The Nauru files—a cache of more than 2,000 leaked incident reports from the detention centre on Nauru—highlight hundreds of reports of neglect, violence and abuse against children in the detention centre, often by guards. I cannot fathom a situation where the UK would tolerate the mistreatment of children, but in the absence of explicit protections and the rule of our own legal system, we have to assume that any scenario is possible.

In conclusion, this proposal is deeply concerning and unworkable on numerous levels. The powers it would grant our Government are on the one hand ill-defined and on the other far-reaching. They are potentially hugely expensive and yet ineffective, exposing vulnerable people to further trauma rather than offering protection.

As great as these concerns are, I have one further concern: what does this policy make us? This is our moment as an independent nation that can demonstrate western liberal values at a moment when they are under attack—values of democracy, rule of law and freedom of speech, yes, but also the value and dignity of every human being. We all believe in taking back control, but if there is one lesson to learn from Australia's experience, it is this: any country that chooses to outsource its constitutional responsibilities compromises its control. I beg to move.

The Lord Bishop of Durham: My Lords, in rising to support Amendment 35 in the name of the noble Lord, Lord Kirkhope, to which I have added my name, I declare my interests in relation to both RAMP and Reset and set out in the register. I thank the noble Baroness, Lady Stroud, for the way she introduced this amendment, and I fully support all her points.

I set out my reasons for supporting this amendment in Committee. However, a significant concern for me now is that the Minister was not able to give assurance that children in families would be excluded from offshoring, nor that families would not be split up in the process. This is deeply concerning. I appreciate that the policy document of 25 February sets out that exemptions will depend on the country where people are being offshored and tat publicising exemptions will fuel the movement of the most vulnerable not subject to offshoring.

However, I would set out that, for children, onward movement to any country after an often traumatic journey to the UK, in addition to the trauma in their country of origin, is simply never in their best interests. All the concerns I set out in my Committee speech regarding the monitoring of the practice of offshoring processing centres are especially true for children.

The Home Office has processes to confirm identity and actual family relationships, which it uses for a range of visas as well as in the asylum process. It would seem that, if this is the concern, there are ways to avoid children being used in this way. Given the deep harm that offshoring would do to everyone, particularly children, I fail to see why the Minister cannot give this commitment.

I am deeply concerned that throughout the Bill, where we have highlighted the deep harm of policies on the most vulnerable, we are told that guidance and discretion can be applied on a case-by-case basis. I understand the logic of that, but what worries me is that it does not speak of any standardised process where everyone can be confident that there is equal treatment.

I further ask whether an economic assessment of the costs of offshoring has been properly made, and, if so, what the outcome of that assessment has been—and if it has not, why not? I ask these questions while fully supporting the need to remove this clause of the Bill in its entirety.

Baroness Lister of Burtersett (Lab): My Lords, I support Amendment 35. In Committee, I and a number of other noble Lords asked various questions to which the Minister responded that she promised to write to us. Well, I have not received a letter. I contacted her office this morning, checked with our Whips' office, and—the right reverend Prelate is also shaking his head—there was no letter.

I was going to raise the question of children, but the right reverend Prelate has already dealt with that very well. The fact sheet came out at the end of last week. My reading of it was that, yes, families with children will potentially be offshored—which is, as the right reverend Prelate said, very troubling.

I simply return to a question I raised at the very end of our debate in Committee, when I said that

"a whole range of noble Lords asked a question, in different ways, about what happens to the asylum seekers if they are granted refugee status in the country to which they have been offshored. Are they allowed back into this country or are they just left there? If they are left there, they have, in effect, been deported."—[*Official Report*, 8/2/22; col. 1421.]

That seemed to me a rather basic question, and I was rather surprised that the Minister said that she could not answer it. I took her at her word that she would write to us, and she has not—so could she answer that question today, please?

5.30 pm

Lord Horam (Con): My Lords, I spoke on this subject in Committee, so I will not make any more than a few brief remarks on Report. I cited the Australian example, which now has all-party support in Australia, for dealing with a particular form of offshoring.

The problem of dealing with cross-channel migration is undoubtedly very difficult, but it is not impossible; we have had some success in dealing with the problem

[LORD HORAM]
of people coming across in lorries, which is one of the reasons they are now coming by sea. But the reason I cannot go along with my noble friend Lady Stroud is that if you are dealing with a very difficult, protracted and visible problem like this, you need to consider all the options available. Some of them will turn out, on closer analysis, to be impractical. It will turn out that you simply do not want to do some of them because of the reasons raised by the right reverend Prelate the Bishop of Durham and the noble Baroness, Lady Lister, about some of the ramifications. Some of them may simply be politically impossible to do, but it is an obligation on the Government to explore every avenue to resolve this very difficult problem.

Also, this is clearly an international problem. It is not only Britain that is dealing with this issue; it is Greece, Italy, France, Spain and so on. One thing I am sure noble Lords have said in the past is that, when looking at this, we should not simply confine ourselves to what we think is right. We should look abroad to see how other countries have tackled it. Some countries have had some success, some have had less success, but it would be foolish to ignore what is happening abroad and what methods they are trying.

For all those reasons, it is just common sense to keep the wording of the Bill as it is at the moment to give the Government the opportunity to explore a number of different avenues, some of which, I agree, may not turn out to be very sensible, and some of which may be more productive. To stop this now and to exclude some aspects because there are unanswered questions at this stage, when the Government are clearly in negotiations on this—they are half way or quarter way through the process; I do not know—would be foolish in the interests of looking at the whole picture.

Finally, the noble Lord, Lord Paddick, often makes the point that this aspect of asylum seekers and refugees coming across the channel is only a small part of a much larger picture of migration; I think he used the figure that asylum seekers make up 6% of those coming over. But we have to get back to the bigger picture of what is happening on migration. By the way, I include Ukraine in that. Obviously, we all hope that no Ukrainian has to find a way across the channel via a smuggler. We hope that this country will be generous enough to deal with all those coming here properly. As I understand it, the Prime Minister said at Question Time today that he had been in discussions with the Poles, for example, about how Britain could help the Polish Government to deal with the massive influx they have had over their borders. That is an entirely separate issue which I hope we can deal with far more generously than so far.

I think this is a distraction, if you like—a difficult and problematic distraction from a very much bigger picture, which I hope we can return to if we really can solve this. But I urge the House not to rule out any particular measure, however difficult it may be and however many questions it may pose, at this stage.

Lord Cashman (Lab): My Lords, I will speak rather briefly; it seems to me that brevity has a very wide definition. Let me just say that outsourcing is entirely unacceptable. I would like to see the back of this clause and schedule; they should not be in a Bill dealing with asylum or refugees. As I said in Committee, this will place vulnerable people again at risk. I give the simple example of someone who might be lesbian, gay, bisexual or transgender ending up in a country to which they are outsourced where they could be criminalised, persecuted and under real threat. What kind of signal do we send to the rest of the world when we treat vulnerable people in this way? I support all the amendments in this group. I think that is brief enough.

Baroness Jones of Moulsecoomb (GP): My Lords, I think the noble Lord, Lord Horam, makes the mistake of thinking that this House trusts the Government. Of course, it does not—or rather, by and large, the majority in this House does not, because the Government have broken their word so many times.

I will speak briefly as well, because I am very concerned that we can vote as much as possible but I do not understand why the Government are trying to move people to other countries. This makes no sense, and it is one of the many ways that the Government are trying to avoid their obligations. Instead of trying to deport people while the Government dither about processing their claims, we should provide them with decent accommodation and work so that they can start to retrieve some of their lives. If there was ever a moment when this Government should come out against the far-right ideology within their own ranks, this is it.

Lord Etherton (CB): My Lords, I entirely agree with and support what has been said by the noble Baroness, Lady Stroud, the right reverend Prelate the Bishop of Durham and the noble Lord, Lord Cashman. Offshoring while an asylum seeker is having their claim assessed is wrong in principle, oppressive in practice and, critically, lacking sufficient safeguards under the Bill. The noble Lord, Lord Horam, mentioned Australia's policy of offshoring as a successful process, as he did on Monday. On the contrary, from a humanitarian perspective, Australia's offshoring shows all the defects and injustices of such a policy.

In Committee, I mentioned the 2013 Amnesty International report *This is Breaking People*, highlighting a range of serious human rights concerns at the immigration detention centre on Manus Island, Papua New Guinea. I also mentioned and quoted from Amnesty's follow-up report, which stated that on 16 and 17 February 2014, violence at the detention centre led to the death of one young man and injuries to more than 62 asylum seekers. Indeed, some reports suggested that up to 147 were injured. I quoted more from this report in Committee, but it is not appropriate or necessary to repeat that now.

What is absolutely critical—here I take serious issue with the noble Lord, Lord Horam—is that before any such notion of offshoring can be pursued by the Government under this or any other legislation, certain assurances have to be provided in primary legislation, none of which is addressed in the Bill, the Explanatory Notes or any other guidance by the Government. First, how will asylum seekers have access to legal

advisers with knowledge of the law and practice relating to UK asylum claims, which is complex and difficult? Is that going to be done four and half thousand miles away on Ascension Island? Secondly, legal aid and advice is available to refugees in the United Kingdom. Is there anything to suggest that it will be available to refugees in offshoring holding centres? If conditions, as in Australia, in the proposed offshore centre are so bad as to cause physical or mental harm to refugees—whether through physical conditions in the centre or, in the case of single women or LGBTQI people, for example, because of discrimination, harassment, bullying and violence from staff or other asylum seekers—will they be able to have recourse or bring proceedings in the UK, or will they be restricted to such remedies as might be available in the foreign countries?

These are fundamental questions. They cannot be left outstanding while individual arrangements with separate countries are being negotiated or considered. They have to form the legal framework within which any such discussions should take place and be seen on the face of any legislation, including this Bill. Although I raised these points in Committee, the Government have not given any answer on any of those issues and, until they have done so, I suggest that these amendments necessarily have to be carried.

Lord Paddick (LD): My Lords, I want to briefly restate what I said in Committee. Not only is the Home Office seeking the power to remove an asylum seeker to any country while their claim is being considered but it is seeking to remove them to a country and then tell that country, "If you think they are a refugee, you take them; they're not our problem any more".

As the noble and learned Lord, Lord Etherton, has just said, according to Amnesty and Migrant Voice, offshoring by Australia effectively excluded legal, judicial, medical, humanitarian and media scrutiny. It has cost it over half a billion pounds a year, according to the British Red Cross, and failed to stop those seeking asylum, including by boat. Evidence to the Public Bill Committee in the other place from independent academics supports these conclusions. The UNHCR has

"voiced its profound concerns about such practices which have 'caused extensive, unavoidable suffering for far too long', left people "languishing in unacceptable circumstances'"

and denied them "common decency".

I accept what the noble Lord, Lord Horam, says: the Government should be looking at every option, but surely they should be taking into consideration the evidence that I have just cited and considered any counterevidence. Then, having worked out its practicalities and decided whether it is to go ahead, they should bring forward legislation—not bring forward legislation and then decide whether they are going to use it.

Clause 28 and Schedule 3, as drafted, should not be part of the Bill. We support all the amendments in this group that seek to prevent anyone being removed from the UK while their asylum claim is being considered, particularly Amendment 35, to which I have added my name.

Lord Rosser (Lab): Amendments 35 and 37 would remove the subsections of Clause 28 and Schedule 3 which allow for offshoring. That is, as we know, the power to export offshore any person in the UK who is seeking asylum without first considering their claim. Let us just repeat: we are talking here about asylum, not general immigration policy.

Clause 28 amends the Nationality, Immigration and Asylum Act 2002, which states that a person seeking asylum cannot be removed from the UK while their asylum claim is being processed. The Bill withdraws that right by allowing the transfer of any asylum seeker to any country listed by the Government. The Government have been somewhat reticent in telling us about the progress of any negotiations they are having with any other countries on this score. I think that is where we hear the term about the Government not wishing to give a running commentary; in other words, "We're going to keep you in Parliament in the dark about what is going on".

The Bill is silent on what, if any, legal obligations the UK would consider itself to have towards asylum seekers once their asylum claims have been dealt with. This issue was raised again by my noble friend Lady Lister of Burtersett and others. The United Nations High Commissioner for Refugees has commented that the provisions of the Bill allow the Government to externalise their obligations towards refugees and asylum seekers to other countries with only minimal human rights safeguards, an issue to which my noble friend Lord Cashman referred. The only thing the Government have said is that the model the Home Office intends to proceed with is

"one where individuals would be processed as part of the asylum system of the country that we had an agreement with, rather than people being offshore and processed as part of our asylum system."

It is not just offshoring—it is also treating and dealing with people under another country's asylum system rather than ours.

5.45 pm

The UNHCR has been highly critical of efforts to offshore asylum processing, noting how

"offshoring of asylum processing often results in the forced transfer of refugees to other countries with inadequate State asylum systems, treatment standards and resources. It can lead to"

indefinite warehousing of asylum seekers

"in isolated places where they are 'out of sight and out of mind', exposing them to serious harm. It can also de-humanise asylum-seekers."

I have a sneaking suspicion that that reference to "out of sight and out of mind" may well be a big attraction for the Government. There would be no pictures in the papers or on TV, apart from the ones showing these asylum seekers being bundled out of this country.

Clearly this policy is intended, in the Government's view, to act as a deterrent. Such measures assume that people have a choice in the decisions they make. In reality, people forced to flee their country because of violence and persecution have no such choice. Consequently, deterrent measures will not stop them making the journey to find safety.

Can the Government say what their evidence is to substantiate the claim in the Explanatory Notes that the policy will

"deter irregular migration and clandestine entry to the UK"?

[Lord Rosser]

As I say, we are talking here about refugees and asylum seekers. Where is the evidence to substantiate that claim in the Explanatory Notes?

In the Commons, the Minister said

"Schedule 3 is designed to be part of a whole system deterrent effect to prevent illegal migration. Access to the UK's asylum system should be based on need, and not driven by the actions of criminal enterprise".—[*Official Report*, Commons, Nationality and Borders Bill Committee, 26/10/21; col. 388.]

Yet since no assessment would be made of need before a person could be moved to a third country, need cannot enter into it as far as the Government are concerned. Although the Minister in the Commons mentioned "criminal enterprise", this clause is not targeted at criminals. It is targeted at people who are desperately seeking refuge and have legitimate reasons to be granted it. It is not targeted at those involved in the kind of criminal enterprise to which we all object most strongly and wish to see stamped out.

The proposal to offshore asylum claims is inconsistent with the global humanitarian and co-operative principles on which refugee protection is based. Frankly, if every country adopted the Government's proposed approach, where would that leave the provisions and spirit of the refugee convention? I do not agree with the noble Lord, Lord Horam, that we should take the Government on trust and accept that we are not going to be told the details of how it would work.

I fully sympathise with what the noble Baroness, Lady Stroud, said in reiterating that a number of questions had been asked in Committee and we have not had a response. Quite honestly, if the Government are not prepared to tell us what they intend to do and why, and answer legitimate questions raised by Parliament, which surely has a right to know the answer, then I sincerely hope that Amendments 35 and 37 get carried if they are put to a vote. I have tabled amendments about leaving out Clause 28, but we would be prepared to support the amendments spoken to by the noble Baroness, since they take out the worst parts of Clause 28.

Baroness Williams of Trafford (Con): My Lords, I thank all noble Lords who have spoken in this debate. I thought it might be helpful, although we will be dealing with this in further groups, to start off about Ukraine and our support for our friends and colleagues there. I know that things are moving quite quickly, and noble Lords may not have caught up with the latest, so I thought it might be helpful to outline it.

We are establishing an expansive Ukrainian family scheme that will allow British nationals and settled people in the UK to bring a wide group of family members to the UK, extending eligibility to adult parents, grandparents, children over 18, siblings and their immediate family members. We are committing to establishing a humanitarian sponsorship pathway, which will create a new route to the UK for Ukrainians. These will be fee free; no fee will be required for any of the elements of the packages we are offering.

In terms of other support, we have extended visas for Ukrainian temporary workers in some sectors so that they can now stay until at least 31 December 2022, if they cannot return to Ukraine. We are providing £40 million-worth of humanitarian support to provide Ukrainians with access to basic necessities. This will be on top of the £100 million-worth of ODA funding that has already been pledged for energy, security and reform.

We have deployed a team of UK humanitarian and military logistics experts to the countries neighbouring Ukraine. We have called on Russia to enable humanitarian access and safe passage for civilians to flee the violence. We also have 1,000 troops on standby to support the humanitarian response in the region. We stand ready to further support Ukraine's economy through £500 million- worth of multilateral development bank guarantees. I think that demonstrates that we are trying to do everything we can to help our Ukrainian friends and colleagues.

Before I turn to the amendments, I will update the noble Baroness, Lady Lister, on the letter. I will not assert that it was sent at 3 pm, but that is my understanding. Given my record on letters in this place, I know that the noble Baroness will come back to me if she has not received it—

The Lord Bishop of Durham: I say to the Minister that 3 pm today is far too late for this debate, and we have not received it.

Baroness Williams of Trafford (Con): I do not deny that 3 pm is too late, but that was my understanding. I will chase it, if indeed it did not go. I am glad I did not assert that comment, because I have been proved—

Baroness Stowell of Beeston (Con): My Lords, it may assist my noble friend to know that I have received the letter.

Baroness Williams of Trafford (Con): I am so pleased that my noble friend has been able to confirm that to me. I was just trying to be helpful.

In terms of these amendments, I will remind noble Lords from the outset that changes within Clause 28 via the schedule do not enable overseas asylum processing. The final arrangements will depend on our negotiations with like-minded partners. The arrangements will of course be compatible with our domestic and international obligations—this goes to the point made by the noble Baroness, Lady Jones of Moulsecoomb. On the face of the Bill, we set out the requirements a state must meet for us to remove a person with a pending asylum claim there.

I turn now to the amendments. Changes within Clause 28 via Schedule 3, which the noble Lords, Lord Paddick and Lord Rosser, and my noble friend Lord Kirkhope propose, relate to two policies. The first is to improve our ability to remove individuals with no right to remain in the UK to safe third countries. The second supports our future objective of enabling asylum processing overseas by making it possible to remove someone overseas while their asylum claim is pending and without having to issue a certificate under the Asylum and Immigration (Treatment of Claimants, etc.) Act 2004 in every case. I will now consider each policy in turn.

At the moment, it is too easy for removals of individuals with no right to remain in the UK to be delayed as a result of speculative, and in some cases unfounded, Article 3 human rights claims. The changes we propose will ensure we continue to adhere to our obligations under the ECHR, while preventing unnecessary delays to removal. The introduction of a rebuttable presumption that an individual's rights under Article 3 will not be breached in certain specific safe countries, upon their removal there, is intended to prevent speculative, unfounded human rights claims from delaying removals—although individuals will be able to present evidence to overturn this presumption to prevent removal. It will also make changes to simplify the current legislative drafting in relation to asylum claim appeals, although the effect remains the same: an individual has no right of appeal against the decision that removal to the specified countries would not breach the UK's obligations under the refugee convention. I cannot support Amendments 36 and 39 which, perhaps unintentionally, block these important improvements to our ability to swiftly remove individuals who have no basis to remain in the UK.

As I made clear in Committee, we are currently undertaking discussions with like-minded partners which seek to establish overseas asylum processing. This policy is novel and has garnered significant attention as a result. The fact that discussions are ongoing means that I cannot give any particulars on how the process would work or how the costings would pan out. Many of these matters are for the negotiating table. I will reiterate that this policy will only ever be operationalised in accordance with our international obligations. We are committed to ensuring that overseas asylum processing is both humane and safe, taking into account circumstances which may mean that overseas processing is not appropriate for particular individuals.

For far too long, we have allowed people smugglers to decide where and how people cross borders and claim asylum. These uncontrolled and unsafe routes have led to terrible tragedies off our shores—as we have all seen. The key aim of the Government is to destroy the business model of the people smugglers. One facet of achieving this is to reduce demand for smugglers' services by making it easier to remove individuals who undertake dangerous journeys or otherwise abuse the asylum system. We believe that access to protection in the UK should be based on need and focus primarily on people who remain in regions of conflict.

My noble friend Lady Stroud and the noble Lord, Lord Rosser, talked about Australia to this end, and I will illustrate the point. The Australian high commissioner gave evidence on 23 September 2021 in which he clearly explained that, within 9 months of Operation Sovereign Borders, flow had

"ceased completely. Since then, there has not been a single irregular maritime arrival on Australia's shores, as far as we can tell."

The high commissioner stated that the most important thing was to

"drive the people smugglers out of business by depriving them of a product to sell and destroying their cash flow."—[*Official Report*, Commons, Nationality and Borders Bill Committee, 23/9/21; cols. 76-78.]

That is a very clear message, and it is precisely what the new plan for immigration is designed to do.

The agreements that we are pursuing will have these principles at their core. They will be based on a shared commitment to finding fair and sustainable solutions to address global migration challenges, and to protect the most vulnerable. We are working to establish an effective, functioning system which provides protection to those in need while simultaneously preventing abuse.

Noble Lords will want to know who will be removed overseas for asylum processing and who will be exempted from this. Some noble Lords have already referred to the fact that, in the other place, my right honourable friend Minister Pursglove made clear that unaccompanied asylum-seeking children would not have their claims processed overseas. This demonstrates our commitment to safeguarding and promoting the welfare of children, as expressed in Section 55 of the Borders, Citizenship and Immigration Act 2009. This is one example of how this policy will only be operationalised in accordance with our domestic and international obligations—and, of course, there are other examples.

After a fuller consideration of issues pertaining to vulnerability, we have determined that we should not be drawn further into listing particular exemptions to removal, partly because exemptions depend on the particular circumstances of the countries with which we are working. More importantly, however, being definitive about exemptions from the policy at this stage is likely to hamper its potential to be effective and would incentivise people smugglers to target the most vulnerable in the hopes of keeping their operations viable. It is essential that we do not curtail our efforts to undercut the business model of people smuggling and discourage other dangerous or unwanted behaviours by eroding the policy before it has even begun.

6 pm

My noble friend Lady Stroud and, I think, another noble Lord asked about those who are granted refugee status being allowed to return to the UK. We will take all reasonable steps, in accordance with international human rights standards, to enable a transferee who is available for return to the UK to do so, should the UK be legally obliged to facilitate that person's return.

I hope that I have answered the noble Lord's question, and with that I ask the noble Lord to—

Lord Kerr of Kinlochard (CB): Before the Minister sits down, the letter that she kindly sent us today sets out at greater length what she has just said: she cannot tell us with which countries she is negotiating with, what exactly she is negotiating for or what exemptions would be provided. She admits that the policy is novel and that she is not surprised that the House is asking questions, but she tells us that she can answer none of these questions now. So with this provision she is asking us to sign a blank cheque.

She has answered none of the questions asked by the noble and learned Lord, Lord Etherton, of which the biggest, in my view, is how legal assistance on British immigration law is to be provided to these people, in these unknown countries, who are going through a process about which we have been told nothing. I really do not think that we can sign this blank cheque.

Lord Paddick (LD): On a point of clarification, the Minister said that the Minister in the other place had given an undertaking that children would not be offshored under this scheme. Does that mean that if a family arrives on UK shores the parents of the child could be sent overseas—offshored—while the child remained in the UK, because of that undertaking?

Baroness Williams of Trafford (Con): I thought that I had made it clear that unaccompanied asylum-seeking children would not be offshored.

The Lord Bishop of Durham: Can we be absolutely clear: the Minister is not saying that children could not be offshored if they are members of a family?

Baroness Williams of Trafford (Con): I have gone as far as I am willing to go by confirming that unaccompanied asylum-seeking children would not be subject to offshoring, but on some of the wider vulnerabilities it would be wrong to be drawn at this point.

Baroness Lister of Burtersett (Lab): I have been trying to read the letter on my phone, but it did not arrive until after 4 pm and the Minister's office did not have the courtesy to reply to my email. If I had had the letter at 3 pm I would have been able to read it. So I may have missed this, but I am not clear—and I apologise if the Minister explained this right at the very end—what happens to an asylum seeker who has been offshored, a horrible term, and is deemed to have refugee status by whatever country they have been sent to. Will they be sent back to the UK, or not?

Baroness Williams of Trafford (Con): My Lords, it would depend on the circumstances of the case.

Baroness Stroud (Con): My Lords, it is clear that a number of very serious outstanding questions about this policy need to be answered before we can give the Government these powers. In response to the point made by the noble Lord, Lord Horam, I agree that it is right to explore every possible policy, and that some of them will turn out to be impractical—or even, as he stated, impossible. But that process is undertaken before you bring in legislation and take powers like this: you do not bring in the legislation and then work out whether it is impractical or impossible. So I believe it is right to test the will of the House on this policy.

6.05 pm

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Amendment 35 agreed.

Division No. 2

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Glasman, L.
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Healy of Primrose Hill, B.
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Henig, B.
Hollick, L.
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Howarth of Newport, L.
Humphreys, B.
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Purvis of Tweed, L.
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Royall of Blaisdon, B.
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Tope, L.
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Walmsley, B.
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Wilcox of Newport, B.
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Young of Old Scone, B.

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Attlee, E.
Balfe, L.
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Blackwood of North Oxford, B.
Bloomfield of Hinton Waldrist, B.
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Grimstone of Boscobel, L.
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6.18 pm

Amendment 36 not moved.

Schedule 3: Removal of asylum seeker to safe country

Amendments 37 to 39 not moved.

Clause 31: Article 1(A)(2): well-founded fear

Amendment 40

Moved by ***The Lord Bishop of Durham***

40: Clause 31, page 34, line 45, leave out "first"

The Lord Bishop of Durham: My Lords, I shall speak to Amendments 40 to 45 in place of my friend, the right reverend Prelate the Bishop of Gloucester, who greatly regrets that she cannot be in her place. She is very grateful to the noble Baronesses, Lady Lister and Lady Chakrabarti, for their support, and to Women for Refugee Women for its briefings.

Amendments 40 to 44 relate to Clause 31. They are being brought back at this stage because the Government's response stopped short of providing the reassurances we hoped for. Some 27 organisations with significant expertise in supporting people seeking asylum support these amendments to Clause 31.

In Committee, the Minister stressed that Clause 31 was necessary to provide clarity and consistency of decision-making, the argument being that proving a status of persecution on the basis of reasonable likelihood is too vague and inconsistently applied. Clause 31 seeks to resolve this apparent lack of clarity by instead inserting the balance of probabilities test and a new fear test. This will raise the standard of proof for gaining refugee status, which will have a disproportionate impact on certain vulnerable groups. For women fleeing gender-based violence and those seeking asylum on the grounds of sexuality, providing this increased proof

[The Lord Bishop of Durham]
will be difficult and is likely to be highly traumatising, particularly given what we already know of the Home Office's culture of disbelief and approach to such victims. For this reason, the UNHCR and, indeed, UK courts have consistently applied the reasonable likelihood test. Clause 31 will put us consciously and deliberately out of step with the way the UNHCR believes that the convention should be interpreted and how our own courts, notably the Supreme Court, have interpreted it.

What is most odd, and the reason for pressing this again, is that the Government believe this change will provide clarity. It is not clear why this should be true. There is already a problem with disbelief in the Home Office, which can be readily shown by the fact that 48% of appeals against the Home Office's decisions to the First-tier Tribunal are successful, and 32% of judicial reviews are settled or decided in favour of claimants. Clause 31 does not seem to provide any additional clarity. Adding two different limbs to the test with different standards of proof seems a recipe for creating more confusion, making it harder for legitimate victims and so inevitably prompting more appeals. Amendments 40 to 44 therefore look to keep the status quo standard of proof and keep us aligned with the UNHCR and existing UK case law.

I turn briefly to Amendment 45, which relates to Clause 32. This was discussed at length in Committee and I will not go over the old ground, but in short, the interpretation of the convention applied in Clause 32 seems punitive towards women and other victims who use the particular social group reason without any clear or positive purpose. As the noble Baroness, Lady Lister, argued in Committee, if Clause 32 is necessary to clarify the "particular social group" definition, there is no reason it could not be provided by clarifying once and for all that the two conditions are alternatives, not cumulative, as has been the understanding in UK law since Fornah and was recognised by the Upper Tribunal as recently as 2020. This would provide clarity without disadvantaging women and other vulnerable groups.

More than 40 organisations in the ending violence against women and girls and anti-trafficking sectors have supported this amendment to Clause 32. This week, three UN special rapporteurs released a statement on the impact of the Bill, in particular Clause 32, on women. I urge the Minister to listen to their plea. As of 2019, only 26% of asylum applications have come from women. Why would we want to make it harder for legitimate victims of gender-based violence and other gender-related forms of persecution to seek help? Might the Minister say why gender is not mentioned in Clause 32 in the way that sexual orientation is, since it is mentioned in the EU directive on which the Government seek to rely?

Clause 32 not only reverses UK case law but does so against the UNHCR's standards, following an interpretation of EU law that was rejected by our own Upper Tribunal in 2020. The Home Office did not appeal that decision; nor was that change included in the *New Plan for Immigration*. It seems to have come from nowhere with little scrutiny or expert oversight. As with Amendments 40 to 44, Amendment 45 is not radical. It simply asks that the Bill continue to operate with the status quo interpretation of the 1951 convention, which is well understood and used by UK courts. The alternative is an unnecessarily punitive barrier being put in front of vulnerable groups. I beg to move.

Baroness Chakrabarti (Lab): My Lords, I am rationing my interventions on Report to facilitate the early and many necessary Divisions. I know that other critics of this Bill are doing the same; I am grateful for that.

Given the events in the last century that led to the creation of the refugee convention, it is particularly distasteful that so much of the Bill seeks to rewrite the convention and its jurisprudence against the interests of the refugee. The Government protest otherwise, of course, but all the world's leading scholars, practitioners and custodians disagree. I am glad to say that your Lordships' House gave its own view on that general proposition very clearly earlier this week.

Clause 31 is a case in point. I support the right reverend Prelate's amendments to it, not least because, among other things, they seek to delete the cross-referencing to Clause 34, which absolutely denies refuge to those who do not currently face a well-founded fear of persecution in part of their country. If one looks at the end of Clause 34, there is no discretion there at all. Although we are grateful for the Minister's earlier comments about Ukraine, convention protection is based on international law, not exceptional executive largesse. If these clauses are not amended, a Ukrainian refugee might well be denied refuge on the basis that they could return to, for example, a part of their country that is not currently occupied or being bombarded by Russia. There is no discretion in Clause 34 at all, despite Ministers waxing lyrical about discretion and case-by-case analysis being so important. This is discretion that works against the refugee, with convolutions and contortions, when it would be for the courts to protect the refugee.

Another trick that has been used in Ministers' speeches at various times during the passage of this Bill is talking about Parliament having the right to rewrite and interpret the convention—"Parliament this, Parliament that". However, they use "Parliament" as a euphemism for "the Home Office", and it is not. I believe I know what your Lordships' House of Parliament thinks about that.

Baroness Lister of Burtersett (Lab): My Lords, although I support all these amendments, I will speak only to Amendment 45, to which I have added my name. Once again, I thank Women for Refugee Women for its support with the amendment.

The right reverend Prelate has made the case for returning to Clause 32. I just want to pick up some points made by the Minister in Committee. He argued that it is difficult to attack the definition in Clause 32 as wrong, yet, in effect, that is what the Upper Tribunal did in the 2020 judgment referred to by the right reverend Prelate, when it confirmed that this approach to membership of a particular social group is contrary to the humanitarian objective of the refugee convention. Moreover, in Committee, the noble and learned Lord, Lord Brown of Eaton-under-Heywood, dismissed this approach as a grave mistake that would cause grave injustice. Was he wrong?

Having listened to his less than convincing justification of the definition in Clause 32, I ask the Minister this: does he accept that Clause 32 means that a woman fleeing gender-based violence with good grounds for being accepted as a refugee is less likely to be accepted, as the UNHCR and myriad civil society groups have warned? His answer in Committee—given loyally, if I may say so—was this:

"What it means is that a woman, like anybody else, who has a proper claim under the refugee convention will find refuge in the UK."—[*Official Report*, 8/2/22; col. 1452.]

I will repeat the question and ask the Minister to give us a clear "yes" or "no" answer, given that clarity is supposed to be what this clause is all about. Does he accept that Clause 32 means that a woman fleeing gender-based violence with good grounds for being accepted as a refugee is less likely to be accepted—yes or no?

6.30 pm

Finally, in response to criticisms made of the equality impact assessment, the Minister promised monitoring of the clause, which is welcome. Could he please give us more information about how it will be monitored? What data will be collected, will the data be published and, if so, how frequently and starting when? Will it include statistics on the number who successfully rely on membership of a particular social group to claim refugee status, and the number of those who fail to secure such status because of their inability to fulfil the criteria? What categories will be used? For example, will survivors of gender-based abuse be included? What will the Government do if the monitoring shows that the clause is having the damaging effect that is feared? I realise that those are again questions for the Home Office, so I should be grateful if the Minister would pass them on and ask the Home Office to write to me.

In conclusion, there is a certain irony that we are debating these clauses the day after the Home Secretary launched a campaign to say "Enough" to violence against women and girls. On Monday, in her summing up on Clause 11, the Minister concluded with the words that the clause was

"fair in its acknowledgement that we absolutely must be sensitive to the vulnerabilities of certain asylum seekers."—[*Official Report*, 28/2/22; col. 627.]

I fear that Clauses 31 and 32 make a mockery of such claims.

Lord Cashman (Lab): My Lords, I shall be brief and summarise the position I took in Committee. I support all the amendments in this group, particularly those relating to Clauses 31 and 32. I do so because the amendments will protect the most vulnerable, including women and girls who have been subjected to gender-based violence and abuse and the long-term harm those cause. They will also protect other vulnerable groups with protected characteristics, and recognise the immense and deep trauma such individuals have suffered but often deny because of a deep sense of shame. The amendments also restore the principle of a civilised and humane approach to asylum and ensure that we conform with the UN refugee convention and our international legal obligations. Finally, I have been deeply moved by the letters and some postcards I have received, particularly from women and other vulnerable groups, who express that they have much to fear from the clauses and the effects that they will have on their lives.

Lord Etherton (CB): I have two amendments in this group, but they are quite distinct from what has been debated so far and distinct from each other. One is concerned with Clause 32(5) and the other concerns Clause 36(1). Because the amendment to Clause 32(5) is a manuscript amendment tabled only today, if I may, I shall start with that to Clause 36(1), because your Lordships will be familiar with the background to that.

Clause 36(1) seeks to define, for the purposes of the convention, the meaning of coming "directly" to the United Kingdom from a country of persecution. The same definition was relevant to Clause 11, because that cross-refers to the provisions of Clause 36, so we have in Clause 36 as a matter of proposed domestic legislation and as a matter of interpretation of Article 31 of the convention the same definition of arriving "directly". Your Lordships will recall that the issue was whether, as the Government contend, if an asylum seeker passes through an intermediate state on the way to the United Kingdom from the place of persecution—through a place considered to be somewhere they ought reasonably to have applied for refugee status—they have not come "directly". In fact, the only way they could come directly, if they are surrounded by other countries—Ukraine is a good example—would be to fly.

The House rejected that definition, because it accepted the amendment to remove Clause 11. It expressly rejected that definition of arriving "directly". Amendment 46 simply takes out the corresponding provision in Clause 36(1), which was incorporated in Clause 11 but would otherwise simply remain at large but, so far as I can see, would have no relevance whatever to anything else in the Bill. If I am wrong on that and there is some purpose in retaining Clause 36(1), although that interpretation of arriving "directly" was rejected by the House when it approved the removal of Clause 11, the House would want to know what it is being retained for: why it is being retained and in relation to what other provisions in the Bill. My amendment would remove Clause 36(1) from the Bill.

Baroness Hamwee (LD): This is another of those occasions when saying "From these Benches, we support" and not much more must not be taken as any lack of support for all the amendments in this group, nor any dilution of the points made.

I just want to register concern about Clause 32(2). The noble Baroness, Lady Lister, spoke to this and I record our support, particularly for the amendment that deals with what is meant by "a particular social group": that you do not qualify unless the group in question is perceived as being different by surrounding society. As has been pointed out to noble Lords in briefings, a trafficked woman would need to show not only that her status as a trafficked woman is an innate characteristic but that trafficked women as a group are perceived as having a distinct identity in the country of origin. That is very difficult to show. Judged by the perceptions of the society in her country? It would be very challenging to find objective evidence on that,

[Baroness Hamwee]
and on that being a distinct group. It is very dangerous to suggest that one can tell those things by looking—or, rather more accurately, perceiving.

Lord Brown of Eaton-under-Heywood (CB): My Lords, I spoke at some length on the legal aspects of this group of clauses in Committee and, having had the advantage of being able to indicate an overall view of them in the newspapers earlier in the week, I really do not want to try the patience of the House, and I certainly do not want to weaken rather than strengthen the number of compelling arguments that have already been heard on them in the past few minutes.

However, they are such objectionable clauses that I cannot simply remain silent. I do not criticise the Minister for this, I am a great admirer of his, but on Monday, at 5.49 pm, in the middle of the debate, we finally got a seven-page letter that sought to argue—if only I were still a judge and could deal with the arguments conclusively by rejecting them—the Government's case for redefining the requirements of the convention.

When we come to Clause 31, the Minister, very fairly, recognises that it would overturn 25 years—a quarter of a century—of settled jurisprudence of the clearest authorities in this country. That is how we have been dealing with it for 25 years. He does not say that it was a wrong approach to the convention; all he argues—as I say, I do not accept it—is that what they are doing provides another possible interpretation of the convention. Is this really the moment at which to reject our established jurisprudence and substitute for it what may or may not—I would say not—be an arguable alternative view of the whole of this.

Clause 31 rejects what has been accepted as the holistic approach: you look at fundamental question arising under Article 1(A) of the convention in the round, you take all circumstances into consideration and you apply the standard of proof of reasonable likelihood—because heaven knows that is the standard which you should be using. You do not carve it up and create endless difficulties, and then say, "Well, actually, part of it has got to be on the balance of probabilities".

I have quoted this before, and I will end with this: Hugo Storey, a recently retired judge of the Upper Tribunal who has spent his life dealing with these sorts of cases and is the immediate past president of the International Association of Refugee and Migration Judges, said that this clause would produce prodigious litigation and endless problems, and that it is not compliant with the way that the UNHCR wants Clause 31 to be applied. I will not go into the arguments on Clauses 32, 34 and 36—they are all objectionable, for the reasons already given. We really must vote down as many of these as we can.

Lord Rosser (Lab): My Lords, I will be very brief. I wish to say that we agree with the amendments in this group, which seek to address the issue that the Bill is seeking to change existing, long-standing definitions and, frankly, make things worse and harder for many of those who would be involved in, for example, seeking asylum. We support the intention of these amendments, and I will leave it at that.

Lord Wolfson of Tredegar (Con): My Lords, I am grateful to noble Lords who propose these amendments: the right reverend Prelate the Bishop of Gloucester, speaking through the right reverend Prelate the Bishop of Durham, and the noble Baroness, Lady Chakrabarti. I agree of course with the importance of the UK carefully assessing whether asylum seekers have a well-founded fear of persecution, as required under Article 1(A)(2) of the refugee convention. However, we do not agree with these amendments which, when taken together, will effectively maintain the current standard of proof for all elements of the well-founded fear test.

There are other undesirable implications of the amendments which I will set out briefly. The House has heard short speeches supporting a number of these amendments. I have obviously got to reply to all of them, so I hope that the House will indulge me. I will try to address them in a comprehensible order, because some of the points are related and some are discrete.

I come first to the point made by the right reverend Prelate the Bishop of Durham, who asked how Clause 31 would produce clarity. Clause 31 is drafted to introduce a step-by-step process for decision-makers, considering whether an asylum seeker has a well-founded fear of persecution. The central point I would make is that currently there is no such clearly structured test.

6.45 pm

Amendment 40 would remove the approach set out in Clause 31. What does Clause 31 do? It imposes a requirement for the decision-maker to first consider—this is in subsection (2)—what you might call the subjective element of the well-founded fear test, where a decision-maker will consider whether the asylum seeker in fact has a characteristic often referred to as a "convention reason" as specified in the refugee convention, and whether the asylum seeker in fact has a fear of persecution as a result of that convention reason.

There is then a second stage of the approach under Clause 31(4), where the decision-maker would consider whether there is a reasonable likelihood—not a fact, as in the first part of the approach—that the asylum seeker would be persecuted if returned. The amendment, however, in combination with other amendments, instead maintains the status quo in expecting decision-makers to take a decision in the round, based on all the evidence available, and therefore wraps up what are conceptually quite different parts of the test into one overall question. Having separated out and identified those two elements of the test, Clause 31 raises the standard of proof for the first element of the test to the balance of probabilities. That is because, at that stage of the test, at its core, we are asking claimants to establish on a balance of probabilities that they in fact are who they say are and that they in fact fear what they say they fear.

Reports from non-government organisations, and speeches from noble Lords in Committee and again today, have warned of the effect that this clause may have on those with certain protected characteristics: those, for example, with LGBT+ claims, or women fleeing gender-based violence. I can say that we have obviously considered this very carefully. There are

several ways in which we would ensure that such individuals were not disadvantaged by the change. We have already put in place specific asylum policy instructions on considering sexual orientation and gender in asylum claims, and these guidance documents set out in some detail how decision-makers should fully investigate the key issues through a focused, professional and obviously sensitive approach to questioning. As part of putting this guidance into practice, we will update both the guidance and training provided to decision-makers, and we will ensure that interviews are sufficiently detailed to enable claimants to meet the higher standard required, regardless of the nature of the claim. Let me be clear: the proposed test will not prevent LGBT+ or female claimants, or any other cohort for that matter, who are genuine refugees from being recognised as a refugee in the UK.

As I said in Committee, there is international precedent that supports our decision to raise the threshold for assessing the first part of the test, the facts that a claimant presents, on a balance of probabilities. Both Canada and Switzerland have systems which examine to this higher standard at least some elements of a claimant's claim. Although I heard the right reverend Prelate the Bishop of Durham say that this makes us out of step with the UNHCR and our own courts in their decisions to date, ultimately, as I explained in Committee, interpretation of the refugee convention is not a matter for the UNHCR or the courts, in the sense that the UK, as a signatory to the convention, is entitled under the Vienna Convention to interpret the words of the refugee convention bona fide. Of course, the UK does that through this Parliament—and I am not using the word "Parliament" as some sort of euphemism for "Home Office". Indeed, I think the results of the votes in this Report stage would indicate that certainly this House is not an extension of the Home Office. I was stating that as a neutral point—noble Lords might think that is good, bad or indifferent.

I will not deal directly with Amendment 42, because I think it is fair to say that it is a consequential amendment on Amendment 41, so my argument on Amendment 41 therefore applies there as well.

Amendment 43 would remove the requirement for decision-makers to consider whether the asylum seeker in fact has a fear of persecution as a result of a convention reason. That link is a vital part of the assessment, which would be removed altogether as a result of these amendments. Refugee status in the UK must not be granted to those who do not have a genuine fear of persecution for a convention reason. I suggest that that ought to be incapable of dispute.

Turning to the second part of the test in Clause 31(4), the standard of proof for the second element of the test—this is whether the claimant would be persecuted if returned to their country of origin or country of former habitual residence—remains at the standard of reasonable degree of likelihood. That is because this element of the test—the future fear of the claimant—is obviously harder for the claimant to demonstrate, and therefore a lower standard of proof is appropriate. It seems that there is no disagreement across the House on that point.

However, while Amendment 43, for the most part, mirrors the closing stages of Clause 31, which would otherwise be removed by Amendment 44, it has one major omission, and I was not sure whether this was accidental or deliberate. From certain of the speeches, it appears to be deliberate, and that is this: the removal of reference to consideration of whether an asylum seeker can internally relocate in their country of origin to a place where they would not have a well-founded fear of persecution. Our interpretation of internal relocation is outlined in Clause 34, and the result of these amendments would, therefore, be a lack of clarity for decision-makers as to whether this factor remains a core part of the well-founded-fear assessment. I suggest that it has to be, considering that internal relocation is a common aspect of the asylum decision-making procedure among our European Union counterparts and other international partners. Therefore, it remains entirely unclear to me why this consideration should be removed if, as I say, it is a deliberate removal.

As I noted in Committee, I set out in the letter, which I heard the noble and learned Lord, Lord Brown, was going to subject to judicial analysis, the concerns of noble Lords regarding the compatibility of this clause with our international obligations, in particular obligations under the refugee convention. I have sought to set out the position, and I apologise twice: first, for the length of the letter—I am afraid that it takes a little time to set out the position—and secondly, for the fact that the letter was sent out later than dated. It was provided to the Whips Office at the end of last week, but it was only circulated, as the noble and learned Lord said, on Monday. I am the person on my feet; I am the person responding to this debate, so it is only right that I make the apology to the House for the lateness of that letter. I am sorry that it was sent out later than it should have been and later than I intended.

I am not going to repeat the contents of the letter, but I will set out the conclusion. Consideration of historic case law, views of authoritative academics, the approach of a number of other jurisdictions and Article 31 of the Vienna convention show that the current policy is not the only possible good-faith interpretation of the convention. We have set out our interpretation in that letter.

Turning to Amendment 45, Article 1(A)(2) of the refugee convention states that a refugee is an individual who has a well-founded fear of persecution for reasons of race, religion, nationality, membership of a particular social group or political opinion. Clause 32 sets out what precisely is meant by each of those characteristics—the "convention reasons". Focusing on "a particular social group", the clause sets out that the definition of that term means that a claimant must meet both conditions of the test, in Clauses 31(3) and 31(4), in order to be considered a member of a particular social group.

I remind the House that far from being clear what the position is in law, there has been a degree of confusion in this area for many years. One can cherry-pick Upper Tribunal decisions from here, there or anywhere, but I am afraid the fact is that there is a clear mismatch between how the concept of "particular social group" has been defined in current legislation and government

[Lord Wolfson of Tredegar]
policy in different tribunal judgments and how it has been interpreted in some courts. Therefore, we have set out a clear definition in primary legislation, because at the moment there is no universally agreed definition.

Lord Etherton (CB): I am afraid that I have been caught rather short on procedure, so I hope the House will indulge me. I did not address Clause 32(5), which is the focus of my manuscript Amendment 45A, but the Minister is now dealing with Clause 32. It would not be appropriate in the circumstances to make a speech on this, but I ask the Minister to respond to two questions.

First, in general terms, what are these acts that are referred to in Clause 32(5) that are criminal and, in some way or other, said to bear upon a quite different issue: sexual orientation, which is an identity? At the moment, it seems as though Clause 32(5) is mixing apples and pears—one on identity, to live a life freely and openly and without fear of persecution, which is what orientation is, and then we have some exclusion or cutting down on acts. I assume that we are not going back 100 years and saying that all those people who are LGBTQI have some inclination to paedophilia: I hope that we are not saying that.

Secondly—

Viscount Younger of Leckie (Con): I am sorry to interrupt the noble and learned Lord, but I think my noble friend is able to answer the questions that he is posing. Moreover, this is Report, so although noble Lords can rise for small points of clarification, it should be no more than that.

Lord Etherton (CB): I have one more point of clarification. Could the Minister explain what the position will be for refugee asylum seekers who are under 16 and for whom any sexual relations would be a criminal offence?

Lord Wolfson of Tredegar (Con): I was coming to each of those points in my speech. I am not going to do so just yet, because I was, it is fair to say, on a different point, but I will come to those points in due course when I deal with the manuscript amendment.

Before the noble and learned Lord's intervention, I was setting out the definition of "particular social group." I was making the point that there is no universally agreed definition and no authoritative definition of that phrase. There is, as I have said, conflicting tribunal-level case law. For example, the right reverend Prelate the Bishop of Durham referred to the Fornah decision of this House in its former judicial capacity. The point there is that it is obiter. That is really important, because that bit is obiter: it is not part of the ratio of the decision. That really underlines my point that we cannot, with great respect, cherry-pick passages of decisions which are obiter, particularly decisions of the Upper Tribunal. Ultimately, it is for the UK, as a member state and signatory, and, for this Parliament—not the Home Office—to interpret the refugee convention. That is what we have sought to do here.

There are two clear conditions, and let me underline the following point: this is not a change in government policy. These conditions do not change the position—they reflect current government policy. The first condition is that members of the group share either an innate characteristic, a common background test that cannot be changed, or a characteristic or belief that is so fundamental to identity or conscience that a person should not be forced to renounce it.

The second condition is that the group has a distinct identity in the relevant country because it is perceived as being different by the surrounding society. The amendment would mean that a group need meet only one of the characteristics to be considered a particular social group. Obviously, that would significantly widen the scope of people who could qualify as a refugee but, relevantly for this debate, it would erode the concept that people deserve and need protection based on fundamental characteristics that go to the core of who they are, such as their faith or sexuality. It would broaden the definition to cover potentially transient factors such as an individual's occupation, and that, we say, is incompatible with very purpose of the refugee convention.

7 pm

On this point, as I set out in Committee, our proposed definition accords with the widely used and accepted interpretation of "particular social group". It follows the formulation applied across much of Europe, which is normally something that would commend it to those on the Benches in that corner of the House. Perhaps in this case they take issue with the EU qualification directive which underpins the Common European Asylum System.

There was concern in Committee about the impact this clause would have on vulnerable groups—for example, faith groups.

Baroness Kennedy of The Shaws (Lab): Will the noble Lord give way?

Lord Wolfson of Tredegar (Con): I am not sure that one generally takes questions on Report. I am newer than the noble Baroness, and I do not want to be rude; equally, I want to maintain the approach of the House.

Viscount Younger of Leckie (Con): My noble friend is correct on that. Noble Lords are guided not to speak after the Minister.

Lord Wolfson of Tredegar (Con): I want to respond to the concern expressed in Committee about the impact the clause would have on vulnerable groups—particularly, for example, female claimants fleeing gender-based violence—and to respond to the right reverend Prelate the Bishop of Durham. Victims of gender-based violence may still be considered to be members of a particular social group for the purposes of making an asylum claim if they meet the conditions in Clause 32(3) and (4). In response to the noble Baroness, Lady Lister, this clause does not therefore mean that women who are victims of gender-based violence are less likely to be accepted as a member of a particular social group: all cases are assessed on a case-by-case basis.

I cannot say, of course, that all women fleeing gender-based violence will always be found to be refugees, if that was the nature of the point that was being put to me. What I can say with certainty is that the structure of the definition does not preclude it. I think I heard, in the way the noble Baroness put the question, that the example was of a woman with "good grounds". If she is asking, "Will this application be accepted?" good grounds is not the test and therefore, if good grounds is part of the question, I am afraid that that is why I necessarily gave the answer I did. I think if the noble Baroness looks at *Hansard*, she will see that I have now, again, answered the question directly.

I turn to Amendment 45A from the noble and learned Lord, Lord Etherton. It is vital that we provide protection to those in the UK who require it as a result of persecution they would face due to sexual orientation, but I suggest that it goes without saying that protection must not be afforded on the basis of one's sexual orientation where the acts in question are criminal in the United Kingdom. I shall deal with both his points.

First, I note the explanatory statement on the amendment. For those who have not seen it, I shall summarise it. The obviously well-meaning intention of this amendment is to prevent applicants under the age of consent in the UK being excluded from refugee protection—I hope I have understood that correctly. I reassure the noble and learned Lord and the House that line 9 of Clause 32 does no such thing. That is because, although an asylum applicant may be under the age of consent in the UK, they can still be persecuted as a result of their sexual orientation. For example, a 15 year-old homosexual applicant may still be recognised as a member of a particular social group should they meet the requirements of Clause 32, even though they are not legally able to consent to sexual activity in the UK. I distinguish in this regard—I hope this is helpful to the noble and learned Lord—between sexual orientation and sexual activity. In that context, I come to the other point.

Let me say what should not need to be said—of course this is not the noble and learned Lord's intention—but we are concerned that, as drafted, the amendment could allow convicted paedophiles and other convicted sex offenders to be granted refugee status in the UK, solely on account of their criminal acts relating to their sexual orientation. Of course, that is not the intention of the amendment: we are concerned that it is an unintended consequence of it. I hope that what I have said already deals with the intention behind the amendment and reassures the noble and learned Lord.

Lastly, I come to Amendment 46. Clause 36 provides the interpretive framework for Clause 11, which sets out Parliament's position on Article 31(1) of the refugee convention. Clause 36 is still relevant in terms of providing the UK's interpretation of key terms in Article 31 of the convention, such as immunity from penalties, so it is not just there to serve Clause 11, which was the first point made by the noble and learned Lord. The convention does not define what is meant by coming "directly" or "without delay". Again, we have taken the opportunity to define those terms. We have taken into account that group 2 refugees will still be protected and not refouled, and will receive relevant entitlements so that the object and purpose of the convention are upheld.

Clause 36 is clear that there is discretion not to grant differentiated entitlements where a person could not reasonably be expected to have claimed in another safe country or where a person made a claim as soon as reasonably practicable. I made points earlier as to discretion and individual assessment. So this does not necessarily rule out the position taken by the House of Lords in R v Asfaw; it will all turn on the particular facts of the case.

Finally, I will prevail on the Home Office, I hope, to write to the noble Baroness, Lady Lister, on the point she raised. For these reasons, and with apologies that it has taken a little longer than I anticipated, I respectfully invite the right reverend Prelate to withdraw his amendment.

The Lord Bishop of Durham: My Lords, I thank the Minister for his very full and considered response and all noble Lords for their contributions. The strength of feeling is strong and again I make the point that these clauses are overly punitive towards women and victims of gender-based violence. I fear that that concern was not answered in the very full answer we were given. In particular, I still do not think that the responses given take any awareness of the trauma of so many of the women who come forward. I fear that to talk about "sufficiently detailed interviews", as the Minister did at one point, would raise hackles on that front.

I have no doubt that my right reverend friend the Bishop of Gloucester will read *Hansard* very carefully and may well write off the back of that. I thank the Minister for making the promise to the noble Baroness, Lady Lister—I was about to ask him to, but he got in there before us. It is rather regrettable that we have not been able to persuade the Government on these points, and the Bill will not now adequately protect those who are subject to gender-based violence. That is the deep concern. That said, with deep regret, I will withdraw the amendment.

Amendment 40 withdrawn.

Amendments 41 to 44 not moved.

Clause 32: Article 1(A)(2): reasons for persecution

Amendments 45 and 45A not moved.

Clause 36: Article 31(1): immunity from penalties

Amendment 46 not moved.

Amendment 47

Moved by ***Baroness Ludford***

47: After Clause 37, insert the following new Clause—

"Refugee family reunion

(1) The Secretary of State must, within 6 months of the date of the passing of this Act, lay before Parliament a statement of changes in the rules (the "immigration rules") under section 3(2) of the Immigration Act 1971 (general provisions for regulation and control) to make provision for refugee family reunion, in accordance with this section, to come into effect after 21 days.

(2) Before a statement of changes is laid under subsection (1), the Secretary of State must consult with persons he or she deems appropriate.

(3) The statement laid under subsection (1) must set out rules providing for leave to enter and remain in the United Kingdom for family members of a person granted refugee status or humanitarian protection.

(4) In this section, "refugee status" and "humanitarian protection" have the same meaning as in the immigration rules.

(5) In this section, "family members" include—

(a) a person's parent, including adoptive parent;

(b) a person's spouse, civil partner or unmarried partner;

(c) a person's child, including adopted child, who is either—

(i) under the age of 18, or

(ii) under the age of 25 but was either under the age of 18 or unmarried at the time the person granted asylum left their country of residence to seek asylum;

(d) a person's sibling, including adoptive sibling, who is either—

(i) under the age of 18, or

(ii) under the age of 25, but was either under the age of 18 or unmarried at the time the person granted asylum left their country of residence to seek asylum; and

(e) such other persons as the Secretary of State may determine, having regard to—

(i) the importance of maintaining family unity,

(ii) the best interests of a child,

(iii) the physical, emotional, psychological or financial dependency between a person granted refugee status or humanitarian protection and another person,

(iv) any risk to the physical, emotional or psychological wellbeing of a person who was granted refugee status or humanitarian protection, including from the circumstances in which the person is living in the United Kingdom, or

(v) such other matters as the Secretary of State considers appropriate.

(6) For the purpose of subsection (5)—

(a) "adopted" and "adoptive" refer to a relationship resulting from adoption, including de facto adoption, as set out in the immigration rules;

(b) "best interests" of a child must be read in accordance with Article 3 of the 1989 UN Convention on the Rights of the Child."

Member's explanatory statement

This new Clause would make provision for leave to enter or remain in the UK to be granted to the family members of refugees and of people granted humanitarian protection.

Baroness Ludford (LD): My Lords, the Ukrainian family scheme drives a welcome coach and horses through the usual Home Office approach to refugee family reunion, which is to oppose anything but a very narrow definition of "family". The Home Office, in my opinion, seeks to restrict this safe route very considerably. As I understand it, the new scheme would allow children as well as adults to sponsor parents, grandparents, siblings and their immediate families, as well as allowing adults to sponsor their children over 18. It does not go as far as Amendment 48 from the noble Lord, Lord Dubs, in including, for instance, reunion with an aunt or uncle, and I look forward to him speaking to that amendment.

The Ukrainian family scheme is not the normal, routine Home Office approach. That approach was expressed at Second Reading of my Private Member's Bill on refugee family reunion, and in Committee in response to my amendment, which was essentially the text of that Private Member's Bill, as is Amendment 47 today.

In Committee on this Bill, the Minister said that the Home Office recognised

"that in some cases there will be exceptional and compassionate circumstances which warrant a grant of leave"

for the purposes of family reunion and that the guidance on exceptional circumstances would be "published in due course". Can the Minister tell us what progress has been made in publishing that guidance? Yet again, as so often, the basis of the policy is just the exercise of discretion. It does not give certainty.

The Ukrainian family scheme is of course welcome, but in its recognition that, having fled to safety, refugees need their families, it should be a precedent, not an exception. As to allowing children to bring in family members, the Minister said at Committee stage of this Bill that

"noble Lords will at least grant that I have been consistent in opposing that sort of policy, because of its negative consequences",

which, she claimed would creative incentives for children to be encouraged and forced

"to leave their family and risk extremely dangerous journeys to the UK in order to sponsor relatives."—[*Official Report*, 8/2/22; col. 1474.]

In fact, it is the lack of safe routes such as family reunion that force dangerous journeys. Families Together, the coalition of 90 NGOs, talks about how the existing rules mean

"that those family members who have become separated but are not covered by the rules are left with the invidious choice of staying put in insecure and dangerous places or embarking on treacherous, expensive, unregulated journeys."

I agree with another NGO, the excellent Safe Passage, that:

"Safe routes save lives, reunite families and support refugees to rebuild their lives … welcomed by our communities."

I hope that the Government will take the precedent of the Ukrainian family scheme and widen it out to their family reunion policies. I beg to move.

Lord Dubs (Lab): My Lords, I wish to speak to Amendment 48 in particular. I say at the outset that I am grateful to the Minister for the trouble she has taken to give me a chance to talk to her and her officials about the clause and the Government's view of it. Although I do not think that either of us was persuaded by the other as a result of our conversation, nevertheless I am grateful for the trouble she went to.

I want to just say a word or two about the background. Until we left the EU we had the benefit of the Dublin treaty, particularly Dublin III. To summarise, the benefit of that was that a refugee child or a child claiming refugee status could seek to join a relative living in this country. For example, a Syrian boy in France could apply to join an uncle in Birmingham or Manchester. That worked fairly well. The figures show that it was quite successful and it was an important part of reuniting families.

When we were concerned that Brexit would put an end to all this because the Dublin treaty would no longer apply, this House passed an amendment to the 2017 legislation so that the Government would negotiate to continue the family reunion provision after we left the EU. That was passed by this House on a vote, it was eventually accepted by the Government in the Commons and it became the law of the land. Then came the 2019 legislation and the Government took the provision out again, for reasons we never understood. Many of us were alarmed that something that had been passed could just be reversed, as it were, by other legislation.

Partly to conciliate me, I think, the Minister arranged a meeting. I was quite surprised that there were three Government Ministers and seven officials at the meeting, and me: it was sort of 10 to one. The effort was made to persuade me that everything would be all right under the then Immigration Rules. The then Immigration Minister was Brandon Lewis. He looked me in the eye and said, "Don't you trust me?" I found this quite difficult. I said, first, "There is no guarantee you will stay in your job for very long." Indeed, within weeks he was promoted to Secretary of State for Northern Ireland. Secondly, I said, "I may trust you personally but I don't trust the Government." I am afraid that is still my position on this legislation.

7.15 pm

What we have is a less than satisfactory provision for family reunion under the Immigration Rules as they now stand. All the evidence is that it is not working. For example, according to Safe Passage, with which I work very closely, it is clear that since the Dublin III arrangements ceased very few children have managed to join their families here. Although the amendment goes a bit wider than children, essentially the main thrust of it is to enable children to join relatives.

Under the Dublin treaty provisions, 90% of these applications were accepted and in 2020 Safe Passage had 134 successful cases. Since the end of Dublin III and the provision being taken out of the 2019 legislation, Safe Passage has had 24 family reunion cases, and decisions from the Home Office on nine of those. Of those nine, seven were refusals: three from Greece, three from France and one from Belgium. Two cases were accepted, both from Greece.

We have seen a dramatic decline in the ability of young people on the continent to join their relatives here on the basis of refugee status. It has been a very difficult situation and, much as I wish to be brief, I want to give one or two examples. There have been no successful applications from France. I will briefly quote some of the reasons that have been given. The Home Office has argued that a child being alone in France or Greece is not a "serious and compelling circumstance" to warrant entry clearance to the UK. Safe Passage believes that a child being unaccompanied and separated from family should surely be a serious and compelling circumstance.

In the case of one unaccompanied child, the Home Office responded:

"You currently live in a shelter for unaccompanied Minors with psychological support. I note you have provided no evidence why this arrangement cannot continue or any serious and compelling considerations in your case."

You have to stay there. There is no future; you cannot join your family.

I have one or two more to quote before I finish. In another instance, the Home Office said:

"From the evidence provided it is noted that you are currently receiving ongoing care"

in a shelter for unaccompanied children

"and no evidence has been provided to suggest this care arrangement can no longer continue … you have evidenced no serious or compelling circumstances to show that your life cannot continue how it is now."

What are we saying? We are saying that a child should stay in some sort of institution and cannot join their family member in this country. For heaven's sake, what is all this about?

In another instance, the Home Office said:

"Whilst we sympathise with people in difficult situations, we are not bound to consider asylum claims from the very large numbers of people overseas who might like to come here"—

ha, ha—

"those who need international protection"—

now we hear it again—

"should claim asylum in the first safe country they reach—that is the fastest route to safety."

I have met young people in Calais and in Greece who desperately want to join their family, often siblings, here. If they cannot do that, they do what any of us would do in that situation: they find another way of getting here to join their family. If the choice was between staying in some hostel, as the Home Office refers to; staying in the conditions in the camp in Moria, on Lesbos—it burnt down, but the situation there is still similar; sleeping under the trees and tarpaulins near Calais; or finding another way of getting to this country to join your siblings, we would do it. They will do it. It is no wonder.

When we still had the Dublin III arrangement, I went to Calais, and in the Jungle talked to people. They said, "When it gets dark we'll try to hop on to the back of a lorry on the motorway nearby." I said, "We are working very hard to find you a safe and legal way, so don't do that dangerous thing." But some of them did, because the safe and legal way did not arrive.

I have many more examples, but I shall not take up more time. But there is a clear case for family reunion, and if as a country we cannot support family reunion on the basis in which I have described it—on the basis described in this amendment—then we are a much less worthy country than I thought we were.

Lastly, in discussions on previous amendments there was much talk about public opinion. I believe that the British public are essentially humanitarian, and if they are given these arguments they will say, "Yes, we support that. We support family reunion, particularly for these children. Let's go for it—we don't agree with the Government." Public opinion is on our side, so let us make sure that the Government listen to that public opinion.

Lord Alton of Liverpool (CB): My Lords, I support the noble Lord, Lord Dubs, in what he has just said. I was one of the signatories of the original Dubs amendment, as it became known. It is a pleasure to follow him this evening and endorse his remarks, as well as those of the noble Baroness, Lady Ludford. I also

[Lord Alton of Liverpool]
support and have signed Amendment 50, which is being proposed by the noble Baroness, Lady Kennedy of The Shaws. My Amendment 51 is an all-party amendment. I declare my interest as a patron of the Coalition for Genocide Response, and my involvement in various relevant all-party parliamentary groups.

Amendment 51 has its origins in northern Iraq, where on 3 August 2014 ISIS attacked Sinjar, killing thousands of Yazidis, abducting thousands of women and girls, and forcing the rest to flee. This attack on the Yazidis was followed by mass atrocities in the Nineveh Plains, from where people were forced to flee or to die. People who were different, including gay people, were thrown from high buildings, prisoners were burnt in metal cages, women were raped, and homes were looted. These atrocities then intensified in their number and scope.

In 2019, I travelled to northern Iraq and met Yazidi leaders and members of other minorities; I took statements and evidence. It was truly shocking to hear first-hand accounts of the terrors to which human beings had been subjected. To hold to account those responsible for atrocity crimes, the 1948 convention on the crime of genocide lays a duty on us to protect, prevent, punish and—since the Bosnian genocide—act from the moment it is believed that this ultimate crime of crimes is being perpetrated.

In 2016, believing a genocide to be under way, the four signatories of this amendment tonight did precisely that and acted. The noble Lord, Lord Forsyth, the noble Baroness, Lady Cox—who is currently in northern Nigeria, collecting evidence on atrocity crimes—the noble Baroness, Lady Kennedy of The Shaws, and I jointly tabled an amendment, calling on the Government to provide a safe and legal route for Yazidis and others dying at the hands of their tormentors. We failed to convince the Government to support it.

However, during that debate, and again in Committee on this Bill, we have again argued that our asylum procedures should create a specific category to help those judged to be at immediate risk of genocide. This amendment would leave the adjudication of whether a genocide was under way to a judge of the High Court of England and Wales, a route suggested to me by my noble and learned friend Lord Hope of Craighead. It was supported as a principle during proceedings on the Trade Bill in 2021 by three-figure majorities of your Lordships' House and only narrowly defeated in the House of Commons, in what I think was the closest vote of the Parliament on a House of Lords amendment.

Genocide is defined in Article 2 of the 1948 convention on the crime of genocide. Winston Churchill said that the horrific nature of the genocide of the European Jews, the Holocaust, was a crime so unimaginably monstrous that it did not have a name; a Jewish Polish lawyer, who lost over 40 members of his family in the Holocaust, gave it one. Despite the term being named and defined, we nevertheless refused to empower a United Kingdom court to pronounce on it, while knowing that routes to the International Criminal Court are invariably blocked by vetoes.

But the House should note that, as recently as in November 2021, a court—a German one, in Frankfurt—did finally put a name to the crimes committed by ISIS against the Yazidis and others. It convicted a man who had bought a five-year-old Yazidi girl as a slave, and then chained her up in the hot sun where she burnt to death. The court convicted him of genocide. On International Women's Day next Tuesday, we should recall that little girl and the estimated 5,000 young Yazidi women and girls abducted by ISIS, who suffered horrific and prolific sexual abuse.

Tonight, we have the chance to do something practical, which we have failed to do thus far. Despite all the evidence and a vote in the House of Commons declaring atrocities against the Yazidis to be a genocide, we have still not recognised this as a genocide and we have failed to create a safe or legal route to enable safe passage for those who are so grievously at risk. As I said at Committee:

> "Reports suggest that among those resettled to the United Kingdom, there have been no Yazidis whatever and no Christians from northern Iraq—none. I would be most grateful if the Minister could tell us what the numbers are, or, if she does not have them, perhaps she could arrange for us to receive them between now and Report".—[*Official Report*, 8/2/22; col. 1484.]

I hope we will be given those figures today.

In January, I asked for a bespoke humanitarian visa scheme for Uighurs and was told:

> "While we sympathise with the many people facing difficult situations around the world, we have no plans to introduce a bespoke humanitarian visa scheme for Uyghurs."

But sympathy alone is not enough. The Foreign Secretary herself has said that there is a genocide under way in Xinjiang; the House of Commons has voted to say there is genocide under way; and American Presidents, present and previous, have said there is a genocide under way. Does that not at least require a bespoke scheme to help some of those affected?

This amendment is modest: it will not be able to help the millions of people caught up in the pestilential nature of persecution, demonisation, scapegoating and hateful prejudice evident in the recent genocides in Iraq and Syria, the razed villages of Rohingyas in Burma/Myanmar, or the concentration camps of Xinjiang. It will not in itself stop the hauntingly cruel elimination of innocent humans being murdered because of their religious, ethnic or other identity. This amendment will also not be able to save every life—but it will save some.

In Committee it was suggested by my noble friend Lord Green that the amendment would potentially open the door to millions of people. The signatories of this amendment have listened to that argument, and we have addressed it. Proposed new subsection (4) in the amendment now gives the Secretary of State the power to use regulations to cap the number of people granted asylum under this scheme in any calendar year. That is not unlike what we are doing over Syrians, Afghans or children. If this amendment had been passed in 2016, it would have saved the lives of some of the Yazidis, Christians, gay people and others who were targeted by ISIS.

In 2016, the noble Lord, Lord Forsyth, said:

> "I say to my noble friend the Minister: throw away the brief from the Home Office and go back to the department and tell it what has been said this evening. I am certain that, despite the

media coverage and the information that is available, people in this country have no idea of the extent of the horrors that are being perpetrated".—[*Official Report*, 3/2/16; col. 1894.]

I therefore hope that tonight the House will send this amendment to the House of Commons, so that an injustice can be put right and a safe and legal route opened for small numbers of people, to be determined by the Home Secretary, who are subject to what we declare to be the crime above all crimes, to which we are treaty-bound to do something about. We are also bound to them by laws of common humanity. I hope we can do rather more than simply express our sympathy and sentiment.

7.30 pm

Baroness Stroud (Con): My Lords, again in the absence of my noble friend Lord Kirkhope, who still has Covid, I wish to speak to Amendment 49, tabled in his name, which introduces a global resettlement target of 10,000 people each year.

We have just heard from the Home Secretary that the Government have committed to expanding their family visa scheme and introducing a new community sponsorship scheme for Ukrainians, both of which are significant and welcome steps. I thank my noble friend the Minister for the further policy details that she gave us earlier. But it is difficult to know exactly what is being proposed and, more critically, exactly how many Ukrainians will be able to access these routes and the timeframe in which they will be able to do so.

Community sponsorship, while effective, is typically not a rapid response option and requires considerable planning, resource and buy-in from local community advocates and groups. I have long been an advocate for this kind of policy but it is a solution that requires people to be able to plan and build the infrastructure to support it, as exists in, say, Canada. However, as we are all too aware, the moment of crisis is now. This is the second time in a few short months that a major global refugee crisis has emerged, with Ukraine swift on the heels of Afghanistan. The reality is that on both occasions we have simply not had the infrastructure in place to care for people properly in terms of both civil society's response and local authority capacity.

With that in mind, I turn to Amendment 49, which offers the Government an effective, carefully planned and responsive solution for refugees as regards not only the protracted crisis that we expect to develop in Ukraine but those seeking protection on these shores from other conflict zones. There are two important reasons for that amendment. The first is that we would be playing our part as a nation in responding to global crises and resettling 10,000 of the world's most vulnerable each year. Secondly, it would mean that we could plan and build a basic level of infrastructure at a local community level to be resilient to crises like the one playing out before us right now.

One of the greatest challenges for Afghan arrivals has been the fact that we have not had the capacity to take in such a big influx so quickly. That is largely because we have not had the stable infrastructure in place for welcome and integration. The success of the Canadian approach to refugee resettlement lies in its consistency. There is strong integration infrastructure there, well-resourced civil society groups and genuine expertise in the local authorities. That is why the Government setting a baseline target for the number of refugees who will be resettled by safe and legal routes could help to build the infrastructure required. If the response to Afghanistan proves one thing, it is that we need to guarantee consistency to both the local authorities and civil society groups that do so much to ensure the smooth transitions for asylum seekers.

A predictable but flexible global resettlement model in which the Government retain control over how places are allocated enables the Home Office to react swiftly to international refugee crises and in a co-ordinated fashion with local authorities, to scale provision in line with demand. Without this amendment, we will continue to lurch from one major crisis to the next. The best way to avoid that outcome is to ensure that we can plan and prepare the infrastructure and manage the flow of refugees. Amendment 49 does not prescribe the exact manner in which the Government should meet their target but simply seeks to address the underlying and fundamental issue—that at the moment we are unprepared and are not playing our part fully in the emerging international crisis.

The success of the Syrian programme in no small part was due to the political commitment and leadership associated with the 20,000-person commitment, which produced voluntary buy-in from local government and, in turn, enabled the build of a well-functioning and properly resourced system. The baseline of 10,000 people is an appropriate number for the future.

I conclude by taking a step back. If we fail to enshrine safe and legal routes, I fear that the two-tier system that the Government are creating with this legislation will come back to haunt us. Does the Minister imagine that the British public will endorse this legislation when its consequences become clear and we criminalise or remove public fund provisions for Ukrainian and Afghan women and children, who will inevitably in their desperation seek other avenues to reach our shores? War clarifies public opinion. The British public are hugely supportive of those fleeing Vladimir Putin's war. I urge the Minister to consider whether, in the heat of the most major war and potential refugee crisis in a generation, it is the right moment to introduce a two-tiered refugee system. Surely it would be better to pause this legislative process to allow for reflection and see where the land lies.

However, if the Minister cannot consider that, I commend Amendment 49 to the House as a pragmatic way in which to ensure that we have the community infrastructure needed to support people for the long haul. It will send a signal both at home and abroad that we are a compassionate and fair nation.

Lord Kerr of Kinlochard (CB): I support all the amendments in this group but particularly Amendment 48, which has my name on it, to which the noble Lord, Lord Dubs, spoke. It is a great pity that the Government wound up the Dubs scheme for unaccompanied children, which was doing a great deal of good, and that the Government did not want to stay in Dublin III or try to negotiate on that. We are not part of that agreement, and that removed two safe routes for unaccompanied children.

[Lord Kerr of Kinlochard]

Under the Immigration Rules, as I understand them, it is not possible for a child to come to stay with a grandparent, sibling—a brother or a sister—uncle or aunt. It has to be a parent. Suppose the parents are lost or the situation is such as that unfolding in Ukraine now. Suppose the child has lost the parents en route. Why can he or she not come and stay with their grandparents in this country? The Immigration Rules seem to be too harsh. I therefore support the language of Amendment 48.

The more worrying point for me is the one made by the noble Lord, Lord Dubs, when he cited the Safe Passage numbers. It is alarming that the number of unaccompanied children coming in by a safe route has dropped steeply now that we are no longer in Dublin, the Dubs scheme has gone and these Immigration Rules are being applied. Where are these children going? Safe Passage tells us that in more than 50% of the cases that it is trying to follow, the children just give up, drop out and disappear off the books. Where do they disappear to? I fear that they disappear down to the beach and into the hands of the crooks.

Safe and legal routes really matter, so Amendment 48, which opens up the possibility again of having a safe and legal route for unaccompanied children, matters in my book. It was in this Chamber that the Dubs scheme was first approved by large majorities. For exactly the reasons that we approved it then, we should approve Amendment 48 now in a world that is, if anything, more dangerous, with more children in such a plight than then. I give my strong support to that amendment.

The Lord Bishop of Durham: My Lords, in rising to speak to Amendment 48 tabled by the noble Lord, Lord Dubs, to which I have added my name, and Amendment 49 in the name of the noble Lord, Lord Kirkhope, presented by the noble Baroness, Lady Stroud, I declare my interests in relation to both RAMP and Reset, as set out in the register.

I support Amendment 48 as one of a range of safe routes needed to give people seeking asylum an alternative to using criminal gangs. People will do whatever it takes to reach family. I simply endorse the comments of the noble Lord, Lord Dubs, the case for family reunion made by the noble Baroness, Lady Ludford, and the remarks of the noble Lord, Lord Kerr. I urge the Minister to consider this proposal as a pragmatic response to the need to find durable solutions to desperate people dying on our borders in order to reach their family. This route will prevent some from ending in the traffickers' hands.

I now turn to Amendment 49. I support it because we need a target for the global resettlement scheme, to ensure that it is operational to a level which provides a real alternative to people forced to use criminal gangs, and that it reaches countries such as Iran, Eritrea and Sudan, from which the majority of those arriving on small boats originate. We had the annual target of 5,000 for the Syrian resettlement scheme, and that is indeed the number who came, in a controlled, predictable and prepared way. We currently do not have a target for the global resettlement scheme, and just 1,587 came in 2021.

A target enables local authorities, charities, faith communities and the wider community, including businesses, to create and maintain the infrastructure needed to provide good welcome and ongoing support. This infrastructure also makes emergency response easier, as we have needed with Afghanistan and now Ukraine. It becomes less a crisis-to-crisis response and rather a strong infrastructure that can scale up when needed.

I note for the Minister that community sponsorship is deliberately not named in subsection (2) of the new clause proposed by this amendment, as there has been an earlier commitment made by Her Majesty's Government that those coming through community sponsorship should be seen as additional to those in any set target. However, it is named in subsection (3). The Minister has previously spoken of her strong support for community sponsorship, so I hope that she will take this opportunity also to reaffirm Her Majesty's Government's commitment to the growth and development of community sponsorship widely, as well as the welcome announcement for it with Ukraine. Further details around that would also be welcomed, particularly by Reset.

It is welcome to see the Home Secretary committing to the humanitarian pathway for Ukrainians. We wait to learn the detail of this and the expected capacity. The point is that over five years, the number coming through on community sponsorship is 700, for the reasons that were named. It takes time. That capacity is growing and building strongly, but it will not answer the Ukrainian question quickly.

Returning to the need for a clear resettlement target, I conclude that without one, I fear that the global resettlement programme will be sidelined, and refugees will have no alternative but to use criminal gangs as what they perceive as their route to safety.

The Earl of Dundee (Con): My Lords, since post Brexit, the EU's Dublin III regulation no longer protects the rights of unaccompanied children. Therefore, along with many of your Lordships, I strongly support this measure, proposed by the noble Lord, Lord Dubs, who has very simply and eloquently indicated that it is a matter of honour that an equivalent to the Dublin regulations should now by us be put in place.

Any ambiguity would thereby be removed and instead we would make sure, as the Dublin regulations used to, that unaccompanied children and certain other people in Europe are able to come here for asylum if a close family member should already be in the United Kingdom.

Baroness Kennedy of The Shaws (Lab): My Lords, I support all the amendments in this group. I particularly want to mention the amendment tabled by my noble friend Lord Dubs, and spoken to powerfully by the noble Lord, Lord Kerr, about the importance of reunion of families.

As some noble Lords will know, I have recently been involved in the evacuation of women judges from Afghanistan. The first flight that I was involved in getting the women out on had 30 women on it. Unfortunately, I was woken at 5 am by a call from our point man at Mazar-i-Sharif airport, who said that

the husband of one of the women judges had an out-of-date passport. It was not long out of date, but it was out of date, so he would not be allowed on the plane. I spoke to the woman judge, who I had got to know through her desperate communications with me. She was weeping, and I could hear her children weeping. I told her to get on the plane with her children and that I would do everything I in my power to get her husband to join her.

7.45 pm

She said, "Can you guarantee it?" I said, "That I can't do, but I promise you I will do everything I can to have him join you". I did not have the confidence in my heart that I would be able to keep the promise of reuniting her husband with her and her children. I am afraid that the whole family had to be stepped down from the flight, leaving me with seats which had involved a lot of money having to be gathered together for this evacuation, because she could not go on the flight. My heart was heavy, because it was a reflection on what I felt and the confidence that I did not have in our system. I have told that story because reunion of families should be at the forefront of our minds.

My name is on Amendment 51. The noble Lord, Lord Alton, has spoken so powerfully about the importance of keeping to our commitment and duty to act when a genocide is in progress and not wait until it is over, and our duty to be of assistance to those who might flee from such persecution. As he has described, a very important protection is in here, in answering the question, as posed, "Who decides whether a genocide is in progress?" This would come before a senior court here, so it would not be a requirement of politicians to make that decision as to whether there was a genocide in progress. However, we must be prepared to support and help those who are fleeing the kind of persecution that is currently taking place in Xinjiang province. There is no need for anxiety that the whole province will end up on our shores; it is very rare that people can flee and make the journey at all. Therefore, I support Amendment 51, tabled by the noble Lord, Lord Alton.

I want to speak powerfully about the importance of there being rapid responses. The noble Baroness, Lady Stroud, has just mentioned how we can invent all sorts of processes but there must be an opportunity to say, "Take people now" if they are in mortal danger. It is what people are feeling about the situation in Ukraine. If you want to be doing these testing and security checks, bring people here and then do the checking. If someone is really a Soviet spy or former KGB agent, make your decision and deport them—but you have to act quickly to save lives.

There is a particular issue here for journalists. Our own Foreign, Commonwealth and Development Office has run a wonderful project, along with many other nations, on media freedom. Britain was there at the start of this project and now there are 50 countries around the world involved in it. One of the reports by the high-level legal panel that was created under that project contained a commitment made by all those countries to create emergency visas for journalists and other human rights people at the front line whose lives are in mortal danger—as was the case for my women judges. These were people who were dealing with human rights issues, protecting women, protecting people from the Taliban and jailing the Taliban. Not being able to put your hand on emergency visas is a tragedy and puts people's lives at risk. It should be possible for there to be emergency visas. That is what my Amendment 50, supported by the noble Lord, Lord Alton, is about: creating emergency rapid responses for people who are at risk.

I remember Anna Politkovskaya, a great Russian journalist, who came to Britain to receive an award, that I was asked to give to her, for PEN International—a brave journalist who had gone to Chechnya and covered some of the ghastly things that Putin was doing there. She wrote a book, *Putin's Russia*, that really put her in his sights. She came to receive this prize, and I remember sitting with her that night; we were all saying to her: "Stay. Do not go back. Your life is in danger". She said, "I know it is, but my son is 16 and I have to go back to make sure that he could get out with me". She went back, and I opened my newspaper two weeks later, and there was the blood on her staircase. She had been shot dead.

What was needed was emergency visas. She could have gone to our embassy, secured a visa for her son and got out within days. Instead, weeks passed and she ended up dead. We must have ways of responding to these situations rapidly. My Amendment 50 allows that kind of visa to exist for those facing imminent risk of death, and it should apply to people who, perhaps for reasons of religion, or reasons to do with their personal characteristics, might be in the same mortal danger. I hope that the House will support this amendment too.

Lord Hylton (CB): My Lords, we have heard some very moving speeches. Because I have consistently spoken over the years in favour of family reunion, I will say something about Amendments 47 and 48, which I support. I urge the Government to take them away and combine the best points from both of them into something workable, practical and possible to implement.

It is most important that children and young people who are already here should be able to sponsor their close relatives, and, conversely, older people here should be able to sponsor their younger next of kin.

Lord Green of Deddington (CB): My Lords, I offer just a sentence on some of these amendments.

On Amendment 48, we need to bear in mind the risk that if we set up what is now proposed, children who are not yet in Europe will feel obliged to take quite serious risks to get into Europe to take advantage of it. With regard to Amendment 49, Syria is a good example. We decided that something needed to be done. We chose a target that, if you like, was doable—5,000 a year—and we did it. I take some encouragement from that. However, we need to be careful about the numbers, because we are already taking 40,000 a year, and if the Channel gets any worse that could be 70,000. We need to be careful not to lose the public's support, which underlies all this.

Lastly, on Amendment 51, I have a good deal of sympathy with the comments of my noble friend Lord Alton on the Yazidis and others in Iraq. It may

[Lord Green of Deddington]
be that we should aim to do something similar to what was done over Syria, but again with a cap, in case the numbers run out of control. That has, indeed, been included in subsection (4) of the amendment, I think.

I mentioned public opinion, which changes from time to time. There is certainly very strong opposition to what is happening in the Channel; there is widespread public feeling that the Government, having promised to reduce immigration, have in fact lost control of the Channel. That, indeed, is the case. We cannot really expect the public to distinguish very clearly between asylum and other kinds of immigration. They are very uneasy, and in taking policy forward we need to keep that well in mind.

Lord Paddick (LD): My Lords, as we have heard, in addition to the family reunion amendments so ably explained by the noble Lord, Lord Dubs, and my noble friend Lady Ludford, this group includes amendments on setting an annual target for the acceptance of asylum seekers into the UK and the acceptance of refugees in specific circumstances—such as those faced by female judges in Afghanistan, the victims of genocide and those fleeing the appalling situation in Ukraine. If the noble Baroness does not take up the challenge set by the noble Lord, Lord Hylton, to combine the best parts of the two family reunion amendments, we will vote for Amendment 48, in the name of the noble Lord, Lord Dubs.

As the noble Baroness, Lady Stroud, explained, the Government need to build capacity in this country to enable us to take in at least 10,000 refugees a year—a number that is seen almost universally as the UK's annual fair share of global refugees. Without a target to aim for, the necessary arrangements—the infrastructure and capacity in local services—will not be in place to cope with situations, such as Ukraine, that can arise, as we have seen, with relatively little notice. It is no excuse for the Government to say, "We are unprepared". We must be prepared, and Amendment 49 seeks to ensure that we are.

I reiterate what I said late on Monday: the British people want to help genuine refugees, like those fleeing the conflict in Ukraine. What they worry about, rightly or wrongly, is being overwhelmed by immigrants. I repeat: in recent years only six in every hundred people coming to the UK to live have been asylum seekers. The British people have nothing to fear from this amendment. On the contrary, if it was explained to them, I am sure that they would support it overwhelmingly.

We support Amendment 50—so powerfully spoken to, and in the name of, the noble Baroness, Lady Kennedy of The Shaws—which makes special emergency provision for people at particular risk, such as human rights defenders, including journalists, and minorities. We also support the amendment from the noble Lord, Lord Alton of Liverpool, to make special provision for victims of genocide.

To put beyond doubt the mixed messages from the Government about what they will do to support refugees from Ukraine, Amendment 54A in my name, and signed by the noble Lord, Lord Coaker, puts into primary legislation the requirement to support, by whatever means necessary, Ukrainian refugees who need to come to the UK. We passionately support all the amendments in this group.

Lord Coaker (Lab): My Lords, what a powerful debate we have just had on what is one of the most important parts of the Bill. The noble Lord, Lord Paddick, spoke about wishing that we could inform the public. I sometimes wish—I do not know how you would do it, unless you put it on live television—that the public could hear more of the speeches made in places like this. That would inform the debate and take it forward in a way that allowed people to make their own mind up. It is disappointing that it does not happen.

It is important, in this context, to remind ourselves that we are all wrestling with how we deal with refugees, family reunion and resettlement schemes. The point made by the noble Lord, Lord Paddick, needs to be repeated time and again: this is not about immigration, it is about refugees fleeing persecution and about asylum. That is extremely important.

The noble Lord, Lord Alton, was also right, with his Amendment 51, to remind us of some of the people who need support.

In speaking to her Amendment 50, my noble friend Lady Kennedy referred movingly to her work to support the judges in Afghanistan. She has dedicated her life to trying to do something for people in such situations.

8 pm

We support the amendment of the noble Baroness, Lady Stroud, and the global resettlement programme that she announced. When the noble Baroness was talking, I wondered whether, in the light of what has happened in Ukraine and the movement of people in all parts of the world, there are the statesmen and stateswomen who could come together to create another 1951 refugee convention. It strikes me that perhaps it is time for the world to come together to understand what we should do about the movement of people across the globe, whether that be through war or famine or whatever. Essentially, this group of amendments—and the issue the Government are wrestling with—is about how we respond to that. The various amendments before us are seeking, in their own ways, to deal with that problem.

Above all, none of us could fail to be moved by my noble friend Lord Dubs. The passion and power that he brought to this issue moved us all and was a challenge to us all. Whether we agree with the amendment or not, what are we going to do about what is a very real situation? As we stand here in this Chamber and debate this, there are unaccompanied children who have nowhere to go. There are people fleeing persecution and war, people facing genocide, who have nowhere to go. That is the reality of what we face and what we are seeking to deal with.

To be fair to the Government, I know that the Minister will describe what they are doing about this issue and refer to the extension to the Ukraine scheme, which we all welcome. As the right reverend Prelate the Bishop of Durham said, we obviously need to understand the details of the Government's proposal. Interestingly, following pressure from this House and

the other place, the Government have incrementally improved and extended their offer, which shows the importance of debate and discussion.

We strongly support my noble friend Lord Dubs' Amendment 48 and will encourage noble Lords and Baronesses to vote for it, should it be put to a vote. Families are split across Europe, and children who seek safety with family members are at very high risk of taking dangerous journeys across the channel and elsewhere to be reunited with their loved ones. Time and again, as noble Lords have said, the lack of safe and legal routes is at the heart of the problem. If those are not put in place, people will seek alternatives—I would; anybody would—so between us, we have to find safe and legal routes. As my noble friend Lord Dubs pointed out, the Government recently closed those safe routes for children. They ended the Dubs scheme, and we need to hear from the Minister what is going to replace it.

On the amendment of the noble Lord, Lord Kirkhope, spoken to by the noble Baroness, Lady Stroud, it is vital to mention that 10,000 is approximately the number the Prime Minister previously committed to. He said that the 5,000 people a year resettled under the Afghan citizens resettlement scheme would be in addition to previous commitment to resettle 5,000. The crucial thing is to have a well prepared and flexible resettlement capacity which can react as needed. This week is a reminder of the reality of that and, as I say, it is good to hear from the Minister that the Government have moved on this.

We used to be a leading country in Europe on resettlement but that has not been the case for the past few years; we now need the Government to commit to our having not just a proud past on resettlement, but a proud future. The Afghan citizens resettlement scheme took five months to get up and running; we need to look at that and understand how we can move much quicker.

On the amendment of the noble Lord, Lord Alton, of course we need to do something about genocide. He knows that we have some concerns about the detail, and it would be for the Government to sort out how it would work in practice, but we unequivocally support the principle of what the noble Lord is trying to do.

I go back to the key point of the debate on all the amendments before the Chamber. The lack of safe and legal routes is at the heart of this, and the amendments seek to address the particular problems that arise from that. As we see with the Ukrainian crisis and other crises, there will be a need at some point for greater international co-operation across not just Europe but the world to deal with this ever-increasing movement of people as they flee persecution, war and famine.

Many of these amendments are worthy of support and I hope the Government listen to what has been said. I will finish with this: when the Government are told by everybody that there is a problem with the legislation before us and they need to change some of it, it is sometimes a good idea for them to listen.

Baroness Williams of Trafford (Con): My Lords, I thank all the noble Lords who spoke in this debate. To take the point made by the noble Lord, Lord Coaker, I sometimes wish that people would listen to the points I make, but sometimes, because it is politics, they choose not to.

On Amendment 47, which relates to refugee family reunion, we have a comprehensive framework to manage cases that fall outside our rules. For example, refugees can sponsor children aged under 18—including siblings, nieces and nephews—to come here where there are serious and compelling circumstances, and there is further discretion to consider any other familial relationship as necessary. As part of the 2021 safe and legal routes review, we sought to clarify in our Immigration Rules which exceptional circumstances may be engaged for children whose applications are being considered outside the rules. This will bring further consistency and transparency to our policy.

Regarding allowing child refugees to sponsor family members under this new clause, I cannot stress enough the objectionable consequences this could create. It risks incentivising more children to be encouraged, or even forced, to leave their family and risk hazardous journeys to the UK, playing into the hands of criminal gangs who exploit vulnerable people, which goes against our safeguarding responsibilities. I know that noble Lords would not want to see that outcome.

I thank the right reverend Prelate the Bishop of Durham and the noble Lord, Lord Dubs, for tabling Amendment 48, which is about safe routes for those seeking to claim asylum in the UK, including unaccompanied children, to travel from countries in Europe to join family in the UK. I know that the noble Lord, Lord Kerr, and the noble Baroness, Lady Ludford, also support this proposed new clause, but I cannot. It tries to create a scheme similar to the EU's Dublin regulation in UK law with respect to those who are in a European country but have family members in the UK. However, unlike the Dublin regulation, where the asylum claim is initially made in the EU country they are in, this new clause attempts to introduce a route for those who are in safe European countries to come to the UK to claim asylum.

On the Dubs scheme, we did not end it; we completed what we set out to do, which was to take 480 children under the Dubs scheme. On family reunion under Dublin, noble Lords will see in the table I sent the noble Lord, Lord Dubs, and which I distributed to all Members of your Lordships' House, that Dublin had about a tenth of the number of our refugee family reunion scheme over a similar period. The noble Lord also talked about the Safe Passage cases. I understand that the Home Office asked him to send details of them. We would be very happy to receive them should he see fit to send them.

In response to the noble Lord, Lord Kerr, noble Lords will be aware that the UK sought to negotiate on these matters, specifically for unaccompanied asylum-seeking children, but it was not possible to reach an agreement with the EU on family reunion. When the UK was seeking to raise these matters with the EU, our proposals had very clear safeguards for children. This new clause has none and fails to consider the individual needs of children, which raises significant issues. While the noble Lords who tabled the new clause might have good intentions, it is not drafted

[Baroness Williams of Trafford]
with a child's interests as paramount. It creates entitlements to come to the UK to claim asylum if the individual has the specified UK relatives but does not consider whether this is in the unaccompanied child's best interests. That is a really important fact. Neither does it consider whether the UK relative can actually take care of the child, nor does it involve any consideration of whether the child would be better placed with a relative, potentially an even closer relative, in another European state.

I cannot ignore the fact that this new clause would encourage asylum seekers, including vulnerable unaccompanied children, to make dangerous journeys to Europe to benefit from its provisions. By the same token, it would discourage asylum seekers, when in Europe, who wish to travel to the UK to interact with the care and support mechanisms or the asylum systems of those safe European countries which should provide them with the safety and protection they are entitled to under the same international legal obligations that the UK abides by.

I have been very clear that we will not consider a more favourable approach to family reunion in the Immigration Rules for those in the EU, including unaccompanied children, as opposed to those in the rest of the world who want to join family here in the UK. A single global approach to family reunion—as taken by our current refugee family reunion policy—is fair and does not encourage what are often dangerous journeys into Europe, facilitated by smugglers and traffickers. As I have said many times, European member states are safe countries with international obligations towards protecting asylum seekers and children, as we do here in the UK, affording all asylum seekers in Europe an opportunity to access the rights to which they are entitled.

The right reverend Prelate talked about community sponsorship and my articulated support for it. That does not diminish; I would like to see far more schemes develop here in the UK. He also linked it to the Ukraine humanitarian pathway. The two are not the same. I am sure we will get more detail on the latter in due course, but I think it is a really good idea.

I thank my noble friend Lady Stroud, on behalf of my noble friend Lord Kirkhope of Harrogate, for speaking to Amendment 49. The Government have time and again demonstrated their commitment to helping people in need of international protection. To date, our resettlement schemes have been non-legislative, operating outside of the Immigration Rules and on a discretionary basis. Operating in this way has effectively enabled us to respond to both protracted and emerging humanitarian crises and has seen us resettle over 27,000 vulnerable people since 2015. The noble Lord, Lord Green of Deddington, outlined why that was so workable in the Syrian context.

Last summer, the UK undertook the biggest and fastest emergency evacuation in recent history, helping over 15,000 people to safety from Afghanistan. The Government have recently opened, on 6 January, the Afghan citizens resettlement scheme, which will provide up to 20,000 women, children and others at risk with a safe and legal route to resettle in the UK. This scheme is in addition to the Afghan relocations and assistance policy, which has already seen over 8,000 people relocated to the UK, with an estimated additional 11,000 likely to be eligible to be relocated under this route. ARAP is neither time limited nor capped, which is a good thing.

8.15 pm

On Amendment 50, I can assure the House of my support for the humanitarian intention behind the proposals. The noble Baroness referred to my commitments made in 2019. We announced our intention to pilot an Emergency Resettlement Mechanism to provide urgent protection in exceptional circumstances to refugees referred to UNHCR in need of rapid emergency resettlement. The implementation of the ERM is on hold temporarily due to the unprecedented circumstances in which we find ourselves as a result of our successful evacuation efforts in Afghanistan which helped bring over 15,000 people to safety. It is important that we consider our capacity in the UK to not place additional pressures on local authority housing and services at a time when capacity is really stretched. The Government remain committed to implementing the ERM as soon as practicable.

I thank the noble Lord, Lord Alton, for proposing Amendment 51, and for his welcome contribution to this important debate so far. On his point about the Yazidis, we have resettled 40 Yazidis through both the UK resettlement scheme and the vulnerable persons resettlement scheme.

On the wider point about genocide, this strays into some of the FCDO equities. In Committee, I committed to refer this onwards to the FCDO. We are utterly committed to the 1948 Convention on the Prevention and Punishment of the Crime of Genocide. Our approach to genocide determination does not prevent, and has not prevented us, taking action to address atrocities. Whether or not a determination of genocide is made, the UK is committed to seeking an end to serious violations of international human rights law—and, where appropriate, international humanitarian law—preventing the escalation of any such violations and alleviating the suffering of those affected.

The amendment would represent a significant departure from the Government's long-standing policy of not assessing asylum claims from abroad. Therefore, we cannot support it. It is not practical for us to be bound to consider asylum claims in British missions abroad from the very large numbers of individuals overseas who might like to come here. Even with a cap on the number of individuals ultimately recognised as refugees under the route, opening an opportunity to claim asylum could make the operation of these locations impractical and unsafe where large numbers sought to do so.

Finally, I turn to Amendment 54A. The Government have made very clear their support for Ukrainians fleeing in fear of their lives. The Prime Minister announced that the UK is prepared to take Ukrainian refugees in considerable numbers. Every conflict and threat situation is unique and requires a tailored response. The Government have already announced a bespoke humanitarian support package for the people of Ukraine, having listened carefully to the asks and requests of

the Ukrainian Government. I will also add that the Government have announced that the numbers are not capped.

We have helped hundreds of British nationals and their families resident in Ukraine to leave the country, with Home Office staff working around the clock to assist them. British nationals, and any person settled in the UK, can bring over immediate Ukrainian family members. Through this policy alone, an additional 100,000 Ukrainians could be eligible to come to the UK and access work and public services. I understand that people are being processed through these schemes in a matter of hours, as we speak. This is very good news.

We are establishing an expansive Ukrainian family settlement scheme which will be fee-free and allow British nationals and people settled in the UK to bring a wider group of family members to the UK. This extends eligibility to adult parents, grandparents, children over 18, siblings and their immediate family members. As I said earlier to the right reverend Prelate, we have committed to establishing a humanitarian sponsorship pathway, whereby Ukrainians who may not have family ties in the UK can be sponsored to come here by willing and able individuals, businesses or community organisations. There will be no cap on this scheme, as I have said, and we will welcome as many Ukrainians as wish to come who have matched sponsors.

I outlined some of the other things we have been doing in the debate on a previous group so I will not go over them again, but what I have outlined is an extremely generous and expansive package befitting the need of Ukrainians for our refuge and protection. On that point, I hope that noble Lords will withdraw or not press their amendments.

Baroness Ludford (LD): My Lords, I have listened carefully to the Minister. I still hope that some lessons will be learned from the Ukrainian family scheme, about which we will probably have some exchanges shortly. I hope for wider reform in future. I heard everything the Minister said but I still think that there needs to be fundamental reform of the family reunion rules for all the good reasons expressed in this debate. However, I am not going to make any further progress so I beg leave to withdraw the amendment.

Amendment 47 withdrawn.

Amendment 48

Moved by ***Lord Dubs***

48: After Clause 37, insert the following new Clause—

"Immigration Rules: entry to seek asylum and join family

(1) The rules laid down by the Secretary of State in accordance with section 1(4) and section 3(2) of the Immigration Act 1971 for regulating the entry into and stay in the United Kingdom of persons not having the right of abode must include provision for admitting persons coming for the purpose of seeking asylum.

(2) These rules must make provision, for the purpose of seeking asylum, for persons in Europe who have a family member in the United Kingdom who is ordinarily and lawfully resident in the United Kingdom.

(3) For the purposes of this section, a "family member" means –

(a) when the person in Europe is an unaccompanied minor:

(i) a parent, including adoptive parent;

(ii) aunt or uncle;

(iii) grandparent; or

(iv) sibling, including adoptive siblings;

(b) spouse, civil partner, unmarried partner of the person in Europe; and

(c) such other persons as the Secretary of State may determine, having regard to

(i) the importance of maintaining family unity;

(ii) any dependency between the family members;

(iii) the best interests of a child; and

(iv) any compelling circumstances."

Member's explanatory statement

This new Clause would require the Government to make provision within the Immigration Rules for unaccompanied children, and certain other people in Europe, to be admitted to the UK for the purposes of seeking asylum where they have a close family member in the UK.

Lord Dubs (Lab): My Lords, now is not the time for a long speech. I am disappointed in the Minister's response. I believe that family reunion for Ukrainians is highly desirable, but she has just rejected family reunion for other people because the system is not working well enough. I would like to test the opinion of the House.

8.21 pm

Division on Amendment 48

Contents 178; Not-Contents 130.

Amendment 48 agreed.

Division No. 3

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Hollick, L.
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8.34 pm

Amendment 49

Moved by ***Baroness Stroud***

49: After Clause 37, insert the following new Clause—

"Refugee resettlement schemes

(1) The Secretary of State must arrange for the resettlement in the United Kingdom of at least 10,000 refugees each year.

(2) The target under this section includes the numbers of people resettled under—

(a) dedicated schemes for the evacuation of people from a geographical locality, such as a specific third State,

(b) a general UK resettlement scheme,

(c) the mandate resettlement scheme or equivalent replacements, and

(d) other routes as appropriate.

(3) The Secretary of State must be guided by the capacity of local authorities and community sponsorship groups in delivering the target under subsection (1)."

Member's explanatory statement

This reflects the Prime Minister's commitment to make the dedicated Afghan resettlement scheme of 5,000 refugees a year additional to the longer standing Government commitment to resettle 5,000 vulnerable refugees per year from elsewhere in the world.

Baroness Stroud (Con): I beg to test the opinion of the House.

8.35 pm

Division on Amendment 49

Contents 169; Not-Contents 122.

Amendment 49 agreed.

Division No. 4

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Janke, B.
Jolly, B.
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Jones of Moulsecoomb, B.
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Maxton, L.
McAvoy, L.
McCrea of Magherafelt and Cookstown, L.
McDonald of Salford, L.
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Nye, B.
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Wharton of Yarm, L.
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8.45 pm

Amendment 50

Moved by ***Baroness Kennedy of The Shaws***

50: After Clause 37, insert the following new Clause—

"Emergency visas

(1) The Secretary of State must, within a period of six months beginning with the day on which this Act is passed, amend the immigration rules in order to ensure that persons at particular risk are entitled to enter the United Kingdom and be provided with temporary abode.

(2) For the purposes of this section, "persons at particular risk" include—

(a) a human rights defender who is at an imminent risk to his or her life;

(b) a person who is targeted because of their protected characteristic and is at an imminent risk to his or her life."

Member's explanatory statement

This new Clause would allow persons at particular risk to be able to be provided with safety in the UK, in line with the Government's commitments from 2019.

Baroness Kennedy of The Shaws (Lab): Having heard the response of the noble Baroness, I would ask that she might indicate whether she would be happy to meet with me to discuss the delay in the operation of this, because I understood from what she said that Covid had got in the way of perfecting this emergency visa arrangement with the UNHCR. I would like to know how expeditious that can be, and it may be by sitting with the noble Baroness and having a conversation we can resolve that. So I beg leave to withdraw my amendment.

The Deputy Speaker (Baroness Fookes) (Con): I am sorry, but the noble Baroness has spoken to the amendment. I must now put the Question.

Baroness Kennedy of The Shaws (Lab): I was just asking for an indication from the Minister; I am with withdrawing my amendment.

Baroness Penn (Con): My Lords, the noble Baroness will be able to withdraw her amendment after the Question has been put.

The Deputy Speaker (Baroness Fookes) (Con): That is correct. It is now in the hands of the noble Baroness: does she wish to seek leave to withdraw?

Baroness Kennedy of The Shaws (Lab): I seek leave to withdraw.

Amendment 50 withdrawn.

Amendment 51

Moved by ***Lord Alton of Liverpool***

51: After Clause 37, insert the following new Clause—

"Conditions for grant of asylum: cases of genocide

(1) A person seeking asylum in the United Kingdom who belongs to a national, ethnical, racial or religious group which meets the criteria, in the place from which that person originates, set out in Article II of the Convention on the Prevention and Punishment of the Crime of Genocide made in Paris on 9 December 1948, must be presumed to meet the conditions for asylum in the United Kingdom following an application to the Court from a non-governmental organisation (registered as a charity in the United Kingdom) representing such a person or group of persons belonging to a national, ethnical, racial or religious group.

(2) The adjudication of whether the group to which the person seeking asylum belongs meets the description specified in subsection (1) must be determined by a judge of the High Court of England and Wales after consideration of the available facts.

(3) Applicants for asylum in the United Kingdom from groups designated under this section may submit their applications and have them assessed at British missions overseas.

(4) The Secretary of State may by regulations place a cap on the number of people granted asylum under subsection (1) in any given calendar year."

Lord Alton of Liverpool (CB): My Lords, I would like to test the opinion of the House.

8.48 pm

Division on Amendment 51

Contents 172; Not-Contents 120.

Amendment 51 agreed.

Division No. 5

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Janke, B.
Jolly, B.
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9 pm

Consideration on Report adjourned until not before 9.40 pm.

Ukraine

Statement

The following Statement was made in the House of Commons on Tuesday 1 March.

"With permission, Mr Speaker, I will make a Statement updating the House on the Government's humanitarian response to the terrible, unjust war that Putin is waging in Ukraine. We are united across the House in horror at what is happening, and the whole country stands

with the heroic people of Ukraine. I have come straight from a meeting with our dear friend and colleague the Ukrainian ambassador to London, and I have just heard at first hand about some of the pressures and tensions inside the country.

Putin must fail in his assault on Ukraine. Working closely with the Ukrainian Government and allies in the neighbouring region, the United Kingdom is standing shoulder to shoulder with Ukraine, sending military support and defensive military aid and training thousands of Ukrainian troops, as well as introducing one of the toughest sanctions regimes in the world. We are supporting NATO partners, pressing for more economic reform and energy independence in Ukraine, banning Aeroflot, and calling for an end to Russian involvement in the SWIFT banking system.

We will continue to think robustly and creatively about what more we can all do. As I said in the House yesterday, the Government will table amendments to the visa penalty measures in the Nationality and Borders Bill, so that we can slow down and effectively stop the processing of Russian visas or those of any state that poses a threat to our national security or the interests of our allies across the world. The Government of Ukraine have requested that the Russian Government be suspended from Interpol. The UK wholeheartedly endorses that position, and we are rallying other international partners to call for and support it as well.

Yesterday I announced the first phase of a bespoke humanitarian support package for the people of Ukraine, having listened carefully to the requests from the Ukrainian Government. We have already made significant and unprecedented changes to the immigration system. We have helped hundreds of British nationals and their family members resident in Ukraine leave the country, with Home Office staff working around the clock to assist them. The right honourable Member for Normanton, Pontefract and Castleford, Yvette Cooper, raised a specific case yesterday, and I am pleased to confirm that the person concerned has been able to travel to the UK.

Family members of British nationals resident in Ukraine who need a UK visa can apply through the temporary location in Lviv, or through visa application centres in Poland, Moldova, Romania and Hungary. We have created additional capacity in all locations apace, in anticipation of the invasion of Ukraine. That includes a new pop-up visa application centre in Rzeszow, Poland, whose total capacity is currently well over 3,000 appointments per week. Our contingency plans have been enacted and are expected to increase total capacity further to 6,000 appointments a week, starting this week. By contrast, demand across these locations is usually approximately 890 biometric appointments per week. There remains availability of appointments and walk-ins across all locations. Should more capacity be required, we will of course deliver it. Our rapid deployment teams are already in the region; the Foreign, Commonwealth and Development Office sent them in a few weeks ago to support this whole effort.

I have also removed the usual language requirements and salary thresholds for people to come to the UK and be with their families. Where family members of British nationals do not meet the usual eligibility criteria but do pass all security checks, we will give them permission to enter the UK outside the usual rules for 12 months. This means that British nationals, and any person settled in the UK, can bring over immediate Ukrainian family members. Through that policy alone, an additional 100,000 Ukrainians could be eligible to come to the UK and gain access to work and public services. There is no limit on the numbers eligible under this route. Anyone in Ukraine intending to apply under the family migration route should call the dedicated 24-hour Home Office line for assistance before applying. Ukrainian nationals already in the UK have been given the option to switch, free of charge, to a points-based immigration route or a family visa route. Visas for Ukrainian temporary workers in some sectors are being extended, so they can now stay until at least 31 December this year.

As I said yesterday, I have heard some Members call for visa waivers. Russian troops are seeking to infiltrate and merge with Ukrainian forces. Extremists are on the ground in the region, too. However, I want to emphasise the seriousness of the security situation on the ground. That is not something that can be discounted lightly. I am sure that if the Opposition want a security briefing from our colleagues, we will happily provide one, but I am very sceptical about how they treat and respect security advice.

As I was saying, extremists are on the ground in the region, too. Given that, and also Putin's willingness to do violence on British soil—and in keeping with our approach, which we have retained consistently throughout all emergency evacuations, including that of Afghanistan —we cannot suspend any security or biometric checks on the people whom we welcome to our country. We have a collective duty to keep the British people safe, and this approach is based on the strongest security advice. These measures have been designed to enable swift implementation—that is the point: swift implementation —without the need for legislation or changes to the Immigration Rules. The Ukrainian people need help immediately, and we are putting it in place now.

I can also set out phase 2 of our bespoke humanitarian support package for the people of Ukraine, as outlined by the Prime Minister earlier today. First, we are establishing an expansive Ukrainian family reunion scheme so that British nationals and people settled in the UK can bring a wider group of family members to the UK. We are extending eligibility to parents, grandparents, adult offspring, siblings, and their immediate family members. Again, the scheme will be free. Those joining family members in the UK will be granted leave for an initial period of 12 months. They will be able to work and have access to public funds.

Secondly, we will establish a humanitarian sponsorship pathway, which will open up a route to the UK for Ukrainians who may not have family ties with the UK, but who are able to match with individuals, charities, businesses and community groups. Those who come under this scheme will also be granted leave for an initial period of 12 months, and will be able to work and have access to public services. The Home Office will work closely with all our international partners on the ground to ensure that displaced Ukrainians in need of a home are supported. My colleague the

Secretary of State for Levelling Up will work with the devolved Administrations to ensure that those who want to sponsor an individual or family can volunteer and be matched quickly with Ukrainians in need. There will be no numerical limits on this scheme, and we will welcome as many Ukrainians as wish to come and have match sponsors.

Making a success of the new humanitarian sponsorship pathway will require a national effort from the entire country, and our country will rise to that challenge. This is a generous, expansive and unprecedented package. It will mean that the British public and the Ukrainian diaspora can support displaced Ukrainians in the UK until they are able to return to a free and sovereign Ukraine. We are striking a blow for democracy and freedom against tyranny. Above all, we are doing right by the courageous people of Ukraine. We will help British nationals and their families get out of Ukraine safely. We will support our displaced Ukrainian friends, and we will respond robustly to Russian threats here in the UK. We will not back down. We will do what is right. I commend this Statement to the House."

9.01 pm

Lord Ponsonby of Shulbrede (Lab): My Lords, the Minister got a rough ride on Monday when he answered a PNQ on visa restrictions for Ukrainian refugees. The whole House was frustrated by the Government's response. Since then—yesterday—we have had the Home Secretary's Statement in the other place, and there was moving applause for the Ukrainian ambassador at Prime Minister's Questions today.

Today, the Ukrainian people face horrors of a potential scale that we have not seen in Europe since the Second World War. The whole of Parliament wants the Government to ensure that we play our historic role as a welcoming country for refugees and play our part in providing support for the Ukrainian people in their hour of need. I want to repeat many of the questions that my right honourable friend Yvette Cooper asked yesterday to better understand the answers. In saying that, I freely acknowledge that this is a rapidly evolving situation.

First, in the past few days, there has been some confusion over which family members can join UK nationals and those settled in the UK. We welcome that the Government have listened and extended the types of family members who are able to join loved ones safely in the UK. I have read estimates of between 100,000 and 200,000 family members. Can the Minister comment on that? Can he also confirm that, whatever the number is, it is not capped?

Secondly, many people, mainly women and children, are fleeing today's terror. They will want to stay close to home, in neighbouring states—a point repeatedly made by the Minister on Monday. What will be done to support these front-line states? We may not be in the EU any more but we are in the Council of Europe, and these countries are our friends, with the same values as us. We should do everything we can to support refugees in front-line states.

Thirdly, the Government have said that the family reunion scheme will be free, but there are reports that some people are being charged to access visas to join family here. Can the Minister guarantee that people can now access the family reunion scheme for free? Further, does the sponsoring family member have to be a British national or have indefinite leave to remain? What about Ukrainians who are here on work or study visas, or those who come here as lorry drivers or on visitor visas?

Fourthly, have the Government considered an emergency humanitarian or protection visa that could still include all the significant security and biometric checks the Home Secretary has talked about but could be done swiftly and go broader than family members?

Fifthly, the humanitarian sponsorship pathway announced in the Statement is a community sponsorship scheme. We welcome this, but the existing community sponsorship scheme takes a long time. What will the Secretary of State do to ensure that the scheme can work quickly? How many people do the Government hope to help in this way, and when can we expect the first Ukrainian refugees to arrive under this scheme? The Government's Statement does not include a resettlement scheme. What plans are there to go further and provide a resettlement scheme in addition to the community sponsorship?

I understand that this is a fast-moving and desperate situation. I ask that the House gets regular updates; I am sure that it will. As I said in opening, the Minister got a hard time on Monday. I hope that in this short debate we can focus on the practical things the Government are going to do to ameliorate the situation of our friends and comrades in Ukraine in their hour of need.

Lord Paddick (LD): My Lords, we all condemn Russia for its unjustified aggression in Ukraine and stand with the Ukrainians in their heroic defence of their homeland, but not everyone can stay and fight. There will be many vulnerable Ukrainians who need at least short- to medium-term sanctuary—in particular, women, children and older people need to be removed to safety.

My understanding is that this Statement is now out of date, following the intervention of the Prime Minister overnight. The Statement talks about a new route, but can the Minister confirm whether all these people will still need a visa to come to the United Kingdom? Can he also confirm that under the provisions of the Nationality and Borders Bill—were it to be in force—they would all be committing a criminal offence with a maximum sentence of 10 years imprisonment if they came to the UK without a visa, and that because there is no direct route from Ukraine to the UK, they would be treated as second-class refugees? Does not the Ukrainian humanitarian crisis highlight exactly why many noble Lords oppose the provisions of the Nationality and Borders Bill?

Can the Minister also confirm that the elderly parents of a Ukrainian national settled in the UK can now be brought to the UK, but only after the Prime Minister overruled the Home Secretary, who wanted to restrict the new arrangements to close family members only? In the Statement, the Home Secretary talked about 100,000 Ukrainians eligible under government schemes. Since then, the Prime Minister has said that the number is 200,000. What is the number now?

[LORD PADDICK]

The Home Secretary gave the excuse for not allowing visa-free entry that security and biometrics were a fundamental part of our visa approval process. She went on to say that Russian troops are infiltrating Ukraine and merging into Ukrainian forces and that intelligence reports state the presence of extremist groups and organisations that threaten the region but also the UK. Can the Minister confirm that the Russian army includes octogenarians and child soldiers?

We are talking about women, children and the elderly—the vulnerable who need the safety and security we, and their families here in the UK, can provide. What is the security risk that women, children and the elderly could potentially be Russian soldiers or members of extremist groups that threaten the UK? As the noble Baroness, Lady Kennedy of The Shaws, said earlier this evening, why can people's security status not be established on arrival in the UK?

The Statement says that the Government are extending the visas for Ukrainian temporary workers "in some sectors" who can now stay until at least December 2022, primarily because people cannot return to Ukraine. In what sectors are Ukrainian temporary workers employed in the UK where they can safely return to Ukraine?

The Statement says that Britain continues to lead—how can that be true when Poland and other EU countries are allowing visa-free entry and the UK is not?

In the Commons on Monday, the Home Secretary tried to link measures, such as the temporary ban on the issuing of visas to nationals of a country that threatens international peace and security, to the Nationality and Borders Bill. She said:

"Those powers will be available as soon as the Bill receives Royal Assent. The sooner that happens, the sooner this House and all Members can collectively act.".—[*Official Report*, 28/2/2022; col. 701.]

Are the Government really saying that they cannot stop issuing visas to Russian nationals in a time of crisis such as we are facing now without new primary legislation? I thought Brexit was about taking back control of our borders. Is the Minister seriously suggesting that they cannot, today, stop issuing visas to the citizens of a hostile foreign state? I look forward to the Minister's response.

Lord Sharpe of Epsom (Con): My Lords, I thank the noble Lords, Lord Ponsonby and Lord Paddick, for their questions. I also thank the noble Lord, Lord Ponsonby, for reminding me of Monday. It was a little bit difficult, but as I am sure he is aware, I did not actually have the full information—or indeed any information. However, I will endeavour to do a little bit better now. However uncomfortable it was for me, we should certainly remember that it was a good deal more uncomfortable for those people in Ukraine fighting for their sovereignty, so that is worth bearing in mind at all times.

If I may, I would like to start by craving Noble Lords' indulgence and making a couple of general points to address questions which I have not been asked but which are important and germane and came out of the House of Commons debate yesterday. I echo the comments of the noble Lord, Lord Ponsonby, about the response given to the Ukrainian ambassador as he arrived in the other place today. It was genuinely moving, and I think it is a sign that the Commons, and, indeed, your Lordships' House, is united in support of the people of Ukraine and all those who are working tirelessly for it. I also echo the comments of my noble friend Lord Ahmad when he spoke about Ukraine the other day and thanked the Opposition Benches for their help and support through this process.

The question I would like to answer which I have not been asked, but which came up a lot in conversation in the other place, is what Members might like to be able to do if they get petitioned with individual cases, because I cannot talk about them for obvious reasons. Just to give an idea of some of the help that is available, individuals can refer to GOV.UK or contact our free helpline. I am going to give the number very carefully so that Members can refer to it in *Hansard*. The number is: 0808 1648810. Noble Lords can ask for advice on those cases. It is a free helpline and it works around the world. If, for any reason, noble Lords cannot get what they need from that helpline—and that should not be the case—we suggest referring via a constituency MP in the usual way. If, for any reason, that does not work, there is a Portcullis House referral system. Just in case any noble Lords have any individual cases that may need addressing, I thought it was worth pointing that out.

In order to answer the various questions that I have been asked, I am going to run through the scheme as announced. Before I do, I want to point out that this is a unique scheme that has not been done by this country before. We have established the Ukrainian family scheme, which will significantly expand the ability of British nationals and people settled in the UK to bring family members to the UK. As my noble friend Lady Williams has just said, that extends the eligibility to adult parents, grandparents, children over 18, siblings and all of their immediate family members. Under this scheme—which will be free—those joining family in the UK will be granted leave for an initial period of 12 months. They will be able to work and to access public funds. Given the range of family members who will be able to come through this route, we estimate—the numbers are inexact for obvious reasons, but this is the best estimate I have—that it might help around 140,000 people to come to the UK. I stress, however, that this is not a capped number, so, in a sense, it does not matter what number I give here, because it is not capped.

We will make emergency changes to Immigration Rules on 15 March to create this route, but we are introducing a concession to the existing rules to enable families to apply via a bespoke application process no later than Friday 4 March—this coming Friday. If people call the helpline before that, someone will get back in touch with them. We will also consider anyone who applied on the existing family route, or existing concessions, under the new scheme if they do not meet the rules. The noble Lord, Lord Ponsonby, asked me about fees: any fees that have already been paid will be refunded. There are no other barriers: all the usual requirements around language and salary, for example, have been removed.

That will mean that although we would encourage Ukrainians not to apply before Friday, we do have mechanisms for those in urgent need to apply now.

Eligible family members who have already made applications under the existing family rules will be considered under the Ukrainian family scheme if they do not meet the family rules. As I have said, they will also have their application fee and any applicable immigration health surcharge payments refunded.

Secondly, we have committed to establishing a Ukrainian sponsorship humanitarian visa offer, which will open up a route to the UK for Ukrainians who do not have family ties with the UK, but who we will match with individuals, businesses, community organisations and local authorities who are willing and able to act as a sponsor. All those benefiting from this offer will also be granted leave for an initial period of 12 months and will be able to work and access public services.

The Home Office will be working closely with the UNHCR and others on the ground to ensure that displaced Ukrainians in need of a home who wish to come to the UK are aware of this offer and are able to apply. DLUHC will be leading on this offer. It will work with the devolved Administrations to ensure that individuals and organisations who want to sponsor an individual or family can volunteer to do so, and they will be matched with Ukrainians in need. Again, there is no arbitrary limit on this scheme: we will welcome as many Ukrainians as wish to come and for whom we have sponsors. I anticipate that DLUHC will be working with local authorities and charities, but the department would welcome thoughts and suggestions on that particular route. The noble Lord, Lord Ponsonby, asked me if only family members can sponsor. British nationals or settled persons can sponsor, not those with temporary leave; but, as I said, we would encourage people to apply anyway.

Turning to the subject of visa waivers, in essence, the noble Lord, Lord Paddick, asked me why we will not go further and announce a visa waiver. Visas are an important security tool and are entirely consistent with all our other Immigration Rules. There is a risk that hostile actors or other individuals with links to serious and organised crime or corruption could exploit the arrangements to travel to the UK undetected if security checks are not in place. The Government do not believe that they should unnecessarily put the UK's security at risk.

I understand what the noble Lord was saying about women, children and octogenarians in the Russian army, but I do not wish to go further and speculate as to what sorts of things the Russians might get up to. We have seen what they are capable of doing in peacetime. It is not peacetime any more, and I would not like to speculate what they might be capable of doing now.

The noble Lord, Lord Paddick, also asked me about visa penalties. The Nationality and Borders Bill contains provisions which allow the UK to apply visa penalties to a country which is being unco-operative in relation to the return of its nationals. Those powers include slowing down the processing of applications, requiring applicants to pay more or, critically, suspending the granting of entry clearance completely. I am told that an amendment will be tabled tomorrow, along with a letter outlining and explaining exactly what is going on with this feature. It would probably be better to wait until tomorrow and see the letter; I have not seen it, so I do not know what is in it.

There were also questions about the variety of existing visas and what is available to Ukrainian nationals already here on existing points-based system routes. They can extend their leave in the UK. Ukrainian nationals on an existing visitor visa can, exceptionally, switch into a points-based system immigration route without having to leave the UK. Ukrainian nationals on an existing visa can apply under the family route for further leave without meeting the immigration status requirement, provided they meet the requirements for leave based on exceptional circumstances. Ukrainian nationals on an existing seasonal worker visa will have their leave in the UK extended to 31 December 2022.

Finally, Ukrainian nationals in temporary work, such as HGV drivers and so on, will have their leave in the UK extended to 31 December 2022 as well. I think the point the noble Lord made was about temporary visas generally; I think that is covered by that particular point. However, all visa routes remain under constant review. As the noble Lord, Lord Ponsonby, said, this situation is incredibly fluid, so I expect there to be further changes as and when circumstances dictate.

The noble Lord, Lord Ponsonby, referenced Yvette Cooper's comments yesterday in the House of Commons when she talked about which family members and how many. I think I have answered that. I want to stress that it is not capped. However, she also made the point—and made it very well—that a lot of people do not wish to be too far away from their loved ones, who are probably fighting in Ukraine as we speak.

That leads on to the humanitarian support we are offering. It is quite considerable. The FCDO has a humanitarian support team in place. We are providing an additional £40 million of humanitarian support, which I think my noble friend Lady Williams referred to earlier. That will provide access to basic necessities and vital medical supplies both in Ukraine and the wider region. That is on top of the $100 million of ODA already pledged for energy security and reform.

I mentioned the humanitarian team from FCDO, but military logistics experts are also operating in the countries neighbouring Ukraine. Obviously, we call on Russia to enable humanitarian access and safe passage for civilians to flee the violence, and we have 1,000 troops on standby to support the humanitarian response in the region should they be needed. We also stand ready to further support Ukraine's economy through £500 million in multilateral development bank guarantees.

I think I have dealt with most of the questions I have been asked. If I have not, I apologise and will hope to come back to them when I have had a chance to skim through my notes in a little more detail. For now, I hope that answers most of noble Lords' questions.

9.22 pm

Lord Hannay of Chiswick (CB): My Lords, I personally very much welcome the work the Government have done in putting together a really strong sanctions package and persuading other countries to come in the direction we wish to go. But I asked two questions in the debate on Friday that were not replied to. I would be grateful if either I could be given a reply now or the noble Lord could provide it in writing.

[Lord Hannay of Chiswick]

My first question was: what are we doing to muster a broad international scheme to ensure that exports to—not from—Russia, particularly of dual-use items, are prevented? During the Cold War there was a scheme called CoCom, which the vast majority of the West subscribed to. Are the Government considering resuscitating that? Secondly, what are the Government doing about countering the tidal waves of disinformation that are coming out? That means not just telling RT that it cannot broadcast but being able to get facts across to the Russian people ourselves while undermining the regime's extremely misleading presentations and narrative.

Lord Sharpe of Epsom (Con): I thank the noble Lord for that question. I cannot answer the question of whether we are planning a new version of CoCom, which I am not familiar with, but we have seen plenty of information delivered at the Dispatch Box in both Houses as to the sanctions applied to Russia, which I am very sure include dual-use items.

On the question of broadcast misinformation, disinformation and so on, the point was made in a meeting I was in earlier that the BBC World Service is one of the finest tools for delivering honest news. I know that message was received and it will be acted on.

Baroness Verma (Con): My Lords, alongside the Ukrainian people, people who are not of Ukrainian descent will also be stranded. Could my noble friend tell me what is being done to help those people, so that they are not left in danger and isolated?

Lord Sharpe of Epsom (Con): I can give two answers. First, if they qualify under the British citizen or the settled status visa programme, they are more than entitled to use that scheme in order to apply for their visas. If they are currently stranded in or near Ukraine, they can go to one of the visa application centres. Obviously, we have also announced the humanitarian visa, which I think will encompass them. As I say, and will keep saying, that scheme is uncapped.

Baroness Ludford (LD): My Lords, can the Minister assure us that the helpline advisers will be fully trained? A journalist on the *Independent* had a tweet a few hours ago saying they are getting lots of calls but they have no information to give out. As I understand it, he said that was true, in a sense—they will have the information by Friday and they will call people back. Perhaps some planning could have taken place for this situation, which we have known was going to happen for weeks, if not months.

What is the situation of EEA citizens who have settled status? Can they sponsor Ukrainian family members in the same way that UK citizens and Ukrainian nationals can?

Lastly, I really do not see the need for these new amendments to the Nationality and Borders Bill. I do not understand why the Government cannot just refuse visas without some complicated new scheme under the Bill. Finally, I congratulate Eurostar on giving free tickets to London for Ukrainian refugees.

Lord Sharpe of Epsom (Con): On the first question, part of the problem with the helpline is that one of the things it is having to deliver is access to a new application form that had to be developed in four days. That is not quite ready. The noble Baroness shrugs her shoulders on that point, but I think it is important to bear in mind that we are doing everything we are doing in liaison with the people of Ukraine and the Ukrainian Government. My noble friend Lady Williams just made this point.

The Home Secretary is regularly in contact with the Ukrainian authorities and the ambassador, and we are very much following their lines. I refer noble Lords, if they are interested, to an article in the *Times* this morning, talking about the diplomatic difficulties in making excessive plans early. I accept the point that this is a fluid situation and that it needs to be done, but it is important to bear in mind that this is happening at record speed. I am told that forms of this sort that have to be developed digitally normally take months, not days. This is being done very quickly.

I answered that question at such length that I have completely forgotten your second question—and I just said "your", so I apologise for that as well. It was to do with EEA citizens. I cannot answer that specifically, but I cannot imagine, given what I have said about Ukrainians with settled status and about British citizens, that that would not be the case. As I have said already, this is meant to be a generous scheme, not a bureaucratic scheme.

On the last point, I have referred to the letter that is coming with the amendment today. I hope I am not piling too much pressure on the letter, but I have not seen it and I am not going to pre-empt what is in it.

Baroness Andrews (Lab): My Lords, we are very grateful for the Minister's Statement. He was not able to answer all the questions from my noble friend on the Front Bench. He was asked about the assistance we are giving to countries that border Ukraine, particularly Poland, which is taking the brunt of refugees. What can we do to build capacity on the ground to support those refugees? Speed is obviously of the essence. I know the Statement says we have one pop-up assessment centre: clearly, that is not going to be enough, even for the numbers we are thinking of taking. Everything is being done for the first time—we appreciate that—but what else can we do to support the Poles to develop their own humanitarian response and also to make sure we are doing everything we can as early as we can for those desperate people?

Lord Sharpe of Epsom (Con): I thank the noble Baroness for that question. I think I have answered about some of the humanitarian actions that the Government have already taken and enacted very swiftly. Obviously, as the noble Lord, Lord Ponsonby, said, the situation is incredibly fluid, and I have no doubt that the Government will react to circumstances on the ground as and when required, at the request of the countries involved. I think I am right in saying—if I am not, I will correct myself later—that very recently, some Royal Marines were redeployed to that part of the world. It is happening, and happening fast.

The visa application centres, to which I think the noble Baroness was referring, are in the following locations. We have them in Poland, in Warsaw. There is the new one in Rzeszów, which I think I referenced on Monday—possibly the only thing I referenced on Monday. We have ones in Moldova, Romania and Hungary. and one is still open in Ukraine, in Lviv. We had to close the one in Kyiv, for obvious reasons. Demand across them is actually not as high as we would have expected at the moment, but we are none the less increasing capacity. More biometric kits are being redeployed and capacity is increasing on an ongoing basis.

Lord Cormack (Con): My Lords, so much is falling on the Poles and the Hungarians, particularly on Poland, as the noble Lord, Lord Ponsonby, said. I make a suggestion for my noble friend to pass on to his ministerial colleagues: I do not expect an affirmative answer, but I do not want a dismissal. In the past, it has been found that it can sometimes be extremely helpful, in time of war, to have a resident Minister from this country stationed abroad. I put it to my noble friend that it would be symbolic, helpful and probably much appreciated by our former fellow members of the EU if we gave some thought to that now.

Lord Sharpe of Epsom (Con): I thank my noble friend for that suggestion, which I will take back; it strikes me as a very good one. Perhaps I may also clarify something I just said: in answer to the noble Baroness, Lady Ludford, EEA settled citizens can.

Lord Campbell of Pittenweem (LD): I imagine that the Minister, like me, has been in awe of the demonstrations of physical courage by so many of the citizens of Ukraine. I hope I can persuade him to accept that there have been some illustrations of political courage. I have particularly in mind the policy reverses of Germany: to supply defensive weapons to Ukraine, to increase defence expenditure by €100 billion and to suspend Nord Stream 2. Mr Putin can hardly be thought to have expected any of that.

Lord Sharpe of Epsom (Con): I thank the noble Lord for that. I am not sure it was a question, but of course I agree with him: it was a courageous act on the part of the Germans, and well done them.

The Lord Bishop of Leeds: My Lords, I very much appreciate what the Government are doing and the Statement that was given. One of the elements that is lacking from it, however, is any reference to religion. One cannot understand the politics of Russia or Ukraine without understanding the history of the past 1,200 years, what is intended to be part of the reunification of the original Rus—I speak as a Russian linguist and former Soviet specialist at GCHQ. If we do not understand the role of religion, we are in danger of short-term, reactive, tactical activities in relation to the current conflict, whereas the Russians, certainly, have been running a long-term strategy under Putin, in which he has been extremely successful thus far. What role is religion playing in the Government's assessment of how to care for refugees, which we have talked about, and in establishing back channels with the Moscow patriarchate and the Ukrainian patriarchate?

Lord Sharpe of Epsom (Con): I thank the right reverend Prelate for that. He will not be particularly surprised to learn that I do not know the details on that subject. I will facilitate contact with the Foreign Office so that he can explain, using the depth of his expertise. I also point out that the setting up of the humanitarian visa scheme is being done by DLUHC, in consultation with a number of NGOs and other bodies. I strongly recommend that the right reverend Prelate gets in touch with DLUHC to pass on some of those suggestions, which strike me as incredibly sensible.

Lord Sterling of Plaistow (Con): The right reverend Prelate has brought this subject up. There are about 15,000 to 20,000 troops stopped 30 miles away from Kyiv. They are conscripts and, as the right reverend Prelate has said, they have been highly religious and devoted to their beliefs for hundreds of years, except for the time when Stalin was in power. They are back and very devout.

I have concerns for these conscripts. As noble Lords know, Kyiv is the most sacred icon for Russia and for many others outside of Russia. That was the place where, nearly 1,900 years ago, the very first Orthodox church was built in Ukraine. That was the beginning, if you will, of the people being converted to Christianity. That is something so special in their mind. You could go all over the world and people talk about it. Today, when you go there, the cathedral is right on top of it. If these young men are asked to destroy it completely with artillery, I think that many of them will refuse or desert. In the history of war, if you desert, you got shot. If you were—

Lord Austin of Dudley (Non-Afl): Too long.

Lord Sterling of Plaistow (Con): I will ask my noble friend, a military historian with huge knowledge on the subject, whether this aspect has been considered. Can we understand that thinking?

Lord Sharpe of Epsom (Con): I thank my noble friend for his question, and indeed for the history lesson. I was not aware of some of the things that he has said, although I take note of them and think that they are very interesting. Lots of other historical moments are happening. The other day, we saw the missile strike on the Holocaust site, which was equally deplorable. Russians were cheerfully pulling the trigger on that, so I do not know where they will stop. I will take back the points he made.

Viscount Waverley (CB): My Lords, I have listened carefully to provisions in relation to Ukrainians. They are appropriate. Being denied the right to live should be a wake-up call to the Government to be generous to the maximum. The Afghan citizens resettlement scheme took three months to establish as a working system. What measures are being taken to ensure that those moving through Europe have all the information about the new Ukrainian family scheme, including timeframes, eligibility for close family members and processing requirements for applications? Once the policy detail has been established, can the Government confirm how many Ukrainian applications can be processed in the immediate weeks of March, so that we do not leave hungry Ukrainian families out in the cold?

Lord Sharpe of Epsom (Con): I thank the noble Viscount for his question. I hope he would agree that the Government have been very generous. The full communications will be available on the GOV.UK website. As we are not expecting people who are potentially living in difficult situations to be able to look this up on the internet, communications will be handed out at the visa application centres. Access to all this information will also be available via the helpline which I have already tried to describe.

I turn now to what will happen once the policy details are all in place. The visa application centres are currently processing under capacity, but capacity is being ramped up. Therefore, I am not in a position to say how many people might be processed in due course, because I suspect that the number will keep rising depending on circumstances.

Lord Austin of Dudley (Non-Afl): My Lords, I welcome the tougher stance which the Government are taking on sanctions since last week. However, would it not make things swifter and more straightforward to make it a legal requirement for law firms, accountants, financial services firms, businesses and others to provide information they have on the finances, assets and business activities of people or companies which are sanctioned?

Lord Sharpe of Epsom (Con): I thank the noble Lord for his question. As I am sure all noble Lords have seen, a letter was received yesterday from the Home Office and from the Business Secretary talking about the forthcoming Bill which will go through the House of Commons next week and will be in your Lordships' House in a couple of weeks. The noble Lord makes some very sensible suggestions. I do not know what the legal niceties would be, but I will certainly take those suggestions back.

Baroness Smith of Newnham (LD): My Lords, I will ask the Minister to try again with the question asked by his noble friend Lady Verma which was about people who are leaving Ukraine but are not Ukrainian nationals. In particular, the BBC was showing pictures of Afghan refugees who had been in Ukraine. As I understand it, they would not fall under the humanitarian sponsorship pathway because the statement says that this pathway is for Ukrainians. For those people who do not have Ukrainian citizenship but are fleeing, will the Government make any offer to them—and, particularly, to anyone who is from Afghanistan?

Lord Sharpe of Epsom (Con): Afghans obviously have access to the Afghan resettlement scheme but—I reiterate the point—we have started work on the humanitarian visa scheme. There are lots of safe and legal routes open to Afghans who may find themselves in Ukraine.

Lord McCrea of Magherafelt and Cookstown (DUP): My Lords, no one should deny that the United Kingdom Government have been leading many Governments across the world in response to the crisis in Ukraine with a strong package of sanctions, et cetera. However, as the situation develops, further measures will be necessary. Can the Minister clarify how long those choosing to come to the United Kingdom can stay under these regulations, and will that period be extended?

Lord Sharpe of Epsom (Con): At the moment it is at least 12 months but we will not be sending anybody back, obviously, if that time expires and it would be unsafe to do so. I imagine that will be under review.

Lord Bellingham (Con): My Lords, does the Minister agree that sporting sanctions are a vital ingredient in the overall package? Bearing this in mind, does he share my concern and dismay about the decision of the Paralympic committee to allow Russian and Belarusian athletes to compete next week, albeit as individuals and not flying their flag?

Lord Sharpe of Epsom (Con): I did not know it had done that. The actions of the sporting authorities around the world have been admirable thus far. I do not think it would be appropriate for me to comment on particular instances where that has not been the case.

Lord Alton of Liverpool (CB): My Lords, will the Minister draw to the attention of his noble friends in the Foreign Office the report this morning from the World Food Programme suggesting that 29% of all the grain and wheat sold to countries in the Maghreb and Middle East—the poorest of the poor—comes from either Russia or Ukraine, and that this is likely to be severely disrupted? There is also its figure that 400,000 people have already left and that it is now making preparations for some 3 million refugees in neighbouring countries. What more can we do to support the World Food Programme and the International Committee of the Red Cross?

Lord Sharpe of Epsom (Con): That question obviously goes back to something that my noble friend Lord Benyon was discussing earlier on food security. Clearly, it is an issue not just for any particular part of the world but for us all. I have tried to go through some of the details on the humanitarian responses but there is another thing I should have mentioned earlier—I picked it up when I was googling before I came in here. I noticed that this morning, or during PMQs, the Prime Minister also announced that every pound donated to the Disasters Emergency Committee's Ukraine appeal by the public will be matched by the Government, starting with £20 million. I also reference the fact that we have given an additional £40 million of humanitarian support. I appreciate that that does not fully answer the noble Lord's question but it is a go at it.

Nationality and Borders Bill

Report (2nd Day) (Continued)

9.43 pm

Amendment 52

Moved by ***Lord Paddick***

52: After Clause 37, insert the following new Clause—

"Refugees and people smuggling

(1) Within three months of this Act being passed, and every three months thereafter, the Secretary of State must lay a statement before 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 to—

(a) increase security cooperation between the United Kingdom and one or more third States to prevent criminal activity in assisting or purporting to assist refugees in travelling to the United Kingdom,

(b) increase domestic and international rates of prosecution for those engaged in assisting or purporting to assist refugees in travelling to the United Kingdom,

(c) prevent or deter a person from—

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

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

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

Member's explanatory statement

This amendment requires the Secretary of State to update Parliament on the actions that are being taken to tackle exploitation of refugees by people smugglers.

Lord Paddick (LD): My Lords, it is me again. Amendment 52 is in my name and that of the noble Lord, Lord Coaker. As he said on Monday night, the Bill almost exclusively targets victims: victims of war, oppression and modern slavery, and victims of people traffickers. We need to focus the Government on those who are exploiting suffering while profiting from the failure of the Government to provide safe and legal routes. In fact, the more difficult the Government make it for genuine refugees to get to the UK, the more that people will have to rely on people smugglers and the more profit that people smugglers will make.

Amendment 52 would require the Government to keep Parliament informed every three months on the progress they are making to increase security co-operation to prevent people smuggling, increase prosecutions of people smugglers both in the UK and overseas, and the steps they are taking to prevent or deter people from charging refugees to help or purporting to help them to get to the UK and endangering their safety. No doubt the Government will say they do not want to give details of the actions they are taking, as this may give the people smugglers an advantage, but we need to hold the Government to account to keep the pressure on them to do all they can to stop this evil exploitation of the vulnerable.

Amendment 61, which we also support, would make it an offence for people smugglers to advertise their services. Also in this group are measures to protect rescuers. Amendment 59 would ensure that those genuinely helping an asylum seeker, such as someone sailing a yacht in the channel who comes across a sinking dinghy full of asylum seekers, cannot be prosecuted by maintaining the status quo where such a prosecution could take place only if the person was helping asylum seekers for gain.

The Bill seeks to limit sea rescue to those co-ordinated by HM Coastguard or the equivalent, but they may not always be involved, especially in what could be the vital initial stages of a rescue. Amendment 60 would extend this immunity from prosecution to situations where the rescuer reasonably believed that the coastguard would have co-ordinated the rescue if it had known about it. The Bill should focus on people smugglers, and not place good Samaritans at risk of prosecution.

Finally, Amendments 62 and 63 try to ensure that lives are not put at risk from those involved in law enforcement pushing back refugee boats. My noble friend Lady Jolly will say more on that. The Government and the Bill should target the people smugglers while doing everything they can to protect the lives of the vulnerable. I beg to move Amendment 52.

Lord Coaker (Lab): My Lords, I also support Amendment 52, which the noble Lord, Lord Paddick, has just moved. As I said in Committee, it is a particularly important amendment. It is one where the Government will agree with the principle if not the practicalities of actually doing it. We all want to tackle the traffickers and the people smugglers but the Bill lacks any reference to that, a lot of the time. It is almost that it is a given. There is a lot of emphasis on changes to the law with respect to refugees and asylum seekers but not much in respect of traffickers. I think that is what Amendment 52 seeks to do.

The focus also is on security co-operation around the channel, increasing international and domestic prosecutions of people smugglers and interrupting the smugglers' business model by preventing their crimes. On security and international co-operation, again the Government will say that they are seeking to do that but clearly, if we are to deal with the problem of channel migration and the crossings, there will have to be closer co-operation between France and the UK and between others in Europe and the UK. Amendment 52 seeks to push to the Government to say more about this.

Requiring the Home Secretary to come with updates every three months on what is actually being done to prevent these dangerous crossings and tackle the perpetrators would be of interest to us all. Something clearly needs to be done because, as I think the noble Lord, Lord Green, mentioned earlier, the situation, whatever the rights and wrongs of it, has gone from "a few" to "quite a few" to "a significant number" of people making the crossing. Whatever the Government are doing, it is clearly not working.

I have retabled Amendment 61. I am not going to push it to a vote, but the Government said a lot about it, saying, "Of course we agree with it, of course there shouldn't be a situation where people traffickers and smugglers can actually advertise on social media to attract people to come to them in order to traffic them across the channel or wherever". It is clearly ridiculous. I want to push the Government again to say what more they are thinking of doing to tackle that issue, which is clearly unacceptable to us all. Something needs to be done about it.

The Government have got themselves into something of a mess on the issue of "for gain". We are having to debate whether a vessel that goes to save lives at sea needs a defence because, officially, it would be committing an offence. The words "for gain" target the offence on people smugglers and criminal gangs who do this on a regular and dangerous model, not on the captain of a ship who goes to the assistance of people at risk of drowning. We believe that "for gain" should remain part of the offence. It would be interesting to hear from the Minister how that has been clarified to protect anybody at sea who seeks to prevent life being endangered at sea. Something should be done about that and there needs to be clarification from the Government to provide certainty.

[Lord Coaker]

Amendment 62 seeks to ensure that nothing can be done in a way in which lives at sea are endangered. That is why we have tabled that amendment. I am grateful to the noble Baroness, Lady Jolly, for her work and support on that. Schedule 6 is where clarification is needed, because quite extensive powers have been given, including the power to stop, board, divert and detain. All of us would like more clarification on how that will take place. What does diversion mean and how is it going to happen?

In her response—I tried to ask this in Committee—can the Minister explain the difference between the MoD and the Home Office on this? The Home Secretary said that pushback was still government policy, although she did not call it that, but James Heappey MP as Defence Minister said it was not government policy and that the MoD would not do it. We all need to know: if we are giving these powers, who is in control? The MoD is supposed to have operational control, as I understand it, but it is obviously not going to ram or push anyone around with a huge naval ship. Presumably smaller coastguard vessels will be used to do that. Can the MoD order a person to do so? How is that going to work and who do they report to—the MoD or the Home Office? Which has the ultimate sanction?

So what we are seeking to do with Amendment 62, although we oppose that part of the Bill in total, is put something in the Bill that simply says that you cannot act against or divert a vessel in a way that would endanger life. Putting that into the Bill is both necessary and sensible. With that, I support Amendment 52 in the names of the noble Lord, Lord Paddick, and myself.

The Minister of State, Home Office (Baroness Williams of Trafford) (Con): My Lords, I thank noble Lords who have spoken. I start with Amendment 52, from the noble Lord, Lord Coaker, on the issue of people smuggling. I am glad to be able to talk about this topic, because it is at the heart of the many problems in this area.

The UK takes smuggling and irregular migration seriously and is absolutely committed to tackling organised immigration crime 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 the threat, we have in place a multi-agency organised immigration crime task force that brings together law enforcement, border guards, immigration officials and prosecutors, to tackle organised crime groups involved in people smuggling. The task force is currently working with partners in some 17 source and transit countries.

Additionally, there are already agreements in place in order to tackle smuggling and irregular migration. For example, in November last year 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 on our law enforcement agenda with a co-operation agreement and a focus on information exchange.

We are committed to working with France to maintain the security of our shared border, and to tackle illegal migration, and this relationship is long-standing, supported by the Sandhurst Treaty. Most recently, last year a bilateral agreement was reached between the UK and France. The UK pledged to make a further financial investment of approximately £54 million in 2021-22 to tackle illegal migration in small boats, and last year's investment saw the French doubling the number of officers patrolling the beaches.

In and beyond Europe, we are working to exchange existing capability and co-operation internationally to disrupt organised criminal gangs and dangerous people smuggling routes. The joint political declaration between the EU and the UK, agreed in December 2020, noted the importance of good management of migratory flows, and the UK's intention to engage in bilateral discussions with the most concerned member states to discuss suitable practical arrangements, including on asylum and illegal migration.

We maintain frequent contact with law enforcement partners both in the UK and abroad as part of our investigations into people smugglers, and these are often highly sensitive and complex. It would not be appropriate to provide commentary on cases, or place information in the public domain that might compromise operations or alert the would-be perpetrators to initiatives designed to thwart their criminal enterprises. I am sure that noble Lords understand that.

Addressing the organised crime groups that facilitate illegal migration 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 with the aim of cracking down on people-smuggling gangs. Last year, over 23,000 crossing attempts were prevented by French law enforcement and, since the UK-France JIC has been established, we have with France dismantled 19 small-boat organised criminal groups and secured over 400 arrests—quite often the things that people do not hear about.

I would like to stress again that the UK already has a number of safe and legal routes in place, and those in need of protection should claim asylum in the first safe country that they reach, rather than paying those smugglers for dangerous journeys with risk to life. All countries have a moral responsibility to tackle the issue of illegal migration and it is fundamental that our international partners engage with us to enhance our current co-operation. We continue to highlight the importance of having effective returns agreements to deter people from making unsafe crossings.

The agreements currently in place with near neighbours reflect this, and the amendment will not help the Government's continued efforts to tackle these crimes. In fact, it might hinder or stall the fruitful and open dialogue on these issues between the UK and its international partners, many of whom would not agree to their discussions and domestic activity aimed at reducing people smuggling being published to a domestic audience.

In summary, I cannot support the amendment, because it is not appropriate to provide a running commentary on the actions that are being taken to tackle people smugglers, and I am sure that the noble

Lord knows that. Much of it is sensitive activity, operational and based on intelligence sharing, with the aim of protecting vulnerable people.

Turning now to Amendment 59, our purpose in removing mandatory proof of gain from this offence is to more readily target people smugglers, where organised crime gangs will conceal their tracks and make it as difficult as possible to prove that they are getting financial gain to the standard required for a successful prosecution.

Let me provide an example. A suspected facilitator was detected at Heathrow Airport with passports concealed on his person and in his baggage. A short time later, an undocumented female of the same nationality and coming off the same flight claimed asylum. Her appearance matched that of the image on one of the concealed passports. The suspected facilitator had £1,400 on his person, which was seized under PoCA 2002. A search of his home address resulted in many additional travel documents being found, along with approximately £3,500. The facilitator refused to answer questions. Despite the strong circumstantial evidence, it could not be established that the money was directly linked to the female asylum seeker's facilitation and so, without being able to prove "for gain", the prosecution could not proceed.

10 pm

I understand fully the noble Lord's fear that the wrong people may be drawn into the judicial process. To avoid this, there is a protection for a person working for organisations whose aim is to assist asylum seekers and which do not charge for their services, as well as for persons providing assistance to individuals in danger or distress at sea whose actions are on behalf of or co-ordinated by HM Coastguard. Defences are provided for seafarers where their assistance is not co-ordinated by the coastguard and for masters of vessels who bring stowaways to the UK. Organisations and individuals who rescue those in danger or distress in good faith will not be convicted for people-smuggling offences.

The way the defence works is that the seafarers simply need to state the facts of the rescue. Unless investigators have specific reasons to doubt a particular case, it will be assumed in such circumstances that they are telling the truth. Unless this is the case, they will not even be referred to the Crown Prosecution Service for it to consider charging the person with the offence. It will not be sufficient for the investigators to be sceptical; they will need to be able to disprove the facts put forward with specific evidence that is admissible and meets the "beyond reasonable doubt" test, ensuring a high degree of protection for the seafarer. I know that we went through this last time in Committee; I hope that tonight's explanation clarifies what we discussed then.

Consideration of whether it is right to seek prosecution in such cases requires a comprehensive and objective assessment of all relevant circumstances, including evidence that the individual acted for gain. However, it is right that other circumstances be also considered. It is vital that prosecution be used as a deterrent where circumstances strongly suggest that the stated reasons for an individual's actions are incredible and/or perverse, to the extent that no reasonable person could believe that they were acting in good faith. In common with any proposal to pursue prosecution, the weight of that evidence will be carefully considered by both the investigating officers and then, if referred, by the relevant prosecution authorities.

I turn to Amendment 60 in the name of my noble friend Lady McIntosh of Pickering. I fully understand the desire to protect seafarers who may need to act independently of Her Majesty's Coastguard. The problem we have is that the amendment proposed by my noble friend would play into the hands of ruthless people-smuggling gangs, who can be expected to adapt their methods to allow them to use a purported rescue as a way to escape prosecution. I am sure that that is not what my noble friend wants. They could supply unseaworthy boats or boats with insufficient fuel that would allow migrants to make their way only a couple of miles off the French coast before running into difficulties—probably for an extra fee. As I have said repeatedly in this House, our intention is to stop people smugglers and not to target for prosecution honest people acting to rescue migrants in distress. However, we need to allow our investigators the opportunity to pursue these gangs, who will exploit any loophole in the law they can find.

I am grateful to the noble Lord, Lord Coaker, for saying that Amendment 61 is a probing amendment. We wholeheartedly agree with the intention behind it. We do not condone the behaviour that it seeks to address—that is, the advertisement of assistance for unlawful immigration to the UK on social media platforms. I do not think that this provision is necessary. There are laws in place which may already criminalise the behaviour that the offence of advertising assistance for unlawful immigration to the UK seeks to capture. Section 25 of the 1971 Act deals with facilitation of a breach of immigration law, which may include conduct such as advertising. 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 to intentionally encourage or assist another person to commit an offence, including pursuant to Section 25 of the 1971 Act. To determine whether an individual has committed an offence under any of these provisions, one must thoroughly review and consider the facts of each case, including the exact wording and content of the advert in question. The overlap with existing statutory provisions would need to be carefully considered to see what value, if any, an offence would add. Obviously, to bring a prosecution in this area is particularly complex, compounded perhaps by the extra-jurisdictional nature of the problem, coupled with the associated practical and legal challenges.

Turning our focus away from legislative measures and towards other measures to combat illegal migration, I have already set out the activities we are undertaking to tackle organised immigration crime with our European partners. As I have said before, it would not be appropriate to provide commentary on cases or to place information in the public domain. It is also worth noting that the Department for Digital, Culture, Media and Sport is leading on the Online Safety Bill. This aims to tackle

[Baroness Williams of Trafford]
harm facilitated through user-generated content and via search results. DCMS is also seeking to introduce the online advertising programme, which aims to reduce harms for consumers, businesses and society as a whole. Crucially, it will review illegal and legal but harmful content, as well as the placement of advertising online across all actors involved.

We do not disagree with the intention behind the amendment at all. The resistance is based on its effectiveness in bringing a solution to what is a quite complex problem. I hope that, for the reasons I have given, the noble Lord can withdraw the amendment.

Amendment 62 seeks to ensure that the maritime enforcement powers cannot be used in a manner that would endanger lives at sea. Safety of life at sea will of course always remain a priority for any interceptions of small boats crossing the channel to facilitate illegal migration, and their use will always comply with international obligations, including in the context of maritime safety. This extends to all potential encounters in respect of using the maritime powers when dealing with vessels carrying irregular migrants towards the UK. Officers exercising these powers are trained in the safe deployment of the tactics and their obligations in respect of human rights within the European Convention on Human Rights. In order to be appointed as an immigration officer, officials must successfully complete and pass a foundation course, which includes understanding the European Convention on Human Rights as it relates to the Human Rights Act and, as a result, their obligations in the context of exercising these powers.

Amendment 63 seeks to ensure that the maritime enforcement powers cannot be used in a manner inconsistent with the UK's international legal obligations. As has been reiterated regularly, we remain committed to our international obligations and in our view, it is not necessary for us to restate those obligations with domestic law. Safety of life at sea will always remain the priority for any interceptions of small boats crossing the channel to facilitate illegal migration, and their use will always comply with international obligations.

This extends to all potential encounters in respect of using the maritime powers when dealing with vessels carrying irregular migrants towards the UK. Officers exercising these powers are trained in the safe deployment of the tactics and their obligations in respect of human rights within the European Convention on Human Rights when exercising their powers. Indeed, as I have said, to be appointed as an immigration officer, individuals have to pass certain obligations through a foundation course.

It should be further noted that the measures introduced by the Bill are designed to prevent unsafe routes to asylum and deter irregular migrants and people smugglers from using the dangerous cross-channel maritime routes, which are some of the busiest shipping routes in the world.

On the final question that the noble Lord, Lord Coaker, asked me about the MoD and the Home Office, my understanding is that they are working together.

Lord Coaker (Lab): Before the Minister sits down, can I say two things? First, I thank her for her reply about the MoD and the Home Office working together; we look forward to seeing how that works out. Secondly, she gave a very helpful answer on Amendment 61, but can she ensure that all the laws she laid out are enforced?

Baroness Williams of Trafford (Con): Yes. There is no point in making them otherwise.

Lord Kerr of Kinlochard (CB): Is the Minister sure that it is undesirable to include Amendments 62 and 63? Her arguments were all about whether it was necessary or not. The French say that if something goes without saying, it is always better said. It seems to me that Amendments 62 and 63, in the Minister's view, are unnecessary. She is probably right, because I cannot see the Border Force or the Royal Navy behaving in a rash way. But would it not be better—would it not be desirable—to have it on the statute book that we will respect maritime law and will not risk lives at sea?

Baroness Williams of Trafford (Con): I have just explained why not.

Can I say something at this point? The noble Lord, Lord Paddick, and the Whip have pointed this out. Generally, after the Minister has spoken, the person who moved the amendment can ask questions of elucidation, but it is not generally the case that people who have not spoken in the debate then stand up and start adding to it. I know the noble Lord, Lord Kerr, is going to be cross with me yet again, but this has been quite a long and arduous process, and it would be helpful for the House if the *Companion* were to be followed.

Lord Paddick (LD): My Lords, to follow up on that point, my understanding is that anybody is entitled to ask a question of clarification on something that the Minister has said but not to engage in debate, which is allowed in Committee but not on Report.

I thank the noble Lord, Lord Coaker, for his support and the Minister for her comprehensive response on these amendments. As I anticipated, the Government want to hide behind tipping off people smugglers as to what the Government are doing to tackle the problem. But how do we hold the Government to account if we do not know what is happening, as far as Amendment 59 is concerned, on the issue of "for gain"?

I understand the example the Minister gave of the chap who had money in his wallet, and so forth. One understands that prosecutions are not always possible, and at least the money was recovered. But there is a defence once charged in the Bill; there is not immunity from prosecution. So, somebody who comes across a sinking dinghy in the channel and rescues the asylum seekers could be subject to a prolonged investigation. The Minister talked about a full examination of the circumstances. It does not prevent the person being arrested, potentially, and being held either on police bail or under investigation for a long period to examine the circumstances. The defence in the Bill is only once charged.

10.15 pm

So our real concern here is that these rescuers will hesitate to rescue these people unless and until they get coastguard involvement, for example. During that period of hesitation, lives could be lost. It will be for the noble Lord, Lord Rosser, to decide whether to divide the House on his amendment if, when we get to that point, he finds, as I do, the Minister's explanation unsatisfactory.

On Amendment 62, I am very concerned. The noble Baroness says, "Don't worry, all these Border Force people have been trained in the European Convention on Human Rights and they wouldn't do anything to endanger life". Yet the Bill provides Border Force officers with immunity from both criminal and civil litigation. Why would that be necessary if they are not going to do anything to endanger life? On the other hand, if the noble Lord, Lord Kerr, is right and it is obvious that they will not do that, why object to the inclusion of that amendment?

However, I beg leave to withdraw my amendment.

Amendment 52 withdrawn.

Amendment 53 not moved.

Amendment 54 had been withdrawn from the Marshalled List.

Amendment 54A not moved.

Clause 39: Illegal entry and similar offences

Amendment 55

Moved by ***Lord Coaker***

55: Clause 39, page 40, leave out lines 5 to 9

Member's explanatory statement

This would prevent 'arrival' in the UK being an offence, rather than 'entry' into the UK.

The Deputy Speaker (Baroness Fookes) (Con): If Amendment 55 is agreed, I cannot call Amendment 56 by reason of pre-emption.

Lord Coaker (Lab): My Lords, I will be brief, because we had a long debate on this issue in Committee. It is, however, an issue that goes to the heart of the Bill—changing the definition of the offence to one of arrival rather than entry. I am, therefore, very pleased to move Amendment 55 and to speak to Amendment 58 in my name and those of the noble Lord, Lord Paddick, and my noble friend Lord Blunkett. This is a fundamental change to immigration law that many of us are worried will criminalise asylum, full stop. One can only imagine what effect a similar law would have in Poland now, with people fleeing across the border. No doubt the Minister will say that it does not apply in those circumstances, and so on. The fact is, however, that the Bill changes the offence from entering to arriving, which raises serious issues and has serious consequences for us all.

For example, aside from those seeking asylum, would this provision apply to a person who arrives in the UK with the wrong paperwork? They have arrived and they have broken the rules: would that be a criminal offence under the Bill? The Home Secretary has presided over this situation for a number of days but has just recently announced that people can safely bring elderly relatives and parents from Ukraine into this country. On the basis of this clause, would those elderly parents be considered criminals if they arrived here without the right paperwork? The Government's proposed legislative changes have real consequences for real people, as highlighted by the recent horrific events in Ukraine.

This clause should be removed from the Bill on both principled and practical grounds. I have guidance that the CPS has announced, in consultation with the National Crime Agency, the Home Office and the police, which says that those seeking asylum should not be prosecuted under existing offences of entering the UK illegally. That is in recognition of the fact that it is not in the public interest, and that asylum seekers "often have no choice in how they travel and face exploitation by organised crime groups".

That is in a press statement from the CPS. The Government are asking us to widen the offence to include arrival when the CPS and Border Force do not believe that the existing offence should even be used. Similarly, the Government's answer has been that the powers will be used in only exceptional and limited circumstances, such as where a person has breached a deportation order—in which case, we should pass a power for those circumstances.

It is not right to ask the House to pass these powers —on the basis that the Government's own agencies say that they will not use them—or to criminalise a person who arrives in the UK to ask for asylum from war and persecution. It is late, but this change in the offence will have serious consequences for the way our asylum and refugee system works. I beg to move.

Lord Green of Deddington (CB): My Lords, this is more important than it looks. Frankly, it is rather absurd that people can turn up in their tens of thousands on our beaches and there will have been no offence. That is not to say that they should be charged, but there must surely be some legal impediment to people just turning up.

Lord Paddick (LD): My Lords, the Bill does two things. It criminalises and treats genuine refugees as second class if they arrive via a so-called safe third country. Also, this clause potentially criminalises everyone who arrives in the UK to claim asylum even when they have flown directly to the UK. It effectively criminalises all asylum seekers arriving in the UK unless they have been resettled through a government scheme—resettlement schemes that range from few and far between to non-existent.

From what the Minister said in Committee, I understand that the idea of the clause was to ensure that migrants crossing the channel in small boats who were rescued and brought to the UK could still be prosecuted, even though they had arrived legally. She said that the new offence would cover all claimants "who arrive without the necessary entry clearance."—[*Official Report*, 8/2/22; col. 1512.]

Someone who secures a visitor visa, for example, flies non-stop to the UK and claims asylum at the UK border would be guilty of an offence because their entry clearance was only to visit, not to claim asylum and stay permanently.

[Lord Paddick]

The Minister tried to reassure the House that this was not the Government's intention, that the offence was intended to be prosecuted in only the most egregious cases and that the Government would be talking to the CPS. There are two issues with this. First, as the noble Baroness, Lady Chakrabarti, said in Committee, this is the very definition of an overbroad criminal offence that relies on the offence being prosecuted in only a subset of cases. The second issue is the potential for government interference with the independent Crown Prosecution Service. The next thing will be the Government telling the CPS to prosecute some political activists and not others. This is a very dangerous road to go down.

Amendment 55, in the names of the noble Lords, Lord Coaker and Lord Blunkett, to which I have added my name, would remove the offence of arriving in the UK without valid entry clearance from the Bill. We will vote with the noble Lord, Lord Coaker, when he divides the House.

Baroness Williams of Trafford (Con): I thank both noble Lords for speaking to these amendments. I have listened carefully to the arguments raised by the noble Lords, Lord Coaker and Lord Paddick, and I appreciate the reasoning behind the amendments in their names, but I remain convinced that we must have offences which apply to arrival in the UK in addition to those of entry.

I cannot overstate that the differences between the terms "entry" and "arrival" are fundamental to how offences are identified and prosecuted. The definition in Section 11 of the Immigration Act 1971 concerning entry is based on assumptions that no longer address the methods that have emerged for migrants to evade our border controls.

It might help if I explained the effect of the amendment and the consequence of not getting it right. I remind the House that the Court of Appeal has held that an asylum seeker who merely attempts to arrive at the frontiers of the United Kingdom to make a claim is not entering or attempting to enter the country unlawfully in accordance with the definition of "entry" in Section 11. This means that individuals who step foot in the UK because their small boat was rescued by Border Force do not "enter" the UK in the technical sense. They simply "arrive". Where there is no unlawful entry or attempt at entry, the unscrupulous people smugglers sending people across the channel in unseaworthy vessels that require rescue cannot be held to account for facilitating a breach of immigration law.

Amending these offences to refer to "enters" rather than "arrives in" renders them unworkable. It is wrong that an individual and those facilitating their journey should be able to evade sanction by allowing themselves to be intercepted and brought to shore. It encourages individuals to unnecessarily endanger themselves and others by travelling in small craft wholly unsuitable for the crossing.

If there is no offence of illegal arrival and if, as proposed in Amendment 58, this is not added as a breach of immigration law for the facilitation offence, then we will have practically eroded our ability to prosecute any people smugglers who are involved in risking migrants' lives by putting them into small inadequate boats.

It is right that we should ensure that the tools exist to deter and prevent these actions for the good of all. We must provide the CPS with the ability to prosecute appropriate cases when in the public interest, so Clause 39 must refer to both those who enter the UK and those who arrive in the UK. I appreciate the concerns raised but am convinced that the proposed amendments, if accepted, would give only comfort to those who exploit and persuade people to make the perilous and unnecessary journey across the English Channel.

The noble Lord, Lord Paddick, made a point about interference with the CPS. That is not the case. An MOU between immigration and the CPS has been updated and will be published. With those words, I hope that noble Lords will be happy not to press their amendments.

Lord Coaker (Lab): I thank the Minister for her reply. It was interesting in that reply, with respect to Amendment 55, that the whole raison d'être for the change to established immigration and asylum practice in this country is that the Government have lost control of migration across the channel. Panic has broken out, measure after measure has been tried, yet the numbers keep going up, and the public pressure to do something about it keeps going up. The Prime Minister has complained to the Home Secretary about it, so they have come up with a new measure which drives a coach and horses through the established procedures we have, has far wider implications than the channel, and affects every potential asylum seeker who enters the UK at the moment. That is why it is completely unsatisfactory to change things on the basis of what is happening, so I wish to test the opinion of the House.

10.30 pm

Division on Amendment 55

Contents 101; Not-Contents 96.

Amendment 55 agreed.

Division No. 6

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Bloomfield of Hinton Waldrist, B.
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Brownlow of Shurlock Row, L.
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10.41 pm

The Deputy Speaker (Baroness Fookes) (Con): As Amendment 55 has been agreed, I cannot call Amendment 56 by reason of pre-emption.

Amendments 57 and 58 not moved.

Amendment 58A

Moved by ***Lord Coaker***

58A: After Clause 39, insert the following new Clause—

"Secure reporting for victims of crime

(1) The Secretary of State must, in regulations, make provisions for the prohibition of automatic sharing of personal data of a victim or witness of crime for immigration purposes.

(2) In section 20 of the Immigration Act 1999, after subsection (2B) insert—

"(2C) This section does not apply to information held about a person as a result of the person reporting criminal behaviour which they are a victim of or a witness to.""

Member's explanatory statement

This new Clause would prevent immigration data being shared about a victim or witness of crime who reports an offence. This is to ensure victims are able to approach the authorities for assistance without fear of immigration repercussions as a result of that contact or resultant data sharing with immigration enforcement.

Lord Coaker (Lab): My Lords, Amendment 58A, in my name and those of the right reverend Prelate the Bishop of London, the noble Lord, Lord Paddick, and the noble Baroness, Lady Meacher, would require the Secretary of State to prohibit the automatic sharing of the personal data of a victim of or witness to crime for immigration purposes.

This is a familiar issue to the House. It was a key issue raised in the Domestic Abuse Bill, when your Lordships voted to provide safe reporting for migrant victims of domestic abuse. In this Bill, this issue has been raised in particular due to the offence of arriving into the UK proposed in Clause 39.

The question I asked in Committee was: if a person is trafficked into the UK, is it the first duty of the police to recognise them as a victim of trafficking or as a criminal under Clause 39? I welcome that your Lordships' House has just voted to remove the offence in question under Clause 39, but the issue of safe reporting continues to be of great concern.

A lack of safe reporting is damaging for victims, public safety and law enforcement because it prevents us tracking down and prosecuting dangerous people. This is not just the belief of Members of this House, it was the conclusion of the 2018 super-complaint. For victims of modern slavery, a mistrust of authority is a huge problem in encouraging people to come forward and identify themselves as a victim. What is practically being done to build that trust?

Rather than full safe reporting, the Government have opted for an immigration enforcement victims protocol, which they state will prevent enforcement

[Lord Coaker]
action against victims while criminal investigations and proceedings are ongoing, and while the victim is being supported.

Organisations working on the ground with victims have raised that the protocol will not make victims feel safe to report offences, so it fails that first hurdle. Can the Minister address these concerns? In Committee, the noble Baroness, Lady Meacher, asked the Government to check whether it remains the case that one in two victims does not report crimes to the police for fear of disbelief and deportation. Does the Minister agree with that? What assessment have the Government made of the scale of the problem?

Safe reporting is a very real problem, which the amendment in my name seeks to address. I beg to move.

The Lord Bishop of London: My Lords, I have added my name to Amendment 58A. I am very grateful to the noble Lord, Lord Coaker, for introducing this new amendment. In Committee, I tabled an amendment looking to create a data firewall for survivors of domestic abuse. This amendment, however, is helpful in that it is broader in its scope and gets to the critical underlying principle: namely, that victims and witnesses of crime should not need to fear coming forward on account of their migration status. I and my colleagues on this Bench, including the right reverend Prelates the Bishops of Gloucester and Bristol, have highlighted these concerns, notably during the passage of the Domestic Abuse Bill.

10.45 pm

The Government's policies have been successful in at least one respect: they have created a real sense of fear and dread among migrants of approaching the authorities. The fear is of heavy-handed immigration enforcement. It includes detention, deportation, and being split from their family members. Many speak of this, so it seems that it is well founded. My concern is that it is not likely to be reduced by the Bill as it stands. These victims, who could receive support, or could actually help law enforcement in the fight against violence against women and girls, against domestic abuse, against FGM, against human trafficking or against a host of other evils, do not present themselves to the authorities. They are not prepared to be witnesses because they are fearful.

This is a real issue identified regularly by front-line agencies and is clearly a serious barrier to supporting victims and countering crime. This is the consequence of our own policy-making, and I am sure there must be a way to resolve it. This amendment provides one solution, which is why I support it. I hope that if the Minister rejects this amendment she will at least undertake to come back with an alternative route forward so that we are not forced to go through this again in future Bills.

Lord Paddick (LD): My Lords, we support this amendment—I have added my name to it. The only question I have in addition to what the Minister has been asked so far is whether it is right that somebody who has been raped and who comes forward to the police as a victim, although she may not be subject to immigration control while a prosecution is ongoing, as soon the case is finished, she could be deported from the country because the police, at the end of the case, will share that victim's immigration status? Can the noble Baroness not understand that victims are not going to come forward and report dangerous criminals who have raped them if that is the threat?

Baroness Williams of Trafford (Con): My Lords, I understand the sentiment behind this amendment, which is to ensure that migrant victims of crime come forward to report that crime to the police and are not deterred from doing so because of concerns that immigration enforcement action might be taken against them. Our overriding priority is to protect the public and all victims of crime, regardless of their immigration status. Guidance issued by the NPCC, updated in 2020, makes it clear that victims of crime should be treated as victims first and foremost.

The NPCC guidance provides that police officers will not routinely search police databases for the purpose of establishing the immigration status of a victim or witness, or routinely seek proof of their entitlement to reside in the UK. Also, police officers must have grounds to suspect that a person does not have legal immigration status and must give careful consideration, on a case-by-case basis, to what information to share with the Home Office and when. The reasons for sharing information must be recorded and the victim advised what has been shared and why.

There can be benefits to sharing information as it can help to prevent perpetrators of crime from coercing and controlling their victims because of their insecure immigration status. Providing the victims with accurate information about their immigration status and bringing them into the immigration system can only benefit them. This amendment would prevent that.

It might help noble Lords if I gave one example of the negative effect of the amendment. The referral of information about a migrant victim or witness enables the Home Office to provide information on Home Office systems to assist the police and other authorities to establish vulnerabilities and safeguarding needs and to assess whether the migrant might be eligible to qualify for leave under the Immigration Rules or bespoke routes. Securing immigration status may allow eligible migrants access to a range of benefits, including health and housing provisions. There are several bespoke routes available to migrant victims and witnesses of crime which enable eligible individuals to regularise their status.

Under this amendment, the Home Office could not lawfully process any applications or requests for relief from enforcement action where details of the crime reported are relevant to those applications or requests, because the applicant's personal data cannot be used for an immigration control purpose. The noble Lord, Lord Paddick, talked about rape, and examples would include applications or requests made for the destitute domestic violence concession, the foreign witness policy or the immigration enforcement migrant victim protocol, which is due to be introduced later this year.

I know that is not what the sponsors of the amendment had in mind, but, were it to be added to the Bill, that would be one of the effects. More broadly, noble Lords will understand that the Government are duty bound to maintain an effective immigration system to

protect our public services and safeguard the most vulnerable from exploitation because of their insecure immigration status.

I have previously said that we need to focus on ensuring that victims with insecure immigration status can access the support they need, and that is the priority. Despite the best intentions, this amendment does not achieve the outcome it seeks. The question of leave to remain is inextricably linked to the conditions attached to that leave, so it is impossible to waive the no recourse to public funds condition in isolation from consideration being given to a person's immigration status. What is more, it has been a long-standing feature of the immigration framework operated by successive Governments that only those with settled status should have access to public funds.

The public rightly expects that individuals in this country should be subject to our laws, and it is right that those with irregular immigration status are identified and that they should be supported to come under our immigration system and, where possible, to regularise their stay. We regularly help migrant victims by signposting them to legal advice to help regularise their stay.

This is the wrong amendment at the wrong time. If adopted, it would prevent victims obtaining the support they need, whether under the DDVC or other routes such as seeking asylum. I hope, on the point from the noble Lord, Lord Coaker, about listening, that the noble Lords have listened and reflected carefully on the unintended consequences of their amendment and will agree to withdraw it.

Lord Coaker (Lab): Having listened carefully to the Minister, particularly about it being the wrong amendment at the wrong time, I will withdraw the amendment. But just let me very quickly say that, whatever the rights and wrongs of the amendment, and whatever the rights of the wrongs of what the Minister has just said, there is a very real problem out there of people who are victims of crime who are terrified of going to the police or the authorities because of fear of their immigration status. Whether that is right or wrong, that is the reality of the situation. I know the noble Baroness knows that. There is a problem that needs fixing. If the amendment is not the right way of doing it, we need to find another way of building that trust so that we do not have victims who are frightened to come forward to the authorities. With those few remarks, I beg leave to withdraw the amendment.

Amendment 58A withdrawn.

Clause 40: Assisting unlawful immigration or asylum seeker

Amendment 59

Moved by ***Lord Coaker***

59: Clause 40, page 41, line 40, leave out subsection (3)

Member's explanatory statement

This would give effect to the recommendation of the Joint Committee on Human Rights to maintain the current position that the offence of helping an asylum seeker to enter the United Kingdom can only be committed if it is carried out "for gain".

Lord Coaker (Lab): I beg to test the opinion of the House.

10.55 pm

Remote Division on Amendment 59

Contents 86; Not-Contents 84.

Amendment 59 agreed.

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11.08 pm

Amendment 60 not moved.

Amendment 61 not moved.

Schedule 6: Maritime enforcement

Amendment 62

Moved by ***Lord Coaker***

62: Schedule 6, page 104, line 13, at end insert—

"(1A) The powers set out in this Part of this Schedule must not be used in a manner or in circumstances that could endanger life at sea."

Member's explanatory statement

This would give effect to the recommendation of the Joint Committee on Human Rights to ensure the maritime enforcement powers cannot be used in a manner that would endanger lives at sea.

Lord Coaker (Lab): I beg to move.

11.09 pm

Division on Amendment 62

Contents 83; Not-Contents 76.

Amendment 62 agreed.

Division No. 8

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Wharton of Yarm, L.
Williams of Trafford, B.
Wolfson of Tredegar, L.
Young of Cookham, L.
Younger of Leckie, V.

11.21 pm

Amendment 63 not moved.

Consideration on Report adjourned.

National Insurance Contributions Bill

Returned from the Commons

The Bill was returned from the Commons with reasons.

House adjourned at 11.22 pm.

Grand Committee

Wednesday 2 March 2022

Building Safety Bill

Committee (4th Day)

4.16 pm

Relevant document: 20th Report from the Delegated Powers Committee

The Deputy Chairman of Committees (Baroness Watkins of Tavistock) (CB): My Lords, Members are encouraged to leave some distance between themselves and others and to wear a face covering when not speaking. If there is a Division in the Chamber while we are sitting, this Committee will adjourn as soon as the Division Bells are rung and resume after 10 minutes.

Amendment 111

Moved by ***Lord Foster of Bath***

111: After Clause 128, insert the following new Clause—

"Sale of goods online for use in buildings

(1) The Secretary of State must, within one year of the passing of this Act, make regulations placing requirements on operators of online marketplaces to take reasonable steps to identify and remove from the online marketplace items which—

(a) do not comply with safety legislation, or

(b) have been withdrawn or recalled by any person in accordance with safety legislation,

and that are of such a kind that are, or may be reasonably assumed to be, for use in buildings.

(2) Regulations made pursuant to subsection (1)—

(a) must specify what in the opinion of the Secretary of State constitutes "reasonable steps",

(b) may specify which items this section applies to, and

(c) may specify penalties for failure to comply with the regulations."

Member's explanatory statement

The purpose of this Clause is to improve the safety of buildings by preventing the sale of faulty electrical goods that can cause fires. This is particularly important in high-rise buildings in which fires can, and in the past have, spread causing fatalities.

Lord Foster of Bath (LD): My Lords, if I purchase, say, an electric fan or a tumble dryer online, it will arrive at my door within a few days and I will plug it in and use it. However, the item could be electrically unsafe or may be one that the manufacturers have withdrawn because they have some concern about it as a potential risk. I have no way of knowing whether the item I have purchased is in that condition for the very simple reason that there are no regulations that require online distributors to take any reasonable steps to ensure that items purchased online are safe. Of course, if the item is unsafe, it could threaten the safety of my home, perhaps causing a fire. If I live in a high-rise block like the ones we are talking about at the moment, that fire could spread and endanger the other flats in the block and the lives of the people who live in them. This is the danger that my amendment seeks to resolve.

4.18 pm

Sitting suspended for a Division in the House.

4.20 pm

Lord Foster of Bath (LD): As I was saying before I was so rudely interrupted, Amendment 111 seeks to address the issue of potentially unsafe electrical items purchased online and the impact that could have in high-rise blocks. Some noble Lords may believe that this is not a very serious issue and that perhaps not very many such products are available.

Electrical Safety First has done a detailed analysis of the work of the Office for Product Safety and Standards and, in a test, 63% of electrical products bought in an online marketplace were found to be non-compliant and, of those, 23 were unsafe. The OPSS publishes a weekly product safety report, which details products found to pose a risk to health and safety. Analysis of these reports by Electrical Safety First shows that, during 2021, 31% of all unsafe products identified were electrical, 72 of them having been purchased online. A separate investigation that it carried out found that 93% of a sample of electrical products tested from online marketplaces were unsafe. It has also repeatedly found numerous items that have been recalled by manufacturers—often due to a concern about the risk of overheating and fire—but were still available for purchase online. We are not dealing with a small problem.

We know that there is an increasing number of fires in high-rise buildings: the number has gone up year on year. In fact, there has been a 20% increase in the last two years alone. We know that some 53%—over half of all of the fires—were caused by electricity in one form or another. In many cases, the source of ignition was a faulty electrical product. The fire in Grenfell Tower was caused by an electrical appliance—a fridge freezer—as was the fire at Shepherd's Court in 2016, which was caused by a recalled tumble dryer, and the fire at Lakanal House in 2009, which was caused by a TV. I do not know whether, in each of those cases, those products were purchased online, but we know from all the research that an increasing number of electrical appliances are purchased online. In February last year, 75% of UK shoppers said that they bought such products online, compared to just 40% the previous year—this was obviously enhanced by lockdown.

This is an accident waiting to happen, and we need to do something about it. That view is supported by many organisations: following the OPSS consultation in 2021, they argued that change was needed to ensure that markets remain fair, and specific powers were requested by them in relation to online marketplaces and platforms. The National Audit Office—the NAO—carried out an investigation and found that there were "gaps in regulators' powers" to regulate the online marketplace. A Public Accounts Committee report includes findings and states that the OPSS had explained to it that

"under current legislation, online marketplaces are not responsible for the safety of products sold by third parties on their platforms."

Yet there is of course a requirement for purchases made not online but in normal shops, so it is odd that there is a discrepancy here.

[Lord Foster of Bath]

It is particularly odd that the Government have done nothing about it so far, because, in answer to a House of Commons Written Question, the Minister said:

"The Government is committed to ensuring that only safe products can be sold in the UK."

The purpose of this amendment is to achieve exactly what the Government want—to ensure that only safe electrical products can be purchased, whether they are purchased in normal shops or online. It seems a simple amendment. I have not spent a lot of time going through it, because I am absolutely certain that the Minister is just going to say, "Yes, Don, good idea, we'll agree to it." I look forward to hearing her say that in a few minutes.

The Deputy Chairman of Committees (Baroness Watkins of Tavistock) (CB): My Lords, the noble Baroness, Lady Brinton, is taking part remotely. I invite the noble Baroness to speak.

Baroness Brinton (LD) [V]: My Lords, I support all three amendments in this group. Amendment 111, which was laid by my noble friend Lord Foster and to which I have added my name, aims to protect consumers from items purchased online that are non-compliant with rules for purchasing the same products in shops. I thank him for his clear and detailed explanation of why it is needed.

The excellent analysis by Electrical Safety First of the Office for Product Safety and Standards demonstrates that there is a real safety issue. Nearly two-thirds of electrical products bought in an online marketplace are non-compliant and a shocking quarter is actively unsafe. *Electrical Contracting News* said that in 2020 faulty appliances caused 43 fires per week in England. Everyday household appliances caused 15,000 accidental fires in homes. We know that some serious and fatal fires in high-rise and medium-rise buildings were caused by faulty appliances. Some fires were due to household items being placed too close to the source of heat or to misuse of appliances, but a number were due to appliances that were found to be faulty.

If two-thirds of electrical products bought in online marketplaces are non-compliant and, worse, a quarter is unsafe, that is a recipe for danger. Perhaps it is not surprising that legislation is taking time to catch up with new ways of purchasing goods, yet the focus of this Bill is to ensure that buildings are safe, especially high-rise buildings. This amendment proposes a solution to the problem and I support it.

Briefly, I want also to add my support to Amendment 112 laid by my noble friend Lady Pinnock and Amendment 117 laid by the noble Baroness, Lady Finlay. The amendment of my noble friend Lady Pinnock also responds to evidence given at both the Grenfell inquiry and Dame Judith Hackitt's review of the appalling habits of too many construction product companies of managing to soften or even blatantly breach the safety regulations. It is evident that the regulations are out of date and I hope that the Minister will be able to respond favourably to this, too.

Finally, the amendment of the noble Baroness, Lady Finlay, highlights the importance of the provision of CO detectors and alarms and seeks for the responsible person to ensure that they are provided. Too many times, people end up with unsafe equipment, whether an old gas fire or, worse, a new exterior gas fire being used inside through ignorance, which has resulted in the deaths of far too many people. We are used to having smoke alarms in buildings, especially high-rise ones. We should also have CO detectors and monitors as a matter of absolute routine for safety. I look forward to hearing the Minister's response.

Baroness Finlay of Llandaff (CB): My Lords, I would like to speak to my Amendment 117 in this group—I am grateful to the noble Lord, Lord Hunt of Kings heath, for supporting this amendment with me. I should declare my interest, as I co-chair the All-Party Parliamentary Carbon Monoxide Group and I chair the CO Research Trust.

As the noble Baroness, Lady Brinton, said, faulty appliances are often a source of carbon monoxide, but so are wood-burning stoves and oil central heating. Anything that burns a carbon-based fuel can produce carbon monoxide, which is colourless, tasteless and odourless and results from incomplete combustion of the fuel. The problem is that high levels kill you rapidly, within a few minutes, but the symptoms are that you just feel warm and sleepy. You think that you are comfortable and sleepy; the next thing you are dead. However, low levels also produce long-term damage and are thought to damage the developing foetus in pregnant women.

4.30 pm

Rather alarmingly, a recent National Energy Action report showed the dangers of indoor spaces where people live and work. It looked at households in the low-income bracket, with a range of vulnerabilities, and found that 35% of the properties it looked at had prolonged spikes of a carbon monoxide level over the threshold at which it can have possible health effects. Some 22% had spikes that lasted longer than 15 minutes, which could be fatal. Households with the maximum carbon monoxide levels were linked to those reporting stress and anxiety about energy affordability, which reaches statistical significance in correlation. There seems to be a relationship between underheating and poverty, then using appliances, sometimes even a gas oven, as a source of heating. That is linked to elevated levels of carbon monoxide.

Older homes have older and riskier types of boilers. When people face fuel poverty, servicing appliances is one of the first things to go. As we try to decrease energy consumption in new buildings, we make them more airtight. The indoor air quality deteriorates, because it is trapped. This was brought into even sharper focus during Covid, when it was well documented that there was a higher incidence of death from Covid in places with poor ventilation.

It is well established that a higher incidence of exposure to carbon monoxide and other indoor pollutants occurs during the winter, when people spend more time indoors. According to the Office for National Statistics, one in eight households in Britain has no access to a private or shared garden. That rises to one in five households in London. During the winter, these people are indoors with their children, often burning gas or other fuel that risks carbon monoxide production.

A study from Queen Mary University concluded that deaths from Covid were 70% higher in areas of increased air pollution. That has been linked to nitrous oxide and sulphur dioxide. A similar study has not been done sampling the quality of indoor air during Covid, although people have now become aware of raised carbon dioxide levels because, if there is more exhaled air, there is a greater chance of more coronavirus in that air. Hence we have suddenly become aware of the need to open windows and so on.

Much innovation and policy-making in the built environment has focused on new buildings and expensive technologies that have low environmental impact, but there are two problems with this approach. Energy efficiency has grown and buildings have become tighter, but construction techniques designed to seal a house and prevent heat escape also decrease ventilation. That is positive from an environmental perspective, because we use less fuel to heat the home, but the downside is poor indoor air quality.

A second major issue with the approach is that it does not account for the older buildings in which most people live and work. The UK has the oldest building and housing stock in Europe, which is largely due to the legacy of dwellings and buildings built around the Industrial Revolution, which still form the backbone of our urban areas today.

People need to know that the air where they live, or spend their day working, is safe. The cost of a carbon monoxide alarm ranges upwards from about £14, with a battery life of seven years, so it costs £2 a year for a carbon monoxide alarm to keep people safe. The cost is minimal, or negligible, but the cost associated with a life lost to carbon monoxide poisoning can run into hundreds of thousands of pounds when one looks at the problems for bereaved children in particular, when they have ongoing needs over the years ahead. On the economic argument alone, I suggest to the Government that a simple amendment requiring carbon monoxide alarms to be installed by whoever owns and runs the building would be more than cost effective.

Baroness Pinnock (LD): My Lords, it was the safety failure of cladding on Grenfell Tower that resulted in 72 people tragically losing their lives. Subsequent investigations showed that construction products that failed flammability tests were used. Obviously, the safety of the construction products used is critical if we are to achieve a much improved building safety standard.

The safety of construction products in the Bill is dealt with only in Schedule 11. Ten pages of detail set out the regulatory regime around product safety. Amendment 112 in my name would add a new clause to the Bill to ensure that product safety is an integral and important part of the legislation.

The purpose of Schedule 11 is to enable the Secretary of State to make relevant regulations to control the safety of construction products. The key word used throughout is that the Government or the Secretary of State "may" by regulations do something. I suggest that the key word should be "must". For example, Schedule 11 states that products "may" be prohibited if they are not safe. Can the Minister clarify the reasoning for not using prescriptive language?

On standards and technical assessments of products, the wording used is that construction products regulations "may" make provision for standards and technical assessments. Given the learning from the tragedy at Grenfell, I would expect product standards to meet safety standards clearly established by regulation. The schedule establishes the notion of creating a list of "safety-critical products" covered by safety-critical standards which "may", or presumably may not, be detailed in a timely way. The regulations also make provision for enforcement—or, at least, they "may" make provision—of the safety and standards regime.

The Hackitt report, my favourite document on all this, has a whole chapter on construction product safety and some very clear recommendations, one of which states:

"A clearer, more transparent and more effective specification and testing regime of construction products must"—

I emphasise "must"—

"be developed. This should include products as they are put together as part of a system."

That is one of the issues that I raised at Second Reading and on other amendments in Committee. It is important that a product is not only proven to be safe but proven to be safe in conjunction with other materials. That was part of the failure exposed by the Grenfell fire.

Dame Judith Hackitt states clearly in her report that that is essential. Her report recommends:

"Manufacturers must retest products that are critical to the safety of"

higher-risk buildings. The report also seeks to ban assessments in lieu of tests—that is, the desktop studies that were part of the failure at Grenfell—and allow them only in

"a very limited number of cases".

The Government have set out to reflect in the Building Safety Bill all the recommendations in Dame Judith Hackitt's report. Unfortunately, Schedule 11 does not do that. It certainly does not do it with the clarity of language or insistence on actions contained in that report.

Amendment 112 is an attempt to draw the attention of the Committee to the fundamental importance of ensuring the safety of, and safe use of, construction products. The amendment seeks to address the want of timeliness in the schedule by insisting on the early publication of regulations on testing and certification. Proposed new subsection (2) seeks to provide for all the recommendations in the Hackitt report to be included in the Bill. I hope that, in her response, the Minister will accept the importance of tightening the proposed regulations on construction products and, given that nearly five years have passed since the Grenfell fire, will accept that no further time should be lost in making buildings safe by ensuring that construction products are safe.

I just want to comment on the other amendments in this group. I give my full support to Amendment 111 in the name of my noble friend Lord Foster, who has made the case for the vital importance of the safety of electrical appliances and for continuing to check them. Too many fires—high-risk fires—have occurred because some electrical appliances are not safe or do not continue to be safe.

[Baroness Pinnock]

I also fully support Amendment 117 in the name of the noble Baroness, Lady Finlay. I give the example of my own council—Kirklees Council—which provided free carbon monoxide monitors for every household. This followed the tragic death of a young child whose family was living in a terraced house where carbon monoxide leaked through from the adjacent house, which was not being properly maintained, if I may put it like that. Really sadly, the child died. As a consequence, the council—with the full support of everybody—produced free carbon monoxide monitors for every household. They are life-saving, and we will obviously fully support the amendment in the name of the noble Baroness. With those comments, I look forward to the Minister's response.

Lord Khan of Burnley (Lab): My Lords, I will speak to all the amendments in this group in the names of the noble Lord, Lord Foster of Bath, and the noble Baronesses, Lady Pinnock and Lady Finlay of Llandaff.

I turn first to Amendment 112 in the name of the noble Baroness, Lady Pinnock. She presented the case very clearly and eloquently; the headline from her contribution was that the amendment seeks to satisfy the Grenfell review and the Hackitt review. Testing and certification are important for product safety. Ultimately, they will save lives and ensure safer homes.

Amendment 117 is in the name of the noble Baroness, Lady Finlay, who made a very clear and economical argument on safety and why this amendment should be welcomed by the Government and all of us—was it £2 for the developers and owners of buildings to ensure the safety of their residents? The noble Baroness, Lady Pinnock, mentioned the very sad example of the young child in her constituency. We can save people's lives by welcoming and adopting this amendment.

4.45 pm

I will focus in particular on Amendment 111 in the name of the noble Lord, Lord Foster of Bath. He painted the stark reality of the situation we face; in 2021, something like 31% of all fires in unsafe buildings were down to electrical faults. The noble Lord also said there had been a 20% increase in fires in high-rise buildings in the last two years, 50% of them caused by electrical safety problems.

We welcome this amendment. The noble Lord mentioned the charity Electrical Safety First; its chief executive Lesley Rudd said that the absence of vital laws governing online marketplaces posed

"one of the biggest risks to product safety in the UK".

Since Brexit, the Office for Product Safety and Standards has been set up, but what new responsibilities has it undertaken in relation to faulty electrical goods and building safety?

Can the Minister say what actions have been taken in response to the report from the Public Accounts Committee, which has been mentioned, on the UK's product safety regime? Does she agree that there is a gap in the law which means that digital giants such as Amazon and eBay are not responsible for the safety of items sold by third parties? If she does, what will the Government do about it?

What does the Minister have to say about these challenges? We have an unregulated marketplace for electrical goods. We have had severe cuts to enforcement bodies. We have also had an increase in online purchases. It is a perfect storm. Ultimately, how will the Minister ensure that dangerous products do not end up in people's homes?

Baroness Bloomfield of Hinton Waldrist (Con): I thank all noble Lords for their contributions to this important debate on additional building safety measures. As noble Lords know, making sure everyone's home is a place of safety is at the heart of the Bill. I will address each of the amendments discussed in turn.

I thank the noble Lord, Lord Foster, and the noble Baroness, Lady Brinton, for raising the important matter of ensuring that electrical goods sold online are safe. The Government remain committed to ensuring that only safe products can be legally placed on the UK market, both now and in the future. Preventing the sale of unsafe electrical goods is clearly important to achieving this aim, but this extends to ensuring that all consumer products sold in the UK are safe. Existing product safety legislation places obligations on manufacturers, importers and distributors to ensure that consumer products are safe before they can be placed on the UK market. This applies to products sold both online and offline.

In common with the noble Lord, Lord Foster, the noble Baroness, Lady Brinton, and the noble Lord, Lord Khan, the Government also recognise that the rise of e-commerce presents a particular challenge. However, it is not true that the Government are doing nothing. They are undertaking a thorough review of the UK's product safety framework, which includes an assessment of the impact of e-commerce.

Following a call for evidence last year, the Government are developing proposals for reform of the product safety framework and intend to consult in due course. This includes options to address the sale of unsafe products online. We are also taking forward a number of immediate actions. This includes implementing a programme of work focusing on the safety and compliance of goods sold by third-party sellers on online marketplaces.

I thank noble Lords for raising this important matter. However, the Government will not be supporting the amendment at this time, given the broader work as part of the product safety review and the existing regulatory controls that I have outlined.

Lord Foster of Bath (LD): I am very grateful for what the Minister said the Government are doing, but before she moves on to the next amendment, can she give a clear indication of the timescale? Far too often we hear the phrase "in due course"—the Minister has herself used it. We all know what it means; can she give us something a little more concrete?

Baroness Bloomfield of Hinton Waldrist (Con): I am afraid I pushed my officials to give me a specific time. They have agreed that we may write with more details to give the noble Lord an indication of when this might be forthcoming.

On Amendment 112, I thank the noble Baroness for raising the important matter of the testing and certification of construction products. The Government are committed to reforming the regulatory framework for construction products and it is important that our approach to reform considers the system in the round and is based on engagement with stakeholders who make, distribute and use construction products.

We therefore do not believe that it is right to set a deadline of six months to introduce new measures, as this will constrain public debate. We intend to introduce a requirement for products to be corrected, withdrawn or recalled where they are not safe. This will deliver a greater practical benefit than publishing information about known safety concerns.

We recognise the importance of accurate, reliable performance information to support appropriate product choices. However, a product's testing record is unlikely to provide useful information for this purpose. Instead, we will create a statutory list of "safety critical" products, where their failure would risk causing death or serious injury and require manufacturers to draw up a declaration of performance for these products. Dame Judith Hackitt's review recommended that industry should develop a consistent labelling and traceability system for construction products. We agree that industry is best placed to develop an approach that will be effective in practice.

I could sense the frustration of the noble Baroness, Lady Pinnock, with the language used in the Bill, specifically in Schedule 11. I am afraid that the "may versus must" argument recurs in many bits of legislation that I have taken through, and particularly here, when Dame Judith used "must" in her report. However, the whole reason we put "may" rather than "must" in legislation is that this approach is designed to allow the Secretary of State to review existing regulations, consult as needed and bring forward new regulations where needed. We clearly intend to use these powers and published draft regulations in October 2021. I recognise that that probably will not wholly satisfy the noble Baroness but it is as far as I may go.

Baroness Pinnock (LD): Did the Minister say October 2021?

Baroness Bloomfield of Hinton Waldrist (Con): Yes. We clearly intend to use these powers and we already published draft regulations in October 2021.

The Minister of State, Home Office and Department for Levelling Up, Housing & Communities (Lord Greenhalgh) (Con): They are draft.

Baroness Pinnock (LD): Are we allowed to see the draft regulations? It would be really useful.

Lord Greenhalgh (Con): They are published.

Baroness Bloomfield of Hinton Waldrist (Con): We will circulate them to the whole Committee.

Baroness Pinnock (LD): That is really helpful. I thank the Minister.

Baroness Bloomfield of Hinton Waldrist (Con): We will also be introducing requirements for labelling construction products, to support regulatory activity. Once again, I thank the noble Baroness for raising this matter but, based on the explanation I have just provided, the Government will not be supporting the amendment.

Finally, on Amendment 117, tabled by the noble Baroness, Lady Finlay of Llandaff, I thank her for raising the important matter of carbon monoxide and the risk it poses. Carbon monoxide can be released from faulty or leaky boilers and chimneys. As the noble Baroness said, it is colourless, odourless and tasteless and can lead to life-changing injuries or death. It is indeed sometimes called the "silent killer".

The Government take the risks and consequences of carbon monoxide poisoning very seriously and share a common goal with the noble Baroness of wanting to safeguard people from this deadly gas. She was right to stress the relationship between poverty, particularly fuel poverty, and the high incidence of harmful indoor air quality. However, the new clause is unnecessary. Legislation is already in place, as I will go on to explain, and we will bring forward new legislation and updates to guidance that will safeguard people from the harmful effects of carbon monoxide poisoning. We believe that, together, these measures will achieve the improvement in safety sought by this clause. The gas safety regulations require the safe installation, maintenance and use of gas systems, and they require landlords to carry out annual gas safety checks, which reduce the risks of carbon monoxide poisoning.

While carbon monoxide alarms are not a substitute for the proper installation, use and checks of combustion appliances, they are a useful additional precaution. Currently, our building regulations require appropriate provision for carbon monoxide detection and alarms when solid fuel appliances are installed in homes, irrespective of tenure. The Smoke and Carbon Monoxide Alarm (England) Regulations 2015 require carbon monoxide alarms in privately rented homes where there is a solid fuel appliance.

Recent evidence and analysis show that, although solid fuel appliances, such as wood-burning stoves, continue to be responsible for a disproportionate number of carbon monoxide incidents, the case to require alarms for combustion appliances using other fuels has grown. Therefore in 2020 we consulted on proposals to extend provisions for carbon monoxide alarms to be fitted when oil and gas-heating boilers are installed in all homes, irrespective of tenure, and to require that alarms are installed in any room used for habitation with a fixed combustion appliance, excluding gas cookers, in privately rented homes and social housing. These proposals received broad support and, in 2021, we announced that we will amend the regulations as soon as parliamentary time allows, with the changes coming into effect as soon as practicable. We will also update the statutory guidance on carbon monoxide alarms.

These new measures extend the use of carbon monoxide alarms to the extent that we consider appropriate, based on the current evidence available. The extended alarm measures are not limited to high-rise buildings and will apply to newly installed combustion appliances in homes irrespective of tenure and to all private and social landlords. While I appreciate the

[Baroness Bloomfield of Hinton Waldrist]
intention of the amendment, I hope I have reassured noble Lords that we have committed to extending the requirements and guidance around carbon monoxide alarms where appropriate to do so. I therefore ask the noble Baroness not to press the amendment.

Once again, I thank noble Lords for this debate, which has considered wider matters connected to safety, and I hope that, with the reassurances given, noble Lords will be content not to press their amendments.

Baroness Finlay of Llandaff (CB): May I ask why the Government have not extended the requirement to all new builds and to major refurbishments when they are bought by a company and subsequently sold, and why there is a resistance to insisting that alarms are installed in workplaces? More and more firms are now struggling with the cost of heating. They may be turning it down, and people in the workplace may, in wanting to keep warm, bring in heating devices from outside that should be used for camping and cooking outside, or whatever. With fuel poverty, the risk of carbon monoxide poisoning is going to rise.

Simply to put into regulation that alarms need to be installed seems a move that would not cost anything significant to the building trade, or anyone refurbishing buildings—but to leave it simply restricted to landlords and to rely on annual checks, when we know that they are not always done adequately, seems completely inappropriate and highly risky. The landlord has to check the appliance installed, but when people are in fuel poverty they often cannot afford to run that appliance as it should be used—and, as I said, they will do such things as use an oven with the door open to try to stay warm, and that will pour out carbon monoxide. The other problem with that is that the level of air in the room is exactly at the level of a toddler's face, so children are more exposed than adults in such a situation. If an alarm was installed, it would go off irrespective of relying on a landlord.

The other problem is that a lot of people now in fuel poverty are not in rented accommodation. They have mortgage commitments which they are struggling to pay. They are suddenly finding that they are in a band of poverty that they never imagined they would be in when they took out a large loan to purchase their property, particularly with interest rates going up as well.

Baroness Bloomfield of Hinton Waldrist (Con): As I said in my speech, the extended alarm measures will apply to all newly installed combustion appliances in homes, irrespective of tenure, and to all private and social landlords. I should also add that we consulted in November 2020 on proposals to extend the requirements for carbon monoxide alarms to oil and gas heating installations and to social housing. The Government are yet to respond to this consultation, but we will do so in due course.

5 pm

Lord Foster of Bath (LD): My Lords, I think we are all grateful to the Minister for her remarks. It is clear that the Government share the concerns we have expressed about construction products, CO_2 monitors and, in relation to my amendment, electrical appliances. However, I have to say that I suspect there is deep concern in this Committee about the language the Minister used in relation to when any action will be taken. We have heard her say "in due course", "as soon as parliamentary time allows", "as soon as is practical" and so on. I am grateful that she said she will write to me on Amendment 111 to tell me when some of that action will take place, but I suspect there will be pressure for all these issues to be raised again at a later stage in the Bill's passage.

In 20 seconds, I will beg leave to withdraw my amendment, but I first want to add a bit of light relief. The Minister's ministerial colleague, who has told us that he is very tired today, is a great fan of Latin mottos and phrases. On Monday, the noble Lord, Lord Leigh, got Hebrew mottos in as well. I thought it might be helpful to look up an appropriate motto for an amendment to make electrical goods sold online safer, then realised that "electrical" and "online" were hardly likely to appear in Latin. However, much to my surprise, when I did a Google search, I found that I was able to get a Latin translation, which is most bizarre. I share with the Committee that, if we want to make an electrical good sold online safer, "fac tutius bona electrica online" is the motto we should be using. With that, I beg leave to withdraw the amendment.

Amendment 111 withdrawn.

Amendment 112 not moved.

Schedule 11: Construction products regulations

Amendment 113 not moved.

Schedule 11 agreed.

Amendments 114 and 115 not moved.

Clause 129: Amendment of Regulatory Reform (Fire Safety) Order 2005

Amendment 115A

Moved by ***Baroness Fox of Buckley***

115A: Clause 129, page 133, line 23, at end insert—

"(2A) In article 6 (application to premises), in paragraph (1B)(b) after "balconies" insert ", but only insofar as any such balconies pose a material risk of the spread of fire, flame or smoke"."

Member's explanatory statement

Amends the Fire Safety Order to make clear that only balconies which pose a material risk of the spread of fire are included as part of the external wall. This would avoid balconies being remediated unnecessarily.

Baroness Fox of Buckley (Non-Afl): My Lords, I was already feeling inadequate enough, but my inability to come up with a Latin phrase or joke on this particularly peculiar amendment of mine is nerve-racking. Clause 129 makes further amendments to the fire safety order and focuses partly on the risk of balconies. My Amendment 115A suggests tightening up the wording so that balconies should be considered a risk only if and where they can be shown to materially contribute to the spread of fire, flame or smoke.

I think this amendment is needed because I am concerned about unnecessary building safety work. I am not sure if this amendment is the right way to resolve the problem, but leaseholders who I have spoken to see emerging a widespread focus on alleged non-cladding defects, such as balconies. This can be a driver to carrying out unnecessary fire safety work, for which leaseholders must pay, with no existing government funding to help. We are all familiar with the "#claddingscandal", but I want to avoid a scandal, or at least an injustice, emerging that is not to do with cladding. That is what this amendment probes.

Broadly, we now have a situation in which a block of flats can have a fire risk assessment that effectively determines that the building is sound but, because some notionally flammable material has been used, for example in the balconies, there are problems with valuations associated with EWS1 and a pre-emptive, rather than necessary, remediation approach. Leaseholders are then encouraged to think of their blocks with these balconies as unsafe and to believe that remediation work is necessary—and the costs will inevitably be charged to them as a fait accompli. This could be driven quite cynically by freeholders using building safety to do upgrades or carry out what otherwise would or should be regular maintenance, at leaseholders' expense. To be less cynical and assume far more good faith, or at least to understand the pressures on freeholders and owners, I am worried that one of the unintended consequences of this Bill would be to drive up fears among owners, assessors, accountable persons and so on, under the weight of legal and insurance liability, that they would be blamed for any fires that occur, in any circumstances. As such, blame avoidance could mean stretching assessments of what is considered unsafe beyond credibility or credulity.

This seems to be partly the explanation to the rather panicky response to any building materials that can catch fire. At the moment, this is expressing itself as the almost default assumption that balconies with timber as a component are dangerous and should be replaced. This is in spite it being well documented that timber can outperform steel in a fire, depending on how it chars. An example of where this can lead is a block of flats in Castletown in Dorset. Leaseholders were shocked, at the start of the year, to receive a letter telling them that the timber-decked balconies of the 204 flats in their block had to be replaced by aluminium balconies, as some may be unsafe. Guess what? Leaseholders must meet the cost of this work estimated, on average, at £10,000 a flat.

In addition to that horrifying financial prospect, the Atlantic House Leaseholders Association raised some other issues pertinent to the Committee debates so far. For example, there was no consultation at all with the leaseholders on this decision about the balconies. Leaseholders are a tad suspicious that the contract for the work to replace the balconies was awarded to the block owner's subsidiary company. The plan that was just announced, but not consulted on, is to carry out the installation inside people's flats, instead of putting up scaffolding, regardless of the major inconvenience and intrusion this will cause in leaseholders' homes. The other day I talked about whether you can call it your home if people can just come in, in the name of safety. This is really going to affect people's home lives.

Also, if there is wear and tear on the timber decking on the balconies in question, it should actually have been the building owner's responsibility to maintain them and keep them up to standard. Yet, despite them having failed to do so, leaseholders are now being forced to pay for the changes to the balconies, under the auspices of building safety and the threat of fire risk.

I am concerned about a climate in which there is a danger of failing to weigh up risks and assess matters objectively and proportionally. Sometimes, in the name of safety—I think that this was true in that instance in Dorset—leaseholders' lives are being made a misery, and they are being made to pay a lot of money for remediations that do not necessarily mean that they are safer.

I do not know if noble Lords saw the story in the *Manchester Evening News* about social housing tenants in Salford suffering freezing conditions for months, since cladding came off their blocks. Having lobbied to get their concerns heard, they were recently sent a letter by Pendleton Together, which manages the nine council blocks, offering

"top tips for keeping warm".

These included: "dress in layers", wear "a hat and gloves", keep "active" and consume "warming food and … drinks" —I thought that these might be handy in this Room, which has been rather chilly. This is another top tip:

"don't drink alcohol to keep warm as it can give you a false feeling of warmth when you're actually cold".

If I were cold, I might still have a drink.

More seriously, I am glad to see that Salford council, which should, in general, be commended for its aspirational housing policies—I am not particularly having a go at it—has apologised for what has happened in its area and for the patronising and condescending message of the letter. But I was using it to illustrate that measures designed to keep people safe from fire can lead to home owners suffering freezing cold, for example, in the middle of an energy price crisis. Unfortunately, fire safety can trump common sense.

I will take noble Lords back to balconies and the Atlantic House block in Dorset that I was talking about. There is a similar perverse outcome in relation to balconies there allegedly being made safer, because, ironically, the decision to replace timber decking with aluminium might make them less safe. Luckily, the chair of the leaseholders' association is a retired engineer from the construction industry, so he spotted that the use of aluminium might not be a safe option at all. Aluminium can be corroded by salty sea air—the block is near the sea—unless it is anodised. The truth is that those leaseholders might well be safer, and not facing a £10,000 bill each, if the balconies with timber decking remained.

My amendment is narrow and might seem a bit specific or even trivialising, but it is an attempt to probe whether the Government will consider adopting a broader cost-benefit analysis approach specifically to balconies to avoid more EWS1-type problems. It is also an attempt to encourage the Government to be

[Baroness Fox of Buckley]
wary of the zero-risk approach of a one-sided and overly precautionary culture of fear, with which the Hackitt review is imbued; there are lots of good things in it, but there are also a lot of things that I do not want to just endorse. Many of the leaseholder campaigners whom I have talked to say exactly the same: they warn that we should talk more to leaseholders, who of course want to be safe but do not want safety to lead to them having to pay for expensive and unnecessary remediation work, on balconies in this instance, when it is just not needed. I beg to move.

The Earl of Lytton (CB): My Lords, I think the noble Baroness, Lady Fox, has done a considerable service, because she has highlighted quite a number of things. You might say balconies represent important facets in terms of building safety. The question of balconies may have been triggered by a fire—it may have been in Australia—caused by a discarded cigarette end on a timber-deck balcony. The circumstances, of course, of timber in high summer in New South Wales or wherever may be significantly difficult from in a typical English summer. I grant you that—and, of course, timber does not retain significant degrees of combustibility throughout the season, typically, in this country. I can certainly testify to disposable barbeques being a far more potent source of fire in such circumstances.

5.15 pm

This brings proportionality into question. Combustion of timber elements on exteriors or balconies depends on location and vulnerability, and it depends on the actual use. This may not be straightforward to assess, although I think it should be possible to do some sort of coarse sift without getting too involved in the liability of having signed off a building as safe.

I think this also relates back to the earlier Amendment 112 on the suitability of materials. Here, I will share with the Committee a page from the family scrapbook, in the sense that my own daughter used to have a flat in east London that had a steel construction but timber decking. The timber decking needed replacement, as it does after a period of time, and it was recommended that she use a composite, on the grounds of longevity. I looked at this, and it had a much more significant fire risk than the timber would have had, yet this product was being freely marketed and recommended for use in this instance. Of course, I straightaway advised her that she should not use that product. As it happens, she has now sold the flat, so the matter has moved on. But that brings into sharp focus the need to make sure that such products, on refurb, on refit or on repair, are not used in inappropriate circumstances. It may be perfectly appropriate to have a composite decking at garden level or just above garden level in a back garden, but not where it is part of the building, where it can create a real threat to the integrity of the building as a whole.

I am actually familiar with balcony failures, because my employer's sister firm had to do a lot of remedial work in a block development in a major south coast town where a chunk fell out and narrowly missed a person some floors down. It was about £15,000 to replace the deck of each of those balconies—by the time you had got a hoist up, done all the protective work and got people who were competent and trained to use it, and only then got the guy in with a jimmy bar and a screwdriver to actually fix it. So, I think the noble Baroness has raised a very valuable point.

I go back to the question of proportionality, and asking the straightforward question: "Has it got any timber, or has it not?" I think the noble Lord, Lord Blencathra, said minimal bits of combustibility may not be significant, and I think we ought to have regard to that and not be overstrict, otherwise we will have far more buildings needing and receiving remediation whose occupants are being prejudiced by an adverse EWS1 or some sort of waking watch or something like that, and it will be totally unnecessary and disproportionate. We have to get a handle on this, and perhaps there is a lack of clarity in guidance while we are all busy trying to sort this thing out. I am sure the Minister understands where I am coming from, and maybe the noble Baroness in responding will comment.

The Lord Bishop of St Albans: My Lords, I will add a few extra words to this. I apologise to the Committee; I am struggling, as I think a number of us are, as there are so many Bills going through that we are bobbing in and out of various Bills. It is frustrating for us that we cannot necessarily sit and follow everything through, but I think this probing amendment touches on some really important issues for us.

Not surprisingly, after the absolute horror of Grenfell, we are rightly trying to think about how we offer maximum safety for everybody. But safety comes at a cost, as we are all aware. As we work on a Bill that we hope will do its job for many years, we need to take an objective view on some of these areas, particularly on what the noble Earl, Lord Lytton, said about proportionality.

If a balcony is made of wood, there is the possibility that it is flammable and there is a level of risk. However, we have to look at whether it is a risk just of the balcony or whether the balcony will spread fire around the entire building. I am not sure that is clear enough in the existing fire safety order. My fear is that we may now be so risk averse that we are not keeping a balanced view on things. Once a balcony which is part of the external wall systems is identified as a fire risk, it will necessarily require remediation, which is not covered by the Government's generous grant scheme as it is non-cladding related, meaning that it will inevitably fall on to leaseholders.

One issue picked up on by the noble Baroness, Lady Fox, is that there is a whole range of risks, of which balconies are one. Assessors should be forced to present a clear argument as to why balconies need removing as part of remedial works rather than there being a default approach which says that wooden balconies are an inherent fire risk without having necessarily to make that argument. It is worth our while pausing on this matter. As the Bill progresses, we need to look at proportionality on a number of levels, of which this is one illustration.

Lord Stunell (LD): My Lords, the noble Baroness, Lady Fox, has raised an interesting theme which has been expanded on by the right reverend Prelate and

the noble Earl, Lord Lytton, that of proportionality. I want to come at it from a slightly different angle. We have to decide whether something being a fire risk or not is an objective or a subjective decision. If we think it is an objective decision, and that it is possible by some process in a square box to say, "Yes, there is no doubt that this is a fire risk", the view of a resident that it is not a fire risk is irrelevant, because it is a fire risk. Or we may think that there is scope for human judgment in that, and that the assessment of the resident—or, at least, of residents collectively in a block, if they decide that a particular level of risk is one they are prepared to accept—may have some bearing on the situation. Where does that objective judgment come from? I think that is at the heart of the question that the noble Baroness, Lady Fox, has brought to this discussion.

We know that there is a tremendous absence of qualified fire risk assessors. So my first question would be: was it a qualified fire risk assessor who made that judgment, or was it somebody who thought they were qualified but who actually was not? Therefore, if you are not quite sure—and we have all done it—in the current climate you obviously give a fail. What professional reputation you have depends on it. I put it to the Minister that this connects to the whole skills and training agenda, in that we do not have enough qualified people with the right skills to do the assessments on the basis of which those huge bills are then handed out.

I think that is really important. It is also important to consider what actual training we are talking about for these fire risk assessors. I presume that, apart from the necessary professional qualifications, they will also act to a code or a guidance note, or something that will be issued by the Secretary of State as part of the regulations that are otherwise in the Bill. That comes back to the question of what the basis is of the guidance that will be given to a fire risk assessor about these inevitably marginal and grey areas of what is and is not risky.

The Minister assured us some time ago that the EWS1 was no longer a factor in these things—but we know that not every insurance provider has come to the same decision. Therefore, it may still be the case that some insurance and mortgage providers will say, "I'm not going to provide you with the finance unless we see an EWS1, or something equivalent to it". We go around in a circle here: the shortage of qualified people with proper guidance to make decisions in difficult and marginal cases means that less qualified people take the safety-first line, which is causing a lot of pain and work to be commissioned unnecessarily. In other words, we could safely afford to cut it finer if we had sufficient trained and qualified risk assessors acting with proper guidance provided by the Government.

I hope that we keep the level of risk as low as it is sensible to do. Secondly, I hope we invest a bit more time in making sure that, among the professionals making these decisions, there is a better common understanding of the phrase "what is sensible and proportionate to do"—of what that line is and where it gets drawn between a balcony that needs to be replaced and one that does not. There are some deep issues here that go far beyond whether leaseholders do not particularly like a decision about a set of balconies in one place or another.

I will just connect this to the situation in Salford, which the noble Baroness, Lady Fox, also brought to our attention. I believe my noble friend Lord Foster did so as well. A large number of residents of those blocks have had all their cladding—and therefore insulation—stripped off and are waiting for an outcome. There are some unintended outcomes lingering on from decisions taken on fire risk. I referred in our previous session to the fact that buildings have more ways of killing you than simply through fire. We need to make sure that, in eliminating one risk, we do not create others as deadly.

Lord Khan of Burnley (Lab): My Lords, I shall briefly speak to Amendment 115A in the name of the noble Baroness, Lady Fox. It is good to see her put it in—I think she is becoming an expert on tabling amendments now. As other noble Lords have said, including the noble Earl, Lord Lytton, the right reverend Prelate the Bishop of St Albans and the noble Lord, Lord Stunell, this is an issue that needs clarifying in relation to subjectivity, objectivity and proportionality. Just to quote the words of the noble Lord, Lord Stunell, this amendment, if accepted, would alleviate the marginal and grey areas.

I thank the noble Baroness, Lady Fox, for her top tips on keeping warm—I shall print them out tonight and use them in future. I wanted to ask the Minister whether the Government have made an assessment of how many balconies pose a material risk and are in need of any remedial works. Is she aware of any new buildings with balconies that do not comply with fire safety regulations? I look forward to her response.

5.30 pm

Lord Greenhalgh (Con): I have tricked the noble Lord, Lord Khan—I am responding to this one. First, we have not gone around counting every balcony in the country. Given that there are 7,500 medium-rise buildings and about 12,500 high-rises, we have other things to do with our time.

I met the devolved Administrations of Wales and Scotland today; we need to know roughly how many buildings require remediation and then do it as quickly and effectively as possible. There is some way of knowing that with high-rises, and through surveys we have a pretty good grip on the number of buildings where remediation may be required—it is actually very few—as well as mitigation. Increasingly, we want to see more innovation so that we can avoid costly remediation wherever possible.

The noble Baroness, Lady Fox of Buckley, is very clever. I have been trying to distil amendments in up to three words—I have got it down to two on one occasion—and it would be easy to say that this is the "balcony" amendment, but I do not think it is. It is the "proportionality" amendment. It is fair to say that this was addressed when, on 10 January, my right honourable friend the Secretary of State set out some building safety reset principles. He said:

> "We … need to ensure that we take a proportionate approach in building assessments overall … too many buildings … are declared unsafe, and … too many … have been seeking to profit from the current crisis."—[*Official Report*, Commons, 10/1/21; col. 283.]

[Lord Greenhalgh]
The noble Baroness was very eloquent in giving examples of precisely that—where, essentially, an industry is fuelled by trying to profit at the expense of leaseholders, very often, who do not have the shoulders to bear the costs being charged to them. That is why we are putting a number of protections for leaseholders in this Bill, for both cladding and non-cladding costs, which we have discussed in other groups, and the very strong principle that the polluter must pay wherever possible, as we discussed in an earlier group today.

The Government have taken three measures with regard to proportionality. It is important to reflect on them, because they are easily forgotten as we debate things. None is in this Bill; I will turn later to some things that are. First, we withdrew the consolidated advice note of January 2020; that was seen as a driver of decisions to remediate without thought on too many occasions, when it was not necessarily the right way to go. Secondly, after withdrawing the advice note, the publicly available specification was introduced, produced by the British Standards Institution; it will enable fire engineers and other experts to have a consistent and auditable assessment of risk—basically, grading whether something is high, medium or low—of the external wall systems, which sometimes include balconies and sometimes do not. That is an important tool to have to be able to start having sensible risk-based assessment of external wall systems.

Baroness Fox of Buckley (Non-Afl): I have one query on that. I thank the noble Lord for his response, but on the recommendation of high, medium and low risk, everything I have read on this suggests that with high or low risk we know where we are, but medium risk says, "There is some risk, but don't worry, you don't need remediation". The point made in everything I have read is: who will go along with that? If you say that there is medium risk—this is where risk aversion comes in—there is concern that the assessors do not have the expertise, as has been referred to, and may say, "There is medium risk, but can I go home and sleep at night, because I am not quite sure what that means? There might be a risk." That is where blame avoidance comes in. This comes back to the assessors; I do not think that will solve it.

Lord Greenhalgh (Con): I did not say that it would. The noble Baroness intervened too early; that is the problem with interventions. No one was saying that any single thing—

Baroness Fox of Buckley (Non-Afl): I was just trying to clarify something—that is good.

Lord Greenhalgh (Con): The noble Baroness raises the issue of balconies. I am talking about a system that looks at the external wall system. We then have the Fire Safety Act, which we took through this House. I have all the scars to prove that it was not an easy matter to get that three-clause Bill past a number of the people here today. We got it on the statute book, however, and it will commence shortly with a building prioritisation tool.

The noble Lord, Lord Stunell, spoke very eloquently on fire risk assessments. They will look at the risk in the round, going beyond external wall systems and including balconies, the external walls, the flat entrance doors and whether they are fire doors, et cetera. Fire risk assessors will have to look in the round, consider whether there are enough ways to exit the building and come up with a series of action steps, which will often be very small, that can make a building safer. It is right that we make sure that those risk assessments are done by competent professionals. They need to be kept up to date. They will come up with a series of actions that can be taken. Not all of those will require huge expense, but they will make the building that little bit safer.

I think noble Lords need to see this as a package. In answer to questions raised, the proportionality agenda does not have a silver bullet as an answer, but there are a number of things that the Government are encouraging that will lead to a more proportionate approach. PAS 9980 refers to materials on a balcony that may be combustible, such as timber decking, which may be relevant even if the construction of the balcony itself includes materials that present minimal or no risk. The current position, with the inclusion of balconies in the fire safety order and the professional guidance in PAS 9980, is all about encouraging that proportionate approach.

The competence of fire risk professionals is a relevant factor and ensuring that is a major objective of the Bill. We are bringing about greater professionalism in the sector through Clause 129, with a requirement that anyone appointed to undertake a fire risk assessment must be competent. That stipulation is in the Bill, in answer to the noble Lord, Lord Stunell. A lot of this is not happening in the Bill, but there are clauses which aim to drive competence, which directly answers questions raised in this debate. That is what we have to look to, rather than necessarily seeing this specific Bill as the answer in isolation. We must look at the measures the Government are taking in the round.

Baroness Fox of Buckley (Non-Afl): My Lords, I thank all noble Lords who have spoken. My heart was in my mouth when the noble Earl, Lord Lytton, spoke, because I thought, "He knows what he's talking about and I'm not sure I do", so I was glad that he recognised something in what I said on the professional point about materials and so on. I am not an expert but I know lots of people who work in this area.

My concern is that there are blocks of flats all around London whose residents are being told that the balconies have to be remediated, but they have passed their fire risk assessments. This is basically coming from freeholders acting in a precautionary fashion, as in the Dorset example I used. They have said, "We think some of these balconies are unsafe. We're going to take them down and you have to pay." They are using safety as the basis but they should have maintained the balconies. There is great concern about the balcony question but I have been caught out by the Minister, because this was really an attempt to talk about proportionality. That is what I really wanted to do. Although I keep hearing about balcony scandals, that was my main focus.

We want to keep people safe all the time, but the right reverend Prelate the Bishop of St Albans made the important point that safety has a cost. Carrying on

from our Committee meeting the other day, I was talking about a cost-benefit analysis and always thinking about balancing. If you want 100% safety, you would never leave the house. We also need a sense of proportionality towards fire, which is still very rare. People are not dying of fires in their thousands, in this country. I want to get the right balance.

The noble Lord, Lord Stunell, made a very important point, on which I have been trying to get balance. As a leaseholder, I have tried to speak on behalf of leaseholders a little, because I thought I could make a valid contribution. I am not suggesting that every time a leaseholder says something, we all have to believe it. Leaseholders are not experts, and their fears and concerns should not make the decision, but sometimes it is worth asking them what they know or think and part of the Bill suggests that. The objective point about competence is key. I am suggesting that, because of blame avoidance, fear of litigation and measures being brought in by the Bill, people will always take the most risk-averse decision. That could be at the expense of leaseholders and will not necessarily improve safety.

I shall withdraw my amendment, but I hope it has contributed to a broad discussion to which we can return on Report to make sure that the Bill does not create more problems than intended.

Amendment 115A withdrawn.

Clause 129 agreed.

Amendments 116 to 119A not moved.

Clauses 130 to 133 agreed.

Amendment 120

Moved by ***Baroness Jolly***

120: After Clause 133, insert the following new Clause—

"Consultation on staircase regulations

The Secretary of State must, within 6 months of the day on which this Act is passed, consult on regulations requiring staircases in all new build properties to comply with British Standard 5395-1."

Baroness Jolly (LD): My Lords, I declare my interest as president of the Royal Society for the Prevention of Accidents. I shall try to be brief.

The Bill was introduced to avoid life-changing horrors, such as we witnessed with the Grenfell fire. "Safety first" has now become our general watchword. Falls on stairs are hidden killers, every year affecting the lives of over 700 families in England. A further 43,000 people are admitted to hospital, often with life-changing injuries. Anyone who has cared for someone who is perhaps advancing in age, with poor balance, eyesight or both, knows just how much of a worry a trip down the stairs can be. Many older people acknowledge the problem and choose to make their retirement home a bungalow—boring maybe, but safe.

I tabled my Amendment 120, with cross-party support, to ensure that staircases in our homes are built to the correct industry standard. It calls for the Secretary of State to consult on regulations requiring all new-build properties with staircases to comply with British Standard 5395-1 within six months of the Bill becoming an Act. However, when it was introduced, it was never enshrined in law; it exists only as a standard and, as such, only a recommendation. This amendment has the backing of the housing industry, because building firms recognise that the existing BS 5395-1 would make stairs safer at little excess cost. The fact that such an industry standard exists but is not universally used is really quite beyond belief. Countless lives will be saved if we simply enshrine this standard in law. Very few amendments to Bills are as uncomplicated, straightforward and beneficial as this.

5.45 pm

Stair accidents are a silent killer because, by their very nature, they do not make headlines: they happen one at a time, usually to older people, and they are so commonplace that we take them for granted. By outlawing the use of unsafe stairs in new builds, this problem will be steadily weaned out, and a fresh page turned. I recognise that retrofitting every home is not realistic, which is why I am focusing on new builds. This is straightforward; it will cost very little more, but will save countless lives.

There is no doubt that this amendment would save lives, and I hope that the Minister will support it. If he feels unable to, I hope he will share with the Committee a compelling reason why he will not give the amendment his blessing. I would then be very grateful if he would meet with me and others to explore his alternatives. I beg to move.

The Deputy Chairman of Committees (Baroness Watkins of Tavistock) (CB): My Lords, the noble Baronesses, Lady Harris of Richmond and Lady Brinton, are taking part remotely. I invite the noble Baroness to speak.

Baroness Harris of Richmond (LD) [V]: My Lords, I support Amendment 120 in the name of my noble friend Lady Jolly and other noble Lords and would just like to make a few comments.

At Second Reading, we heard how important it was to ensure that BS 5395-1 was accepted. I am disappointed that the Government have not yet made a concession on this. In fact, there is no mention at all of stair safety in the Bill. In the 2010 legislation, the standard was put in place only as a recommendation, as we have heard. It is now time to put it in this Bill as a requirement and ensure that all new buildings comply from 2024, as my noble friend Lady Jolly has indicated. We know that hundreds of lives may be saved every year—estimated at about 700 in England alone. If this standard were adopted for all buildings, we could prevent the hospitalisation of around 43,000 more people. Think what amount of money that would save in costs just to the NHS, never mind the trauma suffered by the families of those injured.

I ought to declare a small interest here, as I have increasing difficulty using the stairs in my own home, as they are both steep and deep. In fact, I am having to have another handrail put in so that I can use them safely.

It is vitally important that stairs in high-rise buildings, indeed any communal building, are of sufficient depth and width to allow numbers of people to use them

[Baroness Harris of Richmond]
simultaneously in an emergency. We know that the horrors of the Grenfell Tower disaster were exacerbated by totally impractical stairs in the building. I cannot believe that any building company or architect designing a new high-rise building would rely on just one staircase for multiple flats. That would be a complete dereliction of duty, in my opinion. In the event of an outbreak of fire in a high-rise building, there will inevitably be a rush to get out down the stairs, as lifts will be out of use. It is therefore inevitable that people will fall. BS 5395-1 should be put into law during the passage of this Bill and I urge the Minister to accept this immediately.

Baroness Brinton (LD) [V]: My Lords, I have signed Amendments 122, 123 and 124 in the name of the noble Lord, Lord Foster, and will come to them in a minute, but I wanted to start by supporting Amendment 120, laid by my noble friend Lady Jolly.

As the noble Baroness, Lady Harris, has said, BS 5395-1 ensures that staircases in new-build homes have the best possible ratios between treads and risers. This is especially important as many new-build homes are built to fewer square metres than recommended, resulting in staircases being squeezed into narrower spaces. There is only one consequence of that: stairs become steeper, and too often even fail to have a handrail all the way up because of the narrowness of the stairs. That is a recipe for falls, whether for children, the elderly, or the disabled.

Let me tell noble Lords, it is extremely scary to have to come slowly and painfully down steep emergency exit stairs, holding a handrail, with a stick in your other hand, while others race past you. On one occasion, someone tripped on my stick as they tried to race past me, resulting in both of us falling—luckily, only a couple of steps. Had it been at the top of a run of 10 steps, not only would we both have hurt ourselves badly but others following would probably have fallen over us too. Building standards are there for a reason and should be a minimum for new builds. Building in safety is part of Hackitt's golden thread.

Elderly and disabled people using a stick, or sticks, on a narrow and steep staircase, possibly with no handrail, will be at serious risk of falls. Special fracture clinics report that falls in the vulnerable often lead to life-changing injuries, serious muscle loss while they are in hospital, loss of confidence and, sadly, earlier deaths. So it does not just cost lives; it costs quality of life, and it also costs the NHS and social care millions every year in extra treatment and care support.

I now turn to the other three amendments in this group in the name of the noble Lord, Lord Foster, to which I have added my name. One of the worrying aspects of fires in high and medium-rise residential blocks is the number caused by faulty or defective installation. Home Office data shows that this number is growing, whether from the cables themselves or from the shoddy work on party walls that breaches compartmentation, both of which are completely unacceptable. These amendments address that.

Amendment 122 requires leaseholders to ensure the safety of electrical installations in high-rise buildings. Amendment 123 specifies that leaseholders in mixed tenure high rises have to ensure the safety of their electrical installations. Amendment 124 places a specific responsibility on social landlords to do the same. The noble Baroness, Lady Pinnock, spoke eloquently in the first group this afternoon about the problems of breached compartmentation and quoted from Dame Judith Hackitt's report. The same applies here, but currently the same responsibility does not apply to different types of landlords and leaseholders, and this is an unacceptable loophole. The amendments from the noble Lord, Lord Foster, remedy that.

The requirements in these amendments make it clear that leaseholders and landlords have a duty to ensure that installation works must be safe. Surely, that is not too much to ask. Surely, all these various types of flat should have a current electrical installation condition report, which not only demonstrates that they, the landlords and leaseholders, have taken care to ensure the safety of residents and the buildings they live in but gives them the same protection as those of flats with private tenants. Dame Judith Hackitt's golden thread does not just apply to the construction industry; it also applies to those with responsibilities for the buildings once they are lived in. Most tenants are not aware of the distinction between different types of landlord and leaseholder in building safety law. Surely, our law should be consistent.

Baroness Finlay of Llandaff (CB): My Lords, I was delighted to see this amendment from the noble Baroness, Lady Jolly. As she pointed out, more than 700 people die each year from falls on the stairs. But in addition to this, 43,000 people are admitted to hospital. Falls are tragic and common, but they do not often make the news. Someone is estimated to fall on stairs every 90 seconds, and falls on stairs account for a quarter of all falls in the home. Obviously, when stairs have an inadequate guardrail, the trauma sustained is even worse, as it is when they are a long flight of stairs.

The most common injury is a fractured hip, but the most costly to the country is a spinal cord injury, which is absolutely devastating. The lifetime average cost of a spinal cord injury is £1.12 million, which works out at a total of £1.43 billion for all the accumulated spinal cord injuries. These are staggering figures, yet the British Standard, which has been referred to, is associated with a 60% reduction in falls. It has existed since 2010 and has been thoroughly tested, evidenced and assessed by industry and government. If we are to have homes that are built as homes for life, we need stairs in them that are safe. If workplaces are to be safe, they must have safe evacuation stairs as well.

As they grow older, many people need to install a stairlift in their home to enable them to go up and down stairs safely, particularly when they have items to carry. Many homes are still being built with stairs too narrow to safely install a stairlift on. In the long term, the British Standard is a very good investment for the nation.

I know that the Minister is aware of all of this and has been working with RoSPA to come to a solution. I look forward to hearing an update from him on this matter, because RoSPA and those of us who signed this amendment honestly believe that this one action could save more lives than anything else in the Bill.

Lord Foster of Bath (LD): My Lords, before I remark on Amendments 122, 123 and 124, I express my surprise that we still have arrangements in our House whereby those who wish to contribute virtually do not appear to have the same flexibility as the rest of us to choose when they speak. I feel very sad for my noble friend Lady Brinton, whose support for these amendments I am enormously grateful for. She has to speak before those amendments have even been moved. I hope that the authorities will have a look at this.

I will make two apologies to the Committee. First, I have no Latin motto to offer the Minister on this occasion, unlike the previous one. Secondly, I fear that I cannot be quite as brief in speaking to these three amendments as I was when I spoke to the earlier one. As I said on the amendments that I previously raised, however, the number of fires in high-rise blocks with 10 or more flats has risen considerably year on year—this has been repeated subsequently by a number of noble Lords—with a rise of nearly 20% in the last two years. We also heard that, as I said, 53% of those fires are related to electrical faults.

In the debate on the previous amendment, I referred to electrical faults caused by faulty electrical appliances purchased online. These three amendments in my name raise the issue of faulty electrical installations. We can find ways of dealing with electrical appliances—I suggested a way of doing this in the previous amendment—but in building new blocks, electrical installations are installed and checks carried out on them, quite properly, to ensure that they meet all the necessary safety requirements.

I was pleased that, when I had the opportunity as a Minister for a brief period in the department, I was able to introduce some changes to those regulations to improve still further the safety of installations in new buildings. As we all know, however, over time those installations can be degraded; indeed, some can be damaged by work carried out by overenthusiastic DIYers and for a whole series of other purposes. It makes a great deal of sense to ensure that, from time to time, there are periodic checks of the electrical installations in flats in high-rise blocks—indeed, I would argue, in all properties.

6 pm

I am very lucky that, when I am in London, I live in a flat that I rent from a private owner, who is required under the Electrical Safety Standards in the Private Rented Sector (England) Regulations 2020 to have the electrical installations in my flat checked every five years by a qualified person. That landlord is also required to provide me, the occupant, with a copy of that report. It means I am fortunate: I am a private tenant and my landlord has to undertake these periodic safety checks, so my neighbours and I can have confidence that the electrical installations in my home are safe and will continue to be so over time.

However, a fire in a tower block does not check on the ownership or residency status of those it threatens, so it would be reasonable to assume that similar requirements through regulations apply to all flats, regardless of the basis of occupation. Some blocks may be entirely occupied by private tenants, some by leaseholders and some by social housing tenants. Quite often, blocks have mixed tenure. To ensure the safety of all from faulty electrical installations, all properties in such blocks, regardless of the status of the occupants, should obviously have periodic checks of the installations by an appropriately qualified person, leading to an electrical condition report and, if need be, a requirement for action to resolve any issues identified. However obvious that may seem, many noble Lords will, I suspect, be surprised to learn that, except for private tenants such as me, there is no regulatory requirement for this to happen. Some freeholders may require leaseholders to have such checks and report the results as part of the lease; some do but, sadly, many do not. There is certainly no legal requirement that it happens.

Perhaps more surprisingly, while tenants in privately rented property get this protection, tenants in socially rented properties do not. Of course, some social landlords —Southern Housing is a good example—carry out periodic checks of electrical installations in their properties, but it is a small minority, as the evidence shows. Only 10% of social housing providers have in-date electrical installation condition reports for all properties; 90% do not.

Of course, social landlords have some obligations in this area and, no doubt, the Minister will refer to them. There is a requirement under the Landlord and Tenant Act 1985 to keep electrical installations in repair and, under the Homes (Fitness for Human Habitation) Act 2018, they have to keep them free of electrical hazard. Neither, however, requires social landlords to hold a valid, in-date electrical installation condition report. As I have just said, the vast majority do not do so voluntarily. Therefore, the requirement—and the safety provided by it—which applies to the privately rented sector, does not apply to social housing properties.

At the same time, in the Government's own social housing charter, they have said unequivocally:

> "Safety measures in the social sector should be in line with the legal protections afforded to private sector tenants. Responses to the social housing Green Paper showed overwhelming support for consistency in safety measures across social and private rented housing."

Indeed, the Minister said at Second Reading:

> "The Bill is unapologetically ambitious, creating a world-class building safety regulatory regime that holds all"—

I emphasise "all"—

> "to the same high standard."—[*Official Report*, 2/2/22; col. 916.]

Yet existing legislation is, as I described, deficient in this respect, and it does not achieve the Minister's stated aim. My amendments rectify this: all three require that leasehold properties and social housing properties in HRRBs should have valid electrical installation condition reports providing those residents with the same protection as those required for privately rented tenants.

It is very simple. Privately rented sector tenants get protection; all the rest currently do not. The Minister says that everybody should have the same level of protection; these amendments seek to achieve that, and I look forward to hearing the Minister accept them.

6.06 pm

Sitting suspended for a Division in the House.

6.13 pm

Lord Jordan (Lab): My Lords, I, too, declare an interest as vice-president of RoSPA. I shall not take too long, however, because those who have already spoken have made a watertight case for Amendment 120 to be included in the Bill.

The truth is we do not have to convince the Minister, certainly not of the value of this amendment. He said enough at Second Reading for us to know that he would like the life-saving potential of this amendment to be built into every new house. But we have to convince him that its capabilities to prevent injury and death should be in the Bill now. He must know that every alternative to these words going into the Bill now means delaying the introduction of measures that would help prevent injury and death. It would be a fatal delay because, when we are certain that today, tomorrow and the day after, people will fall downstairs and be seriously injured or killed, we see the tragic implications of delaying this measure.

6.15 pm

This amendment is a sure and safe step forward in the fight against preventable falls. The housebuilding industry itself acknowledges it has seen a 60% reduction in falls where this particular standard, BS 5395-1, has been applied. I do not need to remind the Minister that the Government are engaged in one of their biggest housebuilding programmes ever. Let us make sure that this vital safety measure is an essential mandate for anyone who is taken on to help fulfil the Government's targets. Let us ensure that those developers that have built things they should be ashamed of will not be allowed to build unsafe stairs again.

We are all aware and appreciate that the Minister is overseeing the enormous job of putting together measures that will prevent the reoccurrence of another Grenfell. Although he has to deal with an extraordinary tragedy, I ask him not to walk past commonplace tragedies. They, too, cause people injuries and death and, on the issue of this amendment, 10 times more. Minister, we know you believe in this amendment. Accept it in the Bill now and advance the life-saving legacy that the Building Safety Bill can be for generations of house occupiers to come.

Baroness Young of Old Scone (Lab): My Lords, I will briefly speak in support of Amendment 120—I will call it the safer-stairs amendment, as I know the Minister likes short names for amendments—to which I have added my name. I will not repeat the excellent evidence and support that has been given by several speakers already.

It is simply to say that this will potentially become more of a problem, because we are all getting older—and we in this House should know that more than anybody else. Also, because of the wonderful feeding and other benefits we have given our children, their feet are bigger. With bigger feet and advanced old age, they will become a complete and utter liability, if we continue to build the poxy little stairs, with inadequate surfaces and terrible handrails, that we see all too often in both public and private buildings. This is something that not only would the Minister welcome, but housebuilders are saying they are keen to get ahead with, but they are not willing to do it unilaterally. Housing providers, both public and social, are keen on it, as are fire chiefs and local authorities. It would not cost any more, is absolutely needed and will be needed even more.

One of the endearing things about Governments—although as a staunch Labour supporter, I find it difficult to think of a Conservative Government as endearing—is when they say, "Yes, that is a very good idea. Let's just do it". This is an opportunity for the Government to say that of this Bill now, to avoid deaths, injuries and life-changing circumstances, particularly for older people, which are happening as we speak. There is probably somebody falling down stairs in the House of Lords right now. Minister, if you want us to be fulsome in our praise, put this in the Bill.

Baroness Neville-Rolfe (Con): My Lords, safety has a cost, as the right reverend Prelate the Bishop of St Albans reminded us. We have to decide where we should require money to be spent. I will talk a bit about the electrical safety and standards provisions and then come back to staircases.

I know there is a shortage of electrical experts able to carry out these assessments. Our own electrician, who is very expert, cannot do the assessments we are being asked to provide for social housing and other blocks of flats—for example, my son has a let flat, because he is an academic. The electrician says that he needs to go on a week's course and, as a busy self-employed person, he does not have time. The lobbying organisation Electrical Safety First, which tried to get me to support Amendments 122 to 124, because I am keen on safety and looking after the consumer, seemed relatively unconcerned about this. Moreover, the amendments are wide-ranging and uncosted. As noble Lords will know, I worry a lot about the shortage of skills in the industry.

These amendments would further jeopardise housing supply, this time including social housing, and leave flats empty. Social housing landlords will be doing this sort of thing anyway post Grenfell, I think. For similar reasons, I am against the wide-ranging Amendment 121.

I am much more relaxed about Amendment 120, especially as it includes a consultation provision. The noble Baroness, Lady Jolly, and I did the Consumer Rights Act together; she is right to think forward to the needs of an increasingly ageing population, which is exactly what this amendment does. We also heard from the noble Lord, Lord Jordan, and the noble Baroness, Lady Young. The huge potential cost to the NHS of accidents in an ageing population is also a very strong argument for action, as we heard from the noble Baroness, Lady Finlay of Llandaff.

This is Committee, so I am sure the Minister will reflect further, but if one can find a way—without imposing significant costs—of making staircases safer, that could be extremely useful.

Lord Whitty (Lab): My Lords, I added my name to the amendment from the noble Lord, Lord Foster, which the noble Baroness, Lady Neville-Rolfe, has just disagreed with. Those three amendments seem to me an essential guarantee of safety for the tenants, leaseholders and others who occupy buildings that are owned by what are broadly social landlords.

The noble Baroness is correct that the normal training of electricians does not include an ability to do this, but that needs to be addressed. I contrast it with the gas situation. Social landlords are obliged to have a gas inspection regularly and, by and large, they do it. Gas suppliers both train their people in that respect—it is an essential element of a gas fitter's training—and, certainly in my experience of London boroughs, they carry it out pretty regularly and effectively. I do not see why electrical suppliers should not be in the same situation.

As has been said, over half of fires are ultimately caused by electrical faults; most of those are in appliances, but if those appliances are fitted to an installation and a system whereby the defusing mechanism does not work and the fire goes back into the wall and beyond, you have a terrible and inaccessible situation. That is exactly what the more serious fires caused by electrical faults are. There is clearly a responsibility on the manufacturers and retailers in terms of the quality of the appliances, but there is also a responsibility on those responsible for the buildings to ensure that there is a proper inspection of the whole electrical system. That needs to be addressed; it is an anomaly that gas is different from electric. There was a time when the biggest accidents were gas—now they are predominantly electrical. I hope that these three amendments are carried.

On staircases, I agree with the amendment spoken to by the noble Lord, Lord Jordan. I would also say—somebody referred to it earlier—that there are new high-rise and medium-rise buildings that have received planning permission with one staircase and one means of escape only. That is perfectly legal at the moment. It should not be, but I know of at least three examples in London boroughs which have been passed because they say that there are alternative means of escape—in other words, a lift. Most of us are advised not to use a lift in a fire, and it is pretty much built into our psyche, so that is not a sufficient reason. If we are addressing the staircase regulations, for medium-rise and high-rise buildings, two means of escape without involving an electrical lift need to be written in. I support all the amendments in this group.

Baroness Hayman of Ullock (Lab): My Lords, it has been an interesting debate about two very different but important aspects of safety. I want first to talk about the Safer Stairs campaign introduced by the noble Baroness, Lady Jolly. She and others made it clear that falls on stairs are a huge issue, but unfortunately it seems continually to go under the radar when it comes to what to do to stop so many people suffering often catastrophic falls.

As we have heard, the British Standard has existed since 2010. It has been rigorously tested by industry but has never been made a legal requirement. That is strange: we have a standard, but we do not have to bother with it—that seems a very odd way to go about things. There does not seem to be anything to stop the Government putting this standard into primary legislation. There is a precedent for doing so: the ban on combustible materials went into the Building Regulations 2010. My noble friend Lord Jordan put it in a nutshell when he said that, if the Minister were to accept the amendment, we would have the opportunity to end day-to-day tragedies—the smaller stuff. Kicking the can down the road will cost lives. If we do not address it now, it could be many years before any new ombudsman tackles the problem. If it is 10 years before we get a grip on this, that is 7,000 more unnecessary deaths.

The noble Baroness, Lady Jolly, and the other signatories to the amendment therefore have our strong support—as well, it seems, as that of many noble Lords, not just in Committee today but at Second Reading. This is the Minister's opportunity to do something that would genuinely make a huge difference. He should accept the amendment and, as my noble friend Lady Young of Old Scone said, just do it.

We also fully support the amendments tabled by the noble Lord, Lord Foster, which aim to improve the safety of electrical installations. We have heard that the number of fires in high-rise residential blocks has risen consistently year on year, which indicates that we need to do something practical to try to stop that number continuing to increase. Safety parity for all renters was mentioned. As we have heard, it cannot be right that in a mixed-tenure block a private renter will have electrical checks carried out by law while the social tenant living next door will not. As the noble Lord said, a fire in a tower block does not check the tenancy status of those that it threatens.

I will briefly reference my noble friend Lord Whitty's point about how wrong it is that there is only one escape staircase in blocks now. A planning application was recently overturned because it was challenged on that. As part of the response to Grenfell, the Government really need to get to get to grips with this. I know that this is a planning issue, but I hope that the Minister will take this away.

6.30 pm

In the social housing charter, the Government said:

"Safety measures in the social sector should be in line with the legal protections afforded to private sector tenants. Responses to the social housing Green Paper showed overwhelming support for consistency".

We have heard that social landlords are required to keep electrical installations, but this is general and they do not have to hold a valid electrical safety certificate, as private landlords do. I find that disparity quite extraordinary. I appreciate what the noble Baroness, Lady Neville-Rolfe, said about training and numbers of people, but, if you can do it for the private sector, why can you not do it for the social sector? It really needs to come together.

Baroness Neville-Rolfe (Con): We had the tragedy of Grenfell, and I am worried that we are doing a lot of different things in the Bill—some of them are very major—and are now adding on extra things. Individually, things such as the proposals on staircases and electrical safety might have helped to prevent that tragic fire, but each of them has a cost. So it is obviously up to the Minister to look at them in the round and work out what is needed to try to ensure that we have a safe environment. I now support what was said on staircases, because a very good case was made and I am always open-minded, but I am a bit worried about these all piling up and separately chasing the same thing. I have

[Baroness Neville-Rolfe]
found that, whenever there is a disaster, people come up with several things, and if we had only done some of them 10 years ago we would not have had Grenfell at all.

Baroness Hayman of Ullock (Lab): I appreciate where the noble Baroness is coming from, but I still think there should be parity across the board going forward. Thinking about the Government's levelling-up White Paper, if we are going to level up, surely parity should be part of that, so that all renters have the same protections.

I will sum up because we still have a lot to get through today. Given the nature of the discussion and the concerns that social housing landlords rarely carry out the certification—the problem is it is not mandatory, so it does not happen very often—I hope the Minister has listened to all of this debate. There is a lot for him to take back to his department.

Lord Greenhalgh (Con): My Lords, it has been an absolutely fascinating debate. This is very much the additional safety measures group—that is three words; you cannot do better than that. I thank the noble Baroness, Lady Jolly, in particular for raising this important issue, as well as noble Lords who have spoken about the Safer Stairs campaign. I am sorry that I did not hear from my noble friend Lady Eaton, but she could easily have joined forces with everyone here.

I have been invited to say, "Just go for it" or "Just do it"—it is almost like a Nike ad in this House—but I think that it is a question of how you go for it. I met with the chief executive of RoSPA, Errol Taylor, in this House, and we have a plan that is important to share with noble Lords. As my officials have said, it would be highly unusual, even though people are grappling for precedents, to include in an Act of Parliament something that is as detailed as this, referring to a specific technical standard.

We are not graced by the presence of my noble friend Lord Young, who was Minister when the building regulations were passed. It is possible that this existing standard, BS 5395-1, could be included in an approved document. Indeed, it is in *Approved Document K*. I have received a letter from RoSPA making that proposal, which we will take to the next meeting of the Building Regulations Advisory Committee—BRAC—which advises on these things. We have effectively brought forward the next meeting, which was scheduled for September, as I know that noble Lords are very impatient.

We brought forward that meeting, which essentially is an emergency BRAC, to 16 March. That is how fast we move in my department. You meet someone on 23 February, you set up an emergency meeting on 16 March and you get an answer. Let us see whether the route of updating the approved document is an elegant way of fulfilling the desires that have been laid out by so many noble Lords. We all have elderly parents, or some of your Lordships may well; I do not. No, I take that back—perhaps we do not all have elderly parents. I suddenly realised that that was probably not the thing to say. [*Laughter.*]

Baroness Bloomfield of Hinton Waldrist (Con): Shall I take over?

Lord Greenhalgh (Con): No.

Baroness Jones of Moulsecoomb (GP): Has the noble Lord been drinking?

Lord Greenhalgh (Con): I have not been drinking. I have had some Polos. In fact, I am not drinking anything at all.

I move on to the next campaign, which is electrical safety first. In fact, I am being bombarded with emails and letters. I promise noble Lords that I have had the briefing document from NAPIT—it followed up even today to check that I had it. That is also an incredible campaign.

I have to say that I particularly enjoyed the way the noble Lord, Lord Foster, introduced these amendments. His Amendments 122 and 123 have both been brought forward to ensure electrical safety in homes. I thank the noble Lord for raising this important matter and for his comments on the matter at Second Reading, but I am afraid that the Government cannot support these amendments.

We recognise the intention of these amendments, but we believe that they place a disproportionate burden on leaseholders in high-rise buildings. Under Amendment 122, high-rise leaseholders would be required to obtain and keep up to date an electrical installation condition report—an obligation we place on no other homeowner. Under Amendment 123, that obligation would also be placed on leaseholders who live in mixed-tenure high-rise buildings. "Mixed tenure" is defined as buildings where in addition to leaseholders there are also social housing or private rented tenancies. We believe that leaseholders living in their homes have a fundamental motivation to ensure that their home is safe and will take steps to ensure the safety of electrical installations. Therefore, we do not currently believe there is sufficient evidence to place further burdens on leaseholders in high-rise buildings.

I also assure the noble Lord that the intention of ensuring that residents take an active role in ensuring the safety of their building has already been met in the Bill. The Bill imposes a new active duty on residents not to create a significant risk of spread of fire or structural failure and empowers the accountable person to enforce these duties through the courts. These are systemic changes that are broader in scope than specific requirements for an electrical installation condition report; they will promote genuine collaboration between all parties in keeping their building safe.

The Government thank the noble Lord for raising this important point and will highlight in our guidance to accountable persons and residents the importance of considering electrical installations as part of their building safety decisions. With that assurance, I must ask him not to move his amendment.

On Amendment 124, I thank noble Lords for raising this important matter, but I am afraid that the Government will not be able to accept this amendment. However, I can assure them that their intention is being met by the Government. In the *Social Housing White Paper* we committed to consult on electrical safety requirements in the social sector, and expert stakeholders participated in a Government-led working group last year to inform

the content of that consultation. The working group considered the mandating of electrical safety inspections in all 4 million social homes, not just those in high-rise residential buildings, as moved by this amendment. The group also considered how to keep social housing residents safe from harm caused by faulty appliances. We will consider whether the best way forward to protect social residents from harm is to mandate checks and bring parity with standards in the private rented sector, and it is important that we work through all the issues to reach the right decision. The consultation will be published shortly.

Lord Foster of Bath (LD): Oh!

Lord Greenhalgh (Con): "Shortly" is better than "in due course".

Lord Foster of Bath (LD): Absolutely.

Lord Greenhalgh (Con): Social homes are already safer than homes of other tenures in respect of electrical safety. In 2019, 71% of social homes had all five electrical safety features compared to 60% of owner occupied and 65% of private rented homes. Under obligations in the Landlord and Tenant Act 1985, social landlords are required to keep electrical installations in repair, and the Homes (Fitness for Human Habitation) Act 2018 requires social landlords to keep homes free of electrical hazards.

With that explanation, I ask the noble Baroness to withdraw her amendment.

Baroness Young of Old Scone (Lab): Perhaps I am the only person in the room who does not know what updating the approved document actually delivers, so perhaps the Minister could give us some information.

Lord Greenhalgh (Con): Effectively, the Building Act 1984 has various approved documents, and Approved Document K would be the relevant document to update, which would then set that standard in building regulations. As the noble Baroness, Lady Hayman, has pointed out, when you build new-build homes, you have to build to those regulations. Does that help the noble Baroness understand what I said? I am sorry I am so unclear; I will do better next time.

Baroness Jolly (LD): My Lords, this has been a really fascinating debate. We have a listening Minister, and it looks as if we have a good outcome. I am sure he will carry on listening and, if he does not listen, I am sure we will carry on trying to talk to him to make sure we get what we would like. He said he has met the RoSPA CEO, and he is very insistent and will not take no for an answer. I look forward to pressing this further with the Minister in due course.

Lord Greenhalgh (Con): Dates?

Baroness Young of Old Scone (Lab): I live in Cornwall, and we do things dreckly. For the moment, I am happy to withdraw the amendment.

Amendment 120 withdrawn.

Baroness Bloomfield of Hinton Waldrist (Con): Before we move on, could I just say we have quite a lot more to get through this evening, and we have a hard stop at 9.15 pm? I do not want to stifle debate, but perhaps we could avoid repeating arguments made by previous speakers in the same group.

Amendment 121

Moved by ***Lord Foster of Bath (LD)***

121: After Clause 133, insert the following new Clause—

"Existing homes: standards

(1) This section applies to domestic properties that have been used as such since before this Act is passed.

(2) The Secretary of State must ensure that—

(a) all domestic properties achieve a minimum standard by 2035, and

(b) those domestic premises that, because of their standard, present a serious risk to the health, wellbeing or safety of people living in them, that the occupant is unable to rectify for financial or other reasons, achieve a minimum standard by 2030,

where practical, cost-effective and affordable.

(3) In this section a "minimum standard" is the achievement by the property of—

(a) Level C on an Energy Performance Certificate issued under section 43 of the Energy Act 2011 (domestic energy efficiency regulations) or any amendment to that section made by the Secretary of State by regulations; or

(b) an equivalent level on any new method of measuring the energy efficiency of properties that may be adopted by the Secretary of State by regulations.

(4) The duty in subsection (2) does not apply to a domestic property where the following exemptions apply—

(a) an occupant or anyone else whose permission is needed for works to be carried out has explicitly refused such permission; or

(b) it is not technically feasible to fulfil the duty; or

(c) the cost of carrying out works to fulfil the duty would exceed £20,000.

(5) The Secretary of State may by regulations add to or change the exemptions referred to in subsection (4).

(6) The Secretary of State may by regulations define the terms "practical", "cost-effective" and "affordable".

(7) In this section "wellbeing" includes the ability of an occupant to keep warm at reasonable cost."

Member's explanatory statement

This Clause requires that existing homes achieve a minimum standard in order to protect the safety, health and wellbeing of occupants.

Lord Foster of Bath (LD): My Lords, I will try my very best to be as quick as I can, as I have tried to in all my contributions. I began my last contribution with concern about the speaking order of Members. Can I just say that it was particularly disappointing to have to start speaking for this amendment knowing that, already, the noble Baroness, Lady Neville-Rolfe, had indicated she will not be supporting it? I hope that by the end of my remarks, she might change her mind. I give way.

Baroness Neville-Rolfe (Con): I owe the noble Lord an apology. It was my fault for getting it in the wrong order. I have been trying to be on the other Bill as well.

Lord Foster of Bath (LD): The noble Baroness is forgiven entirely, and let us hope she will come to support the amendment at the end.

The Bill is clear what it is about. It is to make provision about the safety of people in and around buildings and about the standards of buildings. As I said on Second Reading, it is surely relevant to consider the impact of poor-quality homes on the safety of people who live in them, not least given the claim by the Building Research Establishment that millions of individuals and families are living in unhealthy housing, a reality that is having a huge impact on the NHS. Even more worrying is the number of deaths caused by poor-quality homes. We know from the ONS figures that some 8,500 people died in the winter two years ago because of cold housing. They simply did not have sufficient money to keep their homes warm, and often that was because of poor insulation.

We still have in this country over 13.5 million homes that are deemed below what the Government have set as the acceptable energy performance level, that is band C on the energy performance rating. Of those, over 3 million homes are occupied by families deemed to be fuel poor, that is people who even without the rocketing bills that we are now experiencing simply cannot afford to stay warm. Far too many people in this country are having to choose between heating and eating. On Second Reading, I also pointed out, as others have done subsequently, that the removal of unsafe cladding is making the situation worse.

Like the noble Baroness, Lady Fox, I was horrified by the remarks of the group that runs the Pendleton tower block in the note that she mentioned, which gave tips about dressing in layers, wearing a hat and gloves, not drinking alcohol and so on. What the noble Baroness did not point out was that that note came to light in a meeting to discuss increasing the rent for residents in that block. It was absolutely condescending. We need to do more to help the fuel poor, as well as those having to deal with the removal of unsafe cladding. That means improving the energy efficiency of existing homes.

6.45 pm

The Government have said that they want to do that. The *Heat and Buildings Strategy* states:

"To meet Net Zero virtually all heat in buildings will need to be decarbonised. The benefits of more efficient, low-carbon buildings for consumers are clear: smarter, better performing buildings, reduced energy bills and healthier, more comfortable environments."

In the light of this week's very sobering Intergovernmental Panel on Climate Change report, which drew attention to the worsening impact of climate change, and the letters we are all receiving this week from our energy suppliers about increases in our bills, action is urgently needed.

The great thing is that the Government are committed to taking action. The energy White Paper referred to

"our target of reaching as many existing homes as possible at EPC Band C or above by 2035."

On 9 February last year, the noble Lord, Lord Callanan, assured me in an Answer to a Written Question that the Government were committed to this, describing the

"aim for as many homes as possible to be EPC Band C by 2035, where practical, cost-effective, and affordable."

In relation to the fuel poor, the Government want to achieve exactly the same: EPC band C for the over 3 million such homes five years earlier, by 2030. Government commitments are really clear on these points. The fuel poverty strategy, published in February last year, spoke of meeting the target and achieving the outcome of all fuel-poor homes achieving EPC band C by 2030. This has been repeated in Answers to Written Questions, when I have been assured that that really is the Government's aim.

The Government have targets to do exactly what I believe needs doing. To date, however, those targets are not enshrined in legislation, despite the Government increasingly arguing the benefits of putting targets of one sort or another into legislation, just as they have, in a very welcome way, in relation to the Climate Change Act.

Putting the very targets that the Government are committed to in the Bill, as proposed in my amendment, has real benefits. First, it ensures that it will be much harder for a future Government to kick them into the long grass. Secondly, and much more importantly, we have to ensure that we have an industry—this is the point about shortages of people and so on; the noble Baroness is right—that has the skills and equipment and has done the necessary training and preparation to carry this out. When I first proposed this in a Private Member's Bill some time ago, over 100 businesses, including some of the largest companies, such as Mitsubishi, Vaillant and Worcester Bosch, wrote to the Minister, saying

"we require the certainty of statutory targets to give us the certainty that is needed to trigger the high level of investment necessary to achieve Carbon Budget 5 and net zero."

Andrew Warren, chair of the British Energy Efficiency Federation, wrote:

"On far too many occasions the energy efficiency industry has been made promises by Governments, only to see them withdrawn. This has resulted in the laying off of staff, the loss of investment and the closure of factories",

as well as the necessary training not being carried out.

I believe that, to give the industry the confidence it needs to get on with the task and achieve the targets the Government have set it, we should put these targets in legislation and enshrine them in law. That is what this amendment does. There are two ways of going forward: either the Minister can accept this amendment or she can accept the offer I made to the other Minister to accept my Private Member's Bill, which does exactly that. I would be happy with either way. I hope they will support this amendment and that I have persuaded the noble Baroness, Lady Neville-Rolfe, to accept it as well.

Baroness Hayman of Ullock (Lab): My Lords, I also have an amendment in this group. In thinking about what the noble Lord, Lord Foster, just said, there has been a running theme through our debates on the Bill in Committee about the importance of housing standards and how good-quality housing standards can have a positive impact on health and well-being, as well as on fire safety.

Amendments from the noble Lord, Lord Foster, have also drawn attention to the importance of energy efficiency, which is the focus of Amendment 128 in my name. Energy efficiency is important, not just for

safety but from a climate change perspective and for the cost of living, because we know that energy costs will rise dramatically. Energy efficiency is something to which we need to give more attention, in supporting people on how they also can save energy in their homes. The Government should use every opportunity at their disposal to look at how they can improve energy efficiency to reduce costs for consumers.

The noble Lord, Lord Foster, mentioned the Government's *Heat and Buildings Strategy*, which says that, to meet net zero, virtually all heat in buildings will need to be decarbonised. This will bring about reduced energy bills and healthier and more comfortable environments. Again, I am sure that is something we all support. We know energy efficiency will bring comprehensive benefits, not just for climate change but in increased property values. These are all positive aspects of what it can do.

The noble Lord, Lord Foster, also referred to the figures for excess winter deaths caused by cold homes. In a modern, 21st-century society, with everything to support warmth and heating at our fingertips, this should not be happening. In the last normal winter, 8,500 lives were lost because of cold homes. In a society such as ours that is disgraceful and should not be allowed.

We know that low incomes, high energy costs, and poor heating and insulation combine to do this. We need to do more to support insulation. I know the Government do a lot, but we need to focus more on this area. We should not have homes that are unfit for people to survive the cold or incomes that are not sufficient for people to put on the heating.

At this point, I hope the Ministers will both indulge me, if I raise a particular concern—the issue of communal and district heating networks. In the UK, 500,000 homes, 120,000 of which are in London, are heated by communal and district heating networks. They are therefore considered commercial customers, even though the people paying the bills are residents—me for one, in the flat I rent while I am here in London. Those households are therefore not protected by the Ofgem energy price cap that will be introduced on 1 April. Estimates of cost increases for those living in buildings served by communal and district heating networks range from 400% all the way up to 700%.

Some 90% of heating networks run on gas. At the start of 2022, the price of gas spiked at around five times its cost at the start of 2021. Prices remain far higher now than this time last year. This means that energy costs for these households are expected to see a large increase. The increase in energy prices will contribute to the cost-of-living crisis, which means that household finances will be under even further pressure.

We know that much social housing is supplied by communal and district heating networks, meaning that price rises are more likely to affect social housing tenants, who also tend to be in the lower-income groups, as we know. That means that some of those least able to pay for their energy are likely to be asked to pay the most. I saw the Minister nodding, so he clearly understands what I am talking about. I ask him and the noble Baroness to take these concerns back to their colleagues in government, because this is a serious issue for many thousands of people.

Baroness Bloomfield of Hinton Waldrist (Con): I am delighted to take that point on district heating back to the department. It will become an increasingly interesting area as we move to nuclear power and other ways of producing energy for district heating networks. I know that my noble friend has already made a note of that.

I shall speak first to Amendment 121 in the name of the noble Lord, Lord Foster. I thank him for raising this important matter, but I am afraid that the Government will not be able to accept the amendment. That is not because we disagree with its aims, but because we are already doing an awful lot of work in this area, and it pre-empts a number of workstreams already under way across government.

On the assistance that we are giving those who face the tragic choice between heating and eating, I remind noble Lords that we have already introduced winter fuel payments and the warm home discount. The Chancellor, Rishi Sunak, introduced a £9.1 billion package of support in the spending review, encompassing a number of initiatives. A £3 billion package of energy efficiency measures will be introduced over this Parliament. All are targeted at low-income households. There is also the ECO scheme, funded from bills, which will rise from £750 million to £1 billion over this Parliament. There are also boiler upgrades. We are doing a huge amount in this space. We are not unsympathetic to the reasons for the noble Lord's amendment, but I defend our record.

In 2017, the Government committed in the clean growth strategy to upgrade as many homes as possible to EPC band C by 2035 and as many private rental homes as possible to EPC band C by 2030 where practical, affordable and cost effective. The Government have now consulted on raising the energy performance standard in the domestic private rented sector to EPC band C and will publish a response to that consultation in due course.

We further committed in the *Energy White Paper* to seek primary powers to create a long-term regulatory framework to improve the energy performance of homes, alongside a package of incentives. We have consulted a wide range of stakeholders and will undertake further consultation on specific policy design before making secondary legislation. In the *Social Housing White Paper*, we committed to reviewing the statutory decent homes standard by 2024 to consider how it can better support decarbonisation and improve the energy efficiency of social homes. In the *Net Zero Strategy*, we reiterated our commitment to consulting on phasing in higher minimum performance standards to ensure that all homes meet EPC band C by 2035 where practical, cost effective and affordable. In light of these comments, I ask the noble Lord to withdraw his amendment.

I turn to Amendment 128 in the name of the noble Baroness, Lady Hayman. Her proposed new clause would set a requirement for the Secretary of State to consider the energy efficiency impact when making changes to the building regulations for the purpose of building safety. It is a fundamental principle of the building regulations that, when building work is carried out, all applicable technical requirements must be met. In many cases, this will include energy efficiency, referred to in the regulations as the

"conservation of fuel and power".

[Baroness Bloomfield of Hinton Waldrist]
If a particular technical requirement is not applicable to a specific building project, the building regulations none the less require that the building is not made less compliant with that requirement than it was before the building project. This means, for example, that where work is undertaken to improve a building's fire safety performance, the building's energy efficiency must not be worsened as a consequence. The opposite case is also true, in that energy efficiency improvements must not worsen the fire safety performance of a building.

As this principle is laid out in the existing regulations, energy efficiency is already a consideration in carrying out building work. We do not believe that it is necessary to introduce a specific duty for the Secretary of State to consider energy efficiency matters when making building regulations for the purpose of safety. I assure the noble Baroness therefore that her intention to ensure that energy efficiency is considered in relation to building safety has already been met under existing legislation.

I wish to reassure the Committee that the Government take the matter of energy efficiency seriously and are taking action in this space. I therefore ask the noble Lord to withdraw his amendment.

7 pm

Lord Foster of Bath (LD): My Lords, in my remarks, I went out of my way to praise the current Government for the promises and commitments they have made in this area. I will go further and say that I will praise the current Government for at least some of the commitments they have made to provide the funding for the work to be carried out. But I just say to the Minister that it is the industry that will actually deliver, not the Government. We therefore need to consider what the industry needs to ensure that it can deliver.

The industry has said that it wants these targets, promises and commitments put into primary legislation to give it the confidence to carry out the investment, buy the equipment and do the training to enable the work to be carried out. It has been let down time and again by Governments of all political persuasions, with a string of projects that sound almost the same—the green deal, the green this, the green whatever—which have always failed and have not been followed through. The industry has had enough; it has made that very clear. It wants the firm commitments put into legislation. The Business Minister, Mr Kwarteng, believes in targets; he has said so on many occasions. I fail to understand why the Government will not put this one specific issue into legislation.

We will have an opportunity to raise these issues again at a later stage. Be assured that I intend to take every opportunity to press this matter but, in the meantime, I beg leave to withdraw.

Amendment 121 withdrawn.

Amendments 122 to 131 not moved.

Amendment 132

Moved by ***Baroness Neville-Rolfe***

132: After Clause 133, insert the following new Clause—

"Review of external wall fire assessments

Within 12 months of the passing of this Act, the Secretary of State must review the process used by chartered surveyors for assessing external walls of tall buildings for fire risks, in particular the EWS1 form produced by the Royal Institute of Chartered Surveyors, and must lay a report before Parliament."

Baroness Neville-Rolfe (Con): My Lords, I move Amendment 132 in my name on the subject of external wall fire assessments. I did not speak on energy efficiency as time is short, although I was Energy Minister five years ago; I look forward to discussing the opportunities and frustrations informally.

Noble Lords will know that external wall assessments have been a serious problem aggravating the difficulties that leaseholders have experienced in the post-Grenfell world.

Baroness Bloomfield of Hinton Waldrist (Con): My Lords, I am sorry to interrupt. The Minister has had to leave to deal with a pressing personal matter. Can I ask for a five-minute adjournment?

The Deputy Chairman of Committees (Baroness Finlay of Llandaff) (CB): My Lords, the Committee will adjourn for five minutes.

7.04 pm

Sitting suspended.

7.05 pm

Baroness Neville-Rolfe (Con): My Lords, as I was saying, the Committee will know that there has been a serious problem aggravating the difficulties that leaseholders have experienced in the post-Grenfell world. This is because insurance companies and mortgage lenders have required these external wall assessments to be made and the dreaded EWS1 forms to be filled in before transactions can proceed. However, not only are the assessments expensive—or they were—but the requirement to provide them implies, or implied, a very cautious view of the needs of fire safety in particular. Worst of all, there has been a crippling shortage of RICS professionals to carry them out.

I argued during the passage of the Fire Safety Bill that this process was over the top, as sometimes happens with professional-based regulation, and increased the numbers of unsaleable properties post Grenfell by hundreds of thousands. I was therefore delighted to hear the Valentine's Day announcement of the Secretary of State, Michael Gove—in addition to the January comments quoted earlier by my noble friend the Minister—stating that:

"The provisions will protect leaseholders and encourage a more proportionate approach to fixing buildings. Currently, building owners can simply pass all costs on to leaseholders, with no incentive to hold back on unnecessary remediation work that has brought misery to leaseholders. Today's package, alongside the duties in the wider Bill, will create an environment for tough, proportionate action on critical safety issues while preventing cost inflation and excessive work."

"Today's package" sounds good to me. However, I remain a little sceptical, knowing just how bad the gold-plating has been. For example, we were right to

agree earlier on the need to be proportionate about balconies, as the noble Baroness, Lady Fox of Buckley, argued.

The purpose of this probing amendment is to invite my noble friend, who is of course the Minister at the Department for Levelling Up, to update us and agree to undertake a review of the situation in 12 months' time. The review proposed would focus on the tall buildings that are in scope, but the whole sector would benefit from a review that assesses the position of smaller buildings as well as the interests of the consumer rather than just the surveyor—in this case, the leaseholders and property owners affected. I add that the right reverend Prelate the Bishop of St Albans asked me to say that he supports this amendment but had to be elsewhere. I very much hope that my noble friend will look sympathetically on this request, particularly given the helpful change of approach by the Secretary of State.

The Earl of Lytton (CB): My Lords, I will probably disappoint the noble Baroness a little, but I hope that I can also give a bit of explanation. I say that with particular feeling because she chairs the Built Environment Committee, on which I have the privilege to serve.

I understand the irritation that has been generated in some quarters by the EWS1 scheme. I ask the Committee to bear in mind that this was prepared as something of an emergency measure to deal with the logjam of unmortgageable, and therefore unsellable, properties. It was set up at the instigation of government and occurred following discussion with insurers, lenders and valuation professionals. It is a creature of common creation and not the RICS alone, although the RICS put it out. That is quite important.

The unfortunate thing is that, as it was the only form of certification around, it has been latched on to in certain quarters as providing some reassurance for things that it was never intended to achieve. In other words, it was seen as something with a wider fitness for purpose than was ever intended, and that is part of the problem.

When one produces something of this sort, it is produced in collaboration with others, but there will always be people across the spectrum; the insurance world is such that certain sectors of it will top-slice the risk. There will always be some that—a bit like some of what I might call the more adventurous motor insurers—will insure only certain clearly de-risked parts of the market in risk generally. I do not know whether that is a problem here.

This EWS1 was just reviewed in December. The RICS—again in consultation, and again, I believe, with support and collaboration from government but certainly with all the relevant bodies—decided that even though its application in terms of the problems that it created was reduced to a very small proportion, it should be kept because that was the view of valuers, mortgage lenders and insurers. The RICS as a professional body cannot ignore what these people are saying or the commercial pressures that are set before it in dealing with that. The RICS also published its justification in December, which is available on the web. I am all for de-risking things so that assessments of all sorts do not grow horns and a tail. However, I am not sure that having the Government take control and ownership of this particular matter would necessarily reassure lenders or professionals or, for that matter, benefit the market sentiment.

In its evidence to the Levelling Up, Housing and Communities Committee, the RICS acting chief executive made it clear that there is already a process in hand to train up a cohort of fire risk assessors pursuant to the Bill's objectives. EWS1 itself is probably destined to wither on the vine in a relatively short period of time. I therefore hope that I have given some sort of helpful explanation of why I am not sure that it is a good thing for the Government to take on this thing, even if they felt that they were willing to get their fingers involved in that particular pie, and why it is probably best that the matter continues on the critical path it is now and we see the outcome of this cohort of newly trained people. I am sure that other professional bodies will need to do training as well; we must try to make sure that it is rolled out as speedily as possible so that, hopefully, the problems will be put behind us.

Baroness Pinnock (LD): My Lords, I thank the noble Baroness, Lady Neville-Rolfe, for raising an important issue. There is confusion and concern around these EWS1 forms and assessments. There is confusion—which I will come on to, following on from what the noble Earl, Lord Lytton, just said—and there is certainly concern from leaseholders. Either they wait for ever for these external wall structural assessments, or those who do them err on the side of caution because of the way that they were brought in as an emergency measure following the awful Grenfell fire.

7.15 pm

I looked on the RICS website to find out what it is saying. The Minister has said several times that EWS is gone because PAS 9980 has been introduced. There is a question-and-answer section on the RICS website, and one question is:

> "Does the PAS 9980 … replace the need for an EWS1 form?"

The answer is:

> "No. The code of practice for external walls is for building surveyors and fire engineers who will need to carry out mandatory EWS fire risk assessments … as part of the Fire Safety Act."

It goes on to discuss the Fire Safety Act and the need for fire risk assessors, which my noble friend Lord Stunell has raised many times. Qualified fire risk assessors are an absolutely basic requirement for EWS assessments and the Fire Safety Act, and we do not have enough of them. In the discussions on that Act in Committee and on Report, I remember he brought the figures on how long it will take to train them—it was years. That did not fill me with hope that this was going to happen any time soon. So there is a logjam of issues here, which is why this amendment is important.

The noble Earl, Lord Lytton, has said quite a lot about what the RICS folk have said, so I will not repeat that. But the trouble with this is that there is a logjam because of the lack of fire risk assessors and there is confusion about EWS and PAS, and the leaseholders are bearing the cost—I am fed up with them bearing the cost for issues that they have not created.

I am very supportive of this amendment, because all it asks us to do is think about all of the issues and come back. Perhaps the Minister will commit to writing

[Baroness Pinnock]
to all of us to put our minds at rest that the Government will create a lot of good fire risk assessors or de-risk some of the issues—this is the problem—that have been created by this emergency measure, although I understand why it was done. With those brief words, I hope that the Minister will respond positively.

The Earl of Lytton (CB): My Lords, I should perhaps explain that, while I am a RICS member and fellow and a registered valuer, I do not actually deal with this particular thing. But, as a valuer, I understand constructs of risk and the attitude of lenders, because they so often dictate the process that is put in place by the valuers: they often set the fee for valuation and their form is used for this particular process. I say again that it is very difficult for a professional institution that tries to weigh up all these different bodies to get away from the big beasts of the mortgage lenders and the insurance world when it is dealing with this sort of thing. But I make no apology for that—there have been problems, and the noble Baroness is absolutely right that they have been visited, as she would say, on wholly innocent leaseholders. It is right that the whole thing should be kept under constant review.

Lord Khan of Burnley (Lab): My Lords, I rise briefly to speak to Amendment 132 in the name of the noble Baroness, Lady Neville-Rolfe. It is a little but very important amendment and, as the noble Baroness will appreciate, "Every little helps" in making sure we get this right. I admire what the noble Earl, Lord Lytton, who spoke with great expertise, said about ending the confusion and providing clarity. That was a very important point. As a Lancastrian, I have never agreed with somebody from Yorkshire as much as I have agreed with the noble Baroness, Lady Pinnock, during the course of this Bill. She is quite right: leaseholders should not bear the costs for issues they have no control over. It is not their fault. We need to end the logjam.

This is my final contribution in Committee. It has been a fascinating debate. I have a special message for the Minister in Latin, to continue the theme: "Da operam, si potes", or "You can do it, if you try hard". We have debated a lot of fantastic amendments during this Committee. I am sure the Minister can do it and make this landmark Bill even better, to help people, residents and leaseholders across the whole country.

Lord Greenhalgh (Con): My Lords, I thank my noble friend Lady Neville-Rolfe for her amendment. It has been a fascinating debate, with lovely Latin phrases which I am sure have been worked on all afternoon using Google Translate.

As the Government have made clear, it is important that we restore a sense of balance and proportionality to fire safety. We must ensure that fire risk assessments of external walls do not require unnecessary work and reduce the risk aversion we have seen in the sector. The department has already taken steps to ensure that industry takes a proportionate approach to the assessment of the external walls of buildings and I can reassure my noble friend that we will continue to work with industry, including lenders and surveyors, to keep under review the process used to assess external wall systems.

The noble Earl, Lord Lytton, mentioned that we have been tracking the data from mortgage lenders and it is available on the GOV.UK website. I have been looking at my Apple iPhone—I have given the brand away, but I do not know how I could have coded that without using the brand name—and the vast majority of mortgage valuations for flatted developments do not require an EWS1 form. The trend is also going down. I think the most recent data in January was that around 8% of mortgage valuations require an EWS1, so 92% do not. That is down from 9%. My department estimates that 492,000 leaseholders in residential buildings of 11 metres and above do not need to undergo an EWS1 assessment for their building for them to sell their property or remortgage. It is important that we continue to work with mortgage lenders to track how that is evolving over time. These things take time, but the trend is in the right direction.

The Government are also making preparations to launch a professional indemnity—or PII—scheme, targeted at qualified professionals to enable them to undertake EWS1 assessments where otherwise they would not be getting PII cover. A condition of PII coverage under the scheme will be that EWS1 assessments are carried out in line with PAS 9980. An audit process will be in place to monitor compliance to the standard.

I thank my noble friend for raising this important matter. She has absolutely championed that the Government get to grips with some of these points. I think we are making progress on a number of fronts now. I assure her that this work is of critical importance for the Government. We will continue to work closely with industry in the coming months to ensure that. I therefore ask that she withdraws her amendment.

Baroness Neville-Rolfe (Con): My Lords, I thank my noble friend, particularly for giving the figures. Before Report, it would be good to have the figures for the non-high-risk buildings as well, because one of the concerns I had was that the industry was requiring people who were not caught by measures following Grenfell to have these EWS1 assessments. It was a probing amendment and I will reflect further in light of what has been said. It was a very good debate.

There is confusion and concern about the logjam, and we need to make sure that we have the support of the industry professionals who are needed to do this. Things can take a long time in the building industry, as I think we will hear when we debate retentions. I certainly did not want to lock horns with the noble Earl, Lord Lytton, who is such an excellent member of the Built Environment Committee, but to make sure that we had this debate and that we really do sort this issue, as I know the Government have said that they wish to. I beg leave to withdraw my amendment.

Amendment 132 withdrawn.

Amendment 132A

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

132A: After Clause 133, insert the following new Clause—

"Local authorities: impact of land contamination on building safety

Local authorities must assess, within their local areas, the risk posed by land contamination to building safety."

Baroness Jones of Moulsecoomb (GP): Noble Lords may have noticed that I am not my noble friend Lady Bennett of Manor Castle, but I am here to move Amendment 132A and speak to Amendment 132B, both in her name. I am sure that the Minister is listening, because it is quite important that he agrees with me on this.

Baroness Bloomfield of Hinton Waldrist (Con): I am listening.

Baroness Jones of Moulsecoomb (GP): I am so sorry—I thank the noble Baroness.

These amendments create an obligation for local authorities to locate contaminated land in their areas and for the Government to review the management of contaminated land. This is the first parliamentary outing of what has been called Zane's law. It is named for Zane Gbangbola, for whom the Truth About Zane campaign was also founded, which is still working. There is wide support for the campaign—from Sir Keir Starmer and Andy Burnham to the FBU, the CWU and the Conservative-controlled Spelthorne Borough Council—to get on the record the truth about the seven year-old's death in Chertsey in 2014, when floods swept hideously toxic hydrogen cyanide into the family home from a nearby historical landfill site. That is not what the inquest verdict concluded in 2016, but the campaign continues to fight that inequality of arms and the illogic of that verdict.

Last year, Zane's parents, Kye and Nicole, and their supporters took up an even broader issue: the question of why it was that they and the rest of the community had no knowledge of the danger of the historic landfill site near their home. I am old enough to remember Aberfan in 1966; it was a well-known site, but it was unstable. As most noble Lords probably know, 116 children and 28 adults were killed when the landslip came on to a school. What happened to Zane—and his father Kye, who was left paralysed by the hydrogen cyanide—could awfully easily happen to another family or a whole community.

The issue goes back to 1974, when the Control of Pollution Act first took control over waste disposal. However, before that came into effect, many dumps were quietly closed and, since then, have been pretty well forgotten, as campaigner Paul Mobbs explains in a disturbing video, which I do not have here with me. EU regulations on waste and pollution required the tightening of those controls under the Environmental Protection Act 1990. Section 143 brought in an obligation on local authorities to investigate their areas and draw up

"public registers of land which may be contaminated".

Section 61 gave local waste authorities powers to inspect closed landfills and clean them up if necessary. However, lots of new housing developments, in particular, are on old landfill sites. Under pressure, the Government held three consultations on contaminated landfill registers from 1991 to 1993, eventually deciding that the aforementioned Section 143 would not be enacted and all plans for public registers of contaminated sites would be dropped. The explanation given was cost and the desire not to place new regulatory burdens on the private sector.

Limited powers were brought in in 1995, although they did not come into force until 2000, which meant that when developers found contamination problems, public authorities often had to pay. But it got worse. In 2012, as part of the Cameron Government's "bonfire of red tape", to reduce the statutory burdens, the right of enforcement authorities to use the law was further reduced—the emphasis being on "voluntary" clean-up, with no real power to check it had been done. This is clearly a problem for existing buildings, but also for buildings being constructed right now. It is evident that there is a great risk at potential locations of new homes right around the country, from Carlisle to Cambridge, and Dudley to Newbury.

There is also the issue of the climate emergency and the new extremes of weather, particularly floods, but also heatwaves, that cause events such as that which tragically claimed young Zane's life. To identify the size and scale of the problem, in every local authority in the land, there has to be a starting point to fixing it and preventing future risk to life. I beg to move.

7.30 pm

Baroness Pinnock (LD): My Lords, I thank the noble Baroness, Lady Jones, for introducing these two amendments. When I read them, I thought, "You know, this isn't possible. You cannot build on contaminated land." Certainly, from all the planning committees on which I have sat over the years, I know that it is not possible. I live in an area where there is quite a lot of land contaminated by dyes from the woollen industry, which have cyanide in them. My experience of development on contaminated land, which is a bit different from the issues that the noble Baroness, Lady Jones, has raised, is that such sites are raised by planning authorities as part of the National Planning Policy Framework, they have to be identified as part of strategic local plans, and the Environment Agency and the Environment Act all contribute towards ensuring that contaminated land is cleared—decontaminated, if you like—before it is developed.

That is a bit different from some of the issues raised by the noble Baroness, which were about building adjacent to such land. Again, I am surprised that the environment legislation which controls old landfill sites has enabled that to happen. It may be a failure of legislation, but I will wait to hear what the Minister has to say.

The only thing I would say is that the Government are very keen for development of brownfield sites, and there is a desperate need for those sites to be cleared and decontaminated before they can be redeveloped. Everybody wants the Government to continue providing grants to developers to do so. I have experience from my town, where a site has been left empty for at least 15 years. It has been allocated for housing, but no grants have been provided to decontaminate it from an old chemical works that was on the site. So former green-belt land has been developed first, because we are waiting for grants for decontamination of derelict sites.

My one plea to the Minister is to take that back to the department and to say that, if it is to be brownfield sites first, such sites nearly always have significant

[Baroness Pinnock]
contamination. Sometimes it is asbestos in older buildings. Certainly, in the Midlands and the north where there have been industrial complexes, there can be quite serious chemical contamination, and decontamination is necessary before anybody can get near them. I look forward to what the Minister has to say.

Baroness Hayman of Ullock (Lab): My Lords, I shall be brief, because there will probably be another vote soon in the House. We are very happy to support the two amendments tabled in the name of the noble Baroness, Lady Bennett. I thank the noble Baroness, Lady Jones of Moulsecoomb, for her comprehensive introduction.

We know that local authorities, as we heard, are responsible for determining whether their land is contaminated. The noble Baroness, Lady Pinnock, talked about the grants that her authority has been waiting for to clean up land. It is really important that these grants are dealt with quickly, because it can be incredibly expensive to clean up contamination. If we are to use brownfield sites, local authorities need to be able to do so in a way that is cost effective for them. That was an important point.

We are also aware that availability of land is one of the biggest barriers to building at the moment. The government targets for housebuilding mean that, in particularly populated areas such as the south-east, any additional homes are more likely to be built on previously developed brownfield land. No one would want to build on contaminated land by choice, but "brownfield" does not necessarily mean that land is contaminated. We need to be clear about this.

However, there is a need to ensure that houses constructed on sites affected by contamination are built to the appropriate standards, including those next to an area of contamination. We need to know where the contaminated land is so that we can do these checks properly. As the noble Baroness, Lady Jones, said, things such as flooding can bring contamination across a very wide area, with, as we have heard, sadly catastrophic consequences. As she said, on the surface of it, Zane's law seems pretty simple and straightforward to implement. If we can identify the size and scale in every part of the country where contamination is, that would be a very logical starting point to prevent future risk to life and support local authorities in tackling the whole issue of contamination so that we understand it better as we move forward with more development and housing. I hope the Minister will listen to this, because it seems to me that Zane's law ought to be supported.

Baroness Bloomfield of Hinton Waldrist (Con): I thank the noble Baroness, Lady Bennett, for tabling her amendments, so ably introduced by the noble Baroness, Lady Jones of Moulsecoomb. I welcome her raising the important issue of contaminated land in this Committee. As always, the noble Baroness, Lady Jones, made some very powerful points—as did the noble Baronesses, Lady Hayman and Lady Pinnock—on the need for speeding up the process of decontamination. I believe the ambition to bring a version of Zane's law on to the statute book is well intentioned but I consider that the policy intent behind these proposals is already met by existing legislation and statutory guidance.

The noble Baroness, Lady Jones, is right that Section 143 was repealed, but it was replaced by Part IIA of the Environmental Protection Act 1990, which provides a framework for identifying contaminated land in England and allocating responsibility for its remediation. It provides a legal definition of contaminated land and lays out the responsibilities of local authorities and the Environment Agency for dealing with it. These responsibilities include a requirement for local authorities to inspect their area to identify actively land that may be contaminated, to investigate and remedy contaminated land and to maintain a public register of information relating to contaminated land. This includes contamination from non-operational historic landfill sites and is regulated by local authorities. Further, Part C of the building regulations requires reasonable precautions to be taken by developers to avoid any risk to health and safety caused by contaminants in the ground where they are carrying out building work.

Lastly, assessment of contaminated land risk currently focuses on the impact of contaminated land on human health and the environment. Shifting focus on to buildings and building safety may dilute the aims of the existing framework. Given that this existing framework is already embedded into legislation and guidance, the proposed amendments regarding contaminated land would create unnecessary duplication and could cause confusion for local authorities. Therefore, while I appreciate the concerns of the noble Baroness, I ask her to withdraw her amendment.

Baroness Jones of Moulsecoomb (GP): I thank the noble Baroness for her response, and I will of course check the Environmental Protection Act, exactly what it does and what protection it gives. I also thank the noble Baronesses, Lady Hayman of Ullock and Lady Pinnock, for their support.

I care very much about this, even though this amendment is in the name of the noble Baroness, Lady Bennett of Manor Castle, because it seems that the poor always suffer. This is one of those things where, if you live on an old industrial site or whatever, you are likely to have a much lower form of housing and much less protection in any case. If we are talking about levelling up, this would be a very good thing to do.

By the way, I want all your Lordships in this debate to know that this is a much friendlier debate than the one next door. It was a real relief to come in here out of there; there will of course be another vote soon.

I understand that this is not the moment to push this amendment, but it will probably come back on Report. In the meantime, I beg leave to withdraw it.

Amendment 132A withdrawn.

Amendment 132B not moved.

Clause 134 agreed.

Clause 135: Review of regulatory regime

Amendment 133

Moved by ***Lord Greenhalgh***

133: Clause 135, page 142, line 20, at end insert—

""building function" has the meaning given by section 3;"

Member's explanatory statement

This amendment defines "building function" for the purposes of Clause 135.

Amendment 133 agreed.

Clause 135, as amended, agreed.

Amendments 134 to 136 not moved.

Amendment 136A

Moved by ***Lord Aberdare***

136A: After Clause 135, insert the following new Clause—

"Review of safety impact of retention

(1) Within 12 months of the passing of this Act the Secretary of State must publish a review of the impact on building standards and safety of retention of payments due to sub-contractors by building contractors.

(2) Matters which the review may consider include, but are not limited to—

(a) cash flow difficulties sustained by sub-contractors as a result of retention,

(b) ability of sub-contractors, as a result of retention, to afford materials of a suitable quality for future contracts,

(c) ability of sub-contractors, as a result of retention, to recruit sufficiently qualified staff, and

(d) other factors which may cause sub-contractors to make savings on building standards and safety because of retention."

Lord Aberdare (CB): My Lords, it has been interesting and instructive for a non-expert to listen to the debate in this rather impressive Grand Committee while waiting for my sole amendment to be reached as the very last group.

Amendment 136A is a probing amendment that seeks to encourage the Government to take some long-overdue action to tackle the pernicious practice of retentions in the construction sector. I start by thanking, in his absence, the noble Lord, Lord Blencathra. He crafted this amendment in a form deemed to be in scope and then allowed my name to appear above his. I am sorry to hear that, as I gather, he has fallen prey to Covid, but I wish him a speedy recovery and I shall certainly miss his powerful support today. I am also grateful to the Minister for sparing time last week to meet me and David Frise, representing the engineering services alliance, Actuate UK, whose members are among the firms most impacted by retentions.

I shall make just three points relating to the amendment. First, retentions are a cancer affecting the construction industry, which, as noted in the Hackitt report,

"can drive poor behaviours, by putting financial strain into the supply chain".

These can damage both quality and safety; for example, by causing subcontractors to use cheaper, substandard or unsuitable materials or to cut corners on quality in other ways. In some cases they may withdraw from contracts or even be forced out of business altogether, causing the "golden thread" which is such an important part of the thinking behind the Bill to fray, if not snap.

Retentions poison relationships between subcontractors and contractors, creating a fundamentally adversarial relationship rather than a far more productive collaborative partnership. They deprive smaller firms of funds for investment in skills, technology, growth and productivity, while causing them to waste substantial time and effort chasing payments which are due to them, but which in some cases are never paid at all—notably when the business owing them goes bust, as in the case of Carillion. Retentions are not even a particularly effective way of preventing or remedying defects; the sector has been developing much better approaches, such as modern methods of construction and the Get It Right Initiative. I salute the Minister's evident commitment to improving the quality and culture of the construction sector, but that aim will never be achieved while unregulated retentions persist.

My second point relates to the need for legislation. There is a high degree of consensus across the sector that something needs to be done about retentions, and there is even a target date, endorsed by the Construction Leadership Council, for there to be zero retentions by 2025. That is a laudable goal, but, as Ministers regularly point out, there is no industry consensus about how to reach it. Of course there is no consensus between firms that benefit from withholding retentions, often using them to artificially boost their own working capital, and those who are deprived of funds due to them. So we have a stalemate that can only be resolved by government through legislation, whether primary or secondary.

7.45 pm

Thirdly, the Bill provides the right opportunity for government to act—or at least to set a process of action in place, which is what this amendment rather modestly seeks to initiate. It would require the Secretary of State, within 12 months of the Bill becoming law, to publish a review of the impact of retentions on building safety and standards. Such a review would inevitably make crystal clear the damaging impact of retentions in ways set out in the amendment: cash flow difficulties for subcontractors, their inability to afford materials of suitable quality, their inability to recruit and train staff with the right levels of competence, and other ways in which retentions harm safety or quality, including situations where subcontractors are unable to complete work that they are contracted for.

I would like to see a much stronger amendment, requiring specific action by government to finally tackle the issue of retentions, following the safety review that the amendment requires, either by banning them outright or at least by ensuring that they are ring-fenced so that subcontractors can rely on their funds not being lost. This might take the form of regulations made under the provisions of Clause 138, accompanied by guidance to the building safety regulator, along with appropriate enforcement powers. Such an amendment might possibly be suitable for tabling on Report.

Meanwhile, I would like to hear the Minister—whose commitment to shaking up the culture of the construction sector to achieve a much higher level of collaboration, quality and safety I greatly welcome and admire—tell us that, after all the years of government reports,

[Lord Aberdare]
reviews and consultations, he will be the Minister who finally slays the dragon of retentions, putting St Stephen up there with St George. At the very least, he should be looking at actions such as updating the *Construction Playbook* to discourage retentions and ensuring that both the playbook and his department's Procurement Advisory Group's *Guidance on Collaborative Procurement for Design and Construction to Support Building Safety* are actually taken up and complied with by the sector.

Having spent most of my education studying Latin and Greek, I have been deeply embarrassed during this debate by my inability to find a suitable Latin or Greek quotation to match those quoted by many noble Lords. The only one that I could come up with was "Nil desperandum", or "Never despair". Many small construction firms do despair at how retentions hamstring them from achieving the performance that they aspire to, in terms of quality, safety and productivity. I cannot say that I expect the Minister to answer their prayers today, but I can of course say, "Dum spiro spero"—while there is life there is hope. I beg to move.

Baroness Neville-Rolfe (Con): My Lords, I added my name to this amendment, although I am not sure whether it made its way on to the list. I support the great work of the noble Lord, Lord Aberdare, in his quest for a resolution on the subject of retentions—that is, the retention of part of a contract cost.

The noble Lord may recall that, when I was a Minister during the passage of a motley business Bill about six years ago, I promised that a review would be undertaken by the then DHCLG. At first blush, the arrangements seemed wrong and unfair to me, from my experience of the building industry. Somehow, delivery has been extraordinarily slow. It would be nice to have my ministerial promise delivered, albeit somewhat late, by St George here. I very much hope that the Minister will do the right thing and accept this modest proposal for a long-overdue review or whatever else might be agreed between now and Report, with the ever-energetic and nil desperandum noble Lord, Lord Aberdare.

Lord Stunell (LD): My Lords, the noble Lord, Lord Aberdare, has certainly been energetic, forthright and determined on this issue, and rightly so. He has reminded the Committee that the Hackitt report made it clear that the withholding of money from second-tier, third-tier and fourth-tier contractors and suppliers put pressure on them, which made it much more difficult for them to deliver a proper and effective product or job on site. The downward pressure that they faced as a result of the withholding of that money was a major problem for them as functioning entities. That was the view expressed in Hackitt, based on the evidence that had already emerged from the Grenfell inquiry.

Of course, there is much wider evidence around the country. The collapse of Carillion is an example. I think that £140 million of retentions were held by Carillion and thereby lost from those on lower tiers in the pyramid. Whatever else might be said about it, that put a number of companies at risk of going out of business, and indeed a number of companies did so just because that money was lost to them. The evil impact of this is very clear.

Some of the impact is less clear but just as difficult. Such companies find that they do not have the resources to invest in skills, training and continuing professional development, simply because they do not have that cash in hand. So it has an impact. Under

"Matters which the review may consider",

the noble Lord, Lord Aberdare, has sensibly listed in his amendment three important ones and then put "(d) other factors". I would add investment and training as one of the other factors that suffer as a result of this.

I want to remind the Minister that it is government policy that all government contracts should be written in such a way that retentions are not in place. Unfortunately, not every government department has read the memo. I asked the Business Minister, the noble Lord, Lord Callanan, a Written Question and subsequently an Oral Question about how that was progressing. He was quite frank in admitting, and it is on the record, that the Department for Education had so far refused to implement the Government's overall guidance that all public procurement should be without retentions built into the contract documents. I have no doubt that the noble Lord, Lord Callanan, is having a good go at the education department; I hope that I can add to that today and another Minister will have a good go at it, at the very least to make sure that the Government get their own departments to follow their own policy, which would be very much in the direction that the noble Lord, Lord Aberdare, is advocating. I have probably said enough, but I certainly hope to hear good words from the Minister in a moment or two.

The Earl of Lytton (CB): My Lords, I support my noble friend Lord Aberdare. The matter of retentions comes right at the end of this series of Grand Committee sessions, but it is part of a culture. It is the race to the bottom, value engineering or cost-cutting. Construction contract architecture and the practices that have grown up with it are all part of the perverse incentives that have somehow been built up.

At one stage in my professional life, retentions of, say, 5% or 2.5% for limited periods, as the case may be, started as security for the proper completion of works as set out and to a required standard. However, I take the point made by the noble Lord, Lord Aberdare, that this has now gained the appearance of an informal and unconsented bankrolling of construction costs at the expense mainly of subcontractors and their suppliers. This has to stop. It is like all such situations: retentions have a legitimate use but have been subject to serial abuse. If we could keep our eye on one and render the other improbable, that would be all very well, but if the bad practitioners do not get the message, some brutal measures may indeed be necessary and better regulation and protection of sums due may follow from that. I cannot help thinking that the small and medium-sized enterprises that have dwindled and atrophied as a component part of the construction industry are the chief sufferers. They are unable to take on the big beasts of construction.

There is a real point behind this. If the memorandum that the noble Lord, Lord Stunell, referred to became a universal code of practice in the sense that you really had to justify yourself before stepping out of line, that would at least be a start. There is a lot we can do with

what we know and the existing situation in terms of decent treatment, honest measures and taking care of the whole supply line we are dealing with. What the noble Lord, Lord Stunell, said about investment, training and that sort of thing is absolutely on point, and I certainly support the thrust of this amendment.

Baroness Hayman of Ullock (Lab): My Lords, the noble Lord, Lord Aberdare, has raised a very important issue and certainly has our support. Something has to be done to resolve this, and others who have spoken have swung in strongly behind the noble Lord. I am sure the Minister has listened and is taking note.

We have heard that retention is the customary practice of withholding monies to cover defects and incomplete work, but it is also being used for so much more than that, as the noble Earl, Lord Lytton, and the noble Lord, Lord Aberdare, explained. Depending on the size of the project, it can be insignificant or very significant. Large construction projects can be worth £1 billion; huge sums of money can be affected. As the noble Lord, Lord Aberdare, said, reform of the problems this can cause is long overdue.

Retention is often a cause for complaint and quarrel. Subcontractors often find it difficult and can see it as a tool to be bashed with by the paying party, who can hold back payment whether there is good reason to do so or not. I guess that I ought to declare a past interest in that I used to work for a small business that was contracted into large infrastructure projects, so I am very aware of the kind of impact that retention of monies can have. We worked with a lot of other small businesses within large projects. If payment is held back through retention, often for many months, small businesses have a serious cashflow problem, often meaning they cannot pay their staff. This is about not just training but the basic running of the business. They can then become dependent on constant, rolling bank loans, which is not the way a small business wants to run.

All that could be solved if this was sorted out. We see signs everywhere about considerate contractors, but contractors are not always considerate to their subcontractors. We need to sort this out. As we have heard, it can be such a source of pain and concern when the party holding the monies goes bankrupt. Other noble Lords have mentioned Carillion, which is probably the largest example of that happening.

I will not say any more, because we are nearly there, and we are nearly at another vote, I think. The noble Lord, Lord Aberdare, very ably introduced his amendment, so I think the Minister will have heard his message loud and clear. The last thing for me to say during this Committee is that today in particular, and throughout, the Minister has been given an opportunity to slay a number of dragons, not just this one, so I look forward to his response.

8 pm

Lord Greenhalgh (Con): "St George," "St Stephen," "It is so easy, just do it": I have had all the usual exhortations. I did really enjoy meeting the noble Lord, Lord Aberdare, and David Frise. I think it was towards the end of last month, so relatively recently. David Frise, part of the Building Engineering Services Association but representing Actuate UK, had gone through the quite traumatic experience of building up a business then effectively seeing it dismantled because of the pressures of being a subcontractor. I have declared my business interests—as someone who has started a small business, I know exactly what it is like when you are working for bigger businesses, particularly in the early days. It is tough, particularly when people withhold payments that you are contractually due just because they know they can.

Another practice we see in payments is: "Why do we not pay you in 180 days' time?" You have delivered the services and paid all the costs, but: "We are a big company, and our payment run is every 180 days." It is that kind of line; it does not happen all the time, and I know that is not something Every Little Helps would do; it will have a code of practice. But that is the kind of thing we have seen, and it is important, if we want to encourage smaller organisations, that we see the end of those kinds of practices. I think we are, generally speaking; certainly, blue chip companies would not do that.

One of the things I would also say about the whole construction issue is that one of the things I want to know as a businessman is who makes the money. It is clear that developers have made good money since Grenfell. Before Grenfell they made good money, but since Grenfell even more. Some of the manufacturers of the construction materials have done really rather well as well. But actually, construction is a cash-flow business on wafer-thin margins, and the further you go down from the prime contractor, the more they squeeze the margins, and that is the kind of the thing the noble Earl, Lord Lytton, has been talking about—the value engineering. That is why you start to see the corners being cut.

We have to understand that we are dealing with a real cultural issue. That is what we said to the noble Lord, Lord Aberdare, in the meeting. Yes, I would like to wave my magic wand and say there is a legislative solution—but we recognise that he is going to set out in writing to me a number of thoughts about this. I think that is what we agreed. Then, we are going to take some of those thoughts to Dame Judith Hackitt and also talk to Amanda Long, who ran the Considerate Constructors Scheme and is also building a building safety charter, to try and get players on board. Perhaps they can consider cash retentions within that. There is also the New Homes Quality Board and the new homes ombudsman, which operates underneath that. Perhaps they can think about some of these issues.

There are a number of things I can talk about that could potentially also help. The Construction Leadership Council has a business models workstream focused on collaborative contractual practices, which I think has been raised by the noble Lord, Lord Aberdare. We are also looking at the culture of late payments that I already referred to. Our efforts include introducing payment practices, reporting through legislation and guidance. Prompt payment is also important.

What I resolve is not to accept the amendment but to work with the noble Lord, Lord Aberdare, because I really feel passionate about this. It is an abhorrent practice, and we should do what we can to ensure the

[Lord Greenhalgh]
culture of good practice prevails and that we address those that are not following the right way. But let us get the culture right.

Lord Stunell (LD): Before the Minister sits down, I wonder if he could comment on the Department for Education's performance.

Lord Greenhalgh (Con): That is a really good way to end the debate. I will have to write to the noble Lord, because I do not know a lot about the Department for Education other that it is on the street near Marsham Street. I have been there maybe two or three times when I was a council leader. I will write to the noble Lord, but I think it is probably something, as he would well know, that I am not in a position to answer at the Dispatch Box right at this minute.

At this point, I am allowed to sit down. I have avoided a Latin phrase for the whole four hours of this debate, but the noble Lord, Lord Kennedy of Southwark, has provoked me: he responded to me saying that I would not resort to Latin by saying, "Id gratum esset". I knew enough Latin to know that that means, "It would be appreciated". Well, I have appreciated this debate, and I look forward to moving on to Report and taking this landlord Bill through this House.

Lord Aberdare (CB): My Lords, I thank the Minister for that response, which at least confirmed my prophetic abilities and had quite a bit of encouragement. I confirm that we are working on a letter to him along the lines that he described, and we will get that to him in due course—that is a bit pessimistic; we should say "shortly". I thank him for the other comments that he has made, which I will study and act upon.

I was absolutely delighted that the noble Baroness, Lady Neville-Rolfe, was able to contribute to the debate. As she said, she was the Minister responsible when I first accidently got involved with retentions in 2015. For a glorious moment, I thought that she might prove to be the dragon-slayer, but I am delighted that she continues to support the cause. The noble Lord, Lord Stunell, made a very important point about investment in training as well as the fact that government itself is not doing all that it could to bring this practice to an end.

As always, I depend heavily on the vast expertise of my noble friend Lord Lytton, whom I thank particularly for focusing on the impact on SMEs. The noble Baroness, Lady Hayman of Ullock, also did so, again pointing out the issue of cash flow and its importance. Fortunately, my SME was never in the construction sector, so that is one problem that we did not have, although we certainly had plenty of cash-flow problems. Of course, I also thank the Minister.

Fixing this issue will be a key part of achieving the goal that the Minister is setting out to achieve: a productive, high-quality, collaborative, innovative, forward-looking and, above all, safe construction sector, providing the sorts of homes and other buildings that we can be truly proud of. I am not convinced that we should not come back to this issue on Report, but, for now, I beg leave to withdraw the amendment.

Amendment 136A withdrawn.

Clause 136 agreed.

Clause 137: Crown application

Amendment 137

Moved by ***Lord Greenhalgh***

137: Clause 137, page 143, line 2, at end insert—

"(ba) sections (Remediation of certain defects) to (Meeting remediation costs of insolvent landlord) and Schedule (Remediation costs under qualifying leases) (remediation of certain defects);"

Member's explanatory statement

This amendment provides for the new clauses and Schedule relating to the remediation of certain defects to bind the Crown.

Amendment 137 agreed.

Clause 137, as amended, agreed.

Amendment 138

Moved by ***Lord Greenhalgh***

138: After Clause 137, insert the following new Clause—

"Application to Parliament

(1) The following provisions do not apply in relation to the Parliamentary Estate—

(a) sections 101, 102 and 105 (compliance notices under Part 4);

(b) paragraphs 1 to 3 of Schedule 2 (powers of entry of authorised officers).

(2) If the Palace of Westminster (or any part of it) is a higher-risk building within the meaning of Part 4, for the purposes of that Part the accountable persons for the building are the Corporate Officer of the House of Lords and the Corporate Officer of the House of Commons, acting jointly.

(3) No contravention by a Corporate Officer of a provision made by or under Part 2 or 4 makes the Corporate Officer criminally liable.

(4) Subsection (3) does not affect the criminal liability of relevant members of the House of Lords staff or of the House of Commons staff (as defined by sections 194 and 195 of the Employment Rights Act 1996).

(5) In subsection (3) "Corporate Officer" means—

(a) the Corporate Officer of the House of Lords,

(b) the Corporate Officer of the House of Commons, or

(c) the Corporate Officers acting jointly.

(6) In this section "Parliamentary Estate" means any building or other premises occupied for the purposes of either House of Parliament."

Member's explanatory statement

This new Clause makes provision about the application of Parts 2 and 4 to Parliament.

Amendment 138 agreed.

Clauses 138 and 139 agreed.

Clause 140: Regulations

Amendments 139 and 140

Moved by ***Lord Greenhalgh***

139: Clause 140, page 144, line 19, after "71" insert ", (Meaning of "relevant building")(2)(c), (Remediation orders)"

Member's explanatory statement

This amendment provides for the draft affirmative procedure to apply to certain regulations.

140: Clause 140, page 144, line 21, at end insert "or paragraph 4, 12 or 13 of Schedule (Remediation costs under qualifying leases),"

Member's explanatory statement

This amendment provides for the draft affirmative procedure to apply to certain regulations.

Amendments 139 and 140 agreed.

Amendment 141 not moved.

Clause 140, as amended, agreed.

Clause 141: Extent

Amendments 142 and 143

Moved by ***Lord Greenhalgh***

142: Clause 141, page 144, line 41, at end insert—

"(ba) sections 120 to 127 and Schedule 9 (new homes ombudsman scheme);"

Member's explanatory statement

This amendment provides for certain provisions about the new homes ombudsman scheme to form part of the law of England and Wales, Scotland and Northern Ireland.

143: Clause 141, page 145, line 4, leave out subsection (3) and insert—

"(3) Section 2(2) and Schedule 1 (amendments of the Health and Safety at Work etc Act 1974) extend to England and Wales and Scotland."

Member's explanatory statement

This amendment is consequential on the amendment to page 144, line 41 that appears in the Minister's name, providing for the new homes provisions to form part of the law of England and Wales, Scotland and Northern Ireland.

Amendments 142 and 143 agreed.

Clause 141, as amended, agreed.

Clause 142: Commencement and transitional provision

Amendments 144 and 145 not moved.

Amendment 146

Moved by ***Lord Greenhalgh***

146: Clause 142, page 146, line 18, leave out ", 39 and 86 to 88" and insert "and 87 to 89"

Member's explanatory statement

This amendment is consequential on the first amendment of Schedule 5 in the name of the Minister (and also corrects the numbering of the paragraphs referred to).

Amendment 146 agreed.

Amendment 147 not moved.

Clause 142, as amended, agreed.

Clause 143 agreed.

Clause 1: Overview of Act

Amendment 147A not moved.

Clause 1 agreed.

Amendments 148 and 149 not moved.

Bill reported with amendments.

Committee adjourned at 8.11 pm.