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PARLIAMENTARY DEBATES
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HOUSE OF LORDS
OFFICIAL REPORT

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The abbreviation [V] after a Member's name indicates that they contributed by video call.

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

Abbreviation	Party/Group
CB	Cross Bench
Con	Conservative
DUP	Democratic Unionist Party
GP	Green Party
Ind Lab	Independent Labour
Ind 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
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 28 June 2023

3 pm

Prayers—read by the Lord Bishop of Manchester.

Horizon Europe
Question

3.06 pm

Asked by ***Lord Moylan***

To ask His Majesty's Government what financial assessment they have made of the benefits to the United Kingdom's economy arising from scientific discoveries or advances achieved as a result of the United Kingdom's former participation in Horizon Europe.

The Parliamentary Under-Secretary of State, Department for Science, Innovation and Technology (Viscount Camrose) (Con): We are moving forward with discussions on the UK's involvement in Horizon Europe. That is our preference, but our participation must work for UK researchers, businesses and taxpayers. If we are not able to secure association on fair and appropriate terms, we will implement Pioneer, our bold and ambitious alternative. Our participation in previous European programmes had positive employment and commercial effects, hence our position on Horizon Europe and our development of Pioneer as an alternative.

Lord Moylan (Con): Since my noble friend is obviously struggling to answer the question and quantify the benefits to the economy of our former participation in Horizon Europe, can he explain why the Government appear to be so keen to rejoin? If they are going to rejoin, will he consider at least getting an opt-out from clusters 2 and 3 of Pillar 2, which fund social sciences research, from which I really cannot see any advantage at all to the working people of this country, who are being expected to pay for them?

Viscount Camrose (Con): I thank my noble friend for the question. The Government really do see benefit in our past and, I hope, future association to Horizon and its predecessor programmes. Analysis of our participation as a member state in the previous framework programmes found that UK participants received approximately €7 billion in framework programme 7. That represented 15.4% of the total awarded, which exceeded by 16% what would have been anticipated on the basis purely of our GDP share. As regards the pillars we would join, I note that under the terms of the TCA, we opted out from the Pillar 3 equity fund but otherwise elected to join all the remaining pillars, and those are the terms under which we continue to seek association today.

Lord Liddle (Lab): Does the Minister accept that the main benefit that universities see in Horizon is the potential to build close and lasting partnerships with institutions on the continent, for which there can be no domestic substitute? It is from those partnerships that the benefits about which the noble Lord, Lord Moylan, inquired flow in great measure.

Viscount Camrose (Con): Indeed, and the Government recognise very strongly the benefits of collaboration not merely with the EU 27 but globally. The range of benefits includes not just academic benefits but the ability to build our R&D capacity; employment effects; commercial benefits, of course; and leveraging in additional investments as a result of the research.

Baroness Smith of Newnham (LD): My Lords, do His Majesty's Government have any other metric of assessing the benefits of membership of Horizon Europe beyond the purely financial that the noble Lord, Lord Moylan, is looking at? Already, we have heard about patterns of co-operation. At this point, I was going to declare my interests as stated in the register, but I might just point out that I am a professor of European politics, which fits into social sciences, so I do believe that co-operation can be very beneficial.

Viscount Camrose (Con): Indeed. As the specific analysis for association to the Horizon Europe programme is currently being negotiated, I cannot comment on what the analysis is there. I can say that, going back to framework programme 7, the predecessor programme to Horizon, almost 91% of UK participants stated that their project would not have gone ahead had they not participated in FP7. That equates to roughly 41,000 partnerships at risk of never having happened and 29,000 collaborations with non-UK participants potentially lost.

Lord Patel (CB): My Lords, Horizon framework programmes and Horizon 2020 programmes contributed enormously, as the Minister just said, to research and development in the United Kingdom. But coming back to social sciences and humanities, the figure quoted was over £600 million of EU funding, particularly to Oxford University. So it does have economic benefits.

Viscount Camrose (Con): I take the point, but I am not sure there was a question there for me to answer.

Lord Hannan of Kingsclere (Con): The benefits of Horizon are frequently asserted but very rarely demonstrated. Often those assertions come from those who have a vested interest, having been recipients under the old system, as indeed the noble Baroness, Lady Smith, was just honest enough to admit in the form in which she put her question. Will my noble friend the Minister tell me whether the Government have done any cost-benefit analysis of Britain joining on the terms the EU is demanding?

Viscount Camrose (Con): Indeed. As all noble Lords would expect, a very detailed and comprehensive value analysis has taken place as part of the current ongoing negotiations to associate with the Horizon programme. In the words of the Chancellor yesterday, the negotiations have reached a point that is "crunchy", and for that

[Viscount Camrose]
reason, I cannot discuss any of the details of our negotiating position, not least our evaluation of various outcomes.

Viscount Stansgate (Lab): My Lords, if we are going to quote important people in relation to this debate—and I commend the noble Lord for asking this Question, although I disagree with him—can I point out that the president of the Royal Society, Sir Adrian Smith, is on record as saying that people are leaving Britain to do research elsewhere or not coming to Britain because we are not members of Horizon Europe? The Nobel Prize-winning scientist, Sir Paul Nurse, head of the Francis Crick Institute, has said that every month that goes by without an agreement is deeply damaging both to science and to the country. Does the Minister agree, and if so, what are the Government doing about it and when will they make a decision?

Viscount Camrose (Con): As I have said, the Government's preferred position is to associate to the Horizon programme. As to what we are doing about it, we are negotiating purposefully with the EU to bring that about. However, that association has to take place on fair and appropriate terms. Should we not be able to secure those fair and appropriate terms, we will implement Pioneer, our bold and ambitious alternative.

Lord Kamall (Con): Can my noble friend the Minister reassure us that the Government see that there is a world beyond white Europe—that there is much innovation across the world, not just in the EU? While of course we want to be members of the Horizon scheme, we should not enter at any price. An example I would give is that when I was an academic, we got money from the Jean Monnet fund, and it insisted that we rename our international business course "European business"—a small European view of the world, when we should be looking globally.

Viscount Camrose (Con): I thank my noble friend for making that important point. When talking about Horizon, we often slip into the language of concerning ourselves only with collaborations with the universities of Europe. Nothing could be further from good scientific practice or, indeed, from anybody's intention.

Baroness Blake of Leeds (Lab): We recognise the Government's ongoing safety net for researchers in the absence of the Horizon programme. It is welcome. However, it is the continuing uncertainty that has led to the drop-off in participation and, as we have heard, projects moving overseas. As a member between 2014 and 2020, the UK received a disproportionately beneficial amount of funding, leading to ready-made routes and established funding streams into a range of projects, covering heritage, AIDS vaccines, autonomous vehicles, aerospace manufacturing, and noise pollution. This is urgent. When can we end this uncertainty? Can we have a clear route to the decision-making process that is needed?

Viscount Camrose (Con): My Lords, I would like nothing more than to give a definitive date by which a decision will be made one way or the other. The negotiations are ongoing and at a mature stage, with purpose on both sides. More than that I cannot say for fear of prejudicing their outcome.

The Earl of Kinnoull (CB): My Lords, it is now four months and a day. The urgency has been rather absent in the various remarks of the Government. I support the comment made by the noble Baroness, Lady Blake. This is a straight argument about money, and if one tries to amortise this amount of money over one or one-and-a-bit Horizons, you come up with a difficult analysis, where it looks very expensive. If you try to amortise it over several Horizons, you suddenly realise—this applies to both parties in this negotiation—that one is arguing about a row of beans. Can the Minister give us some comfort at least that the British side is seeking to amortise the costs involved over a number of Horizons and therefore is beginning to see that this is not a very large amount of money?

Viscount Camrose (Con): Yes, I very much take the point that scientific research does not take place over intervals of seven years but is a long-term undertaking and an important endeavour. Certainly, the Government's thinking is very much aligned with that. I hope that my words can convey some of our sense of urgency but in these negotiations, we cannot set firm deadlines.

Great British Railways

Question

3.17 pm

Asked by ***Lord Snape***

To ask His Majesty's Government when they intend to bring forward legislation to create Great British Railways and progress contractual reforms for train operators.

The Parliamentary Under-Secretary of State, Department for Transport (Baroness Vere of Norbiton) (Con): My Lords, we will progress legislation to establish Great British Railways when parliamentary time allows. New passenger service contracts will balance the right performance incentives with simple, commercially driven targets that will ensure a central role for the private sector in delivering for customers.

Lord Snape (Lab): My Lords, the short response to that would be to ask why it has not been done before. The current subsidy to the railway industry is about three times more in real terms than it was to the much-maligned BR in the 1990s. Legislation to bring forward an organisation that will put together the disparate but essential parts of the railway industries, such as track and train, is long promised and long overdue. The present system pleases neither passengers nor staff.

Baroness Vere of Norbiton (Con): I am seeking a question in that comment. I can say that the number of passenger journeys is now significantly higher than ever it was under British Rail. Between January and

March 2023, there were around 400 million journeys, which is an astonishing achievement. There are so many things that we can get on with when it comes to Great British Railways—just one example being the long-term strategy for rail. We have received hundreds of responses to the consultation for that, which we will be publishing later this year.

Baroness Randerson (LD): My Lords, at the George Bradshaw address in February, the Secretary of State for Transport said that Britain has

"a broken model. Unable to adapt to customer needs and financially unsustainable".

Given this devastating judgment by the Secretary of State only five months ago, why have the Government abandoned the plans they had to introduce legislation to create Great British Railways within this Parliament? Why is it now possible to adapt, when in February the Secretary of State said it was not?

Baroness Vere of Norbiton (Con): I think the noble Baroness is reading a little too much into those comments. The Secretary of State is completely right that the current financial situation is unsustainable, but at no time did he say that plans to set up GB Railways had been abandoned. He also set out all the different steps that we can take without legislation—for example, contactless payments, simplifying fares, looking at the existing national rail contracts and entering into local partnerships. All those things are being done.

Lord McLoughlin (Con): My Lords, I declare my interest as chairman of Transport for the North. I agree with my noble friend the Minister about the remarkable transformation we have seen in the railways since privatisation and the huge increase in passenger take-up, from 700 million journeys to 1.8 billion in the year prior to the pandemic. Does my noble friend agree that there is a malaise at the moment within the industry as to what the future direction should be? Too much at the moment is being controlled by the Department for Transport, which is, of course, controlled by the Treasury. That is not the best way to run a very successful industry. That is why we need GBR as soon as possible.

Baroness Vere of Norbiton (Con): I point my noble friend back to the long-term strategy for rail, which will help the industry to understand what the medium-term future for the railways looks like. As to what we have been doing to increase revenues and free up the train operating companies, we are looking at the current railway contracts and at ways to put in stronger revenue-incentive mechanisms and allow train operating companies to put resources into increasing revenues.

Lord Faulkner of Worcester (Lab): The Minister will have heard strong support for the establishment of Great British Railways across the House. This is an innovation that I think would survive a change of government, if one were to occur next year. Would it help her if she took a look at the Deregulation and Contracting Out Act 1994, and the establishment of an SI under that Act, which would enable the department's franchising functions to be devolved to GBR if we are not to have primary legislation?

Baroness Vere of Norbiton (Con): I am very grateful to the noble Lord for his helpful intervention.

Lord Haselhurst (Con): My Lords, can my noble friend provide assurance about some of the small schemes that are in waiting, such as the Ely junction enhancement which will have benefits east, west, north and south?

Baroness Vere of Norbiton (Con): The Government are investing record amounts in the railways. In control period 7, between 2024 and 2029, we will be investing £44 billion in infrastructure. Obviously I cannot comment on specific schemes at this time, as the RNEP will be published which will set out which enhancements we are able to prioritise.

Lord Mackenzie of Framwellgate (Non-Afl): My Lords, as a regular champion of LNER on the north-east coast, a nationalised rail company run by the Minister's department, can I ask whether there has been any assessment by the Government of why this train company appears to be head and shoulders above all other privately run train companies in the UK in public acclaim?

Baroness Vere of Norbiton (Con): There are so many factors involved in looking at comparative performance between the different train operating companies, and the Government publish as much data as they can. I pay tribute to staff at LNER, and agree that it offers a great service. However, I took a train up to Norwich last week, and I had great service on that too.

Lord Watts (Lab): My Lords, amid the claims about the number of journeys, what about the cost? It is now cheaper to fly to New York than to travel from Manchester to London on the train.

Baroness Vere of Norbiton (Con): The Government are always looking at what we can do to improve the services and passenger experience on our railways. We are looking at simplifying fares. The noble Lord will know that we have introduced single-leg pricing on LNER and are looking to potentially do a trial around demand-based pricing. All of these things will serve to put downward pressure on prices.

Lord Liddle (Lab): My Lords, I declare an interest as a regular Avanti user. I have been in correspondence with the Minister about the train service fairly frequently. Does she accept that, if one of the big objectives of this Government is to level up between the north and the south in England, and to provide good connections to Scotland, a decent service on the west coast main line is absolutely essential? That does not exist. The proposed legislation, as I understand it, is very short; it is enabling legislation. The fact is that the Government have taken a political decision not to go ahead with this, and I would like her to explain why.

Baroness Vere of Norbiton (Con): I cannot explain the reason why because that decision has, of course, not been taken. The noble Lord mentions Avanti, and I pay tribute to Avanti, because the quality of its services has improved enormously recently. At the end of May,

[Baroness Vere of Norbiton]
cancellations on Avanti were just 1.4%—which is very good among train operating companies—and 93.8% of services were "on time", meaning within 15 minutes of arrival time. Those figures do compare favourably.

Lord Geddes (Con): Does my noble friend find echoes in the exchanges this afternoon of that old adage of the steam train going up and then down the hill: "I think I can. I think I can. I think I can. I thought I could. I thought I could. I thought I could"?

Baroness Vere of Norbiton (Con): Most certainly.

Lord Newby (LD): My Lords, I think the Minister said in an earlier answer that the Government planned to bring forward a Bill when parliamentary time allowed. Does she accept that there is virtually no legislation in the Commons at the minute? The Commons finished last week, or the week before, at 2.37 pm, before we had hardly started. There is parliamentary time. It is a short Bill. Frankly, that is not a reason or an excuse; it is a smokescreen.

Baroness Vere of Norbiton (Con): I do not want to be the one to remind the noble Lord that there are two Houses in Parliament. Your Lordships' House actually has quite a lot of legislation going through.

Lord Forsyth of Drumlean (Con): Does my noble friend agree that there would be more parliamentary time if the Liberals did not table so many amendments, and speak at length on them, at late stages of Bills?

Baroness Vere of Norbiton (Con): Yes, I do.

Lord Tunnicliffe (Lab): My Lords, in May 2021, in CP 423, the Government set out their vision for Great British Railways:

"Under single national leadership, our railways will be more agile: able to react quicker, spot opportunities, make common-sense choices, and use the kind of operational flexibilities normal in most organisations, but difficult or impossible in the current contractual spider's web".

Given the delay since then, are the Government still committed to this vision, or do they accept the ongoing chaos that is the national railway today?

Baroness Vere of Norbiton (Con): The Government remain committed to that mission. Indeed, so much of what we are doing with the railways at the moment is in pursuit of that mission. For example, the Rail Minister has asked the Great British Railways transition team to look at simplification of the railways—at how to simplify the complex rules and processes which exist in rail and which do not need to. That process will be completed later this year.

Disposable and Reusable Nappies

Question

3.28 pm

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

To ask His Majesty's Government what action they plan to take following the publication of the DEFRA report *Life Cycle Assessment of Disposable and Reusable Nappies in the UK 2023*.

Baroness Bennett of Manor Castle (GP): My Lords, in begging leave to ask the Question standing in my name on the Order Paper, I acknowledge support in work on this issue from the reusable nappy industry-linked Nappy Alliance.

The Minister of State, Department for Environment, Food and Rural Affairs (Lord Benyon) (Con): My Lords, Defra's assessment of disposable and reusable nappies concluded that no type of nappy clearly had better or worse environmental performance across its life cycle. We have no plans to take further policy action on nappies at this time. We hope that industry will use the report to continue to improve the environmental impact of nappies, and that it helps consumers make the best choice for them.

Baroness Bennett of Manor Castle (GP): I thank the Minister for his Answer, although I find it somewhat astonishing. I am not quite sure that he is looking at the same report I am, given that it shows that reusables are 25% lower for carbon emissions right now. If you have a green electricity supplier they are 93% better, and in terms of material outputs they are 98% better. This report clearly shows that if the Government want to deliver on their waste reduction, carbon emission and plastic pollution targets, as well as saving so many families money, they should work towards reusables.

Lord Benyon (Con): I wish it was as simple as that. The noble Baroness is absolutely right with her figures on the global warming potential of reusable versus disposal nappies. However, reusable nappies have a higher environmental impact in 11 categories. These include terrestrial acidification, marine eutrophication—the noble Baroness shakes her head, but it is in the report—fresh water and marine ecotoxicity, an issue she has raised with me before, human carcinogenic toxicity, mineral resource scarcity and domestic water consumption. If you look at this in a one-sided way, as somebody once said, with every action there is an equal opposite reaction.

Baroness Burt of Solihull (LD): My Lords, in researching this Question I asked an expert—my daughter, who has four children and has used both types of nappies. In comparing the impact of reusable versus disposable nappies, nobody seems to have factored in the amount of time it takes to do all the washing of cloth nappies. She had to give up cloth nappies when she went back to work. Some 3 billion nappies are thrown away into landfill every year in the UK. This is literally a terrible waste and the Nappy Alliance, as the noble Baroness alluded to, is calling for a national nappy waste strategy. Are the Government planning to produce such a strategy? If not, why not?

Lord Benyon (Con): With five children, I should perhaps also declare an interest. I like to think I pulled my weight, though my wife might disagree. The noble Baroness's point about 3.6 billion nappies is right. About 78% of those go into incineration but 22% go into landfill, which is 22% too much. We have looked at this in a number of ways. Local authorities have the lead on this, and it is about supporting them to have

schemes that work locally; the Government do not feel we can take action at a governmental level. There are many other—if noble Lords can excuse the expression—crocodiles closer to the canoe in terms of tackling environmental problems. Textiles and plastic are an absolute priority for us, but we certainly want to support local authorities in trying to achieve better disposal of nappies in the future.

Lord Cromwell (CB): My Lords, on a subject related to nappies, a recent House of Lords report recommended banning non-degradable wet wipes; the Government response was that they will ban wet wipes subject to consultation. I find it hard to believe that any consultation is really needed. If it is a procedural requirement, can the Minister tell us how soon this can be completed and a ban put in place?

Lord Benyon (Con): In the *Plan for Water* published in April we said that we were going to do this, and 96% of respondents to our call for evidence supported a ban on wet wipes. More information on the proposed timing of any ban will follow the announcement of the details of that consultation.

Baroness Hayman of Ullock (Lab): My Lords, the life cycle assessment study showed that the environmental impact of reusable nappies varied greatly depending on how they were laundered—for example, not tumble-drying and using lower temperatures. Are the Government prepared to look at incentives to encourage the use of reusable nappies and at the same time provide information, working with manufacturers, as to how best to wash and look after them to have the least impact on the environment? We really need to get to the bottom of this issue.

Lord Benyon (Con): Congratulations to the noble Baroness on the joke of the day. We want to assist consumers in making the right choices. The Competition and Markets Authority has produced guidance on green claims and is investigating both how products and services could be more eco-friendly and how they are marketed—that is one part of it. The noble Baroness is right. We calculate the figures on potential nappy use in future on children being potty-trained by the age of two and a half. I am sure that most noble Lords were probably nappy-trained within two and a half months. If we can encourage the better use of green tariffs and other uses of electricity, as the noble Baroness, Lady Bennett, mentioned, I am sure that the differential between disposables and non-disposables can be improved.

Lord Mackenzie of Framwellgate (Non-Afl): My Lords, I implore the Minister, in answering this very important Question before your Lordships' House, to ensure that he does not throw the baby out with the bath-water.

Lord Benyon (Con): I have run out of ribald replies. This is a serious matter: nappies account for about 4.5% of the waste that local authorities have to deal with. With plastics, textiles and everything else, it is important that we tackle this. I will try to think of another ribald reply for the next question.

Lord Foulkes of Cumnock (Lab Co-op): My Lords, I must confess that I am not an expert on nappies, despite the rumours and attacks that I get from the Scottish nationalists about incontinence. However, in view of the absolute shambles that the Scottish Greens have made of the deposit return scheme, will the Minister be very wary of anything put forward by their English counterparts?

Lord Benyon (Con): I think we all want a deposit return scheme, which is a very important way of recycling more products, but the coalition between the Greens and the Scottish National Party has created a disaster zone and has actually put the whole thing back. I think we are now on track to have a scheme that will be a UK-wide common standard for similar products, which has long been needed. That will be better for Scotland, the United Kingdom and the environment.

Lord Rooker (Lab): Can the Minister tell us the estimated cotton content of the various nappies? If there is a figure, who has done the checking to make sure that none of that cotton comes from Xinjiang in China?

Lord Benyon (Con): The noble Lord will not be surprised that I do not know that figure. I know that the impact of carbon on the environment has dropped considerably since the last life cycle assessment in 2008. That is welcome and we want to see more of it, but we also want to make sure that all our policies on plastics are feeding through to this area of waste management, and that we are tackling the issue of where the products come from, which is entirely right.

Lord Watts (Lab): My Lords, can the Minister say how much we have spent on the wet wipes survey? It seems a complete waste of time. I would like to know how much money his department has spent on this useless exercise.

Lord Benyon (Con): I cannot tell the noble Lord how much we have spent, but if he is criticising my department for asking the people who use these products, those who manufacture them and those who are seeking to create alternative ones that are more environmentally friendly, I do not accept that. It is important that we engage. I do not think we should consult on everything all the time, and sometimes we are rightly criticised for doing too much consultation, but we want to get this right.

Higher Education: Arts and Humanities

Question

3.38pm

Asked by ***The Earl of Clancarty***

To ask His Majesty's Government, following the recent announcement of staff cuts in the Faculty of Arts and Humanities at the University of East Anglia, what steps they are taking to support the study of the arts and humanities in higher education.

The Parliamentary Under-Secretary of State, Department for Education (Baroness Barran) (Con): My Lords, we are supporting the study of the arts and humanities across our education system. Our EBacc ambition has humanities at its heart in order to increase the number of pupils studying these subjects at GCSE and beyond. We are introducing higher technical qualifications and T-levels in creative arts and design, and continue to support our higher education institutions, including maintaining funding for our world-leading specialist providers at £58 million for the 2023-24 financial year.

The Earl of Clancarty (CB): My Lords, would the Minister acknowledge that these cuts, while shocking in themselves, are simply the latest in a pattern of such cuts at universities across the country? In practical terms, they are to make savings, but more materially, they are the result of a long-term downgrading by this Government of arts education from primary school to university. The UEA cuts include creative writing, yet its globally renowned MA course has produced Booker and Nobel Prize winners. Does the Minister appreciate that, if the Government continue with their destructive policy towards arts education, in the end it will be our global reputation which suffers?

Baroness Barran (Con): I absolutely do not accept what the noble Earl has just asserted. If we look at full-time undergraduates undertaking arts and humanities courses, at a time of significant growth in our undergraduate population, the figure is almost unchanged between 2019 and 2022—from 20% moving to 19%. The percentage of disadvantaged young people undertaking these qualifications has also been stable. Looking across similar providers which have a significant percentage of arts and humanities provision, a number of them are in a comparably much stronger financial position.

Lord Morgan (Lab): My Lords, this is a sad and very tragic event for the University of East Anglia, where I had the great pleasure of lecturing at one time—the time of our beloved friend Patricia Hollis. It is bad news for a distinguished department at a good university. It is also showing a very limited appreciation, both by the Government and by the funding councils, of the balance and way of assessing the merits of different university subjects. This seems to be a sad and deplorable cheapening of our universities, at a time when many other universities in other countries wish to partner our own fine institutions.

Baroness Barran (Con): I do not question for a second—and regularly stand at this Dispatch Box to celebrate—the success of our great universities. Those universities, rightly, would also stress their independence and autonomy. I simply made, in my reply to the noble Earl, a comparison between some of the sad, recent events at the University of East Anglia and other comparable institutions.

Lord Cormack (Con): Is my noble friend aware that the Royal Historical Society, of which I have the honour to be a fellow, has expressed real concern not only at this particular decision but at its wider implications? Would she consider discussing with the president of the Royal Historical Society and others what their concerns are and see whether she can assist them?

Baroness Barran (Con): I would be more than happy to meet with the Royal Historical Society. But, again, it is the responsibility of the Office for Students to make a judgment on the financial viability and sustainability of our higher education institutions when they are registered. Its view is that the overall aggregate financial position of the sector is sound. I appreciate there are individual institutions which are under financial pressure, but they are autonomous institutions which need to run their own finances.

Baroness Smith of Newnham (LD): My Lords, while it is absolutely clear that His Majesty's Government have put a lot of emphasis on being a science superpower, have they also considered the ramifications of losing courses in modern foreign languages? If we aspire to be a global player and want to trade with other countries, the use of English is great, but to really understand other countries and cultures, we need scientists as well as people doing humanities who can really communicate in foreign languages.

Baroness Barran (Con): I absolutely agree with the noble Baroness that modern foreign languages are critically important; hence our emphasis on the EBacc in schools to create a pipeline of students who are confident in exploring another language and the bursaries we offer teachers to deliver them.

Baroness Bull (CB): My Lords, in its recent inquiry, the Communications and Digital Committee of your Lordships' House heard that the OfS introduced a measure of low-value courses that failed to take into account the earnings profile in arts and creative careers, which often start on lower salaries or in freelance roles. Does the Minister agree with the committee that what it called a "sweeping rhetoric" about low-value courses needs to change, to reflect not just the realities of work in the sector but also the important point that individuals can and do choose to pursue careers that earn lower salaries but have vital social and cultural value?

Baroness Barran (Con): The Government of course recognise the points that the noble Baroness makes, but it is also important that students are really well informed and understand the choices they make when they opt for one qualification or another, particularly in relation to the debt that they might take on. That is why we are so keen to encourage degree apprenticeships in the creative industries, for example, because of all the opportunities that offers.

Baroness Wilcox of Newport (Lab): My Lords, among UEA's alumni of novelists and Nobel laureates was a former colleague of mine. We taught together in the English department of a high school in Newport. Her teaching skills were exceptional, honed by her years studying the arts at UEA. Notwithstanding the Minister's previous responses, what, if anything, are the Government

doing to ensure that such motivating arts teachers continue to graduate from our universities and thus inspire a love of the arts in our children and young people?

Baroness Barran (Con): A love of the arts can come from many sources—importantly from universities and schools but also from wider cultural experiences. As the noble Baroness knows, we are committed to the bursaries that we are putting in to support particularly the modern foreign language teachers that were referred to but also our wider commitment to the creative industries in this country.

Baroness Andrews (Lab): Does the noble Baroness agree with me—I am sure she does—that the creative industries in this country generate £109 billion a year and are 5% of our GDP? Does she agree that anything that is done through funding, or through language that attempts to create a false dichotomy between creativity in science and in the arts—or that talks about low value, as opposed to high value—is damaging to creativity as a whole and to our ability, as a country, to produce the innovation and cultural vitality that we need across the whole spectrum, whether it is in the arts or the sciences?

Baroness Barran (Con): I feel that the noble Baroness and I listen to different bits of what the Government say about this. It was only last month that the Government announced their plans to grow the creative industries from the current £108 billion by a further £50 billion, and a million more jobs by 2030. We are making a major investment in the sector, particularly in performance and screen technology research labs based in Yorkshire, Dundee, Belfast and Buckinghamshire.

Lord Hampton (CB): My Lords, I declare an interest as a secondary school teacher and head of a design and technology department. According to the *Art Now* report published by the APPG for Art, Craft and Design in Education, 67% of art and design teachers questioned are thinking of leaving the profession. What are the Government trying to do to stop this entire waste of talent?

Baroness Barran (Con): The noble Lord asks an important question, and part of this is about being clear about the value we put on those qualifications. As I mentioned in my opening reply, we are introducing a new T-level in this area in 2024 and further apprenticeship opportunities the following year.

Arrangement of Business

Announcement

3.48 pm

Baroness Williams of Trafford (Con): My Lords, before we start Report, it might be helpful, given that we will have a very long day, for noble Lords to acquaint themselves with the *Companion* and its rules on Report and on debate more generally.

Illegal Migration Bill

Report (1st Day)

Relevant documents: 34th and 37th Reports from the Delegated Powers Committee, 16th Report from the Constitution Committee, 12th Report from the Joint Committee on Human Rights. Correspondence from the Senedd published.

3.49 pm

Clause 1: Introduction

Amendment 1

Moved by ***Baroness Chakrabarti***

1: Clause 1, page 1, line 3, leave out "unlawful migration, and in particular"

Baroness Chakrabarti (Lab): My Lords, noble Lords across this House are to be commended for the anxious scrutiny given to this most controversial Bill over many hours, days and nights in Committee. Now, it is time to move through votes on as many already well-debated amendments as quickly as possible.

I have Amendments 1, 2, 3, 5 and 13 in this first group. However, short of any miraculous change of heart by the Home Secretary and the Government, it is the crucial Amendment 5, also bearing the names of the noble Lords, Lord Paddick and Lord Kirkhope of Harrogate, and the noble and learned Lord, Lord Etherton, that I shall press in what I hope will be a very short while. It replaces the rather long and strange narrative in Clause 1, so as to reinstate Section 3, the interpretation provision, of the Human Rights Act, and ensure that the rest of the Bill is read so as not to require that British officials, Ministers or His Majesty's judges breach precious international treaties that our former statesmen and stateswomen played such a heroic part in creating. These are the ECHR of 1950, the refugee convention of 1951, the conventions on statelessness of 1954 and 1961, the UN Convention on the Rights of the Child of 1989, and the anti-trafficking convention of 2005.

This interpretation amendment is essential to protecting the most vulnerable people, including by any amendments to follow. It is equally important for the international rules-based order and for our reputation as a great democracy in a troubled world. That was two minutes. I beg to move.

Lord Etherton (CB): My Lords, I support the noble Baroness, Lady Chakrabarti, on one legal point. In Committee, the noble Lord, Lord Wolfson of Tredegar, stated, quite correctly, that we have a dualist system under which international obligations are not part of our law unless specifically incorporated by statute. I consider that this interpretation amendment does not fall foul of that because it imposes no positive obligation to do anything specifically required under those treaties. It is simply of a negative nature to say that the Bill itself —and, in due course, the Act—must be interpreted so as not to conflict with those treaties. For my part, it is perfectly legitimate and legal.

Lord Hope of Craighead (CB): My Lords, I will speak to Amendment 4, in my name. I appreciate the need to move as fast as possible and I shall be as short as I can. This amendment, which appeared in Committee and is renewed today, would require the Secretary of State to provide

"guidance as to how the provisions of this Act are to be read and given effect in a way that is compatible with the Convention rights".

The amendment follows a recommendation by the Constitution Committee prompted by the provisions in Clause 1(3), which tells us that

"so far as it is possible to do so, … this Act must be read and given effect so as to achieve the purpose mentioned in subsection (1)".

Clause 1(5), the crucial subsection, states:

"Section 3 of the Human Rights Act 1998"—

which gives the function of deciding what the convention rights mean for the courts—

"does not apply in relation to provision made by or by virtue of this Act".

The Committee said that the Government's position requires explanation. Of course, there are more fundamental objections to these provisions, which are the subject particularly of Amendment 5. I do not want anything I may say in the next few minutes to be taken as undermining in any way the point made by the noble Baroness in favour of her amendment, but the fact remains that the Government's position on how these provisions are going to work needs to be explained, and no sufficient explanation has been given. Clause 1(5), after all, is a major incursion into the way the convention rights are currently protected. This is a matter of particular concern given the extent to which the Bill affects so many people, including children and the victims of modern slavery, who are extremely vulnerable to government action. As I said last time, they are being sent into a desperate kind of no man's land where the ordinary protections we enjoy are being denied them.

In replying to this amendment in Committee, the Minister said that my amendment was at odds with Section 6 of the Human Rights Act which, as he put it,

"should be our guiding light here; it affords the necessary clarity for those seeking to give effect to the provisions in the Bill".—[*Official Report*, 24/5/23; col. 921.]

I simply did not understand that response and I still do not; indeed, I think it makes the case for guidance of the kind I am talking about all the more strongly. Without going into details, Section 6(1) requires public authorities to act compatibly with the convention rights, while Section 6(2) disapplies it in two circumstances. Yet the fact that the Minister is contemplating disapplication of Section 6(1) suggests to me that he is contemplating that there will be breaches of convention rights flowing from the provisions of the Bill. That seems quite inconsistent with the ECHR memorandum, which says that the clauses it identifies as engaging the convention rights are capable of being applied compatibly.

I am not going to enlarge any further, but it seems to me that that explanation does not make any sense; it is contradictory to the memorandum and it is no answer to the point I was seeking to raise. The fundamental point takes me back to Amendment 5: the short answer to the difficulty created by that explanation is to vote in favour of Amendment 5, which I will do.

Baroness Helic (Con): My Lords, I support Amendment 5 in the names of the noble Baroness, Lady Chakrabarti, the noble Lord, Lord Paddick, and the noble and learned Lord, Lord Etherton. I speak on behalf of my noble friend Lord Kirkhope of Harrogate, who put his name to the amendment but regrets that he cannot be here with us today. This amendment is firmly in the Conservative tradition of strengthening, not undermining, the international rule of law. I remind noble Lords, and especially my noble friend, that Conservative Governments were instrumental in creating the first four conventions listed in the amendment.

Regrettably, the precise legal position of the Bill and its compliance with our international obligations—with this Conservative legacy—remains unclear. The Government say they believe it is compliant. A great number of others, include some of the bodies tasked with implementing these conventions, say that it is not. What is clear is that disobeying or disapplying international agreements which bear the name of the United Kingdom is not acceptable. If the Government are unhappy with their international obligations, they are free to seek to renegotiate them, but simply ignoring our international legal commitments in pursuit of domestic expediency puts us in very bad company.

As your Lordships' House has repeatedly reminded the Government over the last few years, if we hope to negotiate or originate future international agreements on anything from trade to artificial intelligence, and to continue to play our historic role as a creator and driver of international law, we cannot breach our existing agreements. Who would trust us then? We rightly argue for the rule of law in our international relationships and expect it to be followed by other countries; we must follow it ourselves.

The Lord Bishop of Chelmsford: My Lords, I support Amendment 5 also tabled by the noble Baroness, Lady Chakrabarti. In Committee a comprehensive debate took place, during which different cases were made by distinguished lawyers across the House about the place of international law as it relates to our domestic lawmaking. Notwithstanding the different interpretations, I wish to reflect on the moral imperative for us to take seriously the commitments we have made in past decades. Those commitments have value in themselves, but they have also come to define the country that we are and aspire to be. They are part of why we are trusted by much of the international community and held in high regard.

4 pm

Treaties such as the refugee convention and the UN Convention on the Rights of the Child set out clearly the rights of people who, due to their particular circumstances, may not be able to speak up for themselves. In many cases, this country has led the way in drafting the treaties named in the amendment. We should be proud of our involvement in advocating for the rights of every single human being. Anything that affirms our conviction that we are all created in the image of God, worthy of value, dignity and safety, should be commended.

Ensuring that international treaties of this nature are taken seriously in this country, and in this Parliament, is especially important given much of the unfortunate

rhetoric and misinformation present around the Bill and last year's Nationality and Borders Act. Language matters and it forms perceptions, sometimes false perceptions. For example, we hear repeatedly that refugees should claim asylum in the first safe country they reach, even when the majority of refugees already do this, and even though the refugee convention makes no such obligation on people to claim asylum where they first find themselves.

The refugee convention states that protection is not a simple concession made to the refugee: he or she is not an object of assistance, but rather the subject of rights and duties. If we move away from this indisputable legal principle, which underpins the human rights framework, not only our reputation but the spiritual health of this nation will be at stake.

Lord Kerr of Kinlochard (CB): My Lords, I think the argument for Amendment 5 was won in Committee and need not be rehearsed at great length now. In my view there is no doubt that if we pass the Bill, what will follow will be a series of breaches of conventions, in particular the 1951 refugee convention. That is not just my view. It is also UNHCR's view, formally and on the record.

When this point was put to him on our first day in Committee, the Minister said that UNHCR

"is not charged with the interpretation of the refugee convention".—[*Official Report*, 24/5/23; col. 968.]

That is not true. Article 35 and the preamble to the refugee convention give UNHCR the task of supervising its implementation. We are required as convention contracted parties to submit our legislation to UNHCR. It has commented on this legislation and believes it would lead to breaches of the convention. That is why you can sum up the argument in three words: pacta sunt servanda. If we purport to believe in the rules-based international system, we cannot pass the Bill in this form. We must support Amendment 5. If the Government believe what they say, they can support Amendment 5 too.

Lord Cormack (Con): My Lords, we were given an admirable example by the noble Baroness, Lady Chakrabarti, in her brevity at the beginning. I have to apologise to the House that, because I am looking after a sick wife, I will not be here as late as I would like to be. But this is a fundamental amendment in the Bill, and to violate international law is to invalidate national law. We should all bear that in mind. We often talk of China and the violation of the agreement that we made when Hong Kong was handed over. How can we continue to do that with sincerity and determination if we pass laws in this place that violate international law?

Baroness Jones of Moulsecoomb (GP): My Lords, we have heard several times in the course of debates on the Bill that this is the will of the British people. I can assure the noble Lord sitting opposite that, if he steps outside the right-wing media, he will see that it is not. They have already been quite shocked by the egregious and often law-breaking behaviour of this Government, so now the only decent thing this Government can do is accept Amendment 5 and say that they will not break more laws. This is a reasonable request from, apparently, the whole House. I urge the Government to accept this amendment.

Lord Lilley (Con): My Lords, at an earlier stage in our debates I asked all the lawyers present why our judiciary and officials, in interpreting these international agreements, give 75% of applicants for asylum the right to asylum on first application. It is only 25% in France and in almost all other countries it is below ours. If we are interpreting these laws correctly, other countries must be interpreting them incorrectly. We are told that we will lose all credibility if we do things incorrectly. Why do these other countries not lose all credibility? Why has none of the lawyers answered these questions before or now?

Lord Green of Deddington (CB): My Lords, I will speak within two minutes and oppose this amendment. Migration Watch was the first organisation to draw attention to this problem and has been calling for action for three years. I will make two political points, not legal ones. I leave the law to the lawyers.

Practically, we find ourselves in a situation where we have no means of stopping the flow of another 50,000 applicants for asylum over this year, and quite possibly as many or more next year. With last year's intake still under consideration, the whole system is being overwhelmed and the cost is becoming extraordinary, even as a percentage of our foreign aid. This is unacceptable.

Secondly, from a political point of view, I am not political but the public are furious—

Noble Lords: Oh!

Lord Green of Deddington (CB): Noble Lords know that I am not. The point has just been made that the public do not understand this—they are furious and the Government's reputation is suffering severely. Effective action is essential, but that will be only harder if this amendment is approved. I trust that this House will ensure some flexibility on the legal front in order that a very serious matter may be addressed practically.

Lord Horam (Con): My Lords, some extreme language was used throughout Second Reading and Committee and there was very strong emotion. I understand that, because the Bill evokes strong feelings, but I suspect that, beneath all that, there may be more agreement than has been visible in our debate today and in previous debates. The spokesman for the Opposition has not added his name to this amendment and they did not oppose Second Reading, I suspect because there is an understanding that this is a difficult problem that any Government have to deal with. Any Government of whatever stripe have to take protecting the country's borders extremely seriously.

A great deal of agreement underlies all this. For example, we all agree that there should be better-organised legal routes for genuine asylum seekers than there are at the moment. The main difference between the two sides in this debate is over the role of deterrence. The Government argue that we will not succeed in handling this problem unless there is an element of deterrence.

[Lord Horam]

To bring it up to date—I will respond to the Chief Whip's desire to be quick—we now all have the impact assessment, which we did not have until the day before yesterday, which points out the Australian example. Australia brought in a law very similar to this, which gave its Government the power to detain people and turn them around, in their case to Nauru and the Solomon Islands—in our case it is to Rwanda—within 48 hours. I asked the Government, reasonably, why we are not doing this. They pointed out that the Australians do not have to pay any regard to the European Convention on Human Rights, whereas we do. In their view, to comply with that, we could not reasonably turn detainees around within 48 hours; we would have to take at least 28 days, as is in the Bill at the moment.

I do not know whether the Government have ticked every box and crossed every T in relation to the ECHR, but it is quite clear that they have made a big attempt to do so. They have clearly taken on board the spirit of what we have agreed, even if not the letter of the law. The Government are in discussions with the European court about the convention. I am interested to know what the Minister can say about the state of those discussions. It is not only the UK but other countries—Italy, Spain and France—that are in discussion, because this is a new problem which is not covered by the original convention. We have to take that into account and realise that there is a real problem here, which is not a lot to do with immigration but is about border control more than anything else, which any Government will have deal with.

In relation to the point made by the noble Baroness, Lady Jones, the Bill in its unamended form, as it is now, passed the Commons with a majority of 59. There is huge public support for what the Government are attempting to do. The latest YouGov poll showed 60% as saying that illegal migrants should not be allowed to claim asylum in this country; only 20% said the reverse, and 20% were undecided. We have to take that into account. As Matthew Parris, who is no one's idea of a right-wing nutcase, said recently in an article:

"If you oppose the government's plans to send away those who land, then whether or not you know it you are advocating an indefinite continuation of migrant deaths. And that is cruel".

It is indeed cruel to allow that continue.

Lord Paddick (LD): My Lords, the refugee crisis in a global one and any sustainable solution needs to be international. If we do not comply with our international obligations, as set out by the noble Baroness, Lady Chakrabarti, we are unlikely to achieve the international co-operation necessary to deal with the crisis. I am afraid I do not agree with the argument put forward by the noble Lord, Lord Lilley, that because other countries do not abide by their obligations, we should not abide by ours either.

The noble Lord, Lord Green of Deddington, talked about the cost. The Government's own impact assessment says that implementing the measures in the Bill will cost the country more than the status quo. In response to the noble Lord, Lord Horam, the impact assessment says there is an "academic consensus" that there is no evidence that the measures in the Bill will have a deterrent effect. Opinion polls may say that illegal migrants should not be allowed to settle in the UK but we are talking about genuine refugees; we are not talking about illegal migrants.

We support all the amendments in this group and Amendment 5 in particular, which we will support if the noble Baroness, Lady Chakrabarti, chooses to divide the House.

Lord Wolfson of Tredegar (Con): My Lords, I have the misfortune to differ from the noble and learned Lord, Lord Etherton. I know that he will not think that this is any personal discourtesy. Let me take a few minutes to explain to the House why I respectfully disagree.

Noble Lords: Oh!

Lord Wolfson of Tredegar (Con): Noble Lords say "No"; I think there are important points of constitutional principle here, and if that means we take another two and half minutes over it, so be it.

The starting point is that we are, as the noble and learned Lord said, a dualist state. That means that the treaties listed in the amendment are not part of our domestic law. If you were to go to court and try to rely on, for example, the UN Convention on the Rights of the Child, it does not give you a right in domestic law. I will come back to that point in a moment.

4.15 pm

What does this amendment do? The noble Baroness, Lady Chakrabarti, and the noble and learned Lord, Lord Etherton, say that this is an interpretation amendment. The word "interpretation" does not appear in the amendment. I invite noble Lords to do something unfashionable and actually look at the words of the amendment. It provides:

"Nothing in this Act shall require any act or omission that conflicts with the obligations of the United Kingdom"—

under these treaties. That means that if the Act requires a Minister to do X but a court later holds that X is contrary to honouring these treaties, the Minister is prohibited from doing it. If the Act says that a Minister cannot do something but a court later says that the treaty means that the Minister has to, then the Minister has to. That is not, I suggest, a matter of interpretation; it changes substantively the nature of the obligations and the nature of domestic law. That is important because if it was a matter of interpretation, we would not need this clause. It has been part of our law for many years, most recently set out by the Supreme Court in the Assange case, that the courts will always interpret domestic Acts of Parliament consistently with our international treaty obligations if they can do so. This clause, therefore, is not a matter of normal interpretation; it goes further, and it has the substantive effect, I suggest, of incorporating those treaties into our domestic law. Parliament can do that, but it should not do it on a Wednesday afternoon by incorporating six treaties, which very few people in this House have read, in part or in full, into our law. This is not the way to incorporate treaties.

There is also one difference—I think I am right about this—between the amendment proposed in Committee and that proposed here today. If I recall correctly, the fourth convention in the list—the 1989 UN Convention

on the Rights of the Child—was not part of the amendment in Committee. That is not a problem—it can change. However, it is interesting that a year and a half ago, the Scottish Parliament, as it was entitled to do, incorporated that convention into Scots law, but did so in a way that made it have effect in England and Wales as well. The Government took the Scottish Parliament to court under the Scotland Act. The Supreme Court held that the Scottish Parliament had exceeded its powers because it had no right to incorporate the UNCRC into the law of England and Wales. This Parliament can do that—of course it can—but it should not do so without proper debate.

This Parliament should not be incorporating, I respectfully suggest, five treaties into our domestic law on a Wednesday afternoon; still less should it do so on the basis that this is merely interpretation. It is not interpretation, it is substantive, and I invite every Member present to read the first two lines of the amendment and ask themselves whether it is interpretation or substantive. It is substantive, and it should not be accepted for that reason. This is not an interpretation amendment.

Lord Coaker (Lab): My Lords, I declare my interests as a trustee of the Human Trafficking Foundation, and my work with the University of Nottingham Rights Lab.

The noble and learned Baroness, Lady Butler-Sloss, Karen Bradley MP and I were at an international co-operation event on human trafficking. Nothing better illustrated the importance of international co-operation than the discussions we had over the last couple of the days; they showed how important the UK's reputation is.

I say to the noble Lord, Lord Horam: no one is saying that there is not a problem that needs solving. However, it should not be solved by trashing international conventions that we have signed up to but in a way which is consistent with them and which we should be proud of.

The noble Lord, Lord Wolfson, mentioned the UN Convention on the Rights of the Child. I remind him that it was the 1991 Conservative Government who ratified that convention. That was when we had a Conservative Government who, as the noble Baroness, Lady Helic, pointed out, actually put into practice most of these conventions. They were proud of it, the country was proud of it, and this Parliament was proud of it. We do not solve the problem that the noble Lord, Lord Horam, mentioned by driving a coach and horses through that.

Can your Lordships imagine what we would say if the other countries that have signed up to the international treaties which we have signed turned round and said, "We're not going to abide by those treaties any more"? Imagine if they unilaterally declared that they would step away from them and have nothing to do with them. That is the point of principle.

There is something else that I found absolutely unbelievable. I say to the noble Lord, Lord Horam, that we absolutely support Amendment 5, tabled by my noble friend Lady Chakrabarti, and one reason I did not put my name to it is that we wanted to show the breadth of support across this Chamber for that amendment. To think that I do not talk to my noble friend Lady Chakrabarti about different amendments, or that we do not work together, as we do, along with other Members of this House, is nonsense.

The noble Lord, Lord Wolfson, pointed out that the amendment says:

> "Nothing in this Act shall require any act or omission that conflicts with the obligations of the United Kingdom".

The noble Lord can have his point of view—I agree with that. My point is that it is unbelievable that this House has to have an amendment before it to actually require the Government of our country to abide by the international conventions that they have signed up to. That is the point of principle.

I do not know what dualism is; I had never heard of it until a couple of weeks ago—I think it was the noble Lord, Lord Wolfson, who tried to tell me what it was. I am still not sure I understand it, but what I do understand is that, if you sign international conventions, freely, then the obligation is on you to abide by those conventions, and that is the expectation of those countries which sign them with you. That is what we should stand for. It is why we will support Amendment 5 and are proud to do so.

Lord Etherton (CB): My Lords, before the Minister replies, can I mention that I have two amendments in my own name, which are consequential? They relate to the ability to have judicial review if the amendment to Clause 1 succeeds.

The Parliamentary Under-Secretary of State for Migration and Borders (Lord Murray of Blidworth) (Con): My Lords, as the noble Baroness, Lady Chakrabarti, has set out, Amendment 5 seeks to replace Clause 1 with a new clause that provides that nothing in this Bill requires an act or omission that conflicts with the five international agreements specified in the amendment. This includes the European Convention on Human Rights. Amendment 4, tabled by the noble and learned Lord, Lord Hope, is focused on compatibility with the ECHR. As I have repeatedly said in the debates on the Bill, and to reassure my noble friends Lady Helic and Lord Cormack, the Government take their international obligations, including under the ECHR, very seriously, and there is nothing in the Bill that requires any act or omission that conflicts with UK international obligations. Amendment 5 is therefore, on one level, unnecessary. But what might be viewed as a benign amendment takes a wrecking ball to our long-established constitutional arrangements, with uncertain consequences, as outlined by my noble friend Lord Wolfson.

Along with other countries with similar constitutional arrangements to the UK, we have a dualist approach, where international law is treated as separate to domestic law and incorporated only by domestic law passed by Parliament through legislation. We have, of a fashion, reproduced in domestic law aspects of the text of the ECHR through the Human Rights Act 1998, but that is not generally the case with other international instruments listed in the amendment.

The effect of this amendment would be to allow legal challenges based on international law in the domestic courts. As my noble friend Lord Wolfson has eloquently explained, this amendment would incorporate these instruments into our domestic law by the back

[Lord Murray of Blidworth]
door, thereby making substantive changes to the Bill. I therefore have to disagree with the noble and learned Lord, Lord Etherton, on the effect of Amendment 5. As my noble friend said, this is wrong in principle and far from being an academic point for the lawyers. There is a legitimate case to be made for incorporation but this is not the Government's intention, and we should not make such a fundamental change to our domestic law on the basis of a two-hour debate in Committee and a rather shorter one again today.

The noble Baroness, Lady Fox of Buckley, hit the nail on the head in her insightful contribution in Committee. In the Bill we are legislating to prevent and deter the small boats by putting in place a scheme that makes it unambiguously clear that if you arrive in the UK illegally, you will not be able to stay; instead, you will be detained and returned to your home country or removed to a safe third country. That is the proposition we are seeking to put on the statute book. That is the proposition which Parliament will have endorsed and, having done so, that is the proposition that our courts should give effect to. As the noble Baroness said, we risk undermining the reputation of this place and the elected House if the clear intent of Parliament can be unravelled by this misguided amendment.

On the amendment in the name of the noble and learned Lord, Lord Hope, the Government have published two memoranda addressing issues arising under the ECHR, and I remain unpersuaded of the case for statutory guidance on how the Bill's provisions are to be implemented compatibly with convention rights. It will undoubtedly be necessary to provide Home Office staff and others with appropriate guidance to support the implementation of the Bill. In the Government's view, it would not be appropriate for such routine operational guidance on the implementation of a particular Act to be subject to parliamentary approval.

Amendments 13 and 16, in the name of the noble and learned Lord, Lord Etherton, would strike out Clause 4(1)(d), which makes it clear that the duty on the Home Secretary to make arrangements for the removal of a person who meets the conditions in Clause 2 applies regardless of any judicial review challenge to their removal. The noble and learned Lord's explanatory statement for Amendment 13 describes it as consequential on Amendment 5. It may well be the noble and learned Lord's intention to provide for judicial review challenges to removal—whether on ECHR grounds or otherwise—to be suspensive of removal, but that is not the Government's stance, and I do not accept that his amendment is consequential on Amendment 5. We need a scheme that will enable removals in days and weeks, not, as now, in months and years. Clause 4(1) is critical to achieving that objective and I cannot support its evisceration.

Finally, as regards Amendments 1 to 3, I simply remind the noble Baroness, Lady Chakrabarti, that it is an offence to knowingly enter the United Kingdom without the required leave or to arrive without valid entry clearance or electronic travel authorisation. That being the case, Clause 1(1) quite properly refers to "unlawful migration" and "illegal routes".

In response to the point raised by the right reverend Prelate the Bishop of Chelmsford, I point out that the refugee convention is clear that states can still operate controls on illegal migration. Under Article 31, it is indeed expressly permitted to disadvantage those who have arrived illegally from safe countries, which is true of all who come from France. This embodies the first safe country principle, in the sense that Article 31 protections apply only to those who have come directly from unsafe countries. The first safe country principle is widely recognised internationally, including in the common European asylum system, which is a framework of rules and procedures operated by the EU countries together, based on the refugee convention.

These amendments, particularly Amendment 5 but also Amendment 13, go to the heart of the workability of the Bill. Your Lordships' House has a choice: either we can continue to accept the status quo, which could see the £3.6 billion spent on supporting asylum seekers in 2022-23 mushroom to £11 billion a year, or £32 million a day, by 2026, or we can back the Bill, retain Clause 1 and Clause 4(1)(d), and stop the boats. The House should be in no doubt that these are wrecking amendments. I therefore invite the noble and learned Lord, Lord Hope, not to press his Amendment 4, and ask the noble Baroness, Lady Chakrabarti, not to press her amendment. However, were she to do so, I would have no hesitation in inviting your Lordships' House to reject the amendment.

Lord Kerr of Kinlochard (CB): With reference to what has just been said about the first safe country principle, I would point out to the Minister and to the House that the UNHCR is on record from last week as authoritatively, formally saying that there is no requirement in international law for an asylum seeker to seek protection in the first safe country they reach. We may not like what the umpire says, but he is the umpire.

4.30 pm

Lord Murray of Blidworth (Con): As the noble Lord will recall, and as my noble friend Lord Wolfson made clear in Committee, the UNHCR is not empowered to interpret or referee the convention. That is clear from the Vienna Convention on the Law of Treaties. The UNHCR is not in a position to make that assessment, and I refer the House to the comments I made a moment ago.

Baroness Chakrabarti (Lab): My Lords, I am so grateful, as always, to all noble Lords for their contributions and to most noble Lords for their brevity. I beg leave to withdraw Amendment 1.

Amendment 1 withdrawn.

Amendments 2 to 4 not moved.

Amendment 5

Moved by ***Baroness Chakrabarti***

5: Leave out Clause 1 and insert the following new clause—

"Introduction

Nothing in this Act shall require any act or omission that conflicts with the obligations of the United Kingdom under—

(a) the 1950 European Convention for the Protection of Human Rights and Fundamental Freedoms;

(b) the 1951 UN Convention relating to the Status of Refugees including the Protocol to that Convention;

(c) the 1954 and 1961 UN Conventions on the Reduction of Statelessness;

(d) the 1989 UN Convention on the Rights of the Child;

(e) the 2005 Council of Europe Convention on Action against Trafficking Human Beings."

Member's explanatory statement

This amendment replaces the narrative and interpretation provisions of Clause 1 with clear provision for compliance with all the key international obligations engaged by the Bill.

Baroness Chakrabarti (Lab): If the Government will not accept Amendment 13 as consequential, I will need to press Amendment 13 as well; but, first, I would like to test the opinion of the House on Amendment 5.

4.31 pm

Division on Amendment 5

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Amendment 5 agreed.

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4.42 pm

Clause 2: Duty to make arrangements for removal

Amendment 6

Moved by ***Lord Carlile of Berriew***

6: Clause 2, page 3, line 26, leave out "7 March 2023" and insert "the date on which this section comes into force"

Member's explanatory statement

This amendment ensures the duty to deport in Clause 2 does not apply retrospectively to those who entered or arrived in the United Kingdom before the Bill comes into force.

Lord Carlile of Berriew (CB): My Lords, five of the amendments in this group have my name and the names of noble and noble and learned friends on them. They are designed to remove retrospectivity in relation to the duty to deport. I, and certainly two of my noble friends, have had the advantage of a meeting with the Attorney-General and officials in recent days to discuss this, and I hope I am not being too optimistic in hoping that we will hear something at least partly welcome from the Minister at the end of this debate. I shall be very disappointed if that does not happen.

Retrospectivity is the enemy of legal certainty. Legal certainty is a basic tenet of common law and of our statutory law. In order to save time, I am not going to cite various very eminent judges who have spoken on this subject. I will simply give the names of Lord Bingham, the noble and learned Lord, Lord Mance, and the great public lawyer the late Sir John Laws. I remind your Lordships that the House of Lords Constitution Committee has emphasised that retrospective legislation should be passed in very exceptional circumstances only. The proof of very exceptional circumstances should require more than mere assertion: it should require clear evidence. The fact that the retrospectivity asked for, as in this situation, may affect a relatively small cohort of people is no mitigation for the wrong of unnecessary retrospectivity.

The Government are not offering evidence. They are offering a refrain, and the refrain is: "Stop the boats". But they have failed to offer any convincing evidence at all as to how the present circumstances are so exceptional as to justify the Bill's wide-ranging retrospective powers. This is wholly unacceptable, given that the proposals represent a widespread retroactive overhaul of our asylum law, founded simply on a deterrent effect—"Stop the boats"—which is unproved.

Again, for the purposes of brevity, I will not deliver the whole speech I would have wished to—and will break the habits of a lifetime thereby. But I remind your Lordships that the deterrent effect is hardly borne out by the Government's own figures for migrants

detected crossing the channel in June 2023, the very month we are in. I was surprised they did not appear in the impact statement, because they were available before it. According to those figures, up to that point, 3,506 migrants were detected crossing the channel in June this year, compared with 3,139 in June last year—some 400 more, and 1,500 more than in June 2021. If one looks at the figures for April, May and June 2023 together, the evidence that this retrospective element is stopping the boats is a fairy tale, but one of those nasty fairy tales that keeps the victims of it awake at night because of the uncertainty of what will happen to them.

Furthermore, the Nationality and Borders Act 2022 addressed the same public policy issue and was not retrospective. As Dame Priti Patel MP, the then Home Secretary, said in the Second Reading debate on that legislation, the intention was that:

"Anyone who arrives in the UK via a safe third country may have their claim declined and be returned to a country they arrived from or a third safe country". [*Official Report*, Commons, 19/7/21; col. 717.]

In other words, the policy intention was the same, but although there was a little bit of retrospectivity in that legislation, the vast majority of its provisions were not retrospective.

At the conclusion of Committee on this Bill, the Minister admitted that announcing that it applied from 7 March 2023

"may not have had a decisive impact". [*Official Report*, 24/5/23; col. 967.]

Well, the evidence suggests that it has not had a decisive effect at all. At best it is equivocal, which cannot be a basis for proper retrospectivity. The evidence does not justify such broad and sweeping legislation, which seeks to apply penalties to those who cross the channel to claim asylum, being retrospective in its entirety. It would set a dangerous precedent whereby the Government could legislate retrospectively, based on no more than conjecture and anecdote.

I respectfully suggest, even at this stage of the Bill, that a dangerous precedent is being set, that we should be deadly serious about the fact that we are dealing with the law and with sound and historic legal practice, and that this is not a situation in which the case for retrospectivity is anywhere near made out.

Baroness Hamwee (LD): My Lords, as the noble Lord has said, brevity does not mean half-heartedness today and these Benches whole-heartedly support the noble Lord's amendments to which my name has been added. It is not only an academic, philosophical, jurisprudential matter; retrospectivity applied to this Bill will be cited as a precedent for the future and would have an impact in the real world for individuals.

As we have heard, the Nationality and Borders Act is not retrospective. Indeed, the two classes of asylum seekers for which it provided have not even been brought into effect. Ironically, the situation and the figures that have been cited have supported our points that it will not have the deterrent effect that has been claimed. It is a very thin claim. The weather in the case of the channel crossings, and TikTok's policy in the case of Albania, did have an effect. That puts all of us in our place.

Baroness Lister of Burtersett (Lab): My Lords, I will speak briefly to Amendment 10 and draw attention to my entry in the register with regard to support from RAMP for this and other groups of amendments.

I have lost count of the number of times I have asked where the child rights impact assessment is, only to be told that we will receive it "in due course". It should have been available from the outset to help develop policy, and yet here we are at Report stage with no sign of it still. Without it, how are we supposed to assess ministerial claims that their policies are in the best interest of the child and that there is no incompatibility with the UN Convention on the Rights of the Child? Yesterday in Oral Questions I asked the Minister. All he could say was that:

"I am sure that it will be provided".—[*Official Report*, 27/6/23; col. 574.]

When? After the Bill has gone through?

Lord Hodgson of Astley Abbotts (Con): My Lords, I have looked through these amendments but not put my name to any of them. I have to say that they—in particular Amendment 8—drive a coach and horses through much of what this Bill stands for. Therefore, I am going to ask my noble friend to make sure he resists them.

This is important because we face some very serious challenges in our society as a result of the rapid growth in our population. I will go over this issue only briefly because we are time-constrained, but I just remind your Lordships that this is already a relatively overcrowded island. Last year, we admitted permanently 600,000; the year before last, we admitted 500,000. Stoke-on-Trent has a population of 250,000, Milton Keynes 288,000 and Derby 259,000. If we are going to house those people properly—and we certainly should—we will have to build four Milton Keynes or four Derbies over just two years. On dwellings, we all know how fiercely fought this is. In 2001, there were 21 million dwellings in this country; there are now 25 million—in 20 years, we have built 4 million dwellings.

It is not just at that very high level. The fact that we are introducing hosepipe bans in the south-east of England now is because the population is rising so fast we are running short of water. When we debated this in Committee, I took a certain amount of incoming from the most reverend Primate the Archbishop of Canterbury. He said:

"everyone who has spoken so far has agreed, that we have to control migration. I do not think there is any argument about that, but does the noble Lord accept that of that 700,000 last year, or whatever the number turns out to be exactly, the Bill will cover only 45,000? The Bill is not about overall immigration".—[*Official Report*, 24/5/23; col. 897.]

That is a fair point. However, the figure turned out to be 600,000 and it may well be that that 45,000 is 60,000, in which case it is 10%, not a sufficiently significant number, but the real challenge to us is that everybody thinks it is not their challenge. Everybody thinks it is somebody else's challenge.

We have heard persuasive, dreadful, heart-rending speeches about the positions that people find themselves in—on behalf of interest groups of various sorts—and no doubt we shall hear them again. However, one

[Lord Hodgson of Astley Abbotts]
group has essentially not been heard during our debates, and that is the 67.3 million people who live in this country, 18% of whom are from minority communities.

When I undertook my polling—which, as I have said to Members of the House, is freely available to anyone—I did not want it to be said that it was going to be old white Brexiteers living in the country, as opposed to young trendy hipsters living in the towns. In response to the question "The UK is overcrowded", between 60% and 70% of people polled, across all social classes, all regions of the country and all age groups, felt that was the case. Every interest group, including those that are seeking to blunt the effect of the legislation before us, has to play its part in reducing the number. Unless we are seen to be responding to between 60% and 70% of our fellow citizens, uglier and nastier voices will emerge to capture that. We need to be conscious of that.

In my view, the amendments would punch holes in the bucket. How much water would flow out I do not know, but I hope the Minister will think very carefully before allowing the bucket to lose too much water because that way difficulties lie for us, for our communities and for generations ahead.

Baroness Butler-Sloss (CB): My Lords, in Committee I tabled a similar amendment to Amendment 10, so I will not say much now because I said it then. I listened with interest to what the noble Lord has just said, and I recognise that we do not want illegal migration. However, there are broader and more important issues.

Children have rights. A child who is unaccompanied comes to this country, sometimes quite young, and is settled here in local authority care, placed perhaps in a foster family or a residential home. They go to an English school and become fluent in English but then, at the age of 18, are then removed either to Rwanda—the only country with which there is an agreement apart from Albania, and Albanian children are unlikely to be in this group—or to some other country or home that they have fled. Quite simply, to uproot children at 18 is, as I said in Committee, cruel.

Lord Hacking (Lab): My Lords, I am afraid I have dropped my notes.

Baroness Meacher (CB): My Lords, I strongly support Amendment 10, tabled by my noble and learned friend Lady Butler-Sloss. The sole objective of the amendment is to ensure that the Government fulfil their clear responsibility to protect the best interests of children under the UN Convention on the Rights of the Child. Article 3 of the convention provides explicitly that in all actions the child's best interests must be a primary consideration, and that is what the amendment says. Article 20 requires that children separated from their parents be given special protection and assistance. Unaccompanied children seeking asylum in this country, as noble Lords know, will have escaped from the most appalling persecution, trafficking, modern slavery and other abominable experiences. The current Government are putting the reputation of this country at risk for years to come if they insist on rejecting Amendment 10 and others that seek only to ensure that this country respects our international obligations.

5 pm

Lord Hacking (Lab): My Lords, I have found my notes—they were at my feet—and so will intervene now, if I may.

I support Amendments 6 and 10, and I hope all other noble Lords will similarly support them. I am responsible for Amendment 8. It has been suggested that this is a busting amendment. I do not intend to put it to a vote but I intend to tell your Lordships the importance of my amendment.

It is a little difficult for me to make this intervention because I greatly respect my Front Bench and do not like being in fundamental disagreement with them. However, I am making this intervention because I believe we should all be aware of the gross injustice that this Bill will impose, when enacted, on thousands of refugees arriving in this country. Noble Lords should also be aware that we have the power, under the Parliament Acts, to delay this process as far as to May or June of next year, thereby allowing the Government to have a big rethink.

I wish to be cognisant of the wishes of your Lordships' House and not to speak at length, and I certainly do not want to upset my Front Bench and Chief Whip by going on too long, but this will affect thousands and thousands of refugees, and we should be aware of what we are doing. That is why I have tabled an amendment to remove Clause 2. In Committee, this amendment was supported by the noble Lord, Lord German, and my noble friends Lady Chakrabarti and Lord Coaker. I am now being left to table it on my own.

What is the injustice? Let me trace it through one set of refugees: the Afghan refugees. The information relating to them is contained in the official government statistics for 2022. I do not have the figures for 2023 to bring it up to date—I do not think they have even been issued. In 2022, 8,633 Afghan refugees sought asylum in this country. Most significantly, 97% of them were granted asylum or other status so that they could remain in the United Kingdom. Compare that with the Albanian refugees—there are rather more of them, at around 12,000—76% of whom were refused entry.

It can be assumed that, in 2023, the same number of Afghans, or possibly more, will arrive in this country. We can also assume that there will be the same proportion of genuine refugees, and that all of them will have come to this land in the genuine belief that there is the availability of asylum for them—the people smugglers are hardly going to tell them otherwise. This point was supported by paragraph 33 on page 13 of the impact assessment.

The further point I ask your Lordships to note is that, under the Taliban, there is a lot of evidence of mistreatment of Afghans, particularly women, and particularly relating to education. I also ask noble Lords to take note that, in Afghanistan, there is terrorism, persecution, false imprisonment and torture, hence the very large number of Afghans who got asylum. I remind noble Lords that that figure is 97%.

We should also look at their long journey to this country. The measured distance between Kabul and Calais is 4,168 miles—nearly twice the journey of crossing the United States of America. We do not

know precisely how they carried out that journey but, inevitably, it must have been through Iran and Iraq—two countries which are not friendly to passengers—and possibly on through war-torn Syria. Somehow or other, they managed to reach the Mediterranean and Europe, via Greece or Italy. Their mode of transport must have been fairly limited. If they had the money, they might have been able to take a bus, but, in the main, they must have had to get the indulgence of lorry drivers and accept lifts from them. In my view, one has to be left with an admiration of the Afghans who made it to Calais. The Government make much of the illegal entry of the boat people, but how else could they have got here? Should they have obtained UK visa forms in the depths of the mountainous country of Afghanistan? How on earth could they have made the journey here, except in the circumstances they have?

The consequences of the provisions of the Bill will simply be dire for all refugees. Let us briefly look at them. First, without any investigation about their asylum or other status, they are to be shipped immediately, under Clause 2, to Rwanda—it could hardly be back to their home state, which is the other alternative. Rwanda carries a capacity of about 30,000 refugees. Secondly, once they get to Rwanda, for example, they will be barred from UK asylum status and left with Rwanda asylum status, if that does them any good. Thirdly, they will be branded as illegal immigrants and barred for ever from entering the UK. Their only sin has been that they travelled here from Afghanistan without the necessary paperwork and crossed the channel in a rubber dinghy, yet on arriving here they were seeking to escape the terrors—this is the important point—of the Taliban Government, probably in large numbers.

I will not detain your Lordships further, except to make it plain that, if we allow the Bill through in its present form, it will impose terrible consequences on a lot of refugees who have no opportunity to establish their asylum status. I could go through the mechanism of the Parliament Acts—I have my notes for it—but it suffices to say that, under them, we have the power to stop this, and we should at least consider it.

Lord Clarke of Nottingham (Con): My Lords, I will be brief because my timetable has not allowed me to take a significant part in the Bill hitherto. However, I have attended quite a lot of the debate, which I started attending in a very troubled state of mind, completely uncertain about what I would do about this startling proposal. I sat through quite a bit of the Committee debate, and have listened today to the debate on the two amendments we have had, and I think that the underlying problem is being missed. We all agree that there is a huge problem with illegal migration and that, if we cannot find a solution, people will die in the channel in considerable numbers—they go up each year—by taking risks as they come here. We all admit that it is a global problem, so, if we suddenly become an easier country than others, we are likely to find significant pressures.

We all want to retain our excellent reputation—it is not unblemished, but better than those of most other European countries—for good race relations and an integrated community. During my lifetime, Britain has become a multicultural, multiracial society, and I am glad to say that I think the majority of my fellow citizens feel that the contribution that has been made, and the improvements to our society, are quite substantial as a result. As my noble friend said a moment ago, concern about the dinghies and old fishing boats bobbing on the ocean will, if we are not careful, rearouse all the bad feelings that we used to know, which we remember only too well from 20 or 30 years ago. That is why more than 60% of our population wish to stop illegal immigration.

I have tried to listen for a solution during the debates on the two groups of amendments but, sadly, the only solution being put forward is the rather extraordinary one by the Government that we simply cease to entertain illegal immigration and deport to safe places. I have not heard a single alternative policy put forward. I am not sure that it will work—I think I said that at an earlier stage—but I am still to hear anybody else offer anything but the possibility of litigation or huge numbers of people coming here as the practice of trying to get over the channel grows. We have to face up to our responsibilities. I am a lawyer and have a huge respect for law—abiding by the rule of law is one of the most important underlying principles of our constitution—but we cannot simply produce a lot of legalisms to shoot down the proposal without making any suggestion whatever of a practical kind that is likely to impact a great national problem, which we share as part of a global problem.

Finally—I am sorry that I have spoken for longer than I intended—I give this Government credit, not for coming up with the extraordinary idea of Rwanda but for making our contribution. We have done well with Ukrainian and Hong Kong refugees and admitted a lot of people from Afghanistan, although we could have made a better job of that. We are making our contribution to the global problem and taking a huge net increase to our population each year; we are getting some benefit, as it is helping our workforce. We are not becoming a walled-in, closed country. That is a good British contribution to a tremendous problem for the whole of the western world.

With no alternative policy in sight at all, this latest legal argument, which lies behind the key amendments here, is simply not a good enough reason for rejecting this policy. I do not know whether the policy will work, but we can no longer simply do nothing. To retreat into hours and hours of legalistic debate—which is very interesting, if you are interested in that kind of thing—is not rising to the occasion. Therefore, with a certain reluctance, I will yet again support the Government, which is not always my habit in this House.

Baroness Kennedy of The Shaws (Lab): My Lords, I did not intend to speak, but I cannot let this opportunity to refute what has just been said by the noble Lord, Lord Clarke, go unanswered. There are alternatives. One of the real alternatives is that you have a proper process, and I am disappointed to hear the noble Lord—someone I admire and have great affection for—speak about the rule of law while forgetting what it means. It means that people must have a process to decide on whether their rights will be recognised. On asylum seekers, we have written our names at the bottom of—

Lord Howard of Lympne (Con): My Lords—

Baroness Kennedy of The Shaws (Lab): Let me complete a sentence. We put our names at the bottom of the refugee convention saying that we would provide asylum to people, but you need a decision-making process to decide those who are legitimate and those who might purely be economic migrants. We will deny people that due process and the rule of law. That is where I disagree so sincerely with the noble Lord, and where I say that a process has to be put in place that is speedy and effective, and that it should be allowed for.

Lord Howard of Lympne (Con): I am grateful to the noble Baroness for giving way. Does she not recognise that those who apply through the legal, safe processes, and whose applications are rejected, will not still try to get to this country and will not be able to pay the people smugglers to put them on boats that cross the channel?

Baroness Kennedy of The Shaws (Lab): We had a very good asylum process. Over the years of austerity, it was cut to the bone, including cuts to the number of people with the skills to assess those asylum applications. Now, the way to reverse that is to put in place, once again, good people making those assessments on the applications being made by people seeking asylum in this country and immediately, promptly, making decisions. Then, if the applications are not properly made, people can be deported to other places—but we cannot deny them due process, and that is what we are doing in this business of not letting people make an application and treating everybody the same. That is an affront to the rule of law.

5.15 pm

I am amazed to hear lawyers such as the noble Lord, Lord Howard, and my noble friend Lord Clarke saying that this is abiding by the rule of law. You are not abiding by the rule of law if you do not give people the opportunity of asserting their rights. In international law, asylum seekers have rights. We signed up to that proudly and are admired around the world for doing so. We are diminishing the respect we have by doing this kind of thing. It amazes me that the impact statement makes no mention of what this is going to do to our reputation around the world. As someone who now practises with the International Bar Association in countries around the world, I know that this is what we are respected for. How do we speak to China about its breach of the treaty we made with it over Hong Kong? How do we speak with any authority when we are behaving in this way with regard to international law now?

Baroness Lawlor (Con): My Lords, I am concerned that the amendments in this group would, in their different ways, undermine the purpose of the Bill, which is to deter people and prevent them using unsafe and illegal routes. The date from which it will apply is 7 March 2023. I disagree with the noble Lord who has tabled Amendment 6 and others to change that date: 7 March is very clear and not subject to the time your Lordships' House devotes to scrutinising the Bill, often until the late hours of the day or the early hours of the next morning. Tackling this sort of migration is an urgent matter. People are losing their lives. It is to be dealt with now, not delayed or put off to another date.

On Amendment 10, on unaccompanied children who reach the age of 18 in this country, removal at 18 will in some way deter this sort of illegal immigration for those not removed before the age of 18. The problem of unaccompanied children is one I take very seriously. These are very unsafe routes. It is wrong to tolerate and, in effect, encourage them. If unaccompanied children are allowed to remain, there will be an incentive to send them here, despite the risks on these routes. The assumption will be that the children will be housed, fed and educated in the UK, and that this may bring them advantages in life even if they are removed at 18, perhaps providing grounds for their families to join them.

There is a further complication in that Amendment 10 introduces the idea of judging the best interests of the person at the age of 18. Though I accept that the measure of "best interests" has been adopted in this country in many cases, it can and does give rise to subjective judgments that raise more questions than they resolve, and I am not sure it will not do so in this Bill. More to the point, we do not owe it to anyone who enters the country in defiance of immigration controls to act in their best interests, when doing so has financial costs that must be borne by others. I therefore have grave reservations about these amendments, given that they would remove the clarity about when the measure comes into force and when and to whom it applies.

Baroness Altmann (Con): My Lords, I had not intended to speak but I ask noble Lords to indulge me for a moment. I have great sympathy with my noble friend Lord Clarke and, indeed, with the words of my noble friend Lord Hodgson. However, for me, a resolution is available, but it would require this country, if necessary, to show global leadership and co-ordinate across the globe the actions that we can all take; all countries have the same problem. Rather than sitting here as an island and saying, "You've got to go somewhere else"—where else?—I would hope that we can find a way to show global leadership and organise safe and controlled measures that will deal with this international problem without needing, as the noble Baroness, Lady Kennedy, said, to break international commitments we have made.

Lord Ponsonby of Shulbrede (Lab): My Lords, the second group of amendments centres on the major changes this Bill creates, particularly the duty to remove. We tabled Amendment 9, in the name of my noble friend Lord Coaker, in Committee and hoped to hear from the Government, but since we last discussed this issue significant progress has been made on putting in place returns agreements. That is the answer to the issues raised by the noble Lord, Lord Clarke, and the noble Baroness, Lady Altmann: putting in place returns agreements and negotiating them vigorously, so that people can be deported as they are now. Nobody on this side of the House has said that should not happen, but greater effort needs to be made to put them in place.

Turning to Amendment, 6 on retrospection, which the noble Lord, Lord Carlile, spoke to, I hope he will get the response he is looking for from the Minister;

we are behind him in seeking that response. As he said, retrospectivity is the enemy of legal certainty. He quoted some powerful figures showing that the threat of stopping the boats is not having any effect on the number of people crossing the channel. I agree with the noble Baroness, Lady Hamwee, that brevity does not mean half-heartedness, and I will carry on being brief in addressing the points raised.

My noble friend Lady Lister challenged the Minister again on the child rights impact assessment; I look forward to discovering whether he can give a more convincing answer than he managed yesterday. The noble Lord, Lord Hodgson, who I would count as a friend outside this Chamber, gave a speech he has given on a number of occasions, concerning the overall figures, which are indeed very serious. As he fairly pointed out, illegal migrants, who are the subject of the Bill before us, account for roughly 10% of the overall figures. Everyone on this side of the Chamber—indeed, throughout the House—acknowledges that there is a very serious issue. The focus right now is illegal migration, although I acknowledge the point he made about the wider context.

The noble and learned Baroness, Lady Butler-Sloss, spoke compellingly, as ever, about the rights of the child. I find it mind-boggling that she was having breakfast with my noble friend Lord Coaker this morning in Warsaw. Both gave compelling speeches this afternoon. My noble friend Lord Hacking also spoke with passion, and I am glad that he will not be putting his amendment to the vote today.

This has been a relatively brief debate and I look forward to hearing the Minister's response.

Lord Murray of Blidworth (Con): My Lords, Clause 2 is the centrepiece of the scheme provided for in this Bill. Without it, the Bill as a whole would be fundamentally undermined. It therefore follows that I cannot entertain Amendment 8 proposed by the noble Lord, Lord Hacking, who frankly conceded its wrecking effect in his speech. At its heart, this Bill seeks to change the existing legal framework so that those who arrive in the UK illegally can be detained and then promptly removed, either to their home country or to a safe third country. As my noble friends Lord Clarke and Lord Howard, both fellow lawyers, so powerfully put it, we cannot sit by and do nothing.

As the noble Lord, Lord Carlile, has set out, Amendments 6, 17, 22, 23 and 88 address the retrospective effect of the Bill. The second condition set out in Clause 2 is that the individual must have entered the UK on or after 7 March 2023—the day of this Bill's introduction in the House of Commons. In effect, the noble Lord's amendments seek to do away with the backdating of the duty to remove, as well as of other provisions in the Bill, so that they apply only to those who illegally enter the country from the date of commencement rather than from 7 March.

As I set out in response to the same amendments in Committee, the retrospective nature of these provisions is critical. Without it, we risk organised criminals and people smugglers seeking to exploit this, with an increase in the number of illegal arrivals ahead of commencement of the Bill. This would likely lead to an increase in these unnecessary and dangerous small boat crossings and could place even more pressure on not only our asylum system but our health, housing, education and welfare services. This risk will only grow as we get closer to Royal Assent and implementation. We must take action to prioritise support for those who are most in need and not encourage people smugglers to change their tactics to circumvent the intent of this Bill. I recognise that the retrospective application of legislation is not the norm and should be embarked upon only when there is good reason. I submit to the House that there is very good reason in this instance, given the scale of the challenge we face in stopping the boats.

Amendment 7 in the name of the noble Baroness, Lady Ritchie, deals with entry into the United Kingdom via the Irish land border. As is currently the case, tourists from countries which require visas for them to come to the UK as visitors should obtain these before they travel. That said, I recognise the issue and accept that some individuals may inadvertently enter the UK without leave via the Irish land border. We are examining this issue further. I point the noble Baroness to the regulation-making power in Clause 3, which would enable us to provide for exceptions to the duty to remove where it would be appropriate to do so.

Amendment 10, spoken to by the noble and learned Baroness, Lady Butler-Sloss, relates to the removal of an unaccompanied child once they reach the age of 18. To permit their removal only if it was in their best interests, even when they reach 18, would undermine the intent of this Bill. The Government must take action to undercut the routes that smuggling gangs are exploiting by facilitating children's dangerous and illegal entry into the United Kingdom. As my noble friend Lady Lawlor indicated, this amendment would increase the incentive for an adult to claim to be a child and encourage people smugglers to pivot and focus on bringing over more unaccompanied children via dangerous journeys. The effect would be to put more young lives at risk. That said, where a person enters the UK illegally as a young child, Clause 29 affords discretion to grant them limited or indefinite leave to remain if a failure to do so would contravene the UK's obligations under the ECHR, which would, among other things, take in any Article 8 claims. I hope that provides some reassurance to the noble and learned Baroness.

With regard to Amendment 9, as I indicated in Committee, formal returns agreements are not required to carry out removals, although I agree with the noble Lord, Lord Ponsonby, that returns agreements can be useful to improve returns co-operation. We will seek to negotiate these where appropriate.

5.30 pm

As of May 2023, the Home Office has 16 returns agreements in place. Recent additions to the list include Albania, India, Nigeria and Pakistan. In addition, we have our world-leading migration and economic development partnership with Rwanda. The Government carefully evaluate the advantages of engaging in negotiations to formalise and establish a returns agreement, taking into account the potential requests that the other party would seek to include in the agreement. The Government must retain ultimate discretion over the amount and detail shared, and it would not help the UK's negotiating position to be setting out its negotiating strategy in public.

[Lord Murray of Blidworth]

I have some sympathy for the spirit, if not the letter, of this amendment. Of course, returns agreements have an important role to play, but legislating in this way will not help progress negotiations with other countries—quite the opposite. I therefore invite the noble Lord, Lord Carlile, to withdraw his amendment. If he is minded to test the opinion of the House, I would urge noble Lords to reject the amendment.

Lord Purvis of Tweed (LD): Perhaps I might ask the Minister for clarification. He referred to the 16 agreements, and he knows I asked him specifically for the list of those 16 countries, because the House of Lords Library could not find them for me. The Minister obviously did not think it necessary to write to me between Committee and Report, so can he list those 16 countries now?

Lord Murray of Blidworth (Con): As the noble Lord will recall, during our exchange I made clear that not all of those 16 agreements are in the public domain, so I am not going to provide him with the list he seeks.

Lord Carlile of Berriew (CB): My Lords, I am very disappointed at the Minister's response, for two reasons. First, despite being asked to produce evidence to show that retrospectivity has some factual basis for its inclusion, he has failed to answer that challenge, and he must have done so deliberately. I am afraid that leads me to be very suspicious about whether there is any such evidence whatever of a credible nature.

The second reason I am very disappointed in the Minister is that he knows perfectly well that it would be open to him to suggest a date other than the date of the commencement of the Act: for example, the day when this Bill does pass, which could be within days, or even today. That would, of course, be an element of retrospectivity, but it would be a considerable mitigation of what is provided in the Bill.

Given that discussions have taken place on these issues, I am very surprised that he has simply remained his intransigent self on this issue. The notion that a glut of small boats will be crossing the channel if the period between March and, say, now is not the subject of retrospectivity, is, frankly, absurd, ridiculous and completely lacking in any kind of credibility. I ask him to think about that; I am perfectly prepared not to press the amendment if he stands up and says he is prepared to consider that issue seriously and enter into discussions with other Ministers. Otherwise, I will test the opinion of the House.

5.34 pm

Division on Amendment 6

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Amendment 6 agreed.

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5.44 pm

Amendments 7 and 8 not moved.

Amendment 9 not moved.

Clause 3: Unaccompanied children and power to provide for exceptions

Amendment 10

Tabled by ***Baroness Butler-Sloss***

10: Clause 3, page 5, line 14, at end insert—

"(6A) An unaccompanied child who reaches the age of 18 must not be removed unless it is in their best interest to do so."

Baroness Butler-Sloss (CB): With great regret, because I know that I do not have sufficient support from the House, I will not move my amendment.

Amendment 10 not moved.

Amendment 11

Moved by ***Lord Stewart of Dirleton***

11: Clause 3, page 5, line 35, at end insert—

"(10A) A statutory instrument containing regulations under subsection (7) must be laid before Parliament after being made.

(10B) Regulations contained in a statutory instrument laid before Parliament under subsection (10A) cease to have effect at the end of the period of 28 days beginning with the day on which the instrument is made unless, during that period, the instrument is approved by a resolution of each House of Parliament.

(10C) In calculating the period of 28 days, no account is to be taken of any whole days that fall within a period during which—

(a) Parliament is dissolved or prorogued, or

(b) either House of Parliament is adjourned for more than four days.

(10D) If regulations cease to have effect as a result of subsection (10B) that does not—

(a) affect the validity of anything previously done under the regulations, or

(b) prevent the making of new regulations."

Member's explanatory statement

This amendment applies the "made affirmative" procedure to regulations under clause 3(7) (power to make provision for other exceptions from the duty in clause 2(1)).

The Advocate-General for Scotland (Lord Stewart of Dirleton) (Con): My Lords, I can be relatively brief in explaining these government amendments. In short, they either respond to recommendations by the Delegated Powers and Regulatory Reform Committee or make minor drafting or technical refinements to the Bill. I turn first to the amendments responding to the DPRRC report.

Clause 3(7) confers a power on the Secretary of State to make exceptions from the removal duty under Clause 2. The Bill on introduction provided for such regulations to be subject to the negative procedure. The DPRRC suggested that the affirmative procedure would be more appropriate. Amendment 11 provides for the "made affirmative" procedure to apply, given the need to make regulations quickly, including ahead of implementation of the duty to remove.

The DPRRC similarly recommended that regulations made under Clause 10 setting out the circumstances in which unaccompanied children may be detained should also be subject to the affirmative procedure. Again, we have accepted the committee's recommendation, and Amendments 54, 60 and 62 make the "made affirmative" procedure apply on the first exercise of the power—again with a view to early implementation of the Bill—but thereafter the draft affirmative procedure will apply.

Amendments 129 and 169 relate to the power to amend the definition of a "working day" in Clause 37(8). This definition applies for the purpose of various time limits for appeals under Clauses 47 and 48. The DPRRC argued that the power was inappropriate in enabling changes to be made to the meaning of "working day" in relation to actions to be taken by persons bringing an appeal. Having considered carefully the committee's report, we have concluded that the power is not required, and Amendments 129 and 169 remove it from the Bill.

Amendment 18 is a drafting amendment and simply ensures that Clause 5(3) and (4) dovetail in referring to a country or territory.

Amendments 38 to 41 are also drafting amendments. They simply supplement the reference to the Secretary of State in Clause 7(8) and (9)—which relate to the removal powers—with reference to an immigration officer; this is done for consistency with other provisions in Clause 7.

Finally, Amendments 81 to 84 and Amendment 86 relate to the definition of an "appropriate adult" in Schedule 2. Under Schedule 2, any search of a person under 18 in which that person is required to remove any clothing other than an outer coat, jacket or glove must be in the presence of an appropriate adult. These amendments ensure that the definition of an "appropriate adult" works across the United Kingdom. I beg to move.

Lord Ponsonby of Shulbrede (Lab): My Lords, we are happy to support the Government's amendments. The Bill currently contains extensive secondary instruments that would limit Parliament's ability to provide ongoing scrutiny. However, these changes still relegate decision-making to secondary legislation rather than being in the Bill. The Government may market these changes as a concession to this House, but we regard them more as a bare minimum.

Amendment 11 agreed.

Clause 4: Disregard of certain claims, applications etc

Amendment 12

Moved by ***Lord Hunt of Kings Heath***

12: Clause 4, page 6, line 6, leave out paragraph (c)

Member's explanatory statement

This amendment, with others in the name of Lord Hunt of Kings Heath, seek to amend the Bill so that potential and recognised victims of trafficking will not be detained or removed before they get the opportunity to submit an application to the NRM and have it duly considered.

Lord Hunt of Kings Heath (Lab): My Lords, as well as moving Amendment 12 in relation to modern slavery, I will speak to my other amendments relating to Clauses 4 and 21. I am most grateful to the noble and learned Baroness, Lady Butler-Sloss, the noble Baroness, Lady Hamwee, and the noble Lord, Lord Cormack, for their support.

I am not going to repeat the extensive arguments from two long debates that we had in Committee, save to say that modern slavery is a brutal crime that involves sophisticated criminal networks buying and selling people for profit. Victims of this appalling crime may be forced to enter the UK illegally, having been coerced, deceived, forced against their will, their identity and decision-making powers stripped away. The problem with this Bill, if it is left unamended, is that it will completely undermine the Modern Slavery Act and see victims punished for crimes committed by their perpetrators, deported or held in detention centres, exacerbating pre-existing trauma.

The noble Lord, Lord Clarke, is no longer in his place, but I listened with great interest to his contribution, and I would say to him, as the noble Lord, Lord Carlile, said, that the deterrent effect that this Bill is meant to have is completely unproven. I certainly do not think that the answer is to break international treaties, nor do I think the answer is to undermine so drastically the Modern Slavery Act. Nor does it seem to me sensible to preside over the current chaos of the asylum system. I agree with the noble Baronesses, Lady Kennedy and Lady Altmann, that in the end there is no substitute for international collaboration and agreement, there is no substitute for effective measures to tackle people smugglers instead of their victims and there is no substitute for proper investment in a fast and efficient system for processing asylum claims.

Under the provisions in the Bill, where a protection claim or a human rights claim falls within Clause 4(5), it will be declared as inadmissible by the Secretary of State and will not be considered in the UK. Clause 21 extends the provision to individuals even where there are reasonable grounds to believe that the individual is a victim of trafficking and removes the modern slavery provisions providing such victims with protection. So the Bill will do nothing to break the cycle of exploitation or help people break free of modern slavery.

In Committee, one of the Minister's responses was to claim that the modern slavery national referral mechanism process

"affords opportunities for those who enter the UK unlawfully to frustrate their removal".—[*Official Report*, 5/6/23; col. 1199.]

Where is the evidence? We know that, under NRM referrals last year, 90% of the competent authorities' decisions were positive decisions—in other words that there were reasonable grounds that someone was a victim of trafficking and modern slavery—and 91% of conclusive grounds decisions were similarly positive. As my noble friend Lord Coaker said in Committee, the

"first responders are verified by the Home Office, and Home Office officials then make a reasonable grounds decision or not. A conclusive grounds decision is then made or not. It is Home Office officials who decide".—[*Official Report*, 12/6/23; col. 1674.]

Is the Minister essentially saying that he is disowning his own system over which he as a Minister and his colleagues preside?

We have not discussed the impact assessment as yet, and perhaps it is not really worth discussing, but on page 2 it says starkly that a non-monetised benefit of the Bill will be

"reduced pressure on Modern Slavery National Referral Mechanism processes".

Indeed, and that pressure is reduced even more by just getting rid of the Modern Slavery Act entirely. I will quote, as I did yesterday, what Theresa May said, in the Second Reading debate in the Commons on this Bill:

"The Home Office knows that the Bill means that genuine victims of modern slavery will be denied support."—[*Official Report*, Commons, 13/3/23; col. 593.]

My amendments first seek to remove from Clause 4 the inclusion of a claim to be a victim of slavery or a victim of human trafficking from provision under which the Secretary of State must declare the claim inadmissible. My amendments to Clause 21, which are consequential, seek to restore current protections of victims of trafficking and modern slavery.

Like many noble Lords, I was very proud and very supportive of the Government when the Modern Slavery Act was taken through Parliament. This Bill undermines that Act completely. The Minister has not come up with one substantive piece of evidence to suggest that there is a fault in the actual system contained in that legislation. Unamended, this Bill is a completely untried and untested proposal, but it will undoubtedly strengthen the hands of the trafficking networks. Traffickers know; they keep people under control with threats that they will not receive help if they reach out to the authorities. We really must remove this provision. I beg to move.

Lord Cormack (Con): My Lords, my name is on this amendment and the others that the noble Lord, Lord Hunt of Kings Heath, has tabled. He, like the noble Baroness, Lady Chakrabarti, has given us an admirable example of brevity, and I do not think one needs to repeat what was said in Committee.

As somebody who wrote a biography of William Wilberforce, my parliamentary hero, in 1983 to mark the 150th anniversary of his death and the abolition of slavery, I was particularly proud when it was a Conservative Home Secretary who took through the other place the Modern Slavery Act. I was very glad indeed to be able to give that support. It was in the very best cross-party spirit of your Lordships' House, and we all of us are genuinely proud—I particularly that it was a Conservative achievement but with support from friends and colleagues in all parts. This Bill before us is going to undermine an international achievement of far-reaching importance. To quote another famous Conservative, this is something up with which we should not put.

Baroness Butler-Sloss (CB): My Lords, I have also put my name to most of these amendments. I agree with every word that the noble Lord, Lord Hunt, has said, and I do not propose to say anything more about them, this being Report. I just want to make two extra points.

As noble Lords know, the noble Lord, Lord Coaker, and I got back from Warsaw today. I was chairing 14 countries discussing how Ukraine could be helped against exploitation and modern slavery. I had to deal with questions from so many other countries among the 14 as to what on earth the United Kingdom was doing in the Illegal Migration Bill. To my shame—and I admit that I was ashamed of what is happening—I could not for one moment support the Bill to those MPs from other countries; because this was a parliamentary meeting, everyone was an MP. It was really very distressing for me to stand up unable to support my own country.

The other point is that not only will victims not leave traffickers—the traffickers will say, with perfect truth, "Either you stay with us or you go to Rwanda. Which is worse? We suggest you stay with us"—but it will have a marked effect on prosecutions. There are already far too few prosecutions, and I think the impact on prosecutions of perpetrators and the extent to which modern slavery will increase over the years as a result of this Bill will be enormous.

Lord Griffiths of Burry Port (Lab): My Lords, I spent the whole of last week in Strasbourg, where there was a very similar response from the 47 nations

[Lord Griffiths of Burry Port]
of the Council of Europe towards what we are doing here, with bewildered questions about it put in debate. I simply add that to what the noble and learned Baroness, Lady Butler-Sloss, said about her experience in Warsaw.

Lord Alton of Liverpool (CB): My Lords, I have two amendments in this group, Amendments 113A and 168B. In speaking to them, I will add briefly to the comments already made, all of which I associate myself with.

People have talked a lot about the reputational damage to this country worldwide as a consequence of this legislation. I jealously guard the reputation of Parliament, as many in this Chamber do, and it saddens me that this is in contrast with the modern slavery legislation that other noble Lords have referred to, which enjoyed consensus and which Theresa May constructed with pre-legislative scrutiny, bipartisan support and then bicameral support, with amendments made at every stage and the Government listening and incorporating those things. That is the way to make good legislation—not like this. Reputationally, this is damaging to Parliament.

6 pm

My other point is about human trafficking. Like the noble Lord, Lord Coaker, I worked on a pro bono basis in the voluntary sector with charities associated with this issue. I know their deep concern. As my noble and learned friend Lady Butler-Sloss has reminded us, we are in danger of turning the clock back. We will not get the prosecutions, and the very people the Minister regularly tells us we must go after will have their job made easier as a result of this legislation.

That brings me to my amendments, which would "ensure that there are detailed assessments of the impact of the Bill on victims … and the wider impact on tackling modern slavery … and compliance with the international legal framework". They would ensure that the Secretary of State is obliged to present to Parliament a considered account of how they have scrutinised the legislation, policy and practice in those nations as set out in Schedule 1, with particular reference to: the potential impact on the modern slavery strategies, including in the devolved nations; the potential impact on identification and the levels of support offered to potential and identified modern slavery or trafficking victims; the modern slavery situation, including but not limited to prevention, protection and prosecution; the risk of re-exploitation and re-trafficking; and the state of equality and human rights.

Brevity is the order of the day. I do not intend to say anything further, but I commend these amendments to the House and urge the Government to think again.

The Lord Bishop of Manchester: My Lords, traffickers exercise control over their victims by convincing them that they will not receive help from the authorities if they seek it. The Bill will simply add credence to that claim.

I fully sympathise with the desire to deter people from using our modern slavery laws as a means to make a spurious claim for protection, but where is the evidence? The Government cannot point at any evidence of widespread abuse of our modern slavery system, yet they propose to remove basic protections for some of the most vulnerable people in our country. It is a basic principle of law—I can find it for you in the Book of Genesis if you want—that, in our desire to convict the guilty, we should not end up punishing the innocent. Amendment 12 is the very least we need in order to protect that vital principle.

Some 41% of referrals to the national referral mechanism relate to people exploited as children, which is why I also support Amendment 112 in the name of the noble and learned Baroness, Lady Butler-Sloss. We must ensure that no child victim, whatever form of exploitation they have experienced or whatever crime they may have been coerced into committing, should be disqualified from accessing protection. We owe that to children. We have a moral responsibility at the very least to provide people with the opportunity to have their case heard through the national referral mechanism without fear of immediate detention or removal.

Baroness Hamwee (LD): My Lords, the noble Lord, Lord Griffiths, told us during the last vote about the views of all the members of the Council of Europe and specifically mentioned Hungary questioning what the UK is doing—Hungary.

My name is on the amendments tabled by the noble Lord, Lord Hunt, on behalf of everyone on these Benches. The survivors of modern slavery should be protected and supported, not just because it is the right thing to do and the UK was lauded for it but to help the prosecution of criminals, of which we hear very little. The Bill indicates the extent to which the Government fail to put themselves in the shoes of victims and survivors, including those who have been trafficked here—who therefore have not come under their own steam—and particularly regarding the need for survivors to be in the UK to assist prosecutions. I could go on, but I will not.

The noble Lord, Lord Alton, is right that we need an independent anti-slavery commissioner in post. How long has it been—a year and how many months? A considerable number of criteria should be assessed, but we are where we are. We maintain our opposition to how slavery and trafficking are dealt with. I congratulate the noble Lord, Lord Hunt, on his filleting of the Bill. We will be with him.

Lord Carlile of Berriew (CB): My Lords, my name is on Amendment 96, along with those of my noble and learned friend Lady Butler-Sloss, who spoke earlier and with whom I agree, and the noble Baroness, Lady Hamwee. It attempts to remove Clause 21(5) and (6). Those subsections mean that a person will be removed from this country unless it is "necessary" and there are "compelling circumstances" to show that it is necessary for the person to be present in this country for the dreadful crimes that we are talking about to be prosecuted. Was the Director of Public Prosecutions asked about the effect of this provision on the likely success of prosecutions? If this clause required it to be advisable for the person to be present for the purposes of the investigation and prosecution, I would be in favour of it, but it goes much further than that and is contrary to all good prosecution practice.

I confess that I have met a lot of organised criminals in my time—as a barrister. I have also met an awful lot of victims in my time, as a barrister and occasionally as a Member of this House and the other place. It is not a level playing field. If the Crown Prosecution Service were asked what was advisable, like anybody who has ever prosecuted a semi-serious case and done cases where some witnesses were abroad, as I have, it would say that it is always advisable to have the witness in court, on a local screen or interviewed in a statutory way if at all possible, not to have them on the other side of the globe somewhere—they are unlikely to turn up and will be intimidated by the process.

Let me briefly compare the criminal we are talking about with the victim. The criminal is familiar with the legal system. He—it is usually a he—is often charming. He is often wealthy and can hire lawyers who may even be Members of your Lordships' House. He is malign, lethal and cocky in the face of the legal system. Those are the characteristics of serious organised criminals. As for the victim, what is she going to be like? She will be frightened. She is likely to be poor. She will be vulnerable and terrified of the legal system and, to use an Orwellian word, will feel like an "unperson". Do we really want that?

Lord Morrow (DUP): My Lords, throughout the passage of the Bill here and in the other place, many people have raised serious concerns about it, and about its impact on victims of modern slavery. I fear sounding like a broken record, but I said at Second Reading and in Committee that the Bill should exclude those who are subject to abuse through the heinous crime of modern slavery. I echo the words of the former Prime Minister, Theresa May. When discussing the Bill in the other place, she said that it has always been important to separate modern slavery from immigration status. My position remains unchanged.

I would prefer that modern slavery was out of this Bill entirely. For that reason, I shall support the amendments in the name of the noble Lord, Lord Hunt. They get right to the heart of the matter as they seek to amend the Bill to ensure that potential and recognised victims of human trafficking will not be detained or removed before they can apply to the NRM and have their application considered. In the spirit of those amendments, I have tabled Amendments 102A and 105A to remove Clauses 23 and 24 respectively.

In Committee, the Minister tried to reassure us that the agreement with Rwanda covers ensuring that

"any special needs that may arise as a result of a relocated person being a victim of modern slavery are accommodated".—[*Official Report*, 12/6/23; col. 1704.]

The impact assessment published on Monday was more tentative, saying there could be

"a perceived welfare loss for the individuals relocated to a third country who would otherwise be granted support in the UK although this may be mitigated to the extent that the support provided in a third country is comparable".

This is classic British understatement. We all know that there will be loss of support. The Salvation Army has described the Bill as "potentially devastating". The US State Department's 2023 *Trafficking in Persons Report*, published since Committee, lists Rwanda as a tier 2 country, whereas the UK is a tier 1 country, and said that Rwanda did not refer any victims to services. So, I am far from reassured.

The impact assessment says that one of the strategic objectives of the Bill is "to protect the vulnerable", but it is proposing mass detention of modern slavery victims under Clause 10 and removing their rights, under the European Convention on Human Rights and the Convention on Action Against Trafficking in Human Beings, to a recovery period and support. I find myself in agreement once more with the former Prime Minister Theresa May, who described the Bill as

"a slap in the face for those of us who actually care about the victims of modern slavery". —[*Official Report*, Commons, 26/4/23; col. 808.]

The Government are arguing that this is a Bill of short-term pain for long-term gain. For victims, it will be short-term and long-term pain. The JCHR's *Legislative Scrutiny: Illegal Migration Bill* concluded that the Bill not only breaches international obligations but

"may also result in the increase in trafficking and slavery".

With this in mind, I find myself extremely disappointed that an analysis of the potential number of victims affected by the Bill was not covered in the impact assessment. Particularly at such a late stage in the passage of such significant, flagship legislation, it is troubling that we do not have to hand the most basic information in order to make reasonable determinations, based on the evidence, about the efficacy of the Government's proposals.

As I said in the previous debate in this House, as someone who introduced a Bill in the Northern Ireland Assembly to reduce trafficking and slavery, I cannot support the inclusion of modern slavery victims in this Bill, so I shall be supporting the amendment tabled by the noble Lord, Lord Hunt.

However, your Lordships are wise enough to take a belt-and-braces approach to this Bill, so I am also supporting the amendments in the name of the noble Lord, Lord Randall. They would mitigate some of the concerns about the lack of support by ensuring that victims of modern slavery exploited in the UK will still be able to access the support they need to recover. Why? It is simply the right thing to do.

Lord Weir of Ballyholme (DUP): My Lords, I rise to support not only Amendment 103 in my name and that of my noble friend Lord Morrow, but any and all the amendments in this group. This is for two principal reasons. First, the approach we need to take to the victims of the heinous evil of human trafficking must be compassionate, sympathetic and supportive. When the Government produced its now sadly shelved Bill on kept animals, it contained a clause which sought to outlaw the transporting of live animals for slaughter. But that approach—treating human beings as a commodity; as raw meat, effectively—is precisely what human traffickers are doing to their victims. We should show that same level of compassion to victims of human trafficking.

6.15 pm

Support for the victims of human trafficking is in the spirit of the best of our nation and is in the history of our nation, as has been mentioned by the noble Lord, Lord Cormack, and others. Whatever the historic arguments before then, in the 19th century this country took the lead on the abolition of first the slave trade

[Lord Weir of Ballyholme]
and then slavery itself. It did not simply stand alone to say, "We are virtuous", but took great action, particularly through the Royal Navy, to help suppress the slave trade. We should follow suit and ensure we do everything we can to stamp out the modern evil of modern slavery, so we need to support the victims of human trafficking.

Secondly, as indicated by other Members of your Lordships' House, to include human trafficking in the Bill is entirely counterproductive. There will be a range of views across the House about the overall contents of the Bill. Many of us take a quite cynical and somewhat sceptical approach to the Bill as a whole. Others take the view that strategically, it is the wrong approach and a better approach would be to seek international co-operation to deal with the issue. However, those who are sincerely advocating for this Bill say in justification that its purpose is to bear down on those who are taking advantage of migrants trying to get across to the United Kingdom—to bear down on the criminals organising this. The reality is that, while there is a lack of connection, in my view, between the boats and human trafficking, the motivation of the criminals behind both are the same: to exploit human beings for their own gain.

The reality is that, whatever the concerns many of us have about the Bill as a whole, to include human trafficking and modern slavery and to ignore the gains previously made by the Government is to take us in completely the wrong direction. If victims of human trafficking are to be disregarded and simply deported the moment they are found—even those who are providing assistance to the police—prosecutions and, above all, the pressure on human traffickers will be reduced. What will be the end result? The most logical answer is that human trafficking will increase. Indeed, we will be giving a boon to human traffickers if this Bill goes through unamended. If we take prima facie the purpose of the Bill as described by the Government, it is entirely counterproductive to its supposed intentions. So we need these amendments to go through, and I therefore commend them to the House.

Baroness Helic (Con): My Lords, I support Amendment 95 and the consequential Amendments 99, 101 and 104 in the name of my noble friend Lord Randall of Uxbridge, who unfortunately cannot be in his place today. He has asked me to speak on his behalf and has made it clear that if he were here, and if he could not find agreement with the Government, he would test the opinion of the House.

This amendment has been slightly modified since Committee in order to ensure parity for victims across the whole of the United Kingdom, including Scotland and Northern Ireland. The core intention remains the same: to preserve the existing recovery period for victims of modern slavery.

I emphasise one point in particular: removing modern slavery protections will not help stop the boats. In fact, it will make reducing illegal migration harder. Many victims of modern slavery, often through no fault of their own, have come illegally under the terms of this Bill, even if not necessarily by boat. The protections which give them the space to escape from their exploiters will be removed. This is bad in itself, but the really relevant point for the Government is that, as a result of removing those protections, prosecutions will become harder, as others have pointed out. The position of the people traffickers and criminal gangs who bring people into the United Kingdom illegally and hold them in modern slavery will be strengthened. The core purpose of this Bill—to prevent illegal migration—will be undermined.

The evidence is clear: for a successful prosecution, support for victims must come before engagement with the police and courts system. As drafted, the Bill inverts that, setting a high bar for co-operation before any person can be considered for an exemption from immediate deportation. In Committee, when asked by the noble Lord, Lord Paddick, about the effect of removing victims of modern slavery to another country on the likelihood of their co-operation with prosecutions, my noble friend the Minister said:

> "One would hope that a victim of trafficking would want to facilitate the prosecution of their traffickers". [*Official Report*, 12/6/23, col. 1705.]

Most victims do, but they need support in order to do that. They need trust in the system. Threatening them with immediate deportation is not the way to build that trust, and I am afraid that I do not share my noble friend's confidence that prosecutors will be just as easily able to work with victims in Rwanda as they can with victims in the United Kingdom.

These amendments do not confer a permanent right to settlement or residence in the United Kingdom on modern slavery victims. They retain the existing 30-day recovery period and provision for proven victims to stay in the United Kingdom only at the Secretary of State's discretion—for example, to support prosecutions. That is not really an exclusion or exemption of the sort my noble friend the Minister says will fatally undermine the Bill, but it can create the space needed for victims of modern slavery to receive the support they need to escape the cycle of abuse and begin co-operating with the police. I hope the Government can recognise the benefits of this and re-think their position.

Lord Coaker (Lab): My Lords, it is a pleasure to rise to support many of the amendments in this group, but in particular Amendment 12. I thank my noble friend Lord Hunt, the noble Lord, Lord Cormack, the noble and learned Baroness, Lady Butler-Sloss, and the noble Baroness, Lady Hamwee, for moving such an important amendment.

I start by saying that, as a proud Labour politician, I am the first to recognise the phenomenal achievement, as the noble Lord, Lord Cormack, pointed out, of the Conservative Government in passing the Modern Slavery Act. That is important, and he pointed out the cross-party nature of that. That is why it is so bewildering that we have a Conservative Government driving forward this legislation.

Notwithstanding that, Amendment 12 goes to the heart of the various amendments. It is important to reiterate the explanatory note to my noble friend's amendment, which simply seeks

> "to amend the Bill so that potential and recognised victims of trafficking will not be detained or removed before they get the opportunity to submit an application to the NRM and have it duly considered".

That seems a perfectly reasonable thing to do, but of course, under this Bill, everybody who arrives irregularly —primarily by small boat, as far as the Government are concerned—is automatically excluded. That inevitably means that victims or potential victims of modern slavery and trafficking will be caught by the legislation and their needs will not be met.

We have talked about evidence. Helpfully, on Monday the impact assessment was at last published. The Government recognise the draconian nature of these provisions, as they have put in their own sunset clause, and they say they are doing this because the system is being gamed. On page 24, the impact assessment states:

"For context, of the 83,236 people that arrived in the UK on small boats between 1 January 2018 and 31 December 2022, 7 per cent (6,210 people) were referred to the NRM".

Of course, as was made clear, that 7% of those 83,000 were referred by government-approved officials. They were not necessarily then deemed to have conclusive grounds; they were referred in order to have their situation considered.

That is the issue Amendment 12 seeks to address. It does not say there are not sometimes people who apply who should not, but that the purpose of the Modern Slavery Act is to ensure that victims have the right to have their case heard, to be supported where necessary, and to not be removed from the country during that process. Amendment 12 is therefore perfectly reasonable and if my noble friend chooses to test the opinion of the House, I hope that many of us will support it, because it is a simple but very important amendment.

Lord Murray of Blidworth (Con): My Lords, as the noble Lord, Lord Hunt of Kings Heath, has explained, his amendments would prevent the detention and removal of any person who meets the conditions in Clause 4 and who is the subject of a NRM referral until a conclusive grounds decision and any appeal has been determined. The current average time taken from referral to conclusive grounds decisions, made in January to March 2023, across the competent authorities, was 566 days. Against that backdrop, these are wrecking amendments. They would profoundly undermine the Government's ability to tackle the threat to life arising from the dangerous, illegal and unnecessary channel crossings and the pressure they place on our public services.

Amendments 95, 99, 101 and 104 in the name of my noble friend Lord Randall seek to mitigate the effect of the provisions in the Bill in a more targeted way, but here too I have concerns that the amendments would undermine what we seek to do in these provisions. As I set out in Committee, the NRM presents clear opportunities for abuse by those who would seek to frustrate removal. It is worth repeating the statistics relating to NRM referrals of people arriving in small boats, which demonstrate how the NRM could be open to abuse.

In 2021, 404 people were detained for return after arriving in the United Kingdom on a small boat, 73% of whom were referred to the NRM while in detention. The latest published figure, for the period January to September 2022, is only slightly lower, at 65%. This is a large increase on earlier years; just 6% of those detained for return in 2019 were referred to the NRM while in detention. So far, only a minority of people who arrived on small boats have been detained for return, but if enforcement activity is greatly expanded, as it would be under the terms of the Bill, and if this rate of referral continues, the number of referrals could be substantially higher. These figures cannot be ignored.

I can provide some assurance to my noble friend and other noble Lords. The Bill does not impact NRM referrals of British citizens or persons who are in the UK without valid leave, having overstayed, and who are therefore, I suggest, more susceptible to exploitation in the UK; nor will unaccompanied children arriving on small boats be affected while they remain under 18. They are not subject to the duty to remove until they turn 18. Finally, the Bill provides for an exception to the application of the public order disqualification where it is necessary for someone to remain in the United Kingdom to co-operate with an investigation or prosecution related to their exploitation.

Lord Coaker (Lab): Can the Minister explain whether the figures he has given us are in the impact assessment? It would have helped us if they were; I apologise if I have missed them. Has the Minister changed the way he is coming to the percentage figure? Are the Government now saying that it is not the percentage of the number of people who arrive by small boats but the percentage of those who arrived by small boats and are detained? The percentages are going to be significantly higher because the numbers who are detained are not the sort of numbers I was talking about. The number I quoted is from the Government's own figures. What figures are the Government using and how are they coming to them? Perhaps he can explain to the Chamber how many of the 83,236 people who arrived by small boats were detained, so we can get some idea of the percentages he is talking about.

6.30 pm

Lord Murray of Blidworth (Con): First, I am afraid I have read so many documents in the past few days that I cannot immediately recollect whether the stats are in the IA. I will confirm whether they are, and I am sure I will be able to do that shortly.

Noble Lords: Oh!

Lord Murray of Blidworth (Con): Order! Secondly, I suggest that the material figures are those in detention. It is a fundamental part of the scheme that people will be detained and removed. We can see from the figures that those in detention have been utilising NRM claims; you can see the increase from the statistics I gave a moment ago. On the noble Lord's final point, those are all published statistics, and I can confirm that the 65% figure is in paragraph 143 of the impact assessment.

I remind noble Lords that the application of the public order disqualification is firmly grounded in the provisions of the European convention against trafficking, or ECAT. Article 13(3) of ECAT clearly provides that states are not bound to provide a recovery and reflection period on the grounds of public order. It is again worth stressing that these provisions are time-limited. We recognise their exceptional nature, and the Bill expressly

[Lord Murray of Blidworth]
provides for Clauses 21 to 24 to cease to apply after two years unless both Houses agree to extend their operation for no more than 12 months at a time.

For the reasons I have set out, we consider that this sunsetting provision is more appropriate than the sunrise provision proposed by the noble Lord, Lord Alton, in his Amendment 113A.

Baroness Butler-Sloss (CB): I wonder whether the Minister could help me on this. On the figure of over 500 days in the NRM, from beginning to end, is that entirely due to Home Office officials not getting through it in a timely way, or is there any other reason why it is taking so long?

Lord Murray of Blidworth (Con): The NRM process requires the gathering of evidence and input from the party, so it is not down entirely to Home Office resourcing issues.

The appointment of the new Independent Anti-Slavery Commissioner is at an advanced stage, and I am sure that once appointed they will want to monitor closely the impact of these provisions.

In relation to my noble friend's amendments, I repeat the assurance that my right honourable friend the Immigration Minister made in the other place: namely that we will consider additional protections through statutory guidance for those who have experienced exploitation in the United Kingdom. We are continuing to develop such guidance and in doing so will adopt an appropriate balance between protecting victims of modern slavery and delivering the intent of this Bill.

As regards Amendment 103, the noble Lord, Lord Morrow, quite properly raises the issue of how the modern slavery provisions in the Bill sit with the continued operation of the relevant EU directives in Northern Ireland. As I have said in earlier debates in Committee, the provisions in the Bill are compatible with the Windsor Framework. In particular, in the context of this amendment we do not consider that the 2011 anti-trafficking directive falls within the scope of Article 2 of the Windsor Framework.

Amendments 96, 102 and 105, tabled respectively by the noble Lord, Lord Carlile, the noble Baroness, Lady Bryan, and the noble Lord, Lord Morrow, relate to the presumption that it is not necessary for a person to remain in the United Kingdom to co-operate with an investigation. As I outlined to the Committee, remote participation is now the norm in the workplace, and the criminal justice system is no different. It is simply no longer the case that a victim of crime needs to be in face-to-face contact with the police or others to assist with an investigation. In some cases, victims may even feel safer providing virtual or video-recorded evidence. I assure noble Lords that we are working to ensure that the relevant technology, interpreters and intermediaries are available where needed.

We have provided for statutory guidance to support decision-making by caseworkers when determining if there are compelling circumstances why the presumption should be set aside in a particular case, but there is no evidence as to why, in the majority of cases, such co-operation cannot continue by email, messaging and video conferencing. The presumption in Clauses 21(5), 23(5) and 24(5) is therefore perfectly proper and should be retained.

Lord Carlile of Berriew (CB): My Lords, I would be really grateful if the Minister could answer the question I asked him as to whether the Director of Public Prosecutions had been consulted about the effect on modern slavery and trafficking cases if the victim was not merely in another studio in another building in London or Manchester but in a country thousands of miles away, with no facilities to encourage or even compel them to give evidence.

Lord Murray of Blidworth (Con): I do not know whether the DPP has been consulted on that point but I will certainly find out and write to the noble Lord.

Amendment 112, put forward by the noble and learned Baroness, Lady Butler-Sloss, would prevent the public order disqualification provided for in the 2022 Act being applied to a person whose positive reasonable grounds decision was based on exploitation which had occurred before they were 18. It is, in our view, entirely appropriate for the public order disqualification provided for in that Act to be capable of applying to all relevant individuals, including those exploited as children. In this regard, it is important to note that the public order disqualification in the 2022 Act applies only to specified persons, such as those who have been convicted of a serious criminal offence. In such cases, the age at which the exploitation took place is, I submit, irrelevant to the threat to public order an individual now poses, and we cannot tie our hands on this matter on the basis of the time at which exploitation took place.

The modern slavery measures in the Bill, alongside the others, are intended to deal with the immediate and pressing public risk arising from the exceptional circumstances relating to illegal entry into the UK. We need to take bold action and now. This Bill will not achieve its objective if removals are put on hold for over 500 days awaiting a conclusive grounds decision. As I indicated at the start, these amendments will quite simply wreck the Bill. I hope therefore that the noble Lord, Lord Hunt, will be content to withdraw his Amendment 12. If he is not, I invite the House to reject it.

Baroness Wheatcroft (CB): I am sorry to interrupt the Minister but he referred again to the 500-plus days involved in the NRM process. Earlier, in response to the noble and learned Baroness, Lady Butler-Sloss, he said that one of the reasons for that was examining the evidence. However, since he cites this as a reason for going ahead with these appalling proposals, can he explain to the House why it is not possible to shorten that period? Is he content that a process that takes more than 500 days is humane?

Lord Murray of Blidworth (Con): Considerable efforts are taken to seek to shorten the period but that is not an easy process. I agree with the noble Baroness that we should aspire to have a shorter period but we have to legislate for the world as it is, not as we wish it to be.

I can now confirm to the noble Lord, Lord Carlile, that the CPS was indeed consulted in respect of these provisions.

Lord Hunt of Kings Heath (Lab): My Lords, I am grateful to the Minister for his response, to all noble Lords who have spoken and to my noble friend Lord Coaker for his strong support for my Amendment 12, which, as he says, goes to the heart of the argument.

I was a little surprised by the Minister describing my amendments as wrecking amendments. Noble Lords who have known me over the years know that I do not indulge in that kind of approach. I am seeking to preserve the integrity of the Modern Slavery Act.

The Minister's argument about 566 days and the number of referrals is not a substantive one. The statistic that is most telling, as I repeated again, is that under the NRM 90% of the competent authority decisions last year were positive decisions, in that there were reasonable grounds that someone was a victim of trafficking or modern slavery, so the process stands. The Minister has not produced any argument whatever against the NRM process; he has simply talked about the length of time and the numbers, which goes back to his department and its lack of investment in making sure that the system works effectively.

My real concern here is that, instead of dealing with the perpetrators of the awful crimes around which modern slavery takes place, it is the victims who are going to be penalised. I looked back today at the Second Reading debate of the Modern Slavery Act in your Lordships' House and the remarks of the noble Lord, Lord Bates, the then Home Office Minister, who said:

> "Modern slavery is an evil against which this Government are determined to take a stand".—[*Official Report*, 17/11/14; col. 241.]

How sad it is that the Government have held back from that and are basically undermining it. I wish to test the opinion of the House.

6.42 pm

Division on Amendment 12

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Amendment 12 agreed.

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6.52 pm

Amendment 13

Moved by ***Lord Etherton***

13: Clause 4, page 6, line 9, leave out paragraph (d)

Member's explanatory statement

This amendment is consequential to the amendment to clause 1 tabled by Baroness Chakrabarti and would enable an application for judicial review to be made while the applicant is in the UK regarding an act or omission in conflict with the provisions there.

Amendment 13 agreed.

Amendment 14

Moved by ***Lord Dubs***

14: Clause 4, page 6, line 11, after "2" insert "and does not fall within the exceptions in section 3"

Member's explanatory statement

This amendment would make asylum and human rights claims admissible from unaccompanied children, who are exempted from the duty to remove by Clause 3. This would continue current policy under which unaccompanied children's asylum claims are not subject to the inadmissibility regime.

Lord Dubs (Lab): My Lords, I am grateful to the noble Lord, Lord Scriven, the noble and learned Baroness, Lady Butler-Sloss, and the right reverend Prelate the Bishop of Durham for supporting this amendment.

The issues are pretty clear and I shall be ever so brief. We have been over these arguments in principle both in Committee and, implicitly, in some of the earlier amendments on Report. The clear point is this: the impact of the Bill will be that children claiming asylum in the UK will automatically be turned away, based on the method by which they have travelled and arrived in the UK. That, in effect, will mean that children will be refused an application for asylum, regardless of their need for protection as child refugees.

This is in the light of the most recent figures, which show that, of all the unaccompanied children who arrived and whose cases were determined, 86% were given refugee status. Therefore, we are saying no to the equivalent children who will be coming in the future. We are dealing with some of the most vulnerable of all refugees. We know that. Even the Minister said in Committee:

"We recognise the particular vulnerabilities in relation to unaccompanied children".—[*Official Report*, 5/6/23; col. 1168.]

There has been virtually nothing in the impact assessment about children. At Question Time the other day, the noble Lord, Lord Hannay, referred to the United Nations Committee on the Rights of the Child.

Earlier this month, the committee expressed concerns about the potential impact of the Illegal Migration Bill on children and went on to specify in detail how it would work.

The Government seem to think that, by having this, somehow children will stop coming over. I do not believe there is any evidence to support that. I have talked to some of the children in the Calais area. Those who get to Calais are absolutely determined to continue their journey.

The Government seem to think that most of the world's refugees should claim asylum in the first safe country they reach. Most of the world's refugees, in any case, are in countries adjacent to the one they fled. We know that the majority of children who reach France claim asylum there; it is a minority who claim asylum in this country.

What we are doing with this Bill is shutting the door on some of the most vulnerable human beings on earth: refugee children. These are children who have escaped the most appalling situations. The Government was wobbly even in the Commons during Report on this issue, and the right thing would be for them to accept this amendment. There is absolutely no argument why they should turn their backs on children, the most vulnerable refugees that there are. I beg to move.

Lord German (LD): My Lords, I will speak to the second amendment in this group, which is in my name and the name of the noble Lord, Lord Kerr. I declare my interests as set out in the register. I obviously support the amendment from the noble Lord, Lord Dubs, as an absolutely important amendment.

The amendment I am proposing has two purposes. The first is to provide a route out of the limbo which thousands of people could fall into if they were not removed from this country and had to remain here without any opportunity to make their case. The second purpose is to provide a backstop for the Government so that they can bring matters to a conclusion where there is no conclusion in this Bill.

This amendment provides a backstop for the Government if, for whatever reason, an individual cannot be removed within six months. It means that the Government do not have to indefinitely support them. The Government can consider their asylum claim in the UK which, if successful, means they can get on with their life in the United Kingdom. If it is unsuccessful, they can be removed to their country of origin. Without this amendment, the Government are unable, because of the powers in the Bill, to consider their asylum application in the United Kingdom. So, if a safe third country cannot be identified for a person's removal, the Home Secretary has no way to discharge the responsibility to them.

The economic impact assessment of the Bill assumes that people will be detained for 40 days before removal. In fact, I will quote the Minister at the beginning of today's debate. He said:

"We need a scheme that will enable removals in days and weeks, not … in months".

If that is the case, and the Government are true to their meaning, this backstop will never apply. But it is a backstop in case it does not work. We have not seen the evidence that it might work. The backstop will ensure that taxpayers' money is not tied up in supporting thousands of people indefinitely. It is not a commitment to spend additional money but a financially prudent course of action that will help planning for both national Government and local authorities in this country.

This amendment also recognises the human dignity of each individual. Keeping them in a state of limbo, unable to support themselves and their families, and dependent on the state, is not healthy for any society. It has the great risk of fuelling exploitation in the United Kingdom.

The migration and economic development partnership with Rwanda is currently the only removal agreement that the UK has in place that includes third country nationals. The legal and practical challenges faced by that scheme are well documented and, even if it becomes operational, it will not be possible to remove to Rwanda all of the thousands of people whose claims are deemed inadmissible. That is why this backstop clause for the Government is so important.

7 pm

In response to a similar amendment that we debated in Committee, the Minister said that it would

"encourage illegal migrants to use every tactic to frustrate their removal, in the knowledge that after six months their asylum claim would be processed".—[*Official Report*, 5/6/23; col. 1202.]

However, as the Bill stands, there is little option for any challenge for individuals. The two suspensive claims set out in the Bill both have timeframes far shorter than six months. As the Minister said, they expect the removal to happen within days and weeks, not months. So all the actions that the Government propose would be well under the six months when the time limits to challenge removal will have expired.

I urge Peers to support this amendment to introduce a framework that will provide an opportunity for the Government to control public expenditure. In so doing, it would avoid the horrible, damaging and inhumane prospect of thousands of people being incarcerated in limbo, with no route out of the situation in which they find themselves.

Lord Kerr of Kinlochard (CB): My Lords, I will speak in support of the amendment of the noble Lord, Lord German, to which I have added my name, and in strong support of the amendment of the noble Lord, Lord Dubs.

The noble Lord, Lord German, spoke of limbo, which is exactly what we will create here if we do not pass Amendment 15. These people will be detained indefinitely, in the dark about when they will be sent somewhere and in the dark about where they will be sent. That simply is out of keeping with the traditions of the society in which we are proud to live.

The Government will no doubt say that the possibility that a case might be allowed to start in the asylum process would significantly weaken deterrence. That seems to be the principal argument against today's amendments—even, astonishingly, against the modern slavery amendment a few moments ago. The Government should perhaps read their own impact assessment, in which paragraph 31 says:

"The academic consensus is that there is little to no evidence suggesting changes in a destination country's policies have an impact on deterring people from leaving their countries of origin

[Lord Kerr of Kinlochard]

or travelling without valid permission, whether in search of refuge or for other reasons. Non-policy drivers of behaviour (for example diaspora, shared language or culture, and family ties) are also known to be strong factors influencing the choice of final destination".

I believe that that is the case.

The noble Baroness, Lady Kennedy of The Shaws, spoke powerfully in reaction to the noble Lords, Lord Clarke and Lord Howard, about the importance for the rule of law domestically and respect for international law of allowing the due process of hearing an asylum claim to take place. We all know that it needs to be streamlined and to have more resources put into it, but, basically, it is a sane system. The idea of limbo is insane, immoral and illegal, and, as the noble Lord, Lord German, pointed out, would be costly. The case for Amendments 14 and 15 is rock-solid.

Baroness Butler-Sloss (CB): My Lords, I have put my name to the amendment of the noble Lord, Lord Dubs, which I strongly support, as noble Lords can imagine. I agree with everything that was said in support of Amendment 14, and I will add only two short points.

The first is that, over the years that I have been in this House, the Government have spoken again and again about the welfare and best interests of children. In the Bill, it is notable how the best interests and the welfare of children are totally ignored. Secondly, I visited Calais and met a number of young people, under 18, who were determined to come to this country. There was no question of them being pushed by any adults—I never saw an adult in any of the areas of Calais that I visited. They are determined to come, and they have good reasons to have fled their country. I heard harrowing stories of why they wanted to get away. Quite simply, this amendment would put back what they are entitled to and what is in their best interests. It should be supported.

Baroness Lister of Burtersett (Lab): My Lords, I will make two brief points in support of Amendment 14. Before that I repeat the question I posed earlier: where is the child rights impact assessment that we were promised? It is now Report, and we really ought to have it.

My first point is that, in Committee, I quoted from the previous Lords Minister and from Home Office guidance that unaccompanied young children are

"not suitable for the inadmissibility processes".

I asked the Minister to explain why, given these recent statements, they are considered suitable now, and on what evidence this policy volte-face is based. I did not get a reply, so I would welcome one now, please.

Secondly, last week, I attended Barnardo's launch of its report *A Warm Welcome: A Blueprint for Supporting Displaced Children Seeking Protection in the UK*. We were given a booklet about a comic book for children seeking safety, co-designed by children and young people with lived experience of the asylum journey. It ended with a letter to the children who follow in their footsteps, which said:

"I know when you came to the UK you had a difficult time. I know this because I did too. So don't worry, everything is going to be ok … You have been through a difficult time but you are safe now … You can forget the past because you are safe and you can look to the future and start your life here".

I was close to tears reading this poignant letter because, if the Bill goes through in its present form, the children who follow will no longer be able to start a life here. The booklet was called *Journeys of Hope*; the Bill destroys that hope. This amendment would at least give back some hope to unaccompanied children who reach the UK through irregular routes.

The Lord Bishop of Chelmsford: My Lords, I support both amendments in this group, but I am particularly pleased to be able to speak in support of Amendment 14, to which my right reverend friend the Bishop of Durham is a co-signatory, although he is unable to be present today.

The Bill will prevent potentially thousands of children ever claiming refugee protection in the UK, however serious their protection needs may be and, disturbingly, regardless of the fact that they may not have had any say in the decision to travel here irregularly. Let us be absolutely clear: this means that vulnerable unaccompanied children who have fled unimaginable horrors will arrive to find that they will be detained and then potentially accommodated by the Home Office outside the established care system. All of this is not in order for their asylum cases to be heard and assessed but simply to deter others.

Given that no return agreements are yet in place, and that the Government have not provided any new information about how returns will exponentially increase, the overwhelming majority of individuals will be left to languish in perpetual legal limbo, as we have heard, and financial precarity. I argue that this is unacceptable for any asylum seeker, but for an unaccompanied child it is simply unforgivable.

Last year, close to nine out of 10 separated children were granted refugee status. Some 99% of unaccompanied children arriving from Afghanistan and Eritrea were granted status. It is these children—those with a genuine need for protection—who will be left outside the asylum system unless the Government change course.

Children's development is intrinsically linked to secure attachment and safety, but the state is choosing to prescribe for them an uncertain and harmful future. This is counter to the Home Secretary's duty to safeguard and promote the welfare of all children and to prevent punishment of a child on the basis of status or the activities of their parents, as obligated by both domestic and international law.

The amendment would grant re-entry to the asylum system for those separated children the Secretary of State is unable to remove. It is a pragmatic measure that would go some way towards protecting children from these adverse impacts, which are neither tolerable nor justifiable. I urge the Minister to relent on these amendments.

Lord Hannay of Chiswick (CB): My Lords, I support the amendment in the name of the noble Lord, Lord Dubs. He quoted a letter that the Minister very kindly sent to me two days ago about the reaction of the Committee on the Rights of the Child of the United Nations. That communication demonstrated that the committee found that if we did not amend the Bill—and the amendment we are looking at now is obviously required—we would be in breach of the Convention

on the Rights of the Child. That convention was signed by the late Baroness Thatcher. I do not believe we should be in the business of ignoring the view that we will breach that international obligation we undertook in 1990.

Lord Paddick (LD): My Lords, for the avoidance of doubt, my noble friend Lord Scriven has signed the amendment in the name of the noble Lord, Lord Dubs. All of us on these Benches wholeheartedly support that amendment, in addition to Amendment 15 in the name of my noble friend Lord German.

Lord Ponsonby of Shulbrede (Lab): My Lords, in the spirit of reciprocity, we wholeheartedly support Amendment 15 in the name of the noble Lord, Lord German, as well as my noble friend Lord Dubs's amendment.

My noble friend's amendment points out that we should absolutely not rule out unaccompanied children from being admissible if they come via an illegal route. As we have heard from a number of noble Lords, this would not be in keeping with the Convention on the Rights of the Child.

The amendment from the noble Lord, Lord German, is a practical amendment on granting re-entry into the asylum system for those the Government are not able to remove, and we are happy to support it. It would avoid potentially thousands of children, as well as other asylum seekers, being kept in limbo. As he very fairly pointed out, this is a backstop for the Government because, if they are true to their aspirations for the Bill, they will never have to use the noble Lord's amendment. I look forward to the Minister's response.

Lord Murray of Blidworth (Con): My Lords, as the noble Lords, Lord Dubs and Lord German, have explained, these amendments relate to the provision in Clause 4(2), which provides for protection claims and relevant human rights claims made by persons who meet the conditions in Clause 2 to be declared inadmissible.

On Amendment 14, we recognise the particular vulnerability of unaccompanied children, as observed by the noble Lord, Lord Dubs, which is why we need to prevent them making unnecessary and life-threatening journeys to the UK. If we are serious about wanting to prevent and deter these journeys, it is crucial that we maintain the position currently set out in the Bill. We must avoid creating a perverse incentive to put unaccompanied children on small boats and make dangerous journeys.

In answer to the noble Baroness, Lady Lister, I point out that the Bill provides for a wholly new scheme. We are in a different position from the one we were in in the last Session, when the Nationality and Borders Bill, as it then was, was debated.

As I have said before, the Secretary of State is not required to make arrangements to remove an unaccompanied child from the UK, but there is a power to do so. The Bill sets out that this power will be exercised only in limited circumstances ahead of them reaching adulthood, such as for the purposes of reunion with a parent or where removal is to a safe country of origin. Where an unaccompanied child is not removed, pursuant to the power in Clause 3, we continue to believe that it is appropriate for the Bill to provide for the duty to remove to apply once they turn 18. To provide otherwise will, as I have already said, put more young lives at risk and split up more families by encouraging the people smugglers to put more and more unaccompanied children on to the small boats. In answer to the right reverend Prelate the Bishop of Chelmsford, the Bill is very much about protecting children.

7.15 pm

However, I can offer the noble Lord, Lord Dubs, some comfort. Were regulations to be made under Clause 3(7), permanently excluding a category of persons from the duty in Clause 2(1), the effect of that would be to set aside the requirement in Clause 4(2) to declare any protection claim or relevant human rights claim inadmissible. Such a person would then be dealt with under the processes that apply to a person to whom the duty does not apply. This could include the inadmissibility provisions, as amended by the Bill, in Section 80A of the 2002 Act.

The amendment from the noble Lord, Lord German, seeks to set aside the inadmissibility provisions where a person has not been removed in six months. Existing policy on inadmissibility places no such requirement that a person must be removed within six months. I cannot agree to an amendment that is more lenient than our existing inadmissibility provisions. However, I reiterate once again the core objective of the Bill: to remove illegal entrants in days and weeks, not months and years, as the noble Lord himself reminded the House. That being the case, the amendment is simply unnecessary.

For these reasons, I invite the noble Lord, Lord Dubs, to withdraw his amendment.

Lord Dubs (Lab): My Lords, obviously I find the Minister's reply disappointing. He dangled an incentive that there might be some regulations in the future that might do something to ameliorate the provisions of the Bill—but that is not good enough. We are dealing with very vulnerable people, and if the Minister wants to threaten them by saying that we will treat them badly, because that will stop them wanting them to come, there is no point dangling some regulation for the future that might change that. That does not seem logical to me.

I wish the Minister had been with me when I was talking to a young man who came to this country when he was 15 or 16, but who would not have been able to come here under the provisions of the Bill. He was so excited to be here. He was in education and wanted to be an athletics instructor, and he was jolly good at it.

Finally, I was talking to a young Syrian outside the Palace a few years ago—again, he was 14 or 15. This may not be a very telling argument, but I will describe it anyway. He pointed at this Palace and asked me, "You know what I want to do in life?". I said no and asked him to tell him. He said, "I want to become an MP".

These are the sorts of people who would benefit from the amendment. It is only humane that we should pass the amendment. I wish to test the opinion of the House.

7.18 pm

Division on Amendment 14

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Amendment 14 agreed.

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7.29 pm

Amendment 15

Moved by ***Lord German***

15: Clause 4, page 6, line 16, leave out "cannot be considered under the immigration rules" and insert "must be considered under the immigration rules if the person who made the claim has not been removed from the United Kingdom within six months of the day the claim is deemed inadmissible.

(3A) From the point at which the provisions of subsection (3) apply to a person, no other provision made by or by virtue of this Act applies to that person."

Member's explanatory statement

This amendment would require the Home Secretary to consider a protection claim or a human rights claim if the applicant has not been removed from the UK within six months of the claim being deemed inadmissible, and disapply other provisions at this point.

Lord German (LD): My Lords, I listened very carefully to the explanation of why the Government think this amendment ought not to be accepted, on the grounds that they are going to remove people within weeks of their arrival in the United Kingdom, without any evidence. It is also the case, I think, that this House generally does not believe that will happen. As it is a backstop for the Government to save money, I think it absolutely appropriate that we do our job to help the Government along and make sure that the public finances are not screwed up in that way. Therefore, I wish to test the opinion of the House.

The Deputy Speaker (Baroness Pitkeathley) (Lab): My Lords, there is a technical problem and it has been decided that the Division will be deferred. We will take the Division together with the next Division after the next group.

Amendment 16 not moved.

The Deputy Speaker (Baroness Pitkeathley) (Lab): Amendment 17 is consequential.

Amendment 17

Moved by ***Lord Carlile of Berriew***

17: Clause 4, page 6, line 37, leave out from first "claim" to end of line 40 and insert "are only to claims made on or after the date on which this section comes into force."

Member's explanatory statement

This amendment ensures that protection or human rights claims made before the Bill comes into force cannot be declared inadmissible under the Bill.

Amendment 17 agreed.

Clause 5: Removal for the purposes of section 2 or 3

Amendment 18

Moved by ***Lord Murray of Blidworth***

18: Clause 5, page 7, line 31, at end insert "or territory"

Member's explanatory statement

This amendment supplements the reference to a country in subsection (4)(b) of clause 5 with a reference to a territory, for consistency with the earlier reference in subsection (4) to a country or territory within subsection (3)(a) or (b) of that clause.

Amendment 18 agreed.

Amendment 19

Moved by ***Baroness Butler-Sloss***

19: Clause 5, page 8, line 23, at end insert "and the Secretary of State is satisfied in relation to the proposed country of removal that it is a safe third State as defined in section 80B of the Nationality, Immigration and Asylum Act 2002."

Member's explanatory statement

This amendment, and others in the name of Lord Carlile of Berriew, seek to ensure that asylum seekers can only be removed to third countries or territories listed in Schedule 1 if those countries are places where they will be protected from onward refoulement in breach of the Refugee Convention and be able to be recognised as a refugee and receive protection in accordance with the Refugee Convention (if so recognised).

Baroness Butler-Sloss (CB): My Lords, the noble Lord, Lord Carlile, has asked me to speak on his behalf to this series of amendments. My name is on Amendment 33, and I strongly support the noble Lord's amendments. As we all know, the refugee convention was signed by the British Government. These amendments look at a major concern about safe countries.

It is extraordinary that the Government have put 150 countries in Schedule 1, as I referred to in Committee, given that we know that only two on the list support this. We are told that, even with the additional number that the Minister has told us about, there is no agreement with the majority of countries and that some of the countries with which there are agreements, notably India, have not signed the refugee convention. How can the Government expect to send migrants and refugees to a country that has not signed it? It seems quite extraordinary. The Minister then tells us that it is such a good thing that these countries have joined. It is not only India, but I raise it as an important example.

7.45 pm

Perhaps the most important amendment, with which I am sure the House will sympathise, is that on LGBT people. Of the 150 countries, both those that have supported this and the majority that have not, none is friendly to LGBT people, and some of them are actively hostile. It is most extraordinary that there is no provision at all for anyone in that community. I find it difficult to say this to your Lordships, but I wonder what the Government are thinking. What do they expect? Where do they expect to send LGBT people if not a single country in Schedule 1 will support them?

This series of important amendments is to make sure that the countries to which migrants are sent will be genuinely safe for the people sent there.

Lord Purvis of Tweed (LD): My Lords, I will speak to Amendments 20 and 24 to 28 in my name.

It is notable that, despite Government Ministers on the Front Bench trying to promote this Bill in such vehement terms, for the votes in this Chamber the Conservatives cannot get more than 50% of their Members to support the Government's position. That speaks volumes.

Amendment 20 seeks to restore the fundamental principle that, if people are to be deemed admissible to be removed to a safe country, it should be on the basis of the individual circumstances of their case and after a review of the circumstances that they will face. The Government are turning this on its head, which is simply wrong. We heard earlier about the due process of law. Amendment 20 seeks to restore what the Government seek to remove—the due process of law.

Amendments 24 to 28 follow from the comments of the noble and learned Baroness, Lady Butler-Sloss, on those countries in the schedule that are not party to the refugee convention—India, Kosovo, Mauritius, Mongolia and South Korea. We do not know, and the Minister will not tell us, whether we have a return and resettlement agreement with any of those countries because, as he told me earlier, these are secret agreements. What kind of arrangements do a Government enter into with another Government that would be secret? The only thing I can think is that the other Government have asked us to keep it secret, for reasons that the Minister will not divulge. But he is asking us to legislate and determine that they are safe countries.

There is an inconsistency with the Government's position on Section 80B of the 2002 Act, which was amended by the Nationality and Borders Act 2022, over the definition of a "safe third state". As amended, the 2002 Act is clear about what it is: a safe third state is to be judged with regard to what is relevant to the individual person. Section 80B(4) defines a safe third state, and Section 80B(4)(b) states that one of the characteristics of a safe state is that the person will not be sent to another state—refoulement. There is nothing in this Bill that will give protection to that individual.

In that same section, the refugee convention is specifically mentioned, both in subsection (4)(b)(i) and (4)(c), with regard to a criterion of safety for an individual. I regret very much that the noble Lord, Lord Wolfson of Tredegar, is not in his place. We had a constitutional law lecture at the start of Report on the duality of the system, and if I understood correctly, we should not impose requirements on Executives with regard to international conventions. The law—and the noble Lord, Lord Wolfson, was Justice Minister at the time of the 2022 Bill being taken through Parliament—states categorically that this is a requirement we have put in statute: other Executives have to be a member of the refugee convention or we will not send people to them. What kind of double standard is it that it is fine for us to insist on receiving countries adhering to the convention, but it would be fundamentally wrong for us to adhere to that same convention? This is a double standard we absolutely should not support.

I have leave from my colleagues to say that we on these Benches will strongly support Amendment 37 if the opinion of the House is tested. These aspects are fundamental to the Bill; they are about principle, but also practicalities and our standing in the world. Process of law is very important and we should protect it, and that is why these amendments should be supported.

Lord Alton of Liverpool (CB): My Lords, like the noble Lord, Lord Purvis, I too strongly support Amendment 37 and will vote for it if the opinion of the House is tested. I would also like to support the remarks of my noble and learned friend Baroness Butler-Sloss, on behalf of the noble Lord, Lord Carlile, in moving those earlier amendments, particularly as they relate to safe countries.

My Amendment 21 would insert into Clause 5 the following:

> "No person may be removed to a country listed in Schedule 1 if doing so would put that person at risk due to their protected characteristics as defined in section 4 of the Equality Act 2010".

I raised this issue in Committee and I made a long speech, but I will not detain the House for long this evening. I especially cited the example of Nigeria and I do so again this evening, not least because I heard this morning of the case of Usman Buda, a Muslim, who was murdered in Sokoto state in north-west Nigeria in the last few days, because it was alleged—I repeat: alleged—that he had blasphemed. It is just over a year since the lynching of Deborah Emmanuel, a Christian, at Shehu Shagari College of Education, again following an unsubstantiated accusation of blasphemy. Nigeria is one of the 71 countries that criminalises blasphemy. It is worth remembering that this year is the 75th anniversary of the Universal Declaration of Human Rights, Article 18 of which insists that everyone has the right to believe, not to believe or to change their belief. That is why my amendment seeks to protect people who will be in danger if they are sent back to places like Nigeria because of their belief, non-belief or their desire to change belief.

When the Minister replies, will he say also how the Bill is compatible with Section 4 of the Equality Act 2010? Especially in light of what the noble Lord, Lord Purvis, said a moment ago about amendments affecting people because of their orientation, it is clearly in breach of that and of Article 18, for reasons of faith. That is enough on that subject for now. It is an issue we can return to later in our proceedings, when we come to not just safe countries but how we deal with people with these protected characteristics.

Lord Etherton (CB): My Lords, I rise to address Amendment 37 in my name. I am extremely grateful to those who have co-signed: the noble Lords, Lord Cashman and Lord Scriven, and the noble and learned Baroness, Lady Butler-Sloss. This amendment addresses the countries specified as appropriate for removal in Schedule 1. A number of those countries are shown as not safe for women, but none of the specified countries or territories is shown as unsafe for any other diverse or minority group.

The amendment introduces a new clause after Clause 6, in which Schedule 1 countries in respect of which members of the LGBTQ+ community have a well-founded fear of persecution are specified, and to which they must not be removed. Secondly, provision is made for there to be no removal of anyone, whatever their background or ethnicity, for example, to countries where there is a proposal to commence proceedings under Article 7 of the Treaty on European Union. Finally, subsection (2) of the new clause empowers the Secretary of State by regulation to add to or remove such countries or territories.

In order to sustain this amendment, I need to refer briefly to the reasons why each of the countries mentioned in the amendment as being hostile and unsafe places for LGBTQ+ people are indeed unsafe. I will refer to Home Office country of origin information, Home Office country policy and information notes, known as CPINS, and independent reports. I will deal with this very quickly, and I will start with Brazil. According to Agência Brasil, the dossier on murders of and violence against Brazilian transvestites and transsexuals compiled by ANTRA—the National Association of Transvestites and Transsexuals—states that 131 trans and transvestite people were murdered in Brazil in 2022, making it the country with the most deaths of people from this community for the fourteenth consecutive year. Gambia is accepted as unsafe for LGBTQ+ people by the Home Office in its February 2023 CPIN. Ghana is accepted by the Home Office as unsafe for LGBTQ+ people in its May 2022 CPIN. In Jamaica, a number of cases have been decided that establish it as unsafe for people from the LGBTQ+ community, including the major case of Brown v the Home Secretary, a 2015 decision of the Supreme Court. In Kenya, decided cases—in particular, a well-known case concerning Kenneth Macharia, a gay rugby player, which was decided by the tribunal and not appealed—have established that Kenya is unsafe for members of the LGBTQ+ community. There was a more recent decision to the same effect by the Upper Tribunal in February this year.

In Libera, same-sex sexual activity is criminalised under Liberia's penal code. In October 2020, the Home Office country background note accepted that there was state persecution of LGBTQ+ people in Malawi. The Justice Minister in Mauritius has stated that he will pursue the adoption of legislation to criminalise same-sex conduct. In Nigeria, the criminal code states that anybody found guilty of sodomy shall be liable to up to 5 years of penal servitude. There is a lot to be said about Rwanda; I am going to confine my comments for the moment, but I may need to supplement them later. It is sufficient for the present purposes to say that the current Foreign Office travel advice, as of May this year, is that homosexuality is not illegal in Rwanda but remains frowned upon by many. LGBTQ individuals can experience discrimination and abuse, including from local authorities. There are no specific anti-discrimination laws that protect LGBT individuals. Critically, a United States State Department country report on Rwanda, published in March this year, said that there is abuse and violence against LGBT people, with no adequate response by the Rwandan Government.

There are a number of independent reports by, for example, Rainbow Migration and Human Rights Watch, about the persecution of LGBTQ+ people in Rwanda. I emphasise that trans women are particularly exposed to abuse and persecution in Rwanda. That is well documented. Finally, in Sierra Leone there is criminalisation of any sexual act.

That deals with the first part of the amendment. It would be contrary to the convention, it would be wholly unjust and a travesty in every moral sense to remove members of the LGBTQ+ community to any of those countries I have mentioned.

8 pm

The next part of the amendment concerns countries in relation to which there is a proposal to commence proceedings under Article 7 of the Treaty on European Union. Article 7 applies where there is a clear risk of a serious breach by a member state of the values referred to in Article 2, which provides that the union is founded on the values of respect for human dignity, freedom, democracy, equality, the rule of law and respect for human rights, including the rights of persons belonging to minorities. Currently there are proposals for proceedings in relation to both Hungary and Poland. For that reason, those two countries are inappropriate places to be described as safe.

The omission of any reference to countries which are facing proceedings under Article 7 is quite remarkable, bearing in mind that Clause 5(5) provides that exceptional circumstances which prevent removal to a country listed in Section 80AA(1) of the Nationality, Immigration and Asylum Act 2002, which deals with the inadmissibility of certain asylum and human rights claims—so-called safe states—include where P is a national of a state which is the subject of proceedings under Article 7(1) of the TEU. Moreover, in the debate on the Nationality and Borders Bill on 3 February 2022, the then Home Office Minister, the noble Baroness, Lady Williams of Trafford, accepted that due to Article 7 TEU proceedings, both Hungary and Poland would not come within the inadmissibility criteria for EU asylum claims.

For all those reasons, I hope that the House will support the amendment.

Lord Jackson of Peterborough (Con): My Lords—

Baroness Williams of Trafford (Con): My Lords, I apologise for interrupting my noble friend. The machines to record the votes have basically stopped working. I have spoken to the usual channels, who have agreed that we will defer all Divisions—but not the debates—until Monday.

Lord Jackson of Peterborough (Con): My Lords, I shall speak to Amendment 37. I thank the noble and learned Lord, Lord Etherton, for a very clear exposition.

[Lord Jackson of Peterborough]

Broadly speaking, I support the amendment, although I shall not be voting for it for the reasons I will now give. I concur also with the points raised by the noble Lord, Lord Alton, about Christian and Muslim persecution in Nigeria, which remains a constituent country in Schedule 1.

The amendment is doing a lot of heavy lifting. Notwithstanding my support, I have some significant questions as to whether it should appear in primary rather than secondary legislation, because it is very detailed and because there are other groups that are suffering persecution which could also be included. That does not take away the very real concerns articulated by many noble Lords about lesbian, gay, bisexual and transgender people who may face persecution when returned to some of these countries.

I have a very significant issue. I genuinely hope that when those who tabled the amendment respond to the Minister they will disabuse me of any misapprehension about it, particularly with regard to subsection (1)(c). It seems to me that it is constitutionally unprecedented to put in primary legislation an amendment which is largely dependent on the time-limited, opaque legal process of a foreign legal entity—in this case, Section 7 of the Treaty on European Union. We are relying on the procedures of the European Union and how it handles ongoing and potentially continuous infraction procedures under that part of the treaty as a determinant of whether we include it in the Bill. That is completely unprecedented.

I can understand the points that noble Lords have made about Poland and Hungary, but those legal processes have not yet run their course and are still ongoing. That is a matter for the European Union rather than the United Kingdom.

How wide and prescriptive would this amendment be? Would infraction procedures begin against Latvia, Bulgaria, Malta and Romania? This can be incorporated over a period in secondary legislation in a statutory instrument, rather than on the face of the Bill. I say very gently to the noble and learned Lord, Lord Etherton, that he was not as clear and emphatic in his explanation and rationale for that part of his amendment as he was in the earlier part, that it is of course axiomatic that a number of people, because of their sexuality or gender preferences, would face persecution.

For that reason, I feel uncomfortable about supporting the amendment and will support the Government if they oppose it. I would be extremely grateful if those who tabled the amendment would address the issues that I have.

The Lord Bishop of Manchester: My Lords, we cannot countenance a situation in which people who sought asylum here because of a well-founded fear of persecution in their country of origin are then removed to a third country where they may face a similar, or even greater, level of risk. For that reason, I join others in supporting Amendment 37.

It was my privilege earlier this year to be invited to attend a reception on the Parliamentary Estate, where I met a group of LGBTQI+ women who had sought and gained asylum in this country. Their stories were harrowing. By contrast, their efforts to rebuild their lives here in Britain were inspirational.

It seems to me beyond any doubt that the threshold of safety must be different and, indeed, higher for people like these women—people who are persecuted on the basis of their sexuality or their gender identity. Putting it bluntly, if His Majesty's Government's travel advice to British tourists is that they should not be open about their sexuality when visiting certain countries, two things surely follow. First, those same countries are not places to which we should remove LGBTQI+ people; secondly, the Bill must provide explicit protection to that end. The noble and learned Lord's amendment achieves that aim, and unless the Minister can offer equally concrete protections, I hope that your Lordships' House will support it at such time as the voting machines are resurrected from the dead.

Lord Cashman (Lab): My Lords, I speak in support of the amendments in this group, particularly the amendment to which I have added my name and which the noble and learned Lord, Lord Etherton, so eloquently expounded, as did the noble and learned Baroness, Lady Butler-Sloss. We have of course addressed, and will continue to address, vulnerable people in all the categories affected by the Bill. We have done so consistently—for example, for pregnant women and vulnerable children, as we have done today, and for others. When it comes to protecting the vulnerable, that is arguably how a country is judged, so we make no omission when dealing with Schedule 1.

As was said earlier—I will be brief—there are 63 countries that currently criminalise people merely because of their sexual orientation or gender identity. In a country such as Uganda, for example, for you to know that somebody is in a SOGI minority, as the UN refers to it, and not to report it to the authorities is to face two years in prison. If in Uganda you rent a home to a homosexual person, you can face up to 20 years in prison. Some 63 countries criminalise; now seven have the death penalty. The reality of state discrimination, as has been said, is death, mutilation, persecution, blackmail and coercive rape. I remember David Kato, the Ugandan activist murdered some nine or 10 years ago; his murderer has still not been brought to justice. Lives are being denied, blighted and criminalised.

We raise this issue because within Schedule 1 the majority of those countries that criminalise and offer the death penalty are on the list and there are currently no protections. We have sought reassurances throughout—at Second Reading, in Committee and now—but reassurances there have come none.

Let me finish with the words of a young Ugandan, Arthur Kayima, who said this, yesterday, here in Parliament:

> "Without a Mother I grew up as a very vulnerable child and as if that was not enough, as a child, signs of not being straight were just too visible".

Growing up in a country like Uganda, he said, being considered gay is to be considered evil—

> "a curse, an abomination and a dangerously unforgiven sin".

He continued that the President of Uganda, Museveni,

> "signed into law the world's harshest anti-LGBT+ law, which allows the death penalty for homosexual acts, long serving in prison for promoting homosexuality or renting a room to a gay couple (20 years in prison)".

Without any reassurances, Uganda is on the list in Schedule 1.

That is the reality of being in a country with homophobic laws: those words, spoken by a man seeking asylum in the United Kingdom. No LGBT person should be sent to such a country, and that is one of the many reasons why I support Amendment 37, in the name of the noble and learned Lord, Lord Etherton.

Lord Coaker (Lab): My Lords, I will briefly remind the House why this set of amendments is extremely important. I particularly support Amendment 37.

The thing to remember—I remind us all—is that the Bill automatically detains everybody who arrives irregularly. All those who arrive irregularly and are detained will then, at some point, as far as the Government are concerned—although this is unclear—be deported. There will be thousands upon thousands of people detained and then deported.

The amendments are extremely important, therefore, because if we are saying that thousands upon thousands of people are to be automatically detained and then deported, is there not a responsibility to ensure that the places where those people are to be deported to are safe? This puts an increased burden upon us to ensure that that is the case. As it stands, the Government will reply by saying that Clause 5(5) refers to "exceptional circumstances", and that therefore there is no need for the worries and concerns expressed by a number of noble Lords, including the noble and learned Baroness, Lady Butler-Sloss, because if anybody faced deportation to a country which was not safe, the exceptional circumstances would protect them.

8.15 pm

I think what noble Lords are saying is that that is not good enough. It is not sufficient and it does not give the protections that we would all expect. Look, as an example, at what Amendment 37 rightly seeks to do. Without it, there is no guarantee in the Bill that somebody who arrives here irregularly, is detained and then deported, will not be deported to a country where their rights as a gay person would not be respected. In fact, it is worse than that. As we heard from my noble friend Lord Cashman, the noble and learned Lord, Lord Etherton, and others, not only would they not be safe but it is clear, according to many studies, that they would be persecuted for their sexuality. To be generous about it, that cannot be what the Government want. I do not believe that the Government would want that, and yet under the Bill that is precisely what could happen.

Amendment 37 is particularly important, because although there are exceptional circumstances, it would be left to the discretion of the Home Secretary at the time, and therefore this provision needs to be put into the Bill. I would say that we have a moral obligation to ensure that, if we are going to deport thousands of people—if our Government are going to pass legislation which allows not thousands but tens of thousands to be deported—it is even more incumbent upon us to ensure that the countries to which they would seek to return those people are safe.

Lord Stewart of Dirleton (Con): My Lords, these amendments go to the issue of whether it is safe to remove a person to a country listed in Schedule 1. It remains the Government's view that these amendments are not necessary. I will briefly set out why that is the case.

It is not the case that anyone who meets the conditions in Clause 2 can be sent to any of the countries listed in Schedule 1 without further ado. In the case of a national of a non-Section 80AA country, were they to make a protection claim or human rights claim they could not be returned to their home country. In speaking to his amendment the noble and learned Lord, Lord Etherton, itemised a number of the countries with which he has particular concern. For the sake of brevity, I will answer by reference to a single example, but that example covers the list: a Gambian LGBT person fearing persecution if they were returned to Gambia would not be so returned if they make an asylum claim.

The point was taken up by the right reverend Prelate the Bishop of Manchester. The noble Lord, Lord Cashman, spoke with power and made specific reference to an individual example, and the noble Lord, Lord Coaker, returned to the point when summing up. However, I reiterate that an LGBT person fearing persecution if they were returned to their own country would not be so returned if they make an asylum claim.

In the case of a national of a Section 80AA country, the fact that they have raised a protection or human rights claim against their country of nationality would not be a bar to their removal to their home country, unless the Secretary of State considers that there are exceptional circumstances why they cannot be removed there. The noble Lord, Lord Coaker, in summing up from the Opposition Benches, drew our attention to the concern that that might lay open this serious matter to the idiosyncrasies of a particular Home Secretary, but I urge your Lordships to consider that the countries with which we are dealing here are EU and EEA countries, plus Switzerland and Albania, all of which, we maintain, are clearly safe. That said, if it was considered that there were exceptional circumstances, they would not be removed there and would instead be removed—

Lord Hacking (Lab): I have listened intently to the argument that was presented, particularly by the noble and learned Lord, Lord Etherton, and I just make a very simple proposition. Would it not be much safer to adopt Amendment 37, rather than leaving it to individuals as to whether they make an asylum claim and in what circumstances? That is why I ask the Minister to think again about this.

Lord Stewart of Dirleton (Con): My Lords, the Government Front Bench will reflect, as your Lordships would expect, on submissions made on the Floor of the House at this stage. With respect to the noble Lord, I will defer my consideration of that point until later in my submission and will take matters in a different order. I will return to that point.

Lord Cashman (Lab): My Lords, I accept the principle of non-refoulement to a country—a Ugandan going back to Uganda—but there is the wider issue of a gay Ugandan being sent to a country such as Gambia or Kenya. I seek reassurances on that.

Lord Stewart of Dirleton (Con): I hope to be able to provide that reassurance. Again, with reference to the important point that the noble Lord takes up, which is fully appreciated by the Government Front Bench, I will refer to that in the course of my submission to your Lordships.

I repeat: if it was considered that there were exceptional circumstances, a person would not be removed to his home country. Coming as quickly as I may to the point just raised in an intervention by the noble Lord, Lord Cashman, the country to which they return would be a country considered to be a safe one. A person would not be removed to their home country but at the same time would not be removed to a country where they would be exposed to the same level of risk as they would by dint of their sexual orientation.

If we were to seek to remove a third country's national to any of the countries listed under Schedule 1 and that country were prepared to admit them, those persons would have the opportunity to make a serious harm suspensive claim. Clause 38 makes it clear that persecution and onward refoulement are examples of harm that constitute serious and irreversible harm for the purposes of such a suspensive claim. Such an individual would not be removed to that country if their claim was accepted by the Home Office or upheld by the Upper Tribunal on appeal. So I submit respectfully to the House that the Bill already provides for individual assessments—the very individuality for which the noble Lord, Lord Purvis of Tweed, called in his powerful submission on these important matters. The Bill already provides for that degree of consideration of individual facts and circumstances for which the noble Lord, among others, has called. As such, I consider that Amendment 20, advanced by the noble Lord, Lord Purvis of Tweed, is unnecessary.

Lord Purvis of Tweed (LD): The Minister might be able to help me. Where does the Bill outline the process for that individual review of the individual circumstances?

Lord Stewart of Dirleton (Con): My Lords, in the making of the serious harm suspensive claim, those individual circumstances would be outlined.

Lord Purvis of Tweed (LD): My Lords, the claim can be made only after the notice is provided, but the Minister just told us that there would be an individual process before the notice was provided. Is that correct?

Lord Stewart of Dirleton (Con): My Lords, I do not think I did. The point I am making is that the serious harm suspensive claim in connection with Clause 38 makes it clear that persecution and onward refoulement are examples of harm that constitute serious and irreversible harm for the purposes of such a suspensive claim. Hence there is consideration of individual facts and circumstances.

On Amendments 19, 21, 24 to 28 and 37, I make an observation, namely that much in Clauses 5 and 6 and Schedule 1 draws on existing immigration law dating back some 20 years. To that extent, the provisions contained therein are not new; they provide necessary clarity as to the country to which a person may be removed.

As regards the consideration of the status of countries as places to which persons can be removed safely and which are on the safe list, that list has been added to over the years. It is instructive that some of the countries added to the safe list in terms of the Nationality, Immigration and Asylum Act 2002 were added during the period when the party opposite was in power: in 2003 Albania and Brazil; in 2005 India, Ghana for men and Nigeria for men; in 2007 Gambia for men, Kenya for men, Malawi for men, Mali for men, Mauritius, Montenegro and Sierra Leone for men—I merely exemplify. I reiterate that these are not novel provisions. They provide the necessary clarity as to the country to which a person may be removed.

The noble Lord, Lord Alton of Liverpool, raised a matter concerning the nature of the—

Lord Alton of Liverpool (CB): Protected characteristics.

Lord Stewart of Dirleton (Con): I am grateful to the noble Lord for his assistance. I refer him to the equality impact assessment we have published, which in short order answers his question. Again, I am grateful to him for helping me out in my difficulty there.

Lord Alton of Liverpool (CB): After today's debate, before we reach group 17 and my Amendment 163, which is on safe routes but which also incorporates this idea of using protected characteristics as contained in the Equality Act 2010, perhaps the Minister can give some further consideration as to whether that might be a useful criterion to use as and when the Government decide on the formula that we use for safe routes.

Lord Stewart of Dirleton (Con): My Lords, in the face of that characteristically thoughtful and constructive suggestion, I am happy to assure the noble Lord that we will consider that between now and the point he refers to in relation to his forthcoming amendment.

On Amendment 37, tabled by the noble and learned Lord, Lord Etherton, I know that he has had the opportunity to discuss this amendment with the Attorney-General, my learned friend in the other place. Following that discussion, I will make one further point that I hope will reassure the noble and learned Lord. If the open expression of a person's sexual orientation would prevent them living in a specified third country without being at real risk of serious and irreversible harm, they would meet the threshold for a serious harm suspensive claim as outlined in Clause 39, and the principles enunciated by the Supreme Court of the United Kingdom in the case of HJ (Iran) would be upheld.

Lord Etherton (CB): I am grateful for what the Minister just said in relation to the ability of an openly gay, lesbian, transgender or bisexual person to live in a particular country. If, acting in that open way, they had a well-founded fear of persecution, as I understand it the Minister is saying that that would satisfy serious and irreversible harm. That is not apparent in the Bill, and to make that clear would itself require an amendment to Clause 38, which we will come to in due course.

But I am left, I am sorry to say, somewhat perplexed by the Minister's analysis of the application of Article 7 proceedings against a particular country. In asking this question of the Minister, I can deal with the point from the noble Lord, Lord Jackson. There are two different situations under the Bill under which the issue of removal arises. The first, which is found at Clause 5(4), is where the person

"is a national of a country listed in section 80AA(1) of the Nationality, Immigration and Asylum Act 2002."

That renders inadmissible certain asylum and human rights claims because they are deemed to be safe states.

8.30 pm

Lord Davies of Gower (Con): Could I just ask the noble and learned Lord to ask his question, please?

Lord Etherton (CB): My first question is: does the Minister not agree that that is quite different from the case that the noble Lord, Lord Cashman, raised, where a person is not from a country listed in Section 80AA(1) but from another country? There is a separate provision for that in relation to removal to a Schedule 1 country. Does the Minster not agree that, although Clause 5(5) deals with the Section 80AA point, there is no equivalent to that exception in relation to a situation where somebody comes from a non-EU country that is a non-safe place and the consideration is now to move that person to a Schedule 1 country? What my amendment is dealing with is not the Section 80AA situation but the situation categorised by the noble Lord, Lord Cashman, where a person from a non-safe European state comes here and is threatened to be removed to a Schedule 1 country. All I said—and I am asking the Minister to acknowledge this—is that there should be a similar provision for that situation, for the exclusion of those countries that are facing proceedings under Article 7. That is it.

Lord Stewart of Dirleton (Con): My Lords, I am grateful to the noble and learned Lord, Lord Etherton, of course, for his intervention. It seems to me that the point he raises is one that calls for a degree of interpretative scrutiny that I do not think I am in a position to give at this stage from the Dispatch Box. I wonder if he would be content were I to undertake to write to him on the point that he raises.

Lord Etherton (CB): I am grateful for the Minister writing, but at the moment it seems to me that the Minister has not really addressed my point about the need for such a provision and the exclusion of such countries. On that basis, I would be minded to press the amendment.

Lord Stewart of Dirleton (Con): My Lords, I suspect that nothing I could say from the Dispatch Box will alter the fixed purpose of the noble and learned Lord in any event, but I do repeat my undertaking to write to him on the topic.

I was about to address the matter raised by the noble Lord, Lord Purvis of Tweed, in relation to secret agreements. The Government must retain, I submit, the ultimate discretion over the amount and detail of any information shared with Parliament, but the Government remain committed to principles of transparency and positive engagement. This is considered on a case-by-case basis, finding a balance proportionate to the level of public interest.

Lord Purvis of Tweed (LD): If that is the case, by definition, these agreements will not be treaties, and these agreements will not have gone through the CRaG process, and therefore they will not be binding.

Lord Stewart of Dirleton (Con): My Lords, I repeat the point. The Government retain discretion to enter into agreements and discretion in relation to the level of detail to be shared.

Baroness Butler-Sloss (CB): I am so sorry to interrupt the Minister again, but could I ask a straightforward question? What is the view of the Government about countries they are referring to that have not joined, or have not signed up to, the refugee convention?

Lord Stewart of Dirleton (Con): The straightforward answer to the noble and learned Baroness's question is that we are content to treat with countries that have not signed up to the refugee convention.

On Amendments 29 to 36, the Secretary of State may add a country to Schedule 1 by regulations only if satisfied that there is in general in that country or part of it no serious risk of persecution and will not in general contravene the United Kingdom's obligations under the human rights convention. In so doing, the Secretary of State must have regard to information from any appropriate source, including member states and international organisations. The views expressed by the United Nations High Commissioner for Refugees on a particular country, among other sources of information, will therefore be considered before a country is added to Schedule 1.

In response to the amendments tabled by the noble Baroness, Lady Hamwee, our contention is that, when considering adding a country to the list in Schedule 1, we need to consider the position in the round. We do not live in a perfect world, so it is reasonable to assess a country on the basis that they are generally safe and to consider the possibility of adding to the list only a part of a country.

The noble and learned Lord, Lord Etherton, raised the matter of Rwanda. In relation to protections for LGBTQ+ persons in that country, the constitution of Rwanda includes a broad prohibition on discrimination. Rwanda does not criminalise or discriminate against sexual orientation in law, policy or practice.

Lord Etherton (CB): My Lords, where does the Minister get the evidence to say that, in practice, as opposed to what is written in the constitution, there is no persecution? There are numerous independent reports and newspaper reports, as well as the Foreign Office's own advice, to indicate that there is a real risk of persecution in Rwanda, especially for trans women.

Lord Stewart of Dirleton (Con): As the noble and learned Lord will be aware, the Rwanda litigation found it to be the case that Rwanda was safe. Beyond that, in relation to the sources of information, the Government operate on the basis of information gathered by their officials, discussed with Ministers and considered in relation to legislation to be put forward.

Baroness Wheatcroft (CB): On that point, can the Minister tell the House whether we should take any notice of guidance from the Foreign Office on whether countries are safe to visit?

Lord Stewart of Dirleton (Con): The guidance furnished by the Foreign Office to British citizens for travelling is a separate matter from the guidance upon which the Government are relying in the present case. I can see that that clearly has not impressed the noble Baroness, but none the less it is the position.

Lord Scriven (LD): Why would the Minister tell me, and others who identify as LGBT, that it is not safe to go to a country because we would be in fear of our safety, yet deport to that country an LGBT national from another country having decided that they would be safe and not in fear of persecution? What is the difference?

Lord Stewart of Dirleton (Con): The Government are acting on the basis of information in the context of these provisions.

Baroness Kramer (LD): Can the Minister give clarification? The context is that one is a British citizen and the others are not British citizens, and therefore their standards are different. That must be the interpretation: that the Government have a benchmark for British citizens but a completely different benchmark for those who are not British citizens. Can the Minister please explain this much lower benchmark?

Lord Stewart of Dirleton (Con): In setting the benchmark for countries that are safe for persons to be sent to, the Government are looking at it from the point of view of the objectives of the Bill. We are not looking at it from the point of view of British citizens travelling abroad.

The Bill already includes adequate safeguards to protect those in fear of persecution based on their sexual orientation, gender identity or other protected characteristics, or those who are fearful of onward refoulement. I say again that these amendments are unnecessary, and therefore invite the noble Lord, Lord Carlile, to withdraw Amendment 19. Although we will not be voting tonight, for reasons explained, I urge the noble and learned Lord and other noble Lords—

Lord Purvis of Tweed (LD): Can the Minister give clarification on the point I raised that he has not replied to—the interaction not with Section 80AA of the Nationality, Immigration and Asylum Act 2002, which will be amended by this Bill, but with the definitions of a safe third state under Section 80B of that Act? How will they interact? The asylum claims by persons with a connection to a safe state has the definition, as I referred to, of a safe third state under the 2002 Act. That is not being amended by this Bill. The definition of a safe third state in the 2002 Act, which will still be on the statute book, unamended by this Bill, states that the safety is defined if they will receive protection in accordance with the refugee convention. How will they interact? We have the 2002 Act still on the statute book, where a state that is not a signatory to the refugee convention is defined as a non-safe state, but, as the Minister has told us, under this Bill the same is not being applied.

Lord Stewart of Dirleton (Con): My Lords, as I stated at the outset, the position is that the provisions for the ability of people to bring applications for serious harm suspensive claims allow for scrutiny of the safety of any location to which a person would be sent.

I was on the point of saying that, although we will not be voting this evening, I none the less urge the noble and learned Lord, Lord Etherton, and other noble Lords not to press their amendments.

Baroness Butler-Sloss (CB): My Lords, I thank everyone who has spoken on this group. In relation to Amendment 19, it is not proposed to test the opinion of the House.

Amendment 19 withdrawn.

Amendments 20 and 21 not moved.

8.45 pm

Amendments 22 and 23

Moved by ***Lord Carlile of Berriew***

22: Clause 5, page 8, line 31, leave out from first "claim" to end of line 34 and insert "are only to claims made on or after the date on which this section comes into force."

Member's explanatory statement

This amendment ensures that the removal provisions in Clause 5 only apply to those who make protection or human rights claims after the Bill comes into force.

23: Clause 5, page 9, leave out lines 2 to 4 and insert "the date on which this section comes into force."

Member's explanatory statement

This amendment ensures that Clause 5 only applies to protection or human rights claims made on or after the date the Bill comes into force.

Amendments 22 and 23 agreed.

Schedule 1: Countries or territories to which a person may be removed

Amendments 24 to 28 not moved.

Clause 6: Powers to amend Schedule 1

Amendments 29 to 36 not moved.

Amendment 37

Moved by ***Lord Etherton***

37: After Clause 6, insert the following new Clause—

"Restrictions on removal destinations: LGBT persons

(1) Where the Secretary of State is required by section 2(1) to make arrangements for the removal of a person from the United Kingdom—

(a) trans men and women must not be removed to Brazil;

(b) LGBT persons must not be removed to Gambia, Ghana, Jamaica, Kenya, Liberia, Malawi, Mauritius, Nigeria, Rwanda or Sierra Leone;

(c) no person may be removed to a territory or country listed in Schedule 1 (Countries or territories to which a person may be removed) if the exceptional circumstances specified in section 5(5)(b) apply to that territory or country.

(2) The Secretary of State may by regulations amend subsection (1) to—

(a) add or remove a country or territory, or part of a country or territory;

(b) reflect changes made to Schedule 1 by regulations made under section 6."

Member's explanatory statement

This amendment would prevent LGBT people being moved to countries where they have a well-founded fear of persecution; or to a country which is subject to proceedings under Article 7 of the Treaty on European Union, as is currently the case with Hungary and Poland, and as is recognised as inappropriate by the existing Clause 5(5).

Lord Etherton (CB): I thank all noble Lords who have spoken and the Minister for what he said. I am afraid that I am not persuaded that the Minister has fully grasped the difference between the two types of people I have mentioned—those who come from a safe place and those who do not come from one of these Section 80AA places and who could be removed to somewhere within Schedule 1. He has not explained why it is acceptable for women—one group—to be identified and excluded in relation to countries in Schedule 1 but for not another diverse group which faces persecution. So far as the evidence is concerned, I think he challenged only Rwanda on that. I have already explained that in the light of all the independent evidence I do not accept that Rwanda is not a hostile place for LGBTQ+ people, particularly for those who are trans. On the basis of that, I shall seek to test the opinion of the House.

The Deputy Speaker (Baroness Garden of Frognal) (LD): The Question will be decided by a deferred Division on Monday.

8.48 pm

Consideration on Report adjourned until not before 9.28 pm.

Mortgage Charter

Statement

The following Statement was made in the House of Commons on Monday 26 June.

"Mr Speaker, last week the Bank of England increased interest rates to 5% as the UK, like other countries, grapples with high inflation. We are steadfast in our support for the independent Monetary Policy Committee as it takes whatever action is necessary to return inflation to the 2% target in the medium term.

None the less, I know that higher inflation and interest rates cause anxiety and concern for many families. That is why the Government are already supporting families with one of the largest support packages in Europe, worth £94 billion, or £3,300 per household on average. As interest rates rise, I will not take action that undermines the Bank of England's monetary objectives, but where we can take non-inflationary measures to relieve the anxiety faced by families, we will do so. That is why on Friday, I met the UK's principal mortgage lenders, alongside senior representatives from the Financial Conduct Authority and UK Finance, to agree new support for people struggling with their mortgage payments. At that meeting, I secured agreement from lenders to a new mortgage charter that sets out what support customers will receive, which we are publishing today. The charter has been signed by lenders covering 85% of the UK market, and provides support for two groups of people in particular.

The first group is those who are worried about their mortgage repayments. If they want to switch to an interest-only mortgage or extend their mortgage term to reduce their monthly payments, they will be able to do so, with the option of switching back to their original mortgage deal within six months without any affordability check or credit score impact. For most people, the right course of action will be to continue to make payments on their current mortgage. That will always be the best option, and will always mean that they pay less interest overall. However, this new measure means that people will be able to opt for a lower-cost approach for six months with full reversibility, giving them the peace of mind of knowing that they can try out a new approach and still change their mind later.

The measure will take effect in the next few weeks. It means that a home owner with a £200,000 property with £100,000 outstanding on their mortgage over 15 years can change their payments—with no immediate impact on their credit rating—by extending the mortgage term by 10 years, which could save over £200 a month, or moving to interest-only payments, which could save over £350 a month.

A further measure for this group of customers means that if they are approaching the end of a fixed-rate deal, they will be offered the chance to lock in a new deal with the same lender up to six months ahead. However, they will still be able to apply for a better like-for-like deal with the same lender, with no penalty if they find one, until their current deal ends. That will provide people with more flexibility and optionality to find the best deal for their circumstances.

The second group of people we are supporting is those who are at real risk of losing their home because they fall behind in their mortgage payments. Mortgage arrears and defaults remain at historically low levels, with under 1% of residential mortgages in arrears in 2023, and are at a level lower than just before the pandemic. None the less, for the families involved it is

[Baroness Garden of Frognal]
extraordinarily distressing to lose their house, so we will do all we can to support people who find themselves in such a challenging financial position.

As part of our strong regulatory framework for mortgage holders, banks and lenders already provide tailored support for anyone who is struggling and deploy highly trained staff to help such customers. Support offered includes temporary payment deferrals and part-interest part-repayment, as well as extending mortgage terms or switching to interest-only payments. To supplement that, we have agreed as part of the mortgage charter that in the extreme situation in which a lender is seeking to repossess a home, there will be a minimum 12-month period from the first missed payment before there is a repossession without consent. Anyone who is worried that they could be in this situation should know they can call their lender for advice without any impact at all on their credit score. Lenders will also provide support to customers who are up to date with payments to switch to a new mortgage deal at the end of their existing fixed rate deal without another affordability test, and provide well-timed information when their current rate is coming to an end.

Taken together, these measures should offer comfort to those who are anxious about the impact of higher interest rates on their mortgage, and provide support to those who do get into any extreme financial difficulties. The mortgage market itself remains robust, and the average home owner remortgaging over the last year had close to 50% loan to value, indicating that most people have considerable equity in their homes.

Tackling inflation is the Prime Minister's, and my, number one priority. We said we would halve inflation not because it was an easy thing to do, but because it is the right thing to do, and we will not flinch in our resolve, because we know getting rid of high inflation from our economy is the only way that we can ultimately relieve pressure on family finances and on businesses. That is why we will seek to remove inflationary pressures in our economy, not stoke them. That is what the measures I have set out today will help to do, and I commend this Statement to the House."

8.48 pm

Lord Livermore (Lab): My Lords, when the Chancellor made his Statement on Monday, he did so against a rapidly deteriorating backdrop for Britain's mortgage holders. Interest rates have risen 13 times to a 15-year high of 5%, but inflation is stuck at 8.7%. The average two-year fixed-rate mortgage has increased from 2.6% to well over 6%. Average mortgage costs this year will increase by £2,900. Multiple lenders have withdrawn all new mortgage deals from the market, just as 1.5 million homeowners are set to come off fixed-rate mortgages.

The Resolution Foundation estimates that home owners will pay a combined total of £15.8 billion more in mortgage payments every year by 2026. Data from the Institute for Fiscal Studies shows that, on average, mortgage holders will see their payments rise by £280 per month, equivalent to 8.3% of their disposable income, with some 1.4 million people losing a huge 20% of their disposable income. The latest data from the Bank of England shows that the value of outstanding balances with arrears increased by 9.5% in the first quarter of this year. These figures all show the level of pain among mortgage holders, which will only grow in the months ahead.

We should, of course, remember that those who have bought their own homes have done nothing wrong. They have worked hard, saved for a deposit and taken pride in having a home of their own. But the security that comes with that has, for many, turned to dread, as month after month they receive a letter from their lender telling them their bills are going up by hundreds of pounds a month.

The Government often argue that responsibility for this rapidly deteriorating picture lies in global factors, yet the figures suggest a different story. The latest data show that a typical household in Britain is now paying over £800 more per year for their mortgage than in Germany, £1,000 more per year than in Ireland and £2,000 more per year than in France. The UK has the highest inflation in the G7, with core inflation last month rising to 7.1% in the UK, a 31-year high, while in other advanced economies, including in the eurozone and the US, it has started to fall. Food prices in the UK are currently rising 20% faster than in France, 30% faster than in Germany and more than three times the rate in the US.

Interest rates first spiked dramatically last autumn when the Government gambled with people's livelihoods in their disastrous mini-Budget, sending markets into meltdown. Since then, things have only got worse, as the instability the mini-Budget created has continued. Now, with inflation higher for longer in the UK than in other similar economies, the two-year gilt yield today stands at 5.24%, a new 15-year high, half a percentage point above that at the time of last year's mini-Budget, and above its US equivalent. Markets now see a 70% chance of rates over 6% by the end of this year.

In this context, with millions of home owners struggling to pay their mortgages and with private sector rents rising by more than 10%, the Government's new mortgage charter is clearly necessary, but it is also clearly insufficient. It is insufficient because, while many banks and building societies are doing the right thing by their customers, a purely voluntary set of measures will leave more than 1 million households missing out on the mortgage support they need.

Last week the Labour Party set out proposals to help people across Britain who work hard, pay their mortgages and rents and are now being hit hard by rapidly rising payments. Labour's measures are compulsory, across the board and required of lenders. We would require lenders to allow borrowers to switch to interest-only mortgage payments for a temporary period, or to lengthen the term of their mortgage. We would require lenders to reverse any support measures when the borrower requests it. Were we in Government, we would bring in a renters' charter to end no-fault evictions and introduce four-month notice periods for landlords. It is also important to say that we should not see a big fiscal injection into the economy at this time. If that happened, interest rates would go up even more, crippling the hopes and opportunities of the very people we seek to help.

I therefore ask the Minister the following questions. The Chancellor said in his Statement that the voluntary measures would cover 85% of the mortgage market. That leaves more than 1 million families who are not covered because their lender has not signed up to this scheme. Will the Government now consider making the measures in their mortgage charter mandatory? The Chancellor did not mention renters in his Statement, but many are paying higher rents because their landlords' mortgage costs have gone up. What plans do the Government have to help them? Despite recent increases in the rates that lenders are charging on mortgages, there has not been an equivalent rise in the rate they offer on savings. This gap has grown by more than 50% for two-year products. What action will the Government take to ensure that savers see the full benefits from higher rates, just as borrowers are feeling the full pain? Finally, why does the UK continue to have the highest inflation rate in the whole G7? I thank the Minister in advance for her answers to these specific questions.

Baroness Kramer (LD): My Lords, I rarely speak to such a thronged House. The number that we should focus on is core inflation, which removes the volatile issues over which we have little control and which has shockingly risen to 7.1%—a 31-year high, as the noble Lord, Lord Livermore, said. This number is key to interest rate rises and captures the sheer economic incompetence of the Government, as well as their wholly inadequate trade relationship with Europe post Brexit—the sharp drop in exports, British firms removed from supply chains, a collapse in business investment, the fall in sterling, customs friction driving up the cost of imports, labour shortages and incredibly low productivity.

Three groups of people will be particularly hard hit by the sharp and continuing rise in interest rates: mortgage holders with variable-rate or expiring fixed-rate mortgages, renters whose landlords face significantly higher mortgage costs and small businesses with short-term loan exposure. The mortgage charter will help some to push the pain into the future, but at a price. The hardest hit who face repossessions will feel the full force only after the next general election; I understand the Conservative strategy there.

Unlike this Government, I do not think it acceptable for the hardest hit, who face the destruction of their family finances, to take the bullet for the economy as a whole. Will the Government now put in place the emergency proposals that these Benches have made to assist those in the toughest position, who will get no help from the banks because they are regarded as unattractive customers? This is a voluntary system and the banks will use their standard approach of favouring customers with whom they want long-term relationships and denying opportunity to those with whom they do not.

Reversing cuts in the bank levy and the surcharge would do more than cover the cost of this, and I am with the noble Lord, Lord Livermore, in saying that the banks are really in a position of profiteering at this point because of their rejection of any pressure to share higher interest rates with their savers.

The Parliamentary Secretary, HM Treasury (Baroness Penn) (Con): My Lords, I thank both noble Lords for their contributions and their questions. The reason we are having this Statement today is the action the Government took on the back of the announcement by the Bank of England last week to raise interest rates to 5% as the UK, like other countries, grapples with high inflation.

There are many different international comparators that can be used in this debate, but the primary drivers of the inflation we are seeing in the UK and across the world are the global shock to energy prices, the impact on supply chains still coming out of the Covid pandemic and, in the UK and countries such as the US, tight labour markets. Interest rates are higher in the United States, Canada and New Zealand, and that will all be impacting mortgage payments. When it comes to inflation—and noble Lords have talked about the measure of core inflation—the UK is not alone here either, with 14 EU countries having core inflation higher than the UK's.

First and foremost, the Government's aim is to tackle inflation; our number one priority is to halve inflation by the end of the year to ease the cost of living pressures for everyone. That means that we back the Bank of England in its work to drive down inflation and we will not take measures that would potentially make this worse. We have looked at what we can do to help families who are struggling with the higher interest rates that we now see. We already have a big package of support in place to support families with the higher cost of living that we are seeing—one of the largest support packages in Europe, worth £94 billion, or £3,300 per household on average.

On Friday, my right honourable friend the Chancellor went further, with the mortgage charter for families up and down the country. The noble Lord, Lord Livermore, asked whether we would make the mortgage charter mandatory. I say to him that, when the mortgage charter was announced on Friday, it covered 75% of lenders but by Monday that had extended to 85%. We encourage all lenders to sign up to the charter.

There is the question of how one might make the charter mandatory. The Bill that we have just completed could potentially have had a power of direction within it towards the regulators, but I do not believe that is something that the Labour Party supported; in fact, it welcomed that such a power was not in the Bill. Thinking about the powers by which we can implement policies is perhaps something that we have to consider more carefully in government than in opposition.

The noble Lord asked what we are doing for renters. He mentioned the Opposition's commitment to end no-fault evictions. I am sure that he was pleased to see the Renters (Reform) Bill that has just come before Parliament, which will do just that—the result of a commitment by this Government, long-standing for a number of years, to take action there. As has been noted, the action through the mortgage charter where landlords are mortgage holders may also provide some help and support to renters along with our wider cost of living support.

The noble Lord rightly said we should not do anything to inject money into the economy right now. It is for the Labour Party to explain how that squares with their own plans to borrow £28 billion a year until 2030. For the Government's part, we will continue to

[Baroness Penn]
focus on getting inflation down, supporting the Bank of England in its work and showing responsible fiscal policy.

The noble Lord asked about action to ensure that rising interest rates are not just passed on to mortgage holders but that savers would also see the benefit of those changes. My right honourable friend the Chancellor met the FCA again today along with other regulators, including the CMA, Ofcom and Ofwat. Among the measures agreed at that meeting, the FCA agreed to deliver a better deal for savers by driving competition, including reporting by the end of July on how the savings market is supporting savers to benefit from higher interest rates. The Government fully support the FCA's review and the new consumer duty, which gives it stronger powers to take action if necessary.

We stand by families who are facing higher costs at this time, with both direct help to support the cost of living and specific help to support mortgage holders, all the while remaining committed to tackling high inflation. That is the core of the challenge that we face today and is the Government's number one priority.

Baroness Kramer (LD): My Lords, could I ask the Minister, when she goes back, if she could look a little more closely at the numbers she provided us with for core inflation? I just took a quick look to make sure that I had not got this wrong. The European Union as a whole has core inflation at 6.13%. In the eurozone it is significantly lower at 5.3%. There are some outlier countries, such as those which have particularly taken Ukrainian refugees. Hungary has a distorted number, as have a couple of the other countries which are very close, such as Estonia and Latvia. For the kind of economies against which we compare ourselves, we are definitely on the high-water mark and by some measure.

Baroness Penn (Con): My Lords, I am always happy to go back and double-check my figures. The two averages quoted for the euro area and the eurozone are not what I was referring to. I simply said that 14 countries in the EU have core inflation that is higher than the UK's. That would not just indicate a few outliers, but of course I am happy to go back and double-check and write if I need to.

9.05 pm

Sitting suspended.

Illegal Migration Bill

Report (1st Day) (Continued)

9.28 pm

Clause 7: Further provisions about removal

Amendments 38 to 41

Moved by ***Lord Murray of Blidworth***

38: Clause 7, page 10, line 37, after "State" insert "or an immigration officer"

Member's explanatory statement

This amendment supplements the reference to the Secretary of State in clause 7(8) with a reference to an immigration officer.

39: Clause 7, page 10, line 41, after "State" insert "or an immigration officer"

Member's explanatory statement

This amendment and the amendments in the name of Lord Murray of Blidworth at page 10, line 42 and page 11, line 1 supplement the references to the Secretary of State in clause 7(9) with references to an immigration officer.

40: Clause 7, page 10, line 42, after "State" insert "or an immigration officer"

Member's explanatory statement

See the explanatory statement in the name of Lord Murray of Blidworth at page 10, line 41.

41: Clause 7, page 11, line 1, after "State" insert "or an immigration officer"

Member's explanatory statement

See the explanatory statement in the name of Lord Murray of Blidworth at page 10, line 41.

Amendments 38 to 41 agreed.

Amendment 42

Moved by ***Lord Hendy***

42: Clause 7, page 11, line 7, at end insert "so long as P is accompanied by a suitably trained and qualified escort with the powers of a constable"

Member's explanatory statement

This amendment would require a person (who may be a child) subject to removal to be accompanied by an escort trained and employed for this task and with the power of arrest.

Lord Hendy (Lab): My Lords, in moving Amendment 42 I will speak also to Amendments 45, 48 and 85 in the unavoidable absence of my noble friends Lord Davies and Lord Woodley. I have added my name to those amendments.

Clause 7(12) imposes a statutory duty on a captain of a ship or an aircraft, a train manager or a vehicle driver that, on the instructions of an immigration officer, they must prevent a particular person disembarking or they must detain a particular person. These duties go significantly beyond the existing duties on captains of aircrafts and ships in the Immigration Act 1971. If one of those postholders fails to fulfil that statutory duty, Clause 9(2) of this Bill will make it a criminal offence. This new statutory duty and the threat of criminal prosecution are likely to create major problems for the staff involved.

I appreciate that we have been discussing matters of fundamental human rights until now. These are more prosaic issues, but nevertheless significant for those affected. These amendments are designed to alleviate the difficulties caused for the staff to whom the clause is directed. I would be grateful if the Minister would explain precisely how, in the absence of such amendments, these problems will be overcome. I will give the House five examples of issues that might arise and need addressing.

First, all these jobs are safety-critical, and the individuals performing these functions have statutory safety responsibilities. What if those health and safety duties required all the passengers on a ship, train or bus to be disembarked? For example, if a train breaks down, the duty of the train manager is to make the train as safe as possible, disembark the passengers and take them to a place of safety.

The second issue is the problem of identifying the passenger or passengers who are to be prevented from disembarking or to be detained. The captains of scheduled air flights and cruise ships will have lists of crews, passengers and so on, but how is the manager of a crowded train or ferry to find the passenger concerned? The inevitable result is that the entire complement of passengers on the train or bus will have to be detained.

Thirdly, whether the individual is identified or not, the only way of detaining him or her, or preventing them getting off the train, is to keep the doors closed. How will the manager explain to the passengers on a train arriving into King's Cross from Glasgow that the doors must remain closed until there are security staff or immigration officers to vet the passengers coming off and detain the individual they have identified? What of the consequences to the train operating companies? Are they to be reimbursed for the compensation payable to passengers or Network Rail in the event of consequential delays?

Fourthly, assuming the passenger has been identified by the train manager or coach driver, how will they physically detain them in the absence of any training, skills or desire to engage in physical violence? How and by whom will they be compensated should they be injured?

Fifthly—this is my final example—what will happen if the French driver of a Eurostar arriving into St Pancras, or the Irish driver of a train from Belfast to Dublin, does not keep the doors shut and prevent an individual disembarking? Is it proposed that there will be extradition proceedings if the foreign train manager goes back to their own country? Your Lordships will look in vain for the answers to these very practical questions in the impact assessment.

Paragraph 67 and Annexe A of the assessment deal with extra costs of escorts and other hired staff, but there is not a word about extra payment for the poor souls identified in Clause 7. Paragraph 84 recognises that

"there may be an increase in the level of disruption observed in detention prior to removal",

but there is not a word about how the Clause 7 staff are to cope with such disruption. Paragraphs 117, 132 and 145 report that the Bill imposes no costs on business, but there is not a word about the costs of, among other things, delays to aircraft, ships, trains and buses as a consequence of preventing the disembarkation of passengers.

No doubt the Minister would wish these amendments not to be pursued, but if so, I would be grateful for his full explanation of how these very pragmatic issues are to be addressed in the absence of these amendments.

Lord Paddick (LD): My Lords, the noble Lord, Lord Hendy, has clearly articulated a whole series of practical difficulties with the duties to be imposed on transport workers. From what the noble Lord said, it appears that the Government have quite clearly not thought through the consequences of the duties they intend to place on, for example, train managers. I will listen carefully to any argument the Minister might have that the duties imposed by the Bill go beyond existing duties but, clearly, subjecting these workers to being potentially convicted of a criminal offence for failing to act in accordance with the Bill, while not providing them with any advice, let alone training or equipment, in order to carry out their duties requires some explanation.

Lord Coaker (Lab): My Lords, I very much agree with the comments made by the noble Lord, Lord Paddick, particularly with respect to whether what is included in the Bill is an extension of existing powers, or simply a reiteration of what was in legislation that preceded the Bill. The noble Lord, Lord Hendy, did us a great favour in bringing forward a whole series of practical questions which the Minister started to answer in Committee. They are quite serious questions about the practicalities and, as the Minister knows, we have been concerned about not only some of our principled objections but also the workability of some of the clauses and powers contained in the Bill. It is worth reiterating, so it is on the record, what the noble Lord, Lord Hendy, said: the Government require transport workers—whether it be a lorry driver, a train operator, a train guard or a bus conductor—to act in an almost pseudo-police officer role to detain or search people.

If I were in that situation, I would be genuinely concerned about the implications. There are legitimate questions about the powers of detention, how long people would be detained, the use of force, and so on.

Can the Minister clarify one further point? His previous amendments added the words "immigration officer" to make the legislation consistent with later parts of the clause which refer to an

"immigration officer or the Secretary of State".

Do the Government envisage any difference? Is that wording to cover any eventuality rather than any significant principled thing that the immigration officer could do that the Secretary of State could not, or vice versa? It would be interesting to know, and I look forward to the Minister's response.

Baroness Hamwee (LD): My Lords, I agree with the points made by the noble Lord, Lord Coaker. I am grateful to the Bill team for confirming this, but it would be useful to have it said in the Chamber that "immigration officer" is an immigration officer of any rank at all. There does not have to be any seniority attached to the post when an immigration officer is given powers in these provisions and elsewhere in the Bill.

The Parliamentary Under-Secretary of State for Migration and Borders (Lord Murray of Blidworth) (Con): My Lords, I am grateful to the noble Lord, Lord Hendy, for moving the amendment in the name of the noble Lord, Lord Davies of Brixton, which seeks to protect transport providers. I understand the concern that this is causing.

To answer the points of the noble Lords, Lord Paddick and Lord Coaker, Clauses 7 and 9 simply reflect the current position, corresponding to the long-standing requirement set out in Schedule 2 to the 1971 Act. As now, risk assessments must be made before directions are given to a carrier, and escorts will be provided where this is assessed to be necessary.

[Lord Murray of Blidworth]

All the practical issues raised by the noble Lord, Lord Hendy, apply equally under existing powers, and there are established protocols for dealing with them. We are not putting any additional burdens on the transport sector; in fact, we are providing for the costs of complying with directions under the Bill, but they will be paid for by the Secretary of State and will not be at the carrier's expense. The amendment would therefore put the powers surrounding the giving of removal directions at odds with existing provisions and would effectively turn a requirement to remove people into a request, which would then impact on the number of illegal immigrants being removed.

Government Amendments 46 and 47 are prompted by a question posed in Committee by the noble Lord, Lord Ponsonby, who asked how transport workers could deal with a non-compliant person. Again, the answer lies in the Immigration Act 1971. It is already an offence under Section 24(1)(f) of that Act for a person subject to removal to disembark, and these amendments simply apply that offence to removals under the Bill. This then engages Section 3 of the Criminal Law Act 1967, which enables a person to use reasonable force to prevent a crime—a provision that I am sure the noble Lord, Lord Ponsonby, in particular, will be very familiar with.

Finally, returning to the amendments from the noble Lord, Lord Davies, Amendment 85 seeks to amend the definition of "vehicle" to limit the power in Schedule 2 to search vehicles to only those hired by the Secretary of State to remove persons pursuant to Clauses 2 and 3. We would not want to limit the power to search vehicles in this way; doing so would prevent immigration officers being able to search small boats, for example.

Lord Coaker (Lab): I am sure the Minister answered this in Committee, but can he just confirm that vehicles are lorries, van and cars? Does "a vehicle" mean all types of vehicle?

Lord Murray of Blidworth (Con): I seem to remember —I am sure the Bill team will correct me if I am wrong—that it does not include private cars and camper-vans. I hope that clarifies the point; if am wrong, I will be sent a message, I am sure.

9.45 pm

Adopting the course that Amendment 85 would effect would, we suggest, prevent immigration officers being able to search small boats and certain other vehicles in which migrants have travelled on their journey to the United Kingdom, and in which there may be electronic devices containing relevant information. That of course relates to those provisions in the Bill.

In response to the intervention from the noble Baroness, Lady Hamwee, I can confirm that the powers conferred on an immigration officer by the Bill can be exercised by an officer of any grade, as is generally already the case under the 1971 Act. From memory—again, I will correct this if I am wrong—I think "immigration officer" is a term of art under the Immigration Acts. It means a warranted immigration officer who can perform acts under the Act, so it applies to people of any grade who hold that qualification.

In summary, there is nothing novel in the provisions in Clauses 7 and 9 as they apply to transport operators. We are simply carrying across the provisions from the Immigration Act 1971, which have operated without difficulty for over 50 years. That being the case, I hope that I have answered all the questions and invite the noble Lord to withdraw his amendment.

Lord Hendy (Lab): My Lords, I am grateful to all those who have spoken in this short debate, which I will not prolong. I will indeed withdraw the amendment, but there is one point which I would wish to pursue.

The Minister says that this is really a reiteration of powers which already exist under the Immigration Act 1971. I am not an immigration lawyer and am not on familiar territory but, as I understand it, the 1971 Act and the schedule to which he referred impose duties on the captains of ships and aircraft to detain or to prevent disembarkation; it does not impose those duties on the managers of trains or the drivers of buses and lorries. That is what is new and what takes us beyond what was formerly there. If I am wrong about that, no doubt the Minister will write to tell me that I am ignorant of immigration law, which I may well be.

However, if it is right that the duties go beyond, in being extended to train managers and bus and lorry drivers, that is quite a serious extension. One thing is clear: train managers, bus drivers and lorry drivers will not be skilled or qualified in detaining people who are accused of illegal behaviour. They will not have the skill set to deal with that situation. What we have not heard from the Minister is how those people are going to deal with that and what will happen if it conflicts with some statutory duty that they have. With that, I beg leave to withdraw the amendment.

Amendment 42 withdrawn.

Amendments 43 to 45 not moved.

Clause 9: Other consequential amendments relating to removal

Amendments 46 and 47

Moved by ***Lord Murray of Blidworth***

46: Clause 9, page 12, line 16, leave out "(2) and" and insert "(1A) to"

Member's explanatory statement

This amendment is consequential on the amendment in the name of Lord Murray of Blidworth at page 12, line 17.

47: Clause 9, page 12, line 17, at end insert—

"(1A) In section 24(1) (illegal entry and similar offences), after paragraph (f) insert—

"(fa) if the person disembarks in the United Kingdom from a ship, aircraft, train or vehicle after being placed on board under section 7(11) of the Illegal Migration Act 2023 with a view to the person's removal from the United Kingdom;"

Member's explanatory statement

This amendment provides for section 24(1) of the Immigration Act 1971 to be amended so that it is an offence for a person to disembark in the United Kingdom from a ship, aircraft, train or vehicle if they have been placed on board with a view to their removal under the Bill.

Amendments 46 and 47 agreed.

Amendment 48 not moved.

Clause 10: Powers of detention

Amendment 49

Moved by ***Lord German***

49: Clause 10, page 14, line 21, leave out "and (3)" and insert ", (3) and (3A)"

Member's explanatory statement

This amendment is consequential on Lord German's amendment to page 15, line 37.

Lord German (LD): My Lords, there are two sets of amendments in this group. I am speaking to Amendments 49, 53, 56 and 61, which all concern standards in places of detention. The other amendments have been tabled by the noble Baroness, Lady Mobarik. From these Benches, we support all the amendments in her name and would be pleased to have been able to add our name to them.

We discussed this matter of standards very briefly in Committee, but the rules on where people can be held for detention are being altered by the Bill. Rather than following the Immigration Act 1971, which lays out clearly where people could be detained, this says that people can be detained anywhere the Minister feels appropriate. I have been thinking about a number of questions which arise from that, but clearly the issue that I am particularly concerned about is the boundary-line between where people are going to be detained—because, of course, that is part of the Bill—and where they might be placed when that detention ends and what offering they might get.

I regret to say that today we heard about the government costs for the barge in Portland: a contract has been let, without tendering, for £1.6 billion for the first two years of that contract. I have in front of me a copy of the floor-plan of that barge, and it is quite clear that the only way that the numbers the Government say will be accommodated will be achieved is by putting in bunk beds in each of the single bedrooms on the "Bibby Stockholm". We are also led to understand, apart from the huge cost involved, that there will be curfews and that people will only be allowed on to the dockside in a compound—that is the only space they will occupy. To me, that seems to be detention. The only thing that I need to understand is whether the standards of a place of detention are going to be the same as where people are accommodated when they are not in detention. It seems that what the Government are proposing in this £1.6 billion contract is very clearly a place of security and secure boundaries. If there is a curfew when people are not allowed to leave, clearly that means that there are very strict rules that people will have to follow.

Consequently, if the Minister would ensure that the standards of the Detention Centre Rules, which have been in place since 2001, and the Short-term Holding Facility Rules, which were put in place in 2018, are going to be followed, we can expect to have at least some boundary-lines about what sort of accommodation it will be like. However, I fear that the worst aspect is that we are going to see a dehumanisation of people by being put into places which will not suit the current legislation and certainly will not suit what most people would think of as somewhere decent for people to be detained or to live.

I ask these questions to seek some clarity. Are there any rules at all which the Government are going to follow in relation to the detention of the people they now propose to detain, with everybody being put in detention when they arrive?

Baroness Mobarik (Con): My Lords, I will speak to Amendments 51, 57, 59 and 63 in my name, which retain existing time limits for the detention of children, both unaccompanied and those with families.

Under a Conservative-led Government over a decade ago, Parliament rectified what David Cameron called the scandal of routinely detaining innocent children, so it is regrettable that we are conducting this debate again. The evidence is unequivocal, the debate long since settled: detention does immense and long-lasting harm to children.

I made my points at Second Reading and in Committee, so I shall not repeat the arguments other than to remind my noble friend the Minister of warnings of leading medical organisations in a letter to the Home Secretary outlining the serious harm and risks that refugee children will face if the detention powers in the Bill become law.

There is no policy rationale for why the Government should detain vulnerable young people. The argument is that not detaining children would lead to adults pretending to be children or smugglers exploiting loopholes. But preventing presumed future actions of an unknown number of adults is not a justification.

My noble friend the Minister has recognised the particular vulnerability of unaccompanied children, and for that I thank him. He told us in Committee that, for the most part, unaccompanied children will not be detained. Yet any such exceptionality of a lone child's detention is nowhere in the Bill. Indeed, the proposed legislation expressly does away with the existing statutory provisions that limit an unaccompanied child's detention.

In fact, the new powers to detain them are unrestricted. Under the Bill, unaccompanied children may be detained under the new powers only in circumstances prescribed in regulations. We do not know what will be in these regulations or when we will see them. While I thank my noble friend the Minister for the positive step in making the unaccompanied children regulations subject to the affirmative procedure, there is still no knowing what circumstances will be specified in them.

The law governing something as extreme as the power of the state to detain an individual without charge or trial must be much more firmly established. In Committee, my noble friend the Minister said that

"the Bill will also allow the Secretary of State to make regulations specifying time limits to be placed on the detention of unaccompanied children for the purpose of removal, if required".—[*Official Report*, 7/6/23; col. 1491.]

I remind noble Lords that the Bill does away with precise time limits, as established by a Conservative Government, that keep unaccompanied children's detention to no more than 24 hours and only in short-term holding facilities. The Bill will replace existing limits with a power, if required, to make regulations with any as yet unknown time limits on detention and of unaccompanied children only. To my mind, this is wholly insufficient.

[Baroness Mobarik]

I turn from the Government's possible future time limits in regulations for unaccompanied children to the promised government timescale for child detention. This, we are led to believe, is a timescale for detention of all children—those who are unaccompanied and alone as well as those with their families. The timescale was to be set out during the passage of the Bill through this House, but as yet we do not have it. However, following a very positive engagement with the Immigration Minister earlier today, I am hopeful that we will have clarity and that my amendments will receive consideration on return to the Commons. For that reason, I am minded to test the opinion of the House on Monday.

In October 2020, a Kurdish-Iranian family from Sardasht near the Iraqi border died after the boat they were travelling in capsized in the channel. They were Rasoul Iran-Nejad, 35, Shiva Mohammad Panahi, 35, Anita, nine, Armin, six, and Artin, 15 months, whose tiny body washed up on the coast of Norway months later. I am sure that noble Lords will join me in continuing to mourn the loss of these lives. If these three children, Anita, Armin and Artin, had survived, under the Bill they would be detained indefinitely upon arrival in the UK. Surely that cannot be right. I urge the Government to think again about undoing the progress made when we ended the cruel practice of detaining babies, toddlers and children.

We can and must do better by these vulnerable young people whom the world has already put through so much. Trafficked and refugee children need recovery and protection in line with their rights under the UN Convention on the Rights of the Child, trafficking conventions and the refugee convention. Let us not take away the existing time limits for the detention of migrant children as laid out by a previous Conservative Government. The ending of lengthy child detention was a humanitarian response to what had been an unacceptable practice with grave impacts. This is a proud legacy that we must protect.

10 pm

Baroness Lister of Burtersett (Lab): My Lords, I will speak briefly in support of the amendments tabled by the noble Baroness, Lady Mobarik.

First, on the principle of third time lucky, for the third time today I ask where the child rights impact assessment is. By my reckoning, nearly half the groupings on Report concern children, and yet we have not been given the child rights impact assessment that we need to assess these amendments.

To return to these amendments, it is worth recalling what the Conservative Immigration Minister, Damian Green, said in his Written Statement in December 2010, following the announcement of the policy to limit child detention:

"This Government believe that children should not be detained in our immigration system … This new system will strengthen families' trust and confidence in the immigration system, maintain public confidence in the Government's ability to control the UK's borders and ensure that families with children are treated humanely and in a way that meets our international obligations and our statutory duties in relation to children's safety and welfare".—[*Official Report*, Commons, 16/12/10; cols. 125-26WS.]

He had previously explained that:

"We want to replace the current system with something that ensures that families with no right to be in this country return in a more dignified manner".—[*Official Report*, Commons, 17/6/10; col. 211WH.]

We have still not heard a plausible justification for why the Government are going back on their own policy. The deterrence argument is all the more unconvincing in the light of the impact assessment.

In Committee, I asked what steps would be taken to ensure that children are detained for as short a period as possible, as we have been assured of that. There was no reply. I asked about the estimate of the numbers of children in detention. There was no reply, and nothing, as far as I could see, in the impact assessment.

Yesterday, I received an open letter from 12 young people who arrived in the UK as unaccompanied children and child trafficking victims and who comprise a youth advisory group for ECPAT UK. They expressed their concerns about the Bill's impact on children who come after them. They asked us to think what it would be like for us as children, or for our own children, and to ensure that children are treated as children first.

In a similar vein, I quoted earlier from a Barnardo's report which set out ways to give a warm welcome and hope to child asylum seekers. Locking these children up in detention is the very antithesis of this. Please can we vote on Monday to treat children as children and give them a modicum of comfort and hope?

Baroness Sugg (Con): My Lords, I rise briefly to support my noble friend's Amendment 51 on maintaining the current protections for unaccompanied children. The commitment that the Government would set out a new timescale under which genuine children may be detained—made by the Immigration Minister in the other place and my noble friend in Committee—was very welcome. I hope that my noble friend the Minister will at this point on Report be in a position to provide further detail. If not, the other place will want the opportunity to discuss the matter further with the Government.

I fully acknowledge the verbal reassurances that we have been given by the Government on their ambition to limit the use of powers given by this Bill in relation to the detention of children, which are very welcome. However, accepting my noble friend's amendment, or bringing forward one of their own in relation to the timescale for the detention of children, will really provide the reassurance that we are looking for.

Baroness Stroud (Con): My Lords, I too support the amendment tabled by my noble friend Lady Mobarik. As we have heard, the abolition of child detention in 2014 was one of the landmark achievements of our Conservative Government. Along with the Modern Slavery Act, it was a major step forward in the protection of the most vulnerable in our society. The arguments for this amendment have already been made, so I will keep my remarks short, but I want to make a couple of brief points.

The new detention powers have no time limit in the Bill and apply to unaccompanied children and children with their families. Obviously, this is deeply concerning. The Government have rightly stated that we do not

want to detain children, and have acknowledged the vulnerability of unaccompanied children in debates on this Bill. However, there are still no protections enshrined in the Bill to guarantee that protections remain in place for minors, and there has been time for the Government to clarify this. This really needs to change before the Bill becomes law.

Having spoken with the Minister in the other place, I am aware that the Government are considering these arguments, so this amendment gives them the opportunity to think again. I commend my noble friend Lady Mobarik's amendment to the House.

Lord Ponsonby of Shulbrede (Lab): My Lords, we on the Labour Benches strongly support the amendments tabled by the noble Baroness, Lady Mobarik, and if she presses them to a vote on Monday, we will be supporting her. Her amendments address the removal of safeguards for children put in place when a Conservative Prime Minister sat in No. 10, and it is clear that potentially thousands of children could be detained, some potentially indefinitely. This would undoubtedly cause long-term damage to their health, well-being and development. We are happy to support those amendments, and we are very interested to hear about the ongoing discussions which noble Baronesses on the other side of the House have mentioned.

Regarding the amendments tabled by the noble Lord, Lord German, I interpret them as probing amendments into the rules concerning detention and, particularly in the case of barges with the quite astonishing figures he gave today, the cost and where there will be areas for people to walk around and exercise in the vicinity of the barges. I will be interested to hear what the Minister has to say about that in response to the amendments from the noble Lord, Lord German. We are happy to support the amendments tabled by the noble Baroness, Lady Mobarik.

Lord Murray of Blidworth (Con): My Lords, with these amendments we return to the issue of detention time limits in relation to unaccompanied children and the limiting of places of detention. Amendments 49, 53, 56 and 61, tabled by the noble Lord, Lord German, limit the "place of detention" in the Bill to those that are presently authorised for detention. We detain persons for immigration purposes only in places that are listed in the Immigration (Places of Detention) Direction 2021. As I set out in Committee, following Royal Assent we will update the direction in line with the new detention powers.

For more than 50 years we have operated a framework where the Home Secretary sets out the places where persons may be detained for immigration purposes in an administrative direction. The provisions in paragraph 18 of Schedule 2 to the Immigration Act 1971 have operated perfectly satisfactorily. I see no case now to change to a position whereby places of detention are to be set out in primary legislation.

I assure noble Lords that the welfare of detained individuals is of paramount importance. Any place of detention must be suitable for the persons we are detaining there, and adequate provision will be made for the safety and welfare of the detained person. The Detention Centre Rules 2001 make provision for the regulation and management of immigration removal centres. These rules set out:

> "The purpose of detention centres shall be to provide for the secure but humane accommodation of detained persons in a relaxed regime with as much freedom of movement and association as possible, consistent with maintaining a safe and secure environment".

The rules also set out the specific requirements which an immigration removal centre must comply with, including, but not limited to, provision for maintenance, general security, healthcare, access and welfare. These rules will continue to apply to detention in immigration removal centres under this Bill. I hope that is a complete answer to the points raised by the noble Lord, Lord German. I add that, as their name suggests, these rules apply to detention accommodation, not to non-detained accommodation such as the Bibby Stockholm barge, from which of course people may come and go.

Moreover, we already have robust statutory oversight of immigration detention, including inspection by the Inspectorate of Prisons and independent monitoring boards at every detention facility, and effective safeguards within the detention process which, I would suggest, are efficient.

I turn to the issue of detention time limits. Amendments 51, 57, 59 and 63, tabled by my noble friend Lady Mobarik, seek to retain the existing time limits on the detention of children. It is an unavoidable fact that holding people in detention is necessary to ensure that they can successfully be removed from the United Kingdom under the scheme provided for in the Bill, which is designed to operate quickly and fairly. However, our aim is to ensure that no one is held in detention for any longer than is absolutely necessary to effect their removal.

The duty on the Home Secretary to make arrangements for the removal of all illegal entrants back to their home country or to a safe third country will send a clear message that vulnerable individuals, including children, cannot be exploited by the people smugglers facilitating their passage across the channel in small boats on the false promise of starting a new life in the United Kingdom. The detention powers are an integral part of ensuring the success of this Bill, both as a deterrent and as a means of ensuring that the Home Secretary can comply with the duty to make arrangements for removal.

We must not create incentives for people-smuggling gangs to target children or provide opportunities for people to exploit any loopholes. Children may be put at further risk by adults seeking to pass off unaccompanied children as their own. I know this is not my noble friend's intention, but that is what these amendments would, perversely, achieve.

Under the Bill, detention is not automatic. The Bill provides powers to detain, and the appropriateness of detention will be considered on a case-by-case basis. Moreover, recognising their vulnerability, I remind my noble friend that the Bill makes particular provision for the detention of unaccompanied children.

It is important to recognise that unaccompanied children would be detained only for the purposes of removal in a minority of cases. They are not subject to

[Lord Murray of Blidworth]
the duty to remove, and our expectation is that they will generally be transferred to the care of a local authority until they turn 18. Where they are to be detained, the powers in the Bill may be exercised in respect of unaccompanied children only in circumstances to be prescribed in regulations, as we have already discussed during today's debate. This would be, for example, for the purposes of an initial examination or, where necessary, in the limited cases where they are to be removed to effect a reunion with the child's parent or to return them to a safe country of origin. As we have already debated, such regulations are now to be subject to the affirmative procedure, as a result of the government amendments to Clause 10.

The Bill also includes a power to place a time limit on the detention of unaccompanied children where that detention is for the purposes of removal. We will keep the operation of these provisions under review, and should it be necessary to introduce a time limit, we have the means to do so.

Given the safeguards we have already built into the arrangements for the detention of unaccompanied children, the Government remain of the view that these amendments, however well-meaning, are not necessary. I therefore ask my noble friend not to press her Amendment 51. However, if she is minded to test the opinion of the House, I ask noble Lords, if and when the Division occurs, to reject the amendment.

Ahead of that, I hope that I have been able to satisfy the noble Lord, Lord German, and that he will be content to withdraw his Amendment 49.

Baroness Lister of Burtersett (Lab): Before the Minister sits down, will he please answer my question, which I put for the fourth time, at the risk of being extremely boring and sounding like a broken record: where is the child rights impact assessment? We have nearly finished the first of three days on Report, and we still do not have it.

Lord Murray of Blidworth (Con): As I said yesterday, the child rights impact assessment will be provided in due course.

Lord Scriven (LD): Before the noble Lord sits down, I have listened very carefully to his answer regarding the potential pull factor if unaccompanied children are not placed in detention. However, children have not been placed in detention since the 2014 provision, and there has been no proportional increase in unaccompanied children claiming asylum. In the impact assessment, which the Government produced on Friday, there is absolutely no indication at all of it being a non-monetary risk. Where is the evidence for that claim being made at the Dispatch Box? Both the legislation since 2014 and the Government's own impact assessment show that there is no evidence to say that it would be a pull factor.

Lord Murray of Blidworth (Con): Clearly, the economic impact assessment is targeted at economic impacts, and the noble Lord invites me to comment on something that is a non-economic impact not being in the impact assessment. I am afraid that is a complete explanation for that. As to the pull factors, I suggest to the noble Lord that it is self-evident that there is that risk of a pull factor, and that is an end to the matter.

10.15 pm

Lord Scriven (LD): If it is a pull factor, why was it not a pull factor in 2014?

Lord Murray of Blidworth (Con): I am not suggesting that it was not a pull factor in 2014.

Lord Kennedy of Southwark (Lab Co-op): My Lords, I have been in this House for only 13 years, and in that time I have had many Ministers coming forward with things I do not agree with, but my noble friend has repeatedly—four times—asked for the assessment. To be told "in due course" at the end of the first day on Report is extremely poor. I suggest that the Minister goes back to his department and gets the assessment here. It does not help his case one iota to say "in due course" to the House at this stage. We should have had this thing weeks ago. I really hope he goes back and understands how cross the House is about this. We have only two days left on Report and then Third Reading. It really is not good enough.

Lord Murray of Blidworth (Con): I have listened very carefully to what the noble Lord has said and I will certainly take it back to the department.

Lord German (LD): My Lords, this has been a very interesting but short debate. It is interesting that once again we focus on evidence. I often find it strange in this House when people are asked to make judgments about very important matters, particularly affecting young people, and we are not provided with the evidence.

It is not just four times that the noble Baroness, Lady Lister, has asked. It is probably four on top of four and many times beforehand. She always asks for this in a very decent manner. It is so important that we have that information in order to make judgments about legislation we are being asked to approve or to change. It is not good enough for the Government to say, "Take our word for it". They should provide that evidence as we would normally expect, at the right time and in the right place. We are now moving rapidly beyond the place where it will be in demand. I dread to think about the devices that one uses in the legislative process that allow us to keep coming back to this matter until such time as we can deal with that evidence.

On the amendments I was talking to, I think I have had a partial answer in that the Detention Centre Rules 2001 are to be followed, so that is something about standards. The bit that I did not have answered was what the difference would be between detention and the places where people will be held or provided with accommodation. In the case of the barge that I told the House about earlier, the only difference was that there would be no curfew and the gate would be closed. That seems the only difference in the standards between the two.

It is a matter that I will keep coming back to, but I am minded to withdraw. Before I do, I say to the noble Baroness, Lady Mobarik, that on these Benches we are certain that if she were to move these to a vote we would support her. The issues she has raised are crucial, especially as we lack the evidence for anybody to say that the case being made has been dealt with appropriately. If I could encourage that, I would be very grateful. In the meantime, I withdraw Amendment 49.

Amendment 49 withdrawn.

Amendment 50

Moved by ***Lord Hunt of Kings Heath***

50: Clause 10, page 15, leave out lines 1 to 4

Member's explanatory statement

This amendment, with others in the name of Lord Hunt of Kings Heath, seek to amend the Bill so that potential and recognised victims of trafficking will not be detained or removed before they get the opportunity to submit an application to the NRM and have it duly considered.

Amendment 50 agreed.

Consideration on Report adjourned.

House adjourned at 10.20 pm.

Grand Committee

Wednesday 28 June 2023

4.15 pm

Arrangement of Business

Announcement

The Deputy Chairman of Committees (Lord Duncan of Springbank) (Con): Your Lordships know the drill already but, if there is a vote in the Chamber, I shall let noble Lords know and suspend proceedings so that we can go and vote.

Relationships and Sexuality Education (Northern Ireland) (Amendment) Regulations 2023

Considered in Grand Committee

4.15 pm

Moved by ***Lord Caine***

That the Grand Committee do consider the Relationships and Sexuality Education (Northern Ireland) (Amendment) Regulations 2023.

Relevant document: 44th Report from the Secondary Legislation Scrutiny Committee (special attention drawn to the instrument)

The Parliamentary Under-Secretary of State, Northern Ireland Office (Lord Caine) (Con): My Lords, the regulations before your Lordships today seek to update the education curriculum in Northern Ireland to make age-appropriate, comprehensive and scientifically accurate education on sexual and reproductive health and rights, covering contraception and access to abortion, a compulsory component of the curriculum in all grant-aided schools in Northern Ireland.

I understand and respect that there will be differing views on this issue. I also recognise the will of this Government to deliver on their statutory obligations. In passing the Northern Ireland (Executive Formation etc) Act 2019, Parliament decided to implement the recommendations made by the 2018 report of CEDAW, the UN Committee on the Elimination of Discrimination against Women. Section 9 of the Northern Ireland (Executive Formation) Act 2019, which passed with a majority in the House of Commons of 232 and one of 145 in your Lordships' House, places a legal duty on the Secretary of State to ensure that the recommendations in paragraphs 85 and 86 of the CEDAW report are implemented in full. This is a specific and unique duty which arose from a vote in Parliament. In implementing this decision, the Government have always sought to ensure that the education provided would be similar to that already provided in England with regard to contraception and abortion, and these regulations do this.

It has been widely reported that there is a problem with how sexual education is being taught in schools in Northern Ireland. This has been highlighted by a number of recent studies, including by the Northern Ireland Human Rights Commission. In its report into relationship and sexuality education in post-primary schools in Northern Ireland, it recommended that a standard level of RSE be introduced throughout all schools in Northern Ireland. That was in June this year. Separately, a survey commissioned in September 2022 by a health charity, Informing Choices NI, highlighted that 78% of MLAs agreed that there should be a standardised curriculum, regardless of a school's ethos.

I am acutely aware that education is a devolved matter in Northern Ireland—indeed, I am looking at a former Education Minister, in the form of the noble Lord, Lord Weir of Ballyholme, right now. It has always been the Secretary of State's and this Government's preference that the Department of Education in Northern Ireland updates the curriculum. However, with nearly four years having passed since the executive formation Act, adolescents in Northern Ireland are still not receiving comprehensive and scientifically accurate education on sexual and reproductive health and rights. This is why, on 6 June, the Secretary of State, my right honourable friend Chris Heaton-Harris, laid these regulations in Parliament to comply with his statutory duty.

This SI has the following effects. It amends the Education (Northern Ireland) Order 2006, and the Education (Curriculum Minimum Content) Order (Northern Ireland) 2007 for adolescents, to make age-appropriate, comprehensive and scientifically accurate education on sexual and reproductive health and rights, covering prevention of early pregnancy and access to abortion, a compulsory component of the curriculum. It places a duty on the Department of Education to issue guidance by 1 January 2024 on the content and delivery of the education required to be provided and places a duty on the board of governors and principal of every grant-aided school to have regard to the guidance. Also, the Department of Education is required to publish a report by 1 September 2026 on the implementation of the updated curriculum in grant-aided schools and to lay the report before the Assembly. I say in parenthesis that I trust that there will be an Assembly back in place and fully functioning well before that date.

The Government recognise the sensitivity of this topic and that some parents may wish to teach their child about sex education or to make alternative arrangements to be provided in line with their religious background or their belief about the age that their child or children should access sex education. In recognition of this, this SI also place a duty on the department to make regulations about the circumstances in which a pupil may be withdrawn from education on sexual and reproductive health and rights, or elements of that education, at the request of a parent. This follows the approach taken elsewhere in the United Kingdom.

It is important to state that this Government believe that educating adolescents on issues such as contraception, the legal status of abortion and how relevant services may be accessed should be done in a factual way that does not advocate a particular view on the moral or ethical considerations of abortion or contraception. While schools will be under a duty to teach the updated curriculum within the 2023-24 school year, there will also be a period of implementation and a need for meaningful engagement with parents and teachers.

[Lord Caine]
The amendments to the curriculum come into force on 1 July, in preparation for the 2023-24 academic school year. As I said, the duty on the department to issue guidance on the content and delivery of the required education will come into force on 1 January 2024.

Officials in my department, the Northern Ireland Office, will continue to work closely with those in the Department for Education. They have also been engaging with relevant educational bodies to make them aware of the changes to the curriculum. We understand that further engagement with schools, parents and young people is also very important so that they feel reassured about the content of this updated curriculum. However, it is important that children and adolescents are given the correct information so that they can make informed choices.

That summarises the changes that are introduced by these regulations, and I commend them to the Committee. I beg to move.

Baroness Thornton (Lab): My Lords, I thank the Minister for introducing these regulations. Of course, the Secretary of State is not only empowered to make these regulations but legally obliged to do so. With the regulations, the Secretary of State is making a statutory duty to implement recommendation 86(d) of the report of the Committee on the Elimination of Discrimination against Women. As a result, as the Minister has told us, age-appropriate, comprehensive and scientifically accurate education on sex and reproductive health and rights, covering the prevention of early pregnancy and access to abortion, will become a compulsory component of the curriculum for adolescents in Northern Ireland.

The Labour Party fully supports these measures. On these Benches, we believe that they are a critical step in ensuring that all parts of the United Kingdom meet their human rights obligations to children in this area. All adolescents deserve age-appropriate, comprehensive and scientifically accurate relationship and sex education. For too long, relationship and sex education has been unavailable to adolescents in Northern Ireland. In May 2019, Sir John Gillen's independent review into how the criminal justice system in Northern Ireland deals with serious sexual offence cases made a series of recommendations, including the need to include in the school curriculum for RSE matters such as consent, personal space, boundaries, appropriate behaviour, relationships and sexuality. In April this year, an evaluation by Northern Ireland's Education and Training Inspectorate found that 44% of schools reported that they were delivering the topic of consent

"to a small extent or not at all".

Earlier this month, the Northern Ireland Human Rights Commission, as the Minister told us, published a report into its investigations of relationship and sexuality education in post-primary schools, and found that the curriculum on relationship and sexuality education does not meet human rights standards. According to the commission, most schools are not providing

"age appropriate, comprehensive, scientifically accurate education"

on access to abortion services. The investigation also found that some schools actively contribute to the shame and stigma surrounding unplanned pregnancy and abortion by making statements such as abortion is not a means of contraception and those who knowingly engage in casual sex must bear the consequences of their actions. It revealed that some schools are teaching children that homosexuality is wrong.

In England, Scotland and Wales, compulsory RSE that embeds reproductive rights and choices within the curriculum, implementing the CEDAW recommendations, is already in place. The Labour Party welcomes the fact that today's regulations will help to ensure that the curriculum for children in Northern Ireland meets that standard too. The Northern Ireland Human Rights Commission has welcomed the new regulations and emphasised that implementation and monitoring will be critical. Schools should support and develop their capacity to deliver RSE, and the commission and other expert independent organisations have offered their expertise to help with that.

I have read with care the Secondary Legislation Scrutiny Committee's report on these regulations and the debate that took place in the Commons yesterday. I of course agree with my honourable friend Peter Kyle and the Minister in that debate about the need to move forward on this matter. However, there are a few matters from this report that particularly concern us. The first is the question of consultation—or lack of it, as the committee says at paragraphs 54 to 56. The Minister needs to clarify that and address it. The second is the use of outside contractors to deliver RSE. How will the Department of Education in Northern Ireland ensure that the delivery of RSE meets the updated curriculum that these regulations set in motion? Thirdly, will the Northern Ireland Office liaise with the Department of Education to provide detailed information about implementation, which the report mentions at paragraph 43? Finally, is the Minister assured that the Department of Education will have the necessary regulations in place regarding parents withdrawing their children from RSE?

With those questions, which I am sure the Minister will be happy to address, we offer him our support.

Lord Morrow (DUP): My Lords, I am watching the annunciator because I am due to speak on amendments in the Chamber. I know that we are expecting a vote very shortly, which will probably mean the suspension of the Committee, but noble Lords will understand if I leave and cannot participate in the whole debate, which I want to do.

These regulations are profoundly controversial in terms of their content and the procedure that attended their development. In the first instance, they suffer from a similar legitimacy deficit to that attending the abortion regulations 2020 on account of the fact that they are made by the same parent legislation, Section 9 of the 2019 Executive formation Act. At this stage, lest I forget, I want to challenge something that the Minister said. It was not so much that what he said was inaccurate, but that it was not the whole story. He said that 78% of MLAs voted for this. Yes, but it was 78% of 30; there are 90 MLAs and only 30 voted. That was not said, but it needs to be. However, for reasons that I shall explain, the legitimacy deficit attending these regulations is significantly more extensive.

Section 9 was the result of a vote in another place on 19 July 2019 the impact of which pertains exclusively to Northern Ireland, in a context when every single Northern Ireland Member of Parliament who took their seat in the democratically elected House voted against this provision. It becomes quite disturbing. We are always told by others who maybe have never been to Northern Ireland, or are very rarely there, "We know better than you lot that live there". In other words, a provision that pertained only to Northern Ireland was imposed on Northern Ireland over the heads of its elected representatives.

Baroness Thornton (Lab): I interrupt the noble Lord just to say that I spent the weekend before last in Ireland, just over the border, and in Enniskillen with my family. We had a lovely time.

Lord Morrow (DUP): I am glad that the noble Baroness enjoyed Northern Ireland. Most people who come to Northern Ireland enjoy it because there is so much to do and see. Right now, we can even provide the weather, which we cannot always. I am delighted to hear that she made a visit and I hope she will come back some other time.

Although there is nothing technically wrong with using the votes of other parts of our union to impose changes on specific parts of it in violation of the wishes of its elected representatives, every time that happens there is a clear legitimacy deficit. That is why apologies were subsequently issued for the flooding of Capel Celyn in Wales and the imposition of the poll tax a year early in Scotland.

However, in the case of Section 9, the legitimacy deficit is more extensive, because the Executive formation Bill had been subject to accelerated procedure on the basis that it was about just one issue, and it was widely reported at the time that the clerks in another place advised that the amendment that resulted in Section 9 was not in scope. This meant not only that profoundly controversial legal changes were imposed on Northern Ireland but that we were not even afforded the dignity of a full debate.

4.30 pm

Noble Lords need to understand that, every time Section 9 is used, these wounds are reopened. In the case of these regulations, the legitimacy deficit is even more pronounced. In the first instance, while it was completely wrong to subject the controversial subject of abortion provision to such a cursory debate and to use the votes of MPs who do not represent the people of Northern Ireland to impose abortion on them, the difficulty is greater for these regulations: education about abortion availability and education about reducing teenage pregnancy were not mentioned at any time by any legislator during the rushed passage of Section 9. There was, quite simply, no debate on paragraph 86(d) whatever.

In the second instance, while the Secretary of State went on to run a consultation in November and December 2019 about the drafting of abortion regulations, he implemented abortion provision before he published the regulations. He has conducted absolutely no consultation on education provision on abortion and reducing teen pregnancy. This is most regrettable, to say the least. Thus, if today—

The Deputy Chairman of Committees (Lord Duncan of Springbank) (Con): The noble Lord, Lord Morrow, will forgive me: the bells are ringing for us. We will adjourn proceedings for 10 minutes. If noble Lords get back faster, we will restart faster.

4.31 pm

Sitting suspended for a Division in the House.

4.38 pm

Lord Morrow (DUP): Thus, if you live in Northern Ireland today, you are looking not only at regulations resting on current legislation imposed over your head but at regulations preceded by no primary legislation debate at all in terms of the regulation-making power as it applied to education, relating to paragraph 86(d). The Secretary of State has not even bothered to consult on that, but I suppose that is the way things are now.

That failure to consult is particularly problematic because the NIO—Northern Ireland Office—is subject not only to the general obligation to consult on drawing up new legislation but to the specific human rights obligation flowing from Article 2 of the first protocol of the ECHR. It states:

"In the exercise of any functions which it assumes in relation to education and to teaching, the State shall respect the right of parents to ensure such education and teaching in conformity with their own religious and philosophical convictions".

The failure to consult in this context is particularly egregious given that, when the abortion regulations were challenged in court on the grounds that there had been no consultation in relation to paragraphs 86(d) and 86(f), the court pointed out that the specific regulations it was considering had been subject to prior Northern Ireland Office consultation before the regulations were published; and that no regulations had been published at that time in relation to paragraphs 86(d) and 86(f). However, it said that, if the Secretary of State were to issue regulations to give effect to those paragraphs, he should consult. In paragraph 168 of its judgment, it stated:

"The court notes that the consultation which did take place in the context of the Regulations was limited to the issue of abortion but did not deal specifically with the issue of education on sexual and reproductive health or a strategy to combat gender based stereotypes as set out in paras 86(d) and (f) of the CEDAW Report. However, these paras are not referred to in the 2020 Regulations nor are they contained in the 2021 Directions under challenge. In the event that Regulations or Directions are made in the future to deal with those issues then there will be an opportunity for the Secretary of State to carry out a consultation".

The Secondary Legislation Scrutiny Committee has drawn the House's special attention to these regulations because of the absence of prior consultation on them. In its report, it states:

"In response to our questions, NIO also said that a consultation was not necessary because each school must have a written policy on how it will deliver Relationship and Sexuality Education, and that this policy should be subject to consultation with parents".

[Lord Morrow]

However, that misses the vital point: the regulations before us, with the amendments that they make to legislation, will have already been made prior to any consultation on guidance that the Department for Education might hold or any consultation that a school might conduct in its place.

The SLSC rightly observes:

"It is striking that full public consultations were carried out when comparable regulations were introduced in England, and when similarly controversial regulations on abortion were introduced in NI. NIO has not offered any convincing reasons why these Regulations should be treated differently. The lack of a consultation was also the criticism most frequently mentioned in the submissions, including from teachers, parents and school governors as well as representative organisations. Other points advanced in submissions included … The Council for Public Affairs of the Presbyterian Church in Ireland argued that school governing bodies and principals should have been consulted because they will be the organisations charged with implementing the policy … The Transferor Representatives' Council suggested that the current lack of a NI Assembly made it 'unusual' that the Secretary of State would act without engaging in consultation".

Indeed, it seems to me that the Secondary Legislation Scrutiny Committee became something of a safety valve in the absence of any consultation on the wording of the regulations because, very unusually, the submissions to the committee ran to some 55 pages of text, which has now been published on Parliament's website. Of course, that is no substitute for the consultation that should have taken place on the wording of the regulations and, in particular, on the decision to give them a name with far-reaching implications that are not referenced anywhere in the parent legislation or in paragraph 86(d) of the CEDAW report because the SLSC is not involved in drafting the regulations. Mindful of all these considerations, the SLSC states:

"These Regulations are drawn to the special attention of the House on the ground that there appear to be inadequacies in the consultation process which relates to the instrument".

The conduct of the Northern Ireland Office has been problematic, not only because of its failure to respect due process in the drafting of the regulations but because of its failure to facilitate full, considered parliamentary scrutiny of the regulations. As the SLSC points out,

"the Regulations were brought into effect on 6 June 2023, the same day that they were laid."

Its report states:

"We asked NIO why it had chosen to breach the convention that at least 21 days should be allowed between laying an instrument and bringing it into effect. NIO said that this was 'to allow the DE as much time as possible to progress work on the guidance in preparation for delivery of the education'".

4.45 pm

The SLSC was not too impressed and went on to observe:

"Statutory Instruments Practice, the National Archives' guidance for government departments, states: 'If the 21-day period is reduced, you are reducing the time Parliament has to scrutinise the SI. This should not be done simply for Departmental convenience. If observing the "21-day rule" is impossible, you must explain in the EM why the SI could not have been made and laid sooner, and why it had to come into effect on the day specified. If the reasons are matters of policy, explain why the policy requires such urgent action. The explanation in the EM should also include what the financial or other impact of delaying the legislation to meet the rule would be'…

It is doubtful whether the need to prepare guidance in advance of the (self-imposed) implementation deadline of 1 January 2024 constitutes a requirement for 'urgent action' that justifies the adverse impact on parliamentary scrutiny. Moreover, there is no explanation in the EM, or in NIO's responses to us, of what the impact of delaying the coming-into-force date to meet the rule would be, and we are not clear whether work on the guidance could have progressed immediately, even with a later coming-into-force date. We also note that we made a very similar criticism of NIO when it introduced regulations relating to abortions in NI in 2020…

It would appear that either the NIO has breached the convention without adequate reason, or the timetable for producing guidance in advance of the implementation date of 1 January 2024 is so tight that a 21-day delay now would put it in jeopardy".

I will stop there and look forward to listening to what others have to say on this matter.

Baroness Ritchie of Downpatrick (Lab): My Lords, I declare an interest as a member of the Secondary Legislation Scrutiny Committee. We are joined today by the chair of our committee, the noble Lord, Lord Hunt of Wirral. I speak in a personal capacity.

I concur with our committee's report on this legislation. I know that the rule of the committee is to consider only instruments laid before the House of Lords and to draw the House's attention to those that meet our reporting grounds. It is then for the House to determine what further action is required.

However, with reference to this SI and its controversial nature, and the need for proper, adequate consultation—as already indicated by the noble Lord, Lord Morrow—with schools, boards of governors and churches, which in many instances own the schools, I urge the Minister to bring forward the necessary legislation to push back the implementation date to allow that consultation to take place. I ask the Minister to consider that. It would allow time for a public consultation and ensure that the policy can be fully developed.

In fact, at the weekend, I spoke to one of the principals of a Catholic grammar school in Downpatrick. He was concerned about the outworkings of the action. He is fully cognisant that we now live in a more liberal world and he feels that the content probably can be delivered sensitively, but it would be preferable if there was consultation that allowed for informed choices to be made.

I contend that the manner and content of this legislation suggests a level of arrogance on the part of the NIO and a total disregard for schools, parents and their management structures, many of which are in the faith-based sector. I feel that they have been treated with total ignominy.

The Secondary Legislation Scrutiny Committee received representations from a broad range of bodies, including all the churches in Northern Ireland, the Catholic Schools' Trustee Service—I declare an interest as I was taught in the Catholic sector—the Controlled Schools' Support Council, Right to Life UK, the Christian Institute, the Presbyterian Church and the Transferor Representatives' Council. They all raised several concerns, which have been reflected in the SLSC submission to your Lordships' House. The lack of public consultation prior to the regulations coming into effect has caused immense concern. The NIO told the committee in its responses that there was "no legal requirement" to conduct a consultation—why is that the case?—but that it had

"engaged with a range of stakeholders and statutory organisations".

Can the Minister say which stakeholders and statutory organisations? What responses did the NIO receive? Were these responses published? What did the responses state? Was there any engagement with those groups directly involved with young people—teachers, parents, boards of governors, the controlling bodies and the churches?

The SLSC, as the noble Lord, Lord Morrow, referred to, concludes that, given the controversial nature of this policy and strong views expressed in submissions to the committee, a full public consultation "would have been appropriate". The report also points out that other comparable policy changes, including when similar regulations were introduced for England, were subject to a public consultation before implementation. Why was there no public consultation for Northern Ireland? Why was there no recognition of the need to work with all involved in delivering education, particularly those in faith-based environments—and particularly in Northern Ireland, where the subject of abortion is highly controversial. Why was there no recognition of the need to acknowledge and respect the ethos and faith-based nature of many of our schools?

There is no doubt that full public consultation can result in improved policy-making. Sadly, we are at variance in Northern Ireland with what happened in England. If I may, I just quote what the Catholic Schools' Trustee Service said in its submission; Bishop Donal McKeown, the chair of that service, said:

"We have a particular concern regarding the Explanatory note to the Regulations which proposes a programme of RSE that does not advocate or promote any particular opinion. This requirement runs entirely contrary to the very existence of a faith-based sector which is committed to an ethos, one which parents & carers have specifically chosen for their children".

The submission further states:

"We would highlight the contrast between this legislative requirement and that which applies to schools in England. The House of Commons Library Report"—

Relationships and Sex Education in Schools (England) from 23 March 2023—

"notes, 'Schools will have flexibility over how they deliver these subjects, so they can develop an integrated approach that is sensitive to the needs of the local community; and, as now, faith schools will continue to be able to teach in accordance with the tenets of their faith'. Why are these rights, passed overwhelmingly in 2019, in the House of Commons by approval of 538 MPs being denied to schools in Northern Ireland?"

Noble Lords from Northern Ireland need answers to that question. That submission also says:

"The guidance for England also makes explicitly clear that provision for RSE is set, 'within the context of a school's broader ethos and approach to developing pupils socially, morally, spiritually and culturally' The requirements set out in the legislation for Northern Ireland pose a very different and, indeed, contradictory approach to that approved for schools in England".

While the regulations were laid by the NIO, much of the detailed implementation of the policy will fall to the Department of Education in Northern Ireland. Some aspects of the policy underpinning the regulations, including procedures to allow parents to withdraw their children from sexuality education, may apparently not be developed by the policy implementation date of 1 January 2024—but maybe the Minister has a different view on that. This will be of concern to parents, and it would be useful to fully tease out and get answers on it.

I believe that parents have the right to choose what sort of sexual education their children should receive. The failure to respect the autonomy of parents in this sensitive area is alarming and contrary to any elementary concept of democratic choice. We suggest that the Government should reflect on the European convention, which states that, in the exercise of education,

"the State shall respect the right of parents to ensure such education and teaching in conformity with their own religious and philosophical convictions".

To coincide with the trend of inadequate explanatory memoranda that we receive from other departments—the chair of our committee will be fully aware of that—the NIO has stated in its Explanatory Notes that these regulations would have

"no, or no significant, impact on the private, voluntary or public sectors".

I would like to know this from the Minister: how was that conclusion arrived at, and on what basis was this assessment made?

The Assembly and Executive are the rightful places to deal with such issues, and I hope that there is a restoration. A pause would therefore be suitable to allow a consultation, which would then allow a reformed Assembly and Executive to formulate a policy with legislation on sexuality education matters which is specific to Northern Ireland and takes on board the ethos and faith-based nature of many schools.

This legislation places significant new responsibilities on boards of governors and principals. I feel that it directly undermines the rights of parents and challenges the rights of trustees to promote that faith-based education. What training will be provided to schools, boards of governors and teachers? What funding will be provided during this time of difficult financial challenges for schools, which we hear about daily?

More thought and reflection are required. I ask the Minister to give that and allow a consultation to take place, as well as meetings with all those involved, to ensure that a policy is put in place that fully reflects the needs of all.

Lord McCrea of Magherafelt and Cookstown (DUP): My Lords, I am sure that the Minister knows that some things will have to be repeated as he listens to this debate. Perhaps after the Members from Northern Ireland have spoken a number of times, it will indeed affect his and the department's thinking.

In my humble opinion, which I have a right to, I confess that the statutory instrument before us today is a disgrace to any Government. Forcing all primary schools in Northern Ireland, including faith schools, to teach girls that they have a right to an abortion and telling them how to get one without their parents finding out, even if they are under age, is unbelievable in what is supposed to be a democratic society.

5 pm

I strongly object to the Secretary of State's decision to force through this legislation and to make it illegal for schools to tell pupils that abortion ends the life of an unborn child. Does it or does it not? The Secretary of State seeks to defend his actions by stating that the basis for these regulations comes from Section 9(1) of the Northern Ireland (Executive Formation etc) Act 2019, which requires the Secretary of State to impose abortion

[Lord McCrea of Magherafelt and Cookstown] liberalisation on Northern Ireland. However, this legislation suffers from what I believe is the same constitutional problem as pertained to the abortion regulations. We are dealing with the lives of young people. Teachers are ordered by law to play a part, through the instruction that they are supposed to give, in the destruction of a life, even against their own personal conviction and religious belief.

This issue pertains to matters that are devolved, yet the Secretary of State finds himself incapable of interfering in other issues. For example, we have major problems in Northern Ireland with long hospital waiting lists. Some people are dying because of that, but does the Secretary of State feel that he should involve himself in that? No. Can he or will he intervene to stop the cutting of 300 nurse training places, which will leave the eldest and the weakest in society without essential care? No. Will he provide for the urgent educational needs of vulnerable children? Will he ensure that a Province that has been plagued with the continuing dissident IRA terrorist threat has adequate police numbers to face the challenge and keep the community safe? We are told that those numbers will decrease rather than increase, while they are increasing in the rest of the United Kingdom. The list is long, yet the Secretary of State refuses to make what he calls major policy decisions in the absence of an Executive. He says that, if he did, it would look remarkably like direct rule, which he says he would be very wary of.

Today's regulations are a major interference in the lives of the people of Northern Ireland and should be the responsibility of a devolved Administration. The Secretary of State cannot do anything about those other things, but this is put above them all. In my opinion, that is such hypocrisy. The more he forces on the Northern Ireland community legislation like this, the further he hinders the pathway to the restoration of an Executive. There is no more important issue than that of life and death of the unborn. This legislation is being forced on Northern Ireland by a Government who have not one Member of Parliament elected by the people of Northern Ireland. Indeed, it is good to remember that, as my noble friend Lord Morrow said, not one Northern Ireland Member of Parliament who takes their seat in the democratically elected House of Commons voted for Section 9 of the executive formation Act of 2019.

Baroness Hoey (Non-Afl): I thank the noble Lord for giving way and I agree with what he is saying and with what the noble Baroness said earlier. He says that there is no elected Member from Northern Ireland in the government party. Is it not even worse, in that we could end up in a year's time with a Labour Government who do not even allow their party members in Northern Ireland to stand for election, yet profess strongly to be interested in Northern Ireland?

Lord McCrea of Magherafelt and Cookstown (DUP): The noble Baroness makes her point very clearly. It is beyond challenge. The Labour Party does not permit its members to stand in Northern Ireland, so it could not have an elected representative in the other Chamber, yet it wants to impose its will on the people of Northern Ireland.

The insertion of Section 9 was deeply controversial. I believe that a majority of the people of Northern Ireland find it an offensive amendment, for which there was no prior consultation or proper scrutiny. It was added to a Bill that was supposed to be subject-narrow to the formation of an Executive, yet that legislation was brought through. In fact, not only did the Government bring it through but they did so having presented it on that narrow basis, and it was then deemed appropriate to be granted accelerated passage.

As my noble friend Lord Morrow said, the situation with these regulations is even more anti-democratic and intolerable. As other noble Lords have pointed out, the Secretary of State decided that these regulations, on education provision regarding abortion and reducing teen pregnancy, were not even worthy of consultation. What kind of democratic society are we living in where even the people are not worthy of consultation? These regulations are being imposed over the heads of parents without being preceded by any primary legislative debate at all, in terms of the regulation-making powers as they applied to education. Indeed, the Secretary of State has not bothered to consult or even give himself the semblance of democratic cover before forcing this legislation through. That is arrogance.

As I said, the democratic deficit in relation to these regulations is even worse than that relating to abortion. That is in spite of the fact that, when the abortion regulations were taken to court, the point was made that the Secretary of State had consulted on them and the court stated that,

"in the event that Regulations or Directions are made in the future to deal with those issues"

of education and sexual and reproductive health and so on,

"there will be an opportunity for the Secretary of State to carry out a consultation".

Whenever the NIO was asked about consultation and whether it was necessary, the response was, "No, it's not. Why would you talk to those people?" It said that it was not necessary because each school must have a written policy on how it will deliver regulations and sexuality education, and that this policy should be subject to consultation with parents. The House of Lords Secondary Legislation Scrutiny Committee pointed out that,

"school policies will only be able to operate within the already-established government guidance, meaning that such consultation is too late to affect the framework of RSE delivery".

However, the committee also noted that,

"when comparable regulations were introduced in England",

a full consultation was carried out. I wonder whether that was because the elected Members in the other place would have to answer to their electorate. Maybe that was the reason: the electorate had the power to change them or remove them—but not in Northern Ireland. Our Secretary of State feels that parents in Northern Ireland are too far down the pecking order to be worthy of being heard or consulted. That is contrary to the European Convention on Human Rights, which states:

"In the exercise of any functions which it assumes in relation to education and to teaching, the State shall"—

not might—

"respect the right of parents to ensure such education and teaching in conformity with their own religious and philosophical convictions".

Notice the word "shall". But it has not been done.

We are witnessing a deliberate abuse of parliamentary procedure in the development of these regulations. As the Minister listens to the debate today, in the light of what he is hearing, I ask him what he will do to stop any Secretary of State abusing the powers that they feel they have over the people of Northern Ireland.

The Northern Ireland Secretary of State and CEDAW have demonstrated a total lack of respect for faith, which is very important to many in Northern Ireland. Paragraph 43 of the CEDAW report states:

"The designated members observed that young people in Northern Ireland were denied the education necessary to enjoy their sexual and reproductive health and rights. Most children in Northern Ireland attend denominational schools, either Catholic or Protestant",

but that is not true. It is not true. Of course, does truth really matter? It seemingly does not, because that statement is totally false.

It goes on:

"Church representatives play active roles in school management boards, and the result is that relationship and sexuality education, although a recommended part of the primary and post-primary statutory curriculum of the Department of Education, is underdeveloped or non-existent since it is at the school's discretion to implement the contents of the curriculum according to its values and ethos".

On the one hand, it is saying that schools are either Catholic or Protestant. It goes on to tell us that the contents of the curriculum are at the school's discretion and accord with its values and ethos. It goes on:

"Where relationship and sexuality education is delivered, it is frequently provided by third parties and based on anti-abortion and abstinence ethos".

This attack on Northern Ireland's Churches, at the heart of the educational problem, lacks any sense of human rights balance or cognisance that religious freedom is also a human right, let alone any appreciation of the important and constructive role that Churches have played in education, including RSE.

Just because CEDAW is supposed to be a human rights body, it does not excuse its lack of concern for religious liberty. Religious liberty and freedom were hard fought for and obtained—and cost many a life. On the right to religious freedom, this stunning failure to attempt to understand the faith ethos beggars belief.

It seems that the NIO and CEDAW are unaware of Article 2 of Protocol 1 of the ECHR, which states:

"No person shall be denied the right to education. In the exercise of any functions which it assumes in relation to education and to teaching, the State shall respect the right of parents to ensure such education and teaching in conformity with their own religious and philosophical convictions".

There has certainly been no attempt to respect these rights, when one considers the lack of consultation with parents.

The attitude of the department in the Explanatory Memorandum exposes its ignorance to its human rights obligation under Article 2 of Protocol 1. It says:

"Timing for the Department to make regulations about the circumstances in which a pupil may be excused from receiving education on the updated curriculum is a matter for the Department. There is no guarantee this will be in place by January 2024, the point at which the Department is under a duty to issue guidance to schools on the content and delivery of the updated curriculum. This may attract criticism from faith-based schools, and some teachers and parents".

It seems to say, "So let it be. Who are they?"

5.15 pm

The report continues:

"However, it is our assessment that education should be delivered in a way that informs children of contraception, the legal right to an abortion in Northern Ireland and how relevant services may be accessed, without advocating a particular view on the moral and ethical considerations".

This statement exposes the total lack of concern for people who hold deep convictions of faith. It is to be noted that the RSE guidance from the department in England acknowledged the role of religion and belief in RSE, including in the teaching content, and highlighted the importance of taking account of the religious background of pupils as well as affirming that all schools may teach about faith perspectives. It states:

"All schools may teach about faith perspectives. In particular, schools with a religious character may teach the distinctive faith perspective on relationships, and balanced debate may take place about issues that are seen as contentious. For example, the school may wish to reflect on faith teachings about certain topics as well as how their faith institutions may support people in matters of relationships and sex".

I suggest that noble Lords look at the attendance in churches in England or any other part of the United Kingdom. It is much less than in Northern Ireland.

Religion has a vital part to play. Faith kept the people of Northern Ireland going when the days were dark and terrorist bombs and guns were being pointed at their families and loved ones, who were being murdered. Faith kept them going. Yet, as far as the NIO is concerned, that does not really count.

The guidance in England promotes a whole-school approach, setting RSE

"within the context of a school's broader ethos and approach to developing pupils socially, morally, spiritually and culturally; and its pastoral care system".

How does the Secretary of State value school ethos as a holistic, whole-person approach to education that promotes the physical, social, emotional, intellectual, moral and spiritual development of young people? What consideration has been placed on school ethos or parental rights in this statutory instrument?

In conclusion, I believe that, as others have said, what is being proposed is indoctrination, not education. As a number of noble Lords have stated, this is the Government's deliberate enforcement of their diktat and certainly is not worthy of a Conservative Government. The result of this legislation will add to the thousands of unborn babies and leave many young girls emotionally scarred for the rest of their lives. Of course, those who have presented and supported these regulations will be nowhere to be found to pick up the pieces of these distraught young people. It will be left to many in the church community to reach out the hand of love and care while others walk away. I hope that this Government and those who support them feel proud of what they are doing to the people of Northern Ireland.

Lord Weir of Ballyholme (DUP): My Lords, I speak as a former Education Minister for Northern Ireland. I will keep my remarks relatively succinct, because a

[Lord Weir of Ballyholme]
lot of the substantive ground has been covered by my two colleagues who spoke previously. We are also due to speak in the House on the debate on illegal migration. I join them in expressing concerns about the content of this and in particular the way it has been brought about. The phrase that keeps coming back to me in the context of the implementation of this SI is "lack of respect": a lack of respect for the sensitivities around the issue of abortion, a lack of respect for the ethos and belief of many people in Northern Ireland, a lack of respect for the devolutionary settlement, a lack of respect for basic democratic process, a lack of respect for educational process—I will touch on that later—and a deep lack of respect for education stakeholders at so many different levels.

As has been indicated, this is something on which myriad steps have been taken and in which undemocratic process has been grafted on top of other undemocratic process. As has been said, it arises from Section 9 of the legislation, which itself had an accelerated passage and was grafted on top of a one-issue subject. Indeed, the CEDAW recommendations, which were meant to be advisory, were themselves grafted on to the issue of abortion within Northern Ireland. As has been indicated, in terms of democratic scrutiny, the provisions in paragraph 86(d) of the CEDAW report did not merit a single minute of debate when this was discussed in relation to primary legislation. Beyond that, we now see these regulations being introduced without any consultation whatever. The concerns raised in relation to that have been highlighted by the Secondary Legislation Scrutiny Committee, which also highlighted that some of the provisions will—it seems uniquely—be brought in immediately rather than after the normal 21 days.

The Minister said in his opening remarks that the Government's intention was to put Northern Ireland in a similar position to that of England, yet that is not accurate. In England, proper consultation at least took place. There are many things done by government that all of us will disagree with to different levels but, if we are all given the opportunity to have an input through proper consultation, due process will at least have taken place. This process has circumvented that and has not put the people of Northern Ireland in the same position; it has put them in an inferior position to the people of England and Wales.

This also cuts across educational process. The noble Baroness, Lady Thornton, rightly made reference to the Gillen report. The substance of that report around RSE focused on critical issues of consent, respect for females and ensuring that relationships were conducted in a respectful manner that hopefully means that we can reduce—and, in an ideal world, eliminate—sexual abuse within that. Yet, it has to be said, this SI tackles none of the subjects at the forefront of the Gillen report. Indeed, it circumvents the work that has been going on in the Department of Education and Department of Justice on the Gillen report. When I was a Minister alongside Minister Long, we did not hold similar views on issues such as abortion—

Baroness Thornton (Lab): Does not the existence of a properly run relationship education include all the things that were mentioned in the Gillen report? That is why I referred to it.

Lord Weir of Ballyholme (DUP): Indeed, the noble Baroness was right to refer to it, but the issue is that this SI does not touch on the main recommendations of the Gillen report. It made specific recommendations about what should be included in RSE and how departments could work together on that subject. This SI completely ignores that and puts the cart before the horse. It completely ignores and abrogates what was in the Gillen report.

As I said, Minister Long and I take a very different view on abortion; we are not at one, but we worked together through both departments to set up a joint working group on how RSE could be taken forward, particularly how the recommendations of the Gillen review could be best implemented. These regulations simply cut across that, ignoring the ongoing work, and seek to impose all these things on the NIO. Again, there is concern over where this leaves a wide range of stakeholders. Mention has been made by the noble Baroness, Lady Ritchie of Downpatrick, of a wide range of educational groups across the spectrum which have been completely ignored. I do not think that that is particularly healthy for Northern Ireland.

I have been inundated, in particular by school principals and teachers who are deeply concerned that they have, in effect, been thrown into the fire—it may come as a surprise that there are still some teachers who want to speak to me as a former Education Minister. Not all head teachers and teachers have exactly the same view on abortion; they have a range of views. However, they feel that they have been thrown in at the deep end by the Government without any prior knowledge and consultation. They will be left to pick up the pieces without a clue as to how these regulations are to be implemented.

Similarly, those who give their time as school governors—let us remember that it is voluntary—are left with the legal duty of implementing the regulations, again without any input into the process. I suspect that it is quite often difficult to find people who are willing to give their time and put their head above the parapet to be school governors, but frankly, if stakeholders are simply treated with contempt, that process will become even more difficult.

I agree in part with one thing that the Minister has said, about the need for "meaningful engagement". Would it not have been better if that meaningful engagement had taken place before the SI was introduced? I urge the Government, if they are genuinely committed to meaningful engagement, to put their money where their mouth is, pause these regulations and have a proper consultation. It would not obfuscate many of the democratic flaws in this process or some of the restrictions in the SI, but at least it would ensure that there was the opportunity for people to have their proper say, rather than trying to shut the stable door after the horse has bolted.

Lord Hay of Ballyore (DUP): My Lords, I rise to oppose these regulations, first, in the way that they have been set out. The issue has united communities of all backgrounds in Northern Ireland in terms of how the Secretary of State has dealt with these regulations, laid before Parliament on 6 June 2023. They require the teaching at key stages 3 and 4 of relationships and

sexual education in Northern Ireland, covering abortion and the reduction of teenage pregnancy. They require the Department of Education to introduce a new RSE curriculum across primary schools in Northern Ireland, without any real consultation or prior warning.

Given the hugely controversial nature of the regulations and the strong views expressed against this policy, most people would have believed that a full public consultation would have been necessary.

When similar regulations were introduced in England, they were subject to a public consultation before implementation, as other noble Lords have already stated, as were similar controversial regulations on abortion when they were introduced in Northern Ireland. The Northern Ireland Office has not offered any real, convincing reason why these regulations should be treated any differently.

5.30 pm

The lack of consultation was also criticised by teachers, parents and school governors, as well as representative organisations from across Northern Ireland. I certainly agree with the Presbyterian Church in Ireland that school governing bodies and principals should have been consulted, because they will be the organisations charged with implementing the policy. The absence of consultation was particularly striking—I suppose this has already been raised—in view of the court's judgment in a judicial review of earlier Northern Ireland abortion regulations. The court said that in the event that regulations or directions are made in the future to deal with education on sexual and reproductive health, then there will be an opportunity for the Secretary of State to carry out a consultative process.

Thus today, parents, teachers and children in Northern Ireland are looking not only at regulations resting on parents but at legislation imposed very much over their heads. They are also looking at regulations preceded by no primary legislation debate whatever on the regulation-making powers as they apply to education, in relation to which the Secretary of State has not even bothered to consult. The democratic deficit in relation to these regulations is therefore worse than that relating to the abortion regulations, because there has been no debate about them in Parliament and no consulting process.

We have a Secretary of State imposing a series of measures on the people of Northern Ireland and its educational system with no real consideration for their wishes and views. Education is a devolved matter: schools in Northern Ireland already provide relationship and sex education. The regulations before us amount to a cavalier approach to children's and young people's education in Northern Ireland.

It was said earlier that the Secretary of State has the power, and we would all agree that he has, but it is about how he uses that power. Over the while since he came to the Northern Ireland Office, he has used that power in a very cavalier manner. This is a Secretary of State who does not believe in any consensus whatever on many issues. He quotes the Belfast agreement on occasions around consensus, but right through that agreement, it calls for and talks about consensus. This Secretary of State, for whatever reason, does not seem to want to find consensus on any issue.

There is a litany of issues which we could name and look at where this Secretary of State, for whatever reason, seems to be able to get most people in Northern Ireland and all its political parties against him. He seems to be quite happy in doing that—and does it quite well. The Secretary of State needs to have a rethink in how he deals with Northern Ireland, especially on the issues there. Former Secretaries of State and people who know Northern Ireland well will tell him that the only way Northern Ireland will move forward is by consensus and not by having a cavalier attitude to issues such as this.

5.34 pm

Sitting suspended for a Division in the House.

5.46 pm

Lord Dodds of Duncairn (DUP): My Lords, I will be brief, as other noble Lords have dealt with a lot of the substance of the objections to these regulations.

The point about the lack of respect in relation to teachers, school governors, parents and elected representatives in Northern Ireland is important. There have been many representations from all communities in Northern Ireland, particularly from those sectors, about how badly treated they feel. The lack of respect in the way in which this policy has been driven is the collective responsibility of the Northern Ireland Office, although there is a particular lack of respect and, I have to say, arrogance on the part of the Secretary of State in the way in which he has publicly dismissed criticism, as he also did the other day in the committee in the other place.

The words of my noble friend Lord Hay, a mild-mannered colleague who is not given to hyperbole or stinging criticism, should be taken on board by the Northern Ireland Office. There is a feeling that the current Secretary of State has cost himself a lot of credibility with his attitude and the way in which he goes about matters; it is not helpful. I certainly do not ascribe the same criticism to the Northern Ireland Office Minister whom we have with us in Committee today, who has demonstrated, across a number of issues on which we disagree, a commendable willingness to engage, discuss and have dialogue. We may not always agree, but we certainly have found that engagement productive.

The criticisms outlined by the Secondary Legislation Scrutiny Committee in its 44th report are very strong and I commend the committee for its work. In his reply, the Minister would do well to go through those criticisms one by one and give a detailed explanation and answer to this Committee as to the accusations levelled against the Government in that report. It merits serious consideration and a serious answer: these are not trivial or small issues.

Finally, paragraph 12.2 of the Explanatory Memorandum says:

> "There is no, or no significant, impact on the public sector".

However, paragraph 12.3 says:

> "An impact on the public sector is expected as the Department and will come under a duty to issue guidance … The exact impact will depend on decisions taken during the planning of delivering on the guidance. Furthermore, schools will also be under a legal duty to deliver the updated curriculum".

[Lord Dodds of Duncairn]

Having contradicted itself in paragraph 12.3 compared to paragraph 12.2, the Explanatory Memorandum goes on, in paragraph 12.4, to reverse itself once again by saying:

"A full Impact Assessment has not been prepared for this instrument as no, or no significant, impact on the private, voluntary or public sector is foreseen".

It then adds the words "free text", which is clearly a typo. There is also a typo in paragraph 12.3. I do not know who drew up this Explanatory Memorandum, but whoever signed it off should certainly have looked at it more closely. I would like the Minister to explain what paragraphs 12.2, 12.3 and 12.4 mean, because they are contradictory.

Lord Moylan (Con): My Lords, I am one of those people who has no connection to Northern Ireland—ones who think that they probably know better than those who live there what should be going on—who was rightly criticised earlier, so I speak with great hesitation, but having no connection to Northern Ireland allows a certain amount of detachment.

I have to say that this Government are turning out to be probably the most proconsular Government that Northern Ireland has had for decades. Even under direct rule, there was a higher level of consultation about legislation with people who actually live there than we are seeing today. We have had legislation to implement the Northern Ireland protocol and the Windsor Framework imposed on Northern Ireland without any consultation. One might say that that legislation was controversial between the communities, and having an independent arbitrator impose that legislation was a sort of necessity, however much damage it did to the fabric of the United Kingdom. We have moved on from that more recently to, for example, the Northern Ireland Troubles (Legacy and Reconciliation) Bill and the legislation imposing access to abortion services in Northern Ireland. Today, we have legislation about abortion education in schools.

In respect of the last three, one could be forgiven for thinking that the Government believe that, if they treat Northern Ireland with sufficient insensitivity and disdain, and with no discrimination between the communities, they will so unite the communities of Northern Ireland that all the political problems of the past will be put aside and resolved. That might at least be thought of as a cunning plan, but I suspect that the truth is much worse. We are seeing a loss of contact between what might be called the ruling class in Northern Ireland and the people it governs, including the elected representatives. That is not a right or sustainable position to maintain.

I rose specifically to draw attention to the powerful statement issued by the Irish Catholic bishops, who of course own and manage a large number of the schools. I was, to some extent, anticipated in that by the noble Baroness, Lady Ritchie of Downpatrick. Without repeating her, I will draw attention to a separate part of their statement. It is not simply that they oppose this legislation and what it would require them to do, but they disagree with the fundamental basis on which it arises, which they refer to as

"the recent so-called investigation of the Northern Ireland Human Rights Commission into RSE in schools".

They have serious concern about the accuracy and fairness of that report. I quote briefly from the statement:

"Neither party took the trouble to engage with teachers in the classroom … At best, a limited paper-based exercise was undertaken which failed to recognise that in the reality of classroom teaching, teachers and schools are endeavouring to provide professional, ethically balanced, scientifically honest, and pastorally responsible age-appropriate Relationships and Sexuality formation in our schools".

It is not simply that they disagree with it; they disagree with the basis on which it sits, which adds a further ground for objection and resentment. I suggest that Ministers should closely acquaint themselves with this statement, because it is extremely powerful and really quite excoriating.

There is a practical consideration. In no sense am I able or wishing to speak on behalf of Irish bishops and those who manage Catholic schools in Northern Ireland but, in practical terms, how do the Government think that they can require people with strong views on this topic to teach something that they believe is morally wrong and objectionable? How do they think that they can do this in practice? The most careful consultation would need to take place in order for this to be a practical measure, but that has not taken place and there is no indication that the Government are going to do it. No doubt there will be consultation, but the principle of what is required, as in the CEDAW statement, leaves little wiggle room.

Ministers should take this carefully into account. It is not simply a matter of making a law then seeing it happen. The people with whom the Government are dealing are not civil servants who will do what they are told simply because that is their role. These people have, in their view, ethical responsibilities not only to teachers but to parents. The Government cannot expect them to abandon those responsibilities simply because we have sat here and allowed a statutory instrument—a mere piece of paper that has very little weight in the minds of people with religious faith compared with their ethical beliefs—to go through. I would like to hear what the Minister has to say about that.

Lord Browne of Belmont (DUP): My Lords, like my noble friends from Northern Ireland, I rise to oppose these regulations. The noble Lords who have spoken before me have covered all the main points in both detail and structure so I will limit myself to speaking about the rights of parental withdrawal outlined in the regulations.

First, I declare my interest: many years ago, I was a teacher in an unusual school. Its intake was roughly 50% Catholic and 50% Protestant. Its ethos was to deliver a good education to all in the area. It did not have integrated status but it worked very well. In those days, there was no obligation to deliver lessons on sexual education or RSE but, of course, times have changed. It is right that young people learn about the importance of sexual maturity. However, as I said, I will limit myself to the rights of parental withdrawal.

There are two issues. The first relates to definition; the latter relates to questions of due process and constitutionality. The rights of parental withdrawal are set out in proposed new Article 10A(5), which states:

"The Department must by regulations make provision about the circumstances in which, at the request of a parent, a pupil may be excused from receiving the education required to be provided by virtue of Article 5(1A), or specified elements of that education".

At first glance, this reads as suggesting that the regulations must grant a parental right of withdrawal. In truth, however, because the terms are not defined in the legislation, the regulations could set out the circumstances for withdrawal very narrowly. Surely this generates uncertainty; rather extraordinarily, it is an uncertainty that the Northern Ireland Office saw fit to advertise. Indeed, in the Explanatory Memorandum, the Northern Ireland Office states:

"Timing for the Department to make regulations about the circumstances in which a pupil may be excused from receiving education on the updated curriculum is a matter for the Department. There is no guarantee this will be in place by January 2024, the point at which the Department is under a duty to issue guidance to schools on the content and delivery of the updated curriculum. This may attract criticism from faith-based schools, and some teachers and parents. However, it is our assessment that education should be delivered in a way that informs children of contraception, the legal right to an abortion in Northern Ireland and how relevant services may be accessed, without advocating a particular view on the moral and ethical considerations".

6 pm

It is interesting to note that the House of Lords Secondary Legislation Scrutiny Committee was not too impressed and wished to inquire further why the instrument did not place a duty on the Department of Education to have regulations in place to facilitate parents withdrawing their children from sexuality education by the implementation date of the policy and to ask what steps the Northern Ireland Office is taking to ensure that the Department of Education in fact has some regulations in place. Can the Minister assure us that these will be in place?

It is regrettable that such a controversial regulation is not to be afforded proper scrutiny, as we have heard. Why has the Northern Ireland Office chosen to breach the convention that at least 21 days should be allowed between laying an instrument and bringing it into effect? One trusts that these regulations are not being used as a political football. Like all Members from Northern Ireland here today, I oppose these regulations.

Baroness Barker (LD): My Lords, it is a pleasure to support the Minister today—I do not very often, but I do on this matter. I begin my remarks by declaring that I am the chair of the All-Party Group on Sexual and Reproductive Health and a co-chair of the All-Party Group on HIV/AIDS.

One of the reasons why I am proud to be chair of the former is because of a woman who I never met. When I was young, I listened to my mum and my beloved Auntie Betty talking about a girl who they were at school with in the 1940s in Scotland and who got pregnant. They sat there and said, "She didnae know". That is what happened: lots of young women got pregnant and their lives were transformed, sometimes much against their will, because they just did not know.

As a young woman in my 20s, I began to watch friends and people I knew become sick. Then, some of them went on to die. In some cases, they died because of ignorance. They died because they became HIV positive and, at that point, there was no cure. Fortunately, in the intervening period, HIV has gone on to be a condition with which people live happy, well and fulfilling lives. But I have always believed that everybody in this world has the right to information to make the right choices, and safe choices, about their body and their life. I believe that wherever they are in the world, not just the United Kingdom, but I particularly believe that it should be a right across the four nations of the UK for every young person to have access to accurate information.

Let us go back to why these regulations are in front of us. The noble Lord, Lord McCrea, read this out in his speech, which I disagreed with in many ways. But let us be absolutely clear. The CEDAW report found that, in schools in Northern Ireland, where

"relationship and sexuality education is delivered, it is frequently provided by third parties and based on anti-abortion and abstinence ethos".

Then there is the bit that the noble Lord did not read out:

"Those factors point to State negligence in pregnancy prevention through a failure to implement its recommended curriculum on relationship and sexuality education".

Nobody has talked about the sexuality part of it today, but we are talking about young people and HIV as well. Let us bear that in mind.

Members talked about what the Government have come up with in response as being cavalier. It is not: it is careful and considered. It is an obligation on schools to provide information on sexual and reproductive health that is age-appropriate, comprehensive and scientifically accurate.

I happen to think that, should a parent wish to withdraw their child and prevent them accessing age-appropriate, comprehensive and scientifically accurate SRH education, they would be a bad parent. Children should have the right to access that information, which keeps them safe. I understand entirely that that view is not shared by everybody else. Therefore, we have to make sure that there is a right to withdraw. That right is quite clear. Members of the Committee have made a great deal about the procedural cases put forward by the Secondary Legislation Scrutiny Committee in particular, but that committee does not say—nor has anybody said so far—that there is any intention on the Government's part to frustrate the rights of parents to withdraw their children. That is not the case at all. It is absolutely the case that the Government are upholding their rights.

When we analyse the regulations and the Secondary Legislation Scrutiny Committee's report, it is important to see who was lobbying the committee so hard to point out flaws and faults in the process. It was the Catholic Church, the Christian Institute and Right to Life—organisations that, at every turn, have sought to prevent women, young girls and young people accessing comprehensive sexuality and relationship education, information about abortion and abortion services. The people bringing about that influence on the committee are some of those who have been guilty of providing information that CEDAW found to be wildly inaccurate and misleading. It is not just that young people run into trouble because of ignorance these days; a lot of organisations, which sometimes present themselves as crisis pregnancy advisers, now make a business out of providing information that is inaccurate and harmful.

There is much that I can and do disagree with—

Lord McCrea of Magherafelt and Cookstown (DUP): I have sat through hour after hour of debate recently—in fact, sometimes until the early hours of the morning—in

[Lord McCrea of Magherafelt and Cookstown] which the noble Baroness's party in particular has demanded that legislation be stopped until the Minister comes to the House with an impact assessment. Because he had not done so, they berated him over and over again. We sat for hours going over that same thing. When was the impact assessment delivered on this legislation?

Baroness Barker (LD): I listened to noble Lords talk about the impact assessment, in particular to what they said about it in relation to providers. I think that there will be an impact. The Government have actually been quite clear, because the people who will be impacted are those who have been providing inaccurate information that has harmed children.

I listened to the noble Lord's speech. He talked about this legislation applying to primary schools. It does not; it applies to key stages 3 and 4. We are talking about supplying age-appropriate, comprehensive and scientifically accurate information to people aged 11 to 16.

Lord McCrea of Magherafelt and Cookstown (DUP): The noble Baroness will get the report; I have the speech here. In fact, I did not say that about primary schools. I said that, as far as England is concerned, it was for primary and secondary, but not in Northern Ireland.

Baroness Barker (LD): I will go back and read *Hansard*. I am sorry; I did not hear that distinction. I thought the noble Lord said something different.

I want to come back to the purpose of these regulations, which is to prevent unplanned pregnancies and promote sexual health and well-being. The only question I want to ask is about the evaluation of this. It is to be evaluated and a report will be presented to the Northern Ireland Assembly, which we all hope will be back up and running by then.

This is an education matter but it is also a health matter. Why was the Department of Health not included in the evaluation? If this legislation has the effect that we hope it will, there should be an increase in health outcomes for young people in Northern Ireland. The Minister may have a technical reason why that was not the case, but will he write to me at some stage about what the process of evaluation will be?

This is far from cavalier: it is a careful and considered piece of legislation and I am happy to support it.

Lord Caine (Con): My Lords, as ever, I am grateful to all noble Lords who have contributed to the debate. I particularly thank the two main opposition parties for supporting the Government on regulations which earlier today passed the House of Commons by 373 votes to 28. I am also pleased to welcome to our proceedings my noble friend Lord Hunt of Wirral, chair of the Secondary Legislation Scrutiny Committee.

There is no doubt that the issues before us have generated a good deal of passion and conviction on all sides of the Committee, which I respect completely. I will endeavour to address as briefly as I can some of the points raised. The first question is about why we are doing this and bringing forward the regulations. To some extent, I addressed this in my opening comments regarding the statutory duty under which the Secretary of State is placed by—I gently remind some noble Lords who questioned the legitimacy of the legislation—an Act of the sovereign Parliament of the United Kingdom: in this case Section 9 of the Northern Ireland (Executive Formation etc) Act 2019.

For clarity, this is not an amendment or a change to the legislation that was sought or brought forward by the Government at the time. Noble Lords will remember that it was a Back-Bench amendment from a Labour Party Member of the other place, but I remind them that it was passed by resounding majorities in both your Lordships' House and the other place. We really must respect that.

As noble Lords will recall, that legislation passed almost four years ago, yet little or no progress had been made so far in implementing it, despite extensive discussions between my department and the Department of Education in Northern Ireland, including correspondence last July from the former Secretary of State to the then Education Minister in Stormont. When officials began engaging with the Department of Education in 2019 following the passing of the Executive formation Act, they were assured that the CEDAW recommendations would be implemented—assurances that continued until around February last year. I am sorry that the noble Lord, Lord Weir of Ballyholme, is not in his place because I understand that it was while he was Education Minister in Northern Ireland that his department established a working group to amend the curriculum minimum content order.

In February 2022, the department shifted its position in a briefing paper it provided to the Northern Ireland Office, effectively arguing that the curriculum on RSE should be a matter for schools and teachers to determine —how it should be delivered, which resources to use and what specific topics should be covered. That was in conflict with the Secretary of State's legal duties, which require that certain elements of RSE, as set out in the CEDAW report, must be compulsory components of the curriculum. Noble Lords will understand that, for a Secretary of State to fail in fulfilling his or her statutory duties is a serious breach of the Ministerial Code, and therefore it was imperative that action had to be taken. That is why these regulations have been introduced now. I contend that, given that it is four years since the legislation was passed in Parliament, we can hardly be accused of rushing.

That, of course, leads to one of the major themes of the debate this afternoon—

6.15 pm

Lord McCrea of Magherafelt and Cookstown (DUP): Can I ask the Minister for some clarification? What debate on paragraph 86(d) was held in the other place? Was there a debate?

Lord Caine (Con): The amendment to the executive formation Act, as it became, was put down by Stella Creasy MP in the other place, debated and passed by a resounding majority.

Lord McCrea of Magherafelt and Cookstown (DUP): I am talking not about abortion but about education.

Lord Caine (Con): It placed a statutory duty on the Secretary of State to introduce CEDAW-compliant regulations in respect of both abortion services and relationships and sexual education.

Lord McCrea of Magherafelt and Cookstown (DUP): For clarification, was education mentioned in the debate?

Lord Caine (Con): I do not have the *Hansard* from June or July 2019 in front of me but the amendment was very clear in the obligations that it placed on the Secretary of State for Northern Ireland to introduce CEDAW-compliant regulations, which are now enshrined in statute.

I was about to go on to the major themes of the debate, which is why the laying of the regulations was not preceded by a public consultation—a criticism made by many noble Lords this afternoon and contained in the report of the Secondary Legislation Scrutiny Committee. A number of factors led the Northern Ireland Office to the conclusion that a public consultation was not required in this instance. First, the CEDAW recommendation—I repeat: under the executive formation Act, the Secretary of State has a duty to implement it—is clear that it requires topics such as abortion and contraception to be compulsory components of the curriculum. That is what these regulations will introduce; no amount of public consultation will change the statutory requirement to comply with CEDAW.

While we are on that, the noble Baroness, Lady Ritchie of Downpatrick, asked me about the number of stakeholders that the Northern Ireland Office had discussed. I will just read out one or two of the organisations. There was Love for Life, Common Use, Amnesty, the National Society for the Protection of Young People, the Northern Ireland Human Rights Commission, the Equality Commission for Northern Ireland, the Alliance for Choice and Parentkind.

Secondly, my department conducted an equality assessment under Section 75 of the Northern Ireland Act 1998, in consultation with the Equality Commission for Northern Ireland, and concluded that there was no need for the NIO to consult publicly as it is actually for the Department for Education to issue the guidance on how these issues are taught in schools and for monitoring and collecting any equality data.

Baroness Ritchie of Downpatrick (Lab): The Minister has highlighted the various organisations that were consulted as stakeholders. Does the Northern Ireland Office not consider schools and their governing bodies across the board to be required stakeholders? If so, why were they not considered? Is that not a level of disrespect?

Lord Caine (Con): If the noble Baroness will forgive me, I shall address that issue in a second or two.

Thirdly, we were also informed by the Department of Education in a briefing paper that significant stakeholder consultation haud taken place on the RSE Progression Framework that it has been developing with the Council for the Curriculum, Examinations and Assessment over a number of years. This is the document that will be updated and used as guidance issued by the department.

Although the current law and circumstances dictate that it falls to the Northern Ireland Office that CEDAW-compliant RSE is a compulsory part of the curriculum, it is rightly for the Department of Education in Northern Ireland to take that requirement forward. In that context, I can inform noble Lords that the Department of Education has now assured us that it aims to launch a public consultation on both the guidance and the opt-out scheme at the beginning of the 2023-24 academic year—that is, in September—to meet the duty to issue guidance by 1 January 2024.

Lord McCrea of Magherafelt and Cookstown (DUP): In reference to consultation, the court noted that

"the consultation which did take place in the context of the Regulations was limited to the issue of abortion but did not deal specifically with the issue of education on sexual and reproductive health or a strategy to combat gender based stereotypes as set out in paras 86(d) and (f) of the CEDAW Report. However, these paras are not referred to in the 2020 Regulations nor are they contained in the 2021 Directions under challenge. In the event that Regulations or Directions are made in the future to deal with those issues then there will be an opportunity for the Secretary of State"—

not the Department of Education—

"to carry out a consultation".

Why did he not do it?

Lord Caine (Con): I thank the noble Lord for his speech but I have addressed the Government's position in respect of the public consultation.

Lord McCrea of Magherafelt and Cookstown (DUP): I read out the judgment of the court, not a speech from me.

Lord Caine (Con): I am grateful for the noble Lord's clarification. I set out the rationale behind the Government's decision not to proceed with the public consultation in advance of the laying of these regulations. I am not sure whether he was listening to me but I made it very clear that the Department of Education in Northern Ireland will now take forward a public consultation on these matters at the start of the next academic year, in September, with a view to meeting the 1 January deadline. I do not think that I could be clearer in my comments on that.

In addition, the Department of Education also aims to make regulations for parents to withdraw their children from the required education by 1 January 2024, thus ensuring that there will be an option for parents to withdraw their children on issues such as abortion and contraception should they so wish. That deals directly with issues raised by, among others, the noble Lord, Lord Browne of Belmont.

The regulations are not intended to be overly prescriptive—

Lord McCrea of Magherafelt and Cookstown (DUP): Even if parents—

Lord Caine (Con): I am sorry; I have been very generous to the noble Lord. He spoke for a long time earlier in the debate. I am conscious that other Grand Committee debates need to take place after this one so, if he will forgive me, out of respect for other colleagues —including my noble friend Lord Johnson, who is sitting patiently—I will continue.

[Lord Caine]

The noble Baroness, Lady Thornton, mentioned external providers. I can assure her that my officials are in constant contact with the department and will continue this engagement, although it is principally a matter for the Department of Education in Northern Ireland.

I hope that this gives some reassurance to a number of noble Lords that the views of the public will be properly taken into account before the final guidance is issued by 1 January 2024. I can confirm that that is very much the target for publication.

I will try to be as quick as I can. A number of noble Lords raised issues in relation to the rights of parents and the ECHR. We of course respect and recognise the rights afforded by Article 2 in the first protocol to the ECHR. We assess that the regulations have been drafted in accordance with convention rights. It is the Government's firm view that it is compatible to inform children of the legal right to an abortion in Northern Ireland and how relevant services may be accessed without advocating a particular view on the moral and ethical considerations. Providing such information would not affect the ability of parents to provide advice and guidance to their children in keeping with their religious and philosophical views, which we all respect, and therefore we are, in our view, also compatible with Articles 9 and 10 of the ECHR.

Noble Lords referred to the slight differences between England and Wales and Northern Ireland throughout the debate. The statutory guidance in England references prevention of early pregnancy and abortion and, as such, is similar to what is required under CEDAW. We believe that the regulations are the most appropriate way of meeting our statutory obligations and what CEDAW requires, while keeping as closely aligned as possible with other parts of the UK.

The noble Lord, Lord Dodds of Duncairn, referred to the Explanatory Memorandum. He has the advantage of me, in that I do not have a copy in front of me. I will endeavour to provide greater explanation of the Explanatory Memorandum in due course. My understanding is that there will of course be an impact on the department because of the duty to provide guidance, but the exact nature of that impact will not be known until the guidance has been more fully developed and is published.

I have tried, in as brief a time as possible and with respect to colleagues who are coming after me, to deal with a number of points this afternoon. If there are any issues outstanding, I will of course write to any noble Lord who requires further clarification. On that note, I beg to move.

Motion agreed.

Equipment and Protective Systems Intended for Use in Potentially Explosive Atmospheres Regulations (Northern Ireland) 2017 (Amendment) (Northern Ireland) Regulations 2023

Considered in Grand Committee

6.27 pm

Moved by ***Lord Johnson of Lainston***

That the Grand Committee do consider the Equipment and Protective Systems Intended for Use in Potentially Explosive Atmospheres Regulations (Northern Ireland) 2017 (Amendment) (Northern Ireland) Regulations 2023.

The Minister of State, Department for Business and Trade (Lord Johnson of Lainston) (Con): My Lords, the purpose of this instrument is to ensure that the Windsor Framework, in respect of European Union directive 2014/34/EU, known as the ATEX directive, is properly implemented in Northern Ireland, including provisions regarding the UKNI marking.

I believe it would be helpful if I started today by providing some of the background to this instrument. The ATEX directive aims to prevent equipment or protective systems becoming sources of ignition in atmospheres that could be explosive if conditions lead to dangerous levels of flammable gases, mists or dusts. Settings where these conditions could arise include petrol stations and a range of mainly industrial locations such as agricultural silos, and chemical processing plants.

There are separate GB and Northern Ireland regulations covering ATEX requirements. The Northern Ireland ATEX regulations—the Equipment and Protective Systems Intended for Use in Potentially Explosive Atmospheres Regulations (Northern Ireland) Regulations 2017—were made by the Department for the Economy in Northern Ireland. The enforcement authority is the Health and Safety Executive for Northern Ireland, or HSENI. Currently, the Northern Ireland ATEX regulations refer only to the EU market, which no longer includes Northern Ireland. Conformity assessment bodies perform the vital role of assessing that specified requirements relating to a product, process, system, person or body are fulfilled, carrying out calibration, testing, certification and inspection activities.

6.30 pm

For the ATEX directive, as for other directives, there is a system of mutual recognition of conformity assessment bodies, meaning that a given EU country recognises the results from a conformity assessment body located in another EU country. This system of mutual recognition does not apply to UK conformity assessment bodies, now outside the EU. To address this, the UK previously legislated for a new UKNI marking to be applied in addition to the CE marking where a good requiring mandatory third-party conformity assessment had been tested against EU requirements by a UK body. The UKNI marking applies when placing such products on the Northern Ireland market.

If it is helpful, I will now explain in more detail how this instrument will achieve its purpose. To address the issues stated, this instrument makes the necessary amendments to ensure that the Northern Ireland ATEX regulations reflect the fact that the UK has left the EU; for example, by ensuring that references to "member states" are replaced with an appropriate term that includes Northern Ireland—but not Great Britain—and the European Economic Area states, as well as by ensuring that information obligations on the UK to inform the Commission and member states apply only to information in respect of Northern Ireland and not the rest of the UK.

The instrument introduces new provisions on the UKNI marking to the Northern Ireland ATEX regulations. In line with the Windsor Framework, if a

manufacturer wants to supply an ATEX product for the Northern Ireland market, it will need to manufacture that product to EU requirements. If that product requires third-party conformity assessment under the relevant EU legislation, and if a UK conformity assessment body is used to do that, the manufacturer will be legally required to apply the UKNI indication, which must accompany the CE or other relevant conformity marking.

Failure to comply with this new requirement will be a criminal offence in Northern Ireland. The Northern Ireland Department of Justice has confirmed that the new offence of failure to comply is consistent and proportionate and will not have a detrimental impact on Northern Ireland's criminal justice system. Enforcement authorities will continue to take a proportionate approach to compliance and enforcement activities, in accordance with the Regulators' Code.

I will now set out the impact for business of this instrument. The additional UKNI marking requirements may lead to some businesses incurring costs associated with familiarisation with the new requirements and the labelling itself. However, the impacts of these changes are expected to be very limited. My officials in the Office for Product Safety and Standards will be providing online industry guidance to coincide with this instrument coming into force to ensure that businesses have the information they need on how to comply with the new requirements. My officials are also liaising with HSENI and are ensuring that it has all the necessary information to fulfil its role as the enforcement authority.

In summary, this SI is needed to ensure that the Windsor Framework, with respect to the ATEX directive, is properly implemented in Northern Ireland. The instrument does this by amending the Northern Ireland ATEX regulations to reflect that the UK has left the EU and introducing provisions on UKNI marking. I commend it to the Committee.

Baroness Ritchie of Downpatrick (Lab): My Lords, I rise in support of these regulations. I declare two interests. First, I am a member of the Secondary Legislation Scrutiny Committee; it agreed with the regulations but I have certain questions. Secondly, I am a member of your Lordships' Protocol on Ireland/Northern Ireland Sub-Committee, which now looks at the Windsor Framework. If I may, I will ask the Minister some questions.

As part of our committee's proceedings, officials asked the department for further information about engagement with a cross-representation of stakeholders. The Government have not undertaken a public consultation. Given this instrument's specific remit, is that normal or should such consultation have taken place? The department said that, in the absence of a functioning Northern Ireland Executive, it was not able to engage with Northern Ireland Ministers but did maintain strong engagement with Northern Ireland colleagues in the Health and Safety Executive for Northern Ireland, the Department for the Economy and the Department of Justice; no concerns were raised. Can the Minister indicate in his response the format of that engagement? Was it by email, face-to-face consultation or some other means?

Obviously, because of the Windsor Framework there will be an element of divergence in standards. How will that be managed to ensure that there are no conflicts or challenges? Who will monitor that level and degree of divergence and how will it be recorded? Is the Department for Business and Trade undertaking an audit of areas of divergence as a result of the implementation of the Windsor Framework? The noble Lord, Lord Dodds, is also a member of the protocol committee, and that is one area that we have been exploring with the Foreign Secretary. We have been trying to get that list or audit and, as far as I can recall, we have been told simply that it does not exist. It is important that that audit is conducted and updated on an ongoing basis.

From what I can see, the purpose of these regulations is to ensure that they are implemented in accordance with the Windsor Framework. What role will the EU have in relation to that implementation? Will the Department for the Economy in Northern Ireland have a surveillance role and report to the Department for Business and Trade in London to ensure that implementation is in accordance with the Windsor Framework and with proper health and safety standards? As the Minister suggested, the regulations deal with explosives, gas and petrol stations, and the output thereof.

I agree with the regulations, but I have those few questions, to which I would like a response.

Lord Dodds of Duncairn (DUP): My Lords, as the noble Baroness said, I, too, am a member of the committee on the Northern Ireland protocol—or the Windsor Framework, as it is now called, although the two are interchangeable, not just in name but largely in substance. It should be said by way of general comment that this particularly technical statutory instrument deals with an important area but is illustrative of the fact that, under the Windsor Framework, Northern Ireland is subject to EU law, over which no one has given their consent or had a vote or any say at all.

Regarding some of the claims made about the Windsor Framework, it sometimes needs to be remembered that, in Parliament—the other place and here—we look regularly at a whole raft of statutory instruments which implement EU law in Northern Ireland, and the implications for divergence. The noble Baroness, Lady Ritchie, will know that from our experience in the protocol committee. She and others across the board raised the important point about the implications for divergence: the continuing impact over months, years and even decades, if this is allowed to continue, of rules in Northern Ireland which will diverge from the rest of the United Kingdom, either through acts of the European Union, in areas of law which pertain to Northern Ireland under annexe 2 of the protocol, or by actions of the UK Government, now or in future, to a greater or lesser extent, in which they seek to diverge from EU rules. All these will have an impact on Northern Ireland, and in areas where we cannot foresee the outcome. That is why, although people claim that the Windsor Framework is a settlement, it gives rise to future possible areas of dispute.

When our committee at some point ceases its work, there is no evidence thus far that there will be anyone else to pick up that work. People say that the Northern

[Lord Dodds of Duncairn]
Ireland Assembly will become responsible for it, when it is restored, but there will need to be a massive increase in capacity, skills and personnel to begin to grapple with the massive amount of legislation that is going to come down the track—and for MLAs to get a handle on the sort of issues that are going to arise. I worry about that.

On a couple of specific points, in relation to the lack of an impact assessment, we understand that one has not been prepared because, according to paragraph 13.3 of the Explanatory Memorandum, measures resulting from the framework are out of scope of assessment. Can I have clarification on what that means? Measures resulting from the framework—I presume that is the Windsor Framework—are out of scope of assessment. That seems a rather sweeping statement, but it is there in the Explanatory Memorandum. It seems strange that we should have such a declaration, because my understanding was not that that was the case, but I would be grateful for clarification. Maybe I have misread it or taken it wrong, but it is certainly a concerning statement that is contained in the Explanatory Memorandum.

Another point mentioned in the first paragraph of the Explanatory Notes and in paragraph 7.1 of the Explanatory Memorandum is that the European Union legislation listed in annexe 2 is implemented in Northern Ireland—that is, annexe 2 of the protocol, or the Windsor Framework as it is now called. I would be grateful for clarification, if the Minister can give it—and, if he cannot give it today, I would understand if he writes to me instead—about that statement as well. The Government have told us over and over again that the Windsor Framework removes whole areas of EU law, some 1,700 pages indeed, but the vast bulk of EU law applies to Northern Ireland by virtue of annexe 2, particularly paragraphs 5 to 10.

I would be grateful again for an explanation, although I understand if it is not possible today, but in due course, of that statement as well and its implications in terms of EU legislation. It is stated twice, in the Explanatory Notes and the Explanatory Memorandum and, if these things are meaningful, they have obviously been written deliberately and with consideration.

6.42 pm

Sitting suspended for a Division in the House.

6.53 pm

Baroness Suttie (LD): My Lords, I thank the Minister for his very detailed explanation of these regulations. I have three questions—or requests for clarification—for him; some aspects have already been covered but I will none the less press ahead with them.

First, paragraph 7.4 of the Explanatory Memorandum states that the Health and Safety Executive Northern Ireland previously had responsibility for

"informing the Commission and other member States … where there are non-conformity products that may be on the EU market",

but that this responsibility will now be passed to the Secretary of State. Why was this change considered necessary and why is the Secretary of State considered the most appropriate person to carry out that function?

My second question has to a large degree been covered by the noble Baroness, Lady Ritchie. I wanted to ask why there was no public consultation on these measures, not least with the businesses in Northern Ireland that are directly affected by these changes.

The Minister has largely already covered my third question, which is about an information campaign. Given that these regulations will introduce sanctions for non-use or improper use, it is extremely important that businesses affected by this are aware of the new rules. He said that there will be a website, if I heard him correctly. Are there also plans for a more proactive approach to reach out to companies that will be directly affected—companies exporting to Northern Ireland as well as businesses in Northern Ireland that will be directly impacted?

Baroness Blake of Leeds (Lab): I thank the Minister for the full explanation, which is very much appreciated, and those in the Room for their questions. A few things have been covered that I was going to pick up, and I do not have a great deal more to add. As the noble Baroness, Lady Suttie, mentioned, I was intrigued by the arrangements of the health and safety aspects, particularly the responsibilities for the Secretary of State. I look forward to the answers on that. There are some interesting questions to answer around the consultation. With all these matters, some reassurance is needed on the changes around resources, how they will be managed and, particularly, how they will be monitored. I am sure that the Minister will pick up on the impact assessment in his closing remarks. The only other aspect is around whether there will be any impact on the way that implementation in Great Britain continues and whether this will have any particular impact on that: would there be any digression from the situation arising in Northern Ireland? With those comments, I look forward, with interest, to the Minister's summing up.

Lord Johnson of Lainston (Con): I am extremely grateful to all noble Lords for their participation in the discussion on this statutory instrument. I will try to answer the questions raised in this debate, if I can.

I start with the noble Baroness, Lady Ritchie. I apologised to her in the Division Lobbies for not completely hearing her final question. My commitment here is to focus on the changes relating to these ATEX products, so she will understand if I am quite keen to focus specifically on this regulatory change. I am very aware of the other questions raised around this, particularly relating to the Windsor Framework.

I will cover two points on consultation and, to some extent, impact. We did not undertake a public consultation, given that the instrument's provisions are limited to making amendments for the implementation of a Windsor Framework obligation and ensuring that Northern Ireland continues to implement EU-derived product safety requirements for ATEX goods. But we did have informal discussions around product sector legislation. As I understand it, these were held with over 4,000 businesses, including manufacturers, trade associations and industry representatives by means of a series of structured interviews. There were further discussions with the Northern Ireland civil servants, the department and the Ministry of Justice. These took place in the

form of emails and telephone calls. There was some discussion around the process of this SI and who was effectively responsible for these regulations. That is one of the reasons why they have taken some time to come to noble Lords' attention.

It is worth looking also at the impact on businesses themselves. We estimate that there are just under 5,500 businesses in the UK subject to ATEX regulations—anywhere between lower and upper bands of 5,000 and 6,000. We think that some businesses may incur costs associated with familiarisation of the new requirements and the labelling, but we believe that the impacts of these changes are expected to be very limited, and the expected net impact of these changes is estimated to be about £2.5 million of direct costs to businesses, most likely relating to familiarisation, among other things.

Officials in the Office for Product Safety & Standards will provide online industry guidance, which I mentioned earlier, to coincide with the instrument coming into force to ensure that businesses have all the information they need on how to comply with the new requirements, but I certainly note the well-made comment of the noble Baroness, Lady Suttie, about the importance of ensuring that the affected businesses are well signalled. Officials are also liaising with the Health and Safety Executive for Northern Ireland, which is responsible for enforcing the Northern Ireland ATEX regulations and ensuring they have all the necessary information on doing so.

7 pm

Most noble Lords looked at the point of divergence. I know that the noble Lord, Lord Dodds, looked for some clarification on the Windsor Framework. I would be very pleased to write to all noble Lords on their specific questions relating to divergence and the Windsor Framework but, for the purposes of this debate, I hope they will allow me to focus specifically on this instrument.

To conclude, I thank all noble Lords for their consideration of this statutory instrument and their valuable contributions to the debate. They clearly demonstrated broader issues relating to divergence and labelling in the Windsor Framework but, in this instance, I hope that noble Lords will agree that this is a very specialist and necessary piece of safety legislation and that we would want to continue conforming to ensure these products can be supplied.

The instrument is needed to properly implement the Windsor Framework with respect to ATEX products. It achieves this main purpose by amending the Northern Ireland ATEX regulations to reflect the fact that the UK is no longer part of the EU. The instrument introduces provisions on the UKNI marking that will enable UK conformity assessment bodies to assess ATEX products for the Northern Ireland market and show conformity.

I have covered the impact of the changes, which we believe will be low. These changes are being made now, at the earliest opportunity following the agreement between DBT and the Northern Ireland Civil Service in December. The OPSS will take forward the required amendments to the Northern Ireland ATEX regulations. With that, I commend this instrument to the Committee.

Motion agreed.

Republic of Belarus (Sanctions) (EU Exit) (Amendment) Regulations 2023

Considered in Grand Committee

7.02 pm

Moved by ***Lord Ahmad of Wimbledon***

That the Grand Committee do consider the Republic of Belarus (Sanctions) (EU Exit) (Amendment) Regulations 2023.

Relevant document: 44th Report from the Secondary Legislation Scrutiny Committee (instrument not yet reported by the Joint Committee on Statutory Instruments)

The Minister of State, Foreign, Commonwealth and Development Office (Lord Ahmad of Wimbledon) (Con): My Lords, this statutory instrument was laid on 8 June under the powers provided by the Sanctions and Anti-Money Laundering Act 2018. It amends the Republic of Belarus (Sanctions) (EU Exit) Regulations 2019 by broadening the designation criteria and introducing new financial and trade measures. These enhanced sanctions reflect, and are designed to disrupt, the ability of Belarus to support Mr Putin's war and are designed to deter it from engaging in actions that further destabilise Ukraine.

The Government introduced their previous package of sanctions against the Belarusian regime almost one year ago. It included a range of financial and trade measures, and our trade with Belarus has subsequently dwindled. However, Belarus has continued to support the Russian invasion of Ukraine. It allowed Russian forces to use its territory as the launch pad for the illegal invasion of Ukraine. It trained Russian soldiers, supplied materiel and continues to provide logistical support to Russia.

Mr Lukashenko's cronies continue to spread Mr Putin's poisonous propaganda and disinformation, and there is evidence to suggest that Belarus could be providing a route to circumvent the unprecedented suite of targeted sanctions that we and our allies have imposed on Russia. I know that that has been a cause of specific concern for all Members of your Lordships' House. We condemn the actions taken by Mr Lukashenko and his regime in support of Mr Putin's and Russia's illegal war on Ukraine. In response, we are absolutely determined to scale up our sanctions package against Belarus. The measures in this latest package seek to block circumvention routes and broaden our designation criteria, while adding new powers to constrain propagandists.

I will take each aspect of the package in turn. The instrument contains new trade sanctions, including a ban on UK exports to Belarus of banknotes and on a wide a range of machinery, as well as chemicals that could be used in the production of chemical and biological weapons. It will prohibit the export of precursor chemicals that could be used in the manufacture of chemical and biological weapons. This instrument also bans the import of Belarusian cement, wood, rubber and gold. This will help to further clamp down on revenue streams for the regime.

[Lord Ahmad of Wimbledon]

These new trade sanctions on cement, rubber, wood and machinery will align us with previous EU sanctions and, in the case of precursor chemicals and gold, they go further. The noble Lord, Lord Purvis, has often focused on this issue, so I thought I would share that with noble Lords. At this juncture, as we have said before, while we are moving in a co-ordinated fashion, there may be occasions when we are ahead of our allies or our allies are ahead of us, but the alignment continues to work well.

The measures also include further financial sanctions to prevent Belarus using money markets or transferable securities instruments. Again, noble Lords have raised this issue regularly. Belarus has sought to use such instruments to raise revenue. Thus, by taking these measures, we will be constraining its ability to support Mr Putin's invasion.

Another key aspect of this amendment is the broader range of designation criteria, which is extremely important. It will allow us to sanction a wider range of the regimes' facilitators, including government aides, advisers and Ministers. Where appropriate, it will also enable us to target family members of individuals already designated to prevent them benefiting from asset transfers designed to circumnavigate the bite, effect and impact of UK asset freezes.

This instrument also provides the UK Government with powers to prevent designated Belarusian media organisations spreading propaganda in the UK, including over the internet. These measures provide powers to restrict the reach of Russian and Belarusian disinformation, and go some way further to reduce the impact of the disgusting practice of posting forced confessions online.

These strategic and targeted measures will sit alongside the wide-ranging sanctions that we have already imposed on more than 100 individuals and entities for their role in the violent oppression of Belarusian civil society, opposition groups and the media. I know that this point has been raised by the noble Lord, Lord Collins, among others. We are targeting individuals including Mr Lukashenko and key members of his regime.

To conclude, as noble Lords recognise, the instrument we are debating today is part of our broader efforts to target Mr Lukashenko's Belarusian regime for its continued support of Russia's illegal actions in Ukraine. It is important to be clear that the UK Government have no issue with the people of Belarus. They deserve leadership that does not oppress them or ignore the interest of the Belarusian people in preference for or in support of President Putin.

We reserve the right to introduce further measures in co-ordination with our international partners. Again, I am grateful for the strong support that we have received from noble Lords, particularly the Front Benches. Should Mr Lukashenko's regime continue to prop up Mr Putin's illegal war in Ukraine, we will seek to act further. I beg to move.

Lord Purvis of Tweed (LD): My Lords, I am grateful to the Minister for introducing these regulations. He knows of the Liberal Democrat support for these sanctions, which has been consistent and wholehearted. He is absolutely right that the direct focus of these measures should be the regime supporting this illegal conflict, not the people of Belarus.

I am grateful for officials' work on the very comprehensive impact assessment. Perhaps other ministries could learn from the thoroughness with which the impact assessment was put together, so I commend the officials for that. It is incredibly important that impact assessments are there and are clear, because these measures mean nothing unless they can be enforced. What level of enforcement is now anticipated?

I read the *Hansard* of the House of Commons' coverage on this measure and the new financial sanctions. A question was put to the Minister's counterpart on the resources, capacity and ability of the Office of Financial Sanctions Implementation to enforce these measures properly. If I may say so, this issue has been consistently raised by the noble Lord, Lord Collins, in previous debates on these issues. The Minister there said that the Government's view was that £20 million had been used as penalties for Russian sanctions but there has been little information. I would be grateful if the Minister here could clarify what the impact has been already. The benefit of co-ordination, and the area of focus, has to be on ensuring that UK-based law and consultancy firms are not being used to circumvent these measures.

I am grateful to the Minister for referencing the issue that I have raised on a number of occasions: working with our allies on gold. I will return to that point in a moment.

These measures now have a heightened sense of importance, given the very recent developments. If it is the case that the Wagner Group is now effectively based in Belarus but will still operate via Moscow in many of the countries, as we are seeing, this means that these measures will be even more important.

Before I close, I want to ask the Minister about discussions with our allies. He has heard me referencing the UAE before when it comes to financial relationships. My understanding is that the Wagner operations are now likely to be based out of Minsk, although there is uncertainty about the location of Mr Prigozhin. Let us take that as a fairly reasonable assumption that the operations will still be in place.

The Minister knows about my interest in Sudan. My understanding is that the Kush project, a gold project in Sudan that has been part of the source of the Rapid Support Forces there, has been a joint project between Russians and Emiratis where the Wagner Group has been operating under contract. That has provided—the concern is that it continues to do so—a revenue stream for one of the warring parties in Sudan. My understanding is that the Kush project and investments are, in effect, still being banked through the UAE.

When it comes to restrictions on transferable securities or money market instruments, I would be grateful if the Minister could be clear that this is on the radar of the FCDO in our discussions with our friends in the UAE. These measures will not be effective at directing targeted measures towards the Belarus officials—and now, the Wagner Group—if they are still able to operate with impunity, in effect, in crisis areas such as Sudan. I know that the Minister will not be able to

respond to me in detail today so I would be happy for him to write to me with specific regard to the Kush for Exploration and Production Company.

The Minister knows my view on the proscription of Wagner. I will not ask him about that because I know what he will say in response but, now that Belarus is at the eye of the internal issues in Russia and given the impact in Africa, these points will be of heightened importance. I would be grateful if the Minister could respond to them. In the generality, breadth and widening of the scope, he knows of our support.

Lord Collins of Highbury (Lab): My Lords, I, too, welcome the Minister's introduction to these regulations. Like the noble Lord, Lord Purvis, I reiterate our continued support for the Government's efforts to bring this war to an end. I repeat the sentiments that we expressed during the debate on the Statements made on Monday. I certainly welcome the Minister's response on alignment and co-ordination; these are vital elements to the success of any sanctions regime. We cannot act alone.

I make just one small point: the SLSC drew attention to these regulations because it was

"surprised to learn that—16 months into the conflict—the FCDO is only now prohibiting the export of precursor materials for chemical and biological weapons to a conduit country known to"

supply these things to the Putin regime. I would appreciate some sort of response on that particular point.

7.15 pm

I very much welcome that we are now targeting those key individuals in Belarus, particularly because of their continued human rights abuses, not just because of their support for the Putin regime and the illegal invasion of Ukraine. On that point, the regulations aim to prevent Belarusian media organisations spreading propaganda in the UK, including over the internet. Is the FCDO taking any steps to ensure that those provisions relating to the internet do not unintentionally prevent Belarusians publicising their human rights concerns? It is a two-way process, and obviously human rights defenders use that mechanism to make their case. It would therefore be good to have some assurance on that.

On the precursor materials for biological weapons, the UN Secretary-General raised concerns earlier this year over the potential unintended consequences of sanctions on potash; Lithuania and other eastern European allies disagreed. Can the Minister tell us the Government's current position on that and whether there are plans to further evaluate the impact of such sanctions?

I want to reiterate the point—I know that the Minister has heard me bang on about this—that sanctions are one thing but, without matching them with strong enforcement and investigation, they will be doomed to fail. One key thing about the debate in the Commons on this particular issue, which my honourable friend Stephen Doughty raised, is that a better understanding of those enforcement and investigation elements acts as a very strong deterrent, which stops people avoiding or trying to get round the sanctions regime. He asked a specific question about the transparency of this and mentioned how the OFSI website does not show any financial penalties for non-compliance since September 2022. Of course, as we heard in the debate, the Minister's response was to say that he would write to my honourable friend—oh, there we go, mid-stream.

The Deputy Chairman of Committees (Baroness Scott of Needham Market) (LD): My Lords, a Division has been called. I understand that there are to be two Divisions in quick succession, so I propose that we reconvene 10 minutes after the second Division starts, or sooner if we are all back.

7.19 pm

Sitting suspended for Divisions in the House.

7.44 pm

Lord Collins of Highbury (Lab): My Lords, I was mid-flow. I was making the point about the need for strong enforcement and investigation, primarily to act as a deterrent to make sanctions more effective. My honourable friend Stephen Doughty raised this issue in the other place. He said that, according to records on the OFSI's website, no financial penalties appear to have been issued since September 2022. In response, the Minister, Anne-Marie Trevelyan, said that she would write about the effective implementation. As the noble Lord, Lord Purvis, mentioned, she said that the

"OFSI has issued £20 million in fines so far".—[*Official Report*, Commons, Third Delegated Legislation Committee, 26/6/23; col. 6.]

I am not quite sure what period she meant. She indicated that she would write to my honourable friend but I would like the Minister to respond with the details not only in his response tonight but on an ongoing basis. Parliamentarians should not only be informed but use the information about enforcement in a much more public way to ensure that it is seen that we take the sanctions seriously and that we are pursuing and implementing them, thereby ensuring that the information acts as a proper deterrent. I hope that we can address this issue. That concludes my comments; I look forward to the Minister's response.

Lord Ahmad of Wimbledon (Con): My Lords, I am grateful to the noble Lords, Lord Collins and Lord Purvis. I note that the noble Lord, Lord Purvis, informed me and the noble Lord, Lord Collins, that he is unable to join us as he is speaking on the next group of amendments in the Chamber. That said, I thank both noble Lords once again for their strong support for the Government's position. I am sure that they would both acknowledge that we are constructively taking on the suggestions and practical proposals put forward in these debates to further strengthen what we are doing.

With the noble Lord's indulgence, I will mention briefly the situation regarding Yevgeny Prigozhin, as his whereabouts and so on were raised. I am sure that noble Lords have followed the news that Mr Lukashenko has confirmed that the head of the Wagner Group has arrived in Belarus. Mr Lukashenko has also echoed comments made by Mr Putin that Wagner mercenaries should come to Belarus under security guarantees

[Lord Ahmad of Wimbledon]
offered by him and Mr Putin. We have seen no indications that any Wagner mercenaries have so far relocated to Belarus but the prospect of their doing so cannot be ruled out. We are working closely with key NATO allies. As President Duda of Poland and the NATO Secretary-General, Jens Stoltenberg, have stated, the presence of Wagner mercenaries in Belarus is an extremely worrying development. Of course, I will keep noble Lords informed about that, but I thought it appropriate to mention it right from the start.

I will seek to answer most, if not all, of the questions raised. I take on board the final point raised by the noble Lord, Lord Collins, about transparency and ensuring that not just we in the Chamber but the public are assured that the actions we are taking are resulting in direct sanctions against those who seek either to act against the sanctions or to circumvent them. This instrument widens the scope of what we will be able to do going forward. Specific provisions in the sanctions proposal that we put forward will allow us to take further action. The broadening element of the sanctions will certainly allow us to act more quickly and with greater agility. As I said in my opening remarks, it will also allow us to act to take on board not only the principal individuals but those who may be associated, either by family or business, with those in Russia and Belarus who are subject to these sanctions.

To take some of the questions, the noble Lord, Lord Purvis, asked about resourcing and staffing. The Office of Financial Sanctions Implementation has doubled in size this financial year and continues to grow to meet the challenges of the sanctions introduced. The recruitment of new permanent staff continues following the Chancellor's announcement in March about doubling that department's size. In its annual report, released on 10 November 2022, OFSI said that it is scaling up to over 100 full-time employees by the end of 2022, accelerating and enhancing the ambitious transformation programme. If there are more up-to-date figures during the course of this year, we will, of course, update.

The noble Lord, Lord Collins, rightly asked about the export ban on goods and technology related to chemical and biological weapons. Of course, we continue to review all our sanctions, which are designed to evolve over time to maintain effectiveness and apply increasing pressure. The export of goods and technology related to chemical and biological weapons that is now in place is designed to replicate measures that we have already taken against Russia. This will ensure that we prevent the possibility of such routes being circumvented via Belarus in the event that Russia tries to exploit any potential avenues. I take the noble Lord's point about the importance of acting with greater agility and dynamism. That is why I go back to the broad nature of the sanctions provisions in terms of the structure that we have proposed.

On the issue of circumvention, the noble Lord, Lord Purvis, asked about a particular entity. I can share with noble Lords that we are engaging with third countries to close down routes that Belarus—and Russia, for that matter—could potentially use to circumvent our sanctions. The noble Lord may be aware that I was in the UAE recently. Of course, Russia's illegal invasion of Ukraine and the issue of sanctions were discussed. Noble Lords may be aware that, on 31 March, the Central Bank of the United Arab Emirates announced that it would cancel MTS Bank's Abu Dhabi licence, taking into account the sanction risk associated with the bank after its designation by the UK and the US. These latest measures on Belarus are also designed to close down potential avenues for circumvention. I mention that because it is a practical example of how countries are taking action more broadly.

The issue of Wagner in Africa was also raised. We are aware of the US Treasury's announcement on Wagner Group sanctions on 27 June. We have repeatedly highlighted Wagner's destabilising role in Mali and other parts of Africa. However, we need to look at this and scrutinise it closely; it is an evolving situation, and the events over the weekend demonstrably showed how quickly things can change on the ground. We are analysing the impact of the events of last weekend.

The noble Lord, Lord Collins, raised the issue of media freedom, freedom of expression and unintended consequences. Of course, the UK is committed to international law, upholding freedom of speech and open, transparent and independent media. We refuse to use information in the same callous way as those in Russia and Belarus. We shall continue to hold ourselves to the highest standards, and we have demonstrated this leadership. I take on board the noble Lord's point about ensuring that there are no unintended consequences but, as we keep these sanctions under review, we will ensure that in any such cases, if they are brought to our attention, any unintended consequences of these sanctions are put right.

There was a broader issue of how we respond to those who perhaps feel that the sanctions provide limited assistance on the humanitarian front and on food security. We continue to make the point that there are humanitarian provisions in all the sanctions, including on the issues of food security. To be clear, and for the record, the challenges that the UN-designed Black Sea grain initiative faces and the limitations that we see are not down to the sanctions. It is Russia that continues to limit the number of vessels that are taken out. Recently, when I was in Turkey, that was a key point of our focus and our exchange with key colleagues.

The noble Lord, Lord Collins, raised the issue of human rights and international law, which I have covered. The disinformation issue will be ever evolving, and we need to remain vigilant to how information is used, or how disinformation is utilised by those in Belarus and Russia.

The noble Lord, Lord Collins, also raised potash. This SI has no impact on potash production, but the import of Belarusian potash has been prohibited since August 2021. That is not the cause of the increased cost of food since Mr Putin's invasion. I have already covered the points that the noble Lord raised on chemical weapons.

We are always looking at how we can strengthen the resourcing and effectiveness of our enforcement. On 13 March, my right honourable friend the Prime Minister announced a new economic deterrence initiative to boost our diplomatic and economic tools to respond

to hostile acts by current and future aggressors. With funding of up to £50 million over two years, the EDI will improve sanctions implementation, as well as transparency and enforcement. The noble Lord, Lord Collins, raised that important point.

To conclude, I am again thankful to noble Lords for their participation, but I am particularly grateful to the noble Lords, Lord Collins and Lord Purvis, for their strong support and that of their respective parties for the Government's actions. That yet again sends a united message, in this instance to Belarus and to Mr Lukashenko directly, that we will act together and in unity.

It is firmly in the interests of the UK and our allies to continue supporting Ukraine in the face of Russia's assault and to impose a real cost on Mr Putin and his supporters, including other countries, for his flagrant attack on the international rules-based order. This enhanced package of sanctions will restrict Mr Lukashenko's ability to support Mr Putin's war and any efforts to circumvent the unprecedented package of international sanctions already imposed on Russia. We are grateful for the solidarity across Parliament for the actions that we have taken in response to the invasion to date. I assure the Committee that we will continue to work co-operatively and to update the House accordingly.

Motion agreed.

International Atomic Energy Agency (Immunities and Privileges) (Amendment) Order 2023

Considered in Grand Committee

7.57 pm

Moved by ***Lord Goldsmith of Richmond Park***

That the Grand Committee do consider the International Atomic Energy Agency (Immunities and Privileges) (Amendment) Order 2023.

The Minister of State, Foreign, Commonwealth and Development Office (Lord Goldsmith of Richmond Park) (Con): This instrument was laid before Parliament on 5 June, in accordance with Section 10(1) of the International Organisations Act 1968. A correction was made on 7 June to amend an error in a date referenced in the order. It is subject to the affirmative procedure and will be made once it is approved by both Houses before being put to the Privy Council.

The order's primary purpose is to correct an omission in the privileges and immunities granted to the International Atomic Energy Agency—also referred to as the IAEA or the agency—under the 1974 order. In the Agreement on the Privileges and Immunities of the International Atomic Energy Agency 1959, signed by the UK in 1961, the UK agreed to provide privileges and immunities to representatives of agency members attending any international conference, symposium, seminar or panel convened by the agency. This language was not entirely reflected in the subsequent 1974 order. The proposed amendment allows the UK to fulfil its obligations to provide privileges and immunities to representatives of members attending agency-convened events in the UK. The amendment also clarifies that representatives of members as defined in the 1959 agreement includes

"governors of the Agency's Board of Governors and representatives, alternates, advisers, technical experts and secretaries of delegations".

The Government consider these privileges and immunities both necessary and appropriate to deliver on the interests and commitments that the UK has towards the agency. They are within the scope of the International Organisations Act and in line with UK precedents. The amending order confers no new privileges and immunities but expands the range of meetings where they apply, in line with the 1959 agreement. The provisions of that agreement have previously been applied operationally and meetings of the agency have been held in the UK without incident. However, we cannot continue to bear the risk of our domestic legislation provisions being at odds with our international treaty obligations. It is therefore right that this amending order be passed to allow the UK to fully meet its commitment to provide privileges and immunities to representatives of members attending agency meetings in the UK.

8 pm

The agency was established in 1957 to enable the safe, secure and peaceful use of nuclear technologies. It plays a critical global role in developing and promoting high standards, in verifying that nuclear technologies are being used for peaceful purposes and in supporting nuclear science and research. The UK fully supports the agency: it is an important partner in achieving UK objectives on global security, non-proliferation and energy security. It provides an important forum for the UK nuclear industry to share its world-leading expertise and to collaborate with international partners.

As one example of our commitment to collaboration, we are pleased to host the 29th IAEA Fusion Energy Conference in London in October this year. The conference represents an important opportunity to showcase the UK's world-leading fusion energy research, institutions and scientists. Researchers from around the world will gather to discuss the theory and practice of fusion energy, including the pathway to industrial deployment.

To conclude, correcting the omission in the 1974 privileges and immunities order will allow the UK to meet its internationally agreed obligations and ensure the successful delivery of the IAEA Fusion Energy Conference in the UK. It will also facilitate the continued hosting of a wide range of agency events in the UK, allowing the UK nuclear industry to continue its close collaboration with nuclear researchers and operators from around the world. I commend the order to the Committee.

Baroness Suttie (LD): My Lords, I thank the Minister for his brief but comprehensive introduction to these regulations. I apologise on behalf of my noble friend Lord Purvis of Tweed, who is currently in the Chamber dealing with other matters. We broadly support these measures.

My noble friend was quite keen to ask a question about paragraph 4 in the Explanatory Memorandum, about the situation vis-à-vis Scotland. It says there

[Baroness Suttie]
that a separate Scottish Order in Council would be prepared. Will the Minister say whether there is yet a timetable available for that, and have these proposals already been agreed by the Scottish Government? Otherwise, we welcome these regulations from these Benches.

Lord Collins of Highbury (Lab): My Lords, I, too, thank the Minister for his introduction. I am extremely grateful for his very helpful letter of 12 June explaining why such agreements sometimes differ between different international organisations in how they are set out. I hope that a copy was placed in the Library of the House.

The noble Lord quite rightly pointed out that this instrument corrects discrepancies in a 1974 order which implemented a 1959 immunities agreement giving immunities and privileges across a range of events. I have one basic question: I looked in the Explanatory Memorandum to better understand why it has taken almost 50 years to realise the error. Could the Minister offer an explanation? It may be rather straightforward, but I could not see it in there. This struck me: if this error has been brought to the department's attention, was anyone impacted by it, and do we need to address anything around detriment to an individual?

I was also grateful to the Minister for pointing out the importance of the 29th Fusion Energy Conference, which will be hosted by the IAEA in London in October, and the range of people who will be attending. Can he tell us a bit more about what the Government are doing to prepare and to offer support to ensure that the conference is successful? I look forward to the Minister's response.

Lord Goldsmith of Richmond Park (Con): I am grateful to noble Lords who have contributed to this discussion. In a sense, this legislation is part of our preparation for the event. It is a requirement for us in order to be able to meet our internationally agreed obligations. It is worth pointing out that the privileges and immunities granted to representatives of member states are a requirement of the UK hosting IAEA events. Ministers have looked at the requirement, and I believe a number of questions were raised in the other place about certain countries being involved. Ministers and officials have considered the requirement and any possible associated risk but, as host of the event, the UK has to honour the invitations to all 176 members. As a consequence, we expect a high attendance. We think there will be between 1,000 and 2,000 delegates, although clearly, we do not yet know how many there will be.

On the question about the devolved Administrations—I will come back to how the error was spotted—the 1974 order and the amending order extend to the whole of the UK, but there are some provisions that do not apply in Scotland. The opportunity has been taken to clarify which of the provisions in the 1974 order will apply to Scotland in so far as they are within the legislative competence of the Scottish Parliament. Article 2 inserts new Article 3A into the 1974 order, which clarifies that position. A separate Scottish Order in Council will therefore be prepared in respect of those amendments within the legislative competence of the Scottish Parliament. It will be laid before the Scottish Parliament soon.

The error was spotted only recently—I think because of the organisation in the run-up to the event that we have been discussing. I believe that it was the colleague sitting behind me who spotted the error. It was immediately agreed that the correction should be made to ensure that we comply with international law.

On the agency itself, the IAEA is a key partner for the UK for all the reasons that I described in my opening remarks. Its work to promote nuclear technologies and ensure that they are peaceful, safe and secure is key for countering proliferation, preventing accidents and facilitating the use of nuclear power for energy security and climate goals. I know the Committee has a keen interest in the UK's relationship with the IAEA. As has been noted, passing this amendment will correct a historic error and ensure that we are able to meet our international obligations. It will enable us to successfully host the event that we have discussed in this exchange. That just leaves me to thank the Committee for its time and questions.

Lord Collins of Highbury (Lab): Will the Minister answer my supplementary question about whether there has been any impact?

Lord Goldsmith of Richmond Park (Con): My understanding is that there has been no impact. I looked over my shoulder to confirm that and I got a nod, so I believe that I am right in saying that there has been no impact. The provisions had previously been applied operationally, and meetings of the agency have been held in the UK without any incident. However, the judgment is that we cannot continue indefinitely to bear the risk of our domestic legislation being at odds with our international treaty obligations. There have been no incidents. With that, I trust that the Committee will support the order.

Motion agreed.

Committee adjourned at 8.09 pm.