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PARLIAMENTARY DEBATES
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OFFICIAL REPORT

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

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

Monday 19 February 2024

2.30 pm

Prayers—read by the Lord Bishop of Chichester.

The Lord Speaker (Lord McFall of Alcluith): My Lords, I call the first Oral Question. The clocks are not working, but we will ensure that we stay faithful to the 10-minute limits.

Conventional Weapon Stocks: Expenditure

Question

2.37 pm

Asked by ***Lord Tunnicliffe***

To ask His Majesty's Government when they plan to provide an update on the spending of the £2 billion allocated in the 2023 spending review for replenishing conventional weapon stocks over the next two years.

The Minister of State, Ministry of Defence (The Earl of Minto) (Con): My Lords, £1.95 billion was allocated in the 2023 Spring Budget to improve resilience and readiness across a range of defence capabilities. This is not just about new investments and new equipment; it will also be used to address long-standing challenges across the defence programme, which will make us better able to respond to new threats. The Ministry of Defence remains fully engaged with industry, allies and partners to ensure the continuation of supply to Ukraine and that all equipment and munitions granted in kind from UK stocks are replaced as expeditiously as possible.

Lord Tunnicliffe (Lab): My Lords, I thank the Minister for that Answer; I am not sure that it contained any information, but it met the basic specification. In my view, the moneys are not being spent on their original requirement. That could be for one of two reasons: first, that the money is gone because it has been spent on budget shortfalls and not on the original objective, or, secondly, that the MoD is not good at purchasing things. Let us take, for instance, the 155 mm shells which are very much desired by Ukraine at the moment. The letter of intent was in November 2022, the contract took nine months to negotiate—to July 2023—and none will be delivered until 2025. Which is it: has the money gone, or is the MoD not good at purchasing things?

The Earl of Minto (Con): My Lords, we have just short of £1 billion out for contract, so it is on the way, and we have invested a further £500 million in industrial capacity. Therefore, the money has not been spent elsewhere in the Budget; it is being spent on what it was originally purposed for. This is not the easiest thing to grasp. Resilience and readiness are all about improving capability through, among other things, updating weapon stocks and munitions and investing in manufacturing to ensure that stockpiles are current and ready to meet defence needs. It is not just about replenishing like for like on capability.

Lord Lee of Trafford (LD): My Lords, has the Minister discovered the underground ostrich room deep in the Ministry of Defence? It churns out complacent ministerial briefs and Answers to Questions telling us that all is well: no procurement black holes, enough ships to meet operational needs, and recruiting and housing improving. Last July, the Commons Defence Committee report said:

"We have discovered a UK procurement system which is highly bureaucratic, overly stratified, far too ponderous, with an inconsistent approach to safety, very poor accountability and a culture which appears institutionally averse to individual responsibility".

Can the Minister say what improvements and changes, if any, have been made, and whether the MoD really needs to employ 60,000 civilians—which is virtually the same size as our Army?

The Earl of Minto (Con): I thank the noble Lord for that question. There are a few feathers lying around in some of the rooms in the Ministry of Defence because one thing that the disaster in Ukraine has meant is that the speed with which effective procurement needs to be undertaken has really shaken a few things up. There have been occasions where—it has not happened in the past—specification has been compromised for availability. That is a very good indication that things are starting to move.

Baroness Stuart of Edgbaston (CB): My Lords, can I take the Minister back to munitions and how we are restocking those supplies? Given the limited lifespan for anything stored, can he say something about the surge capacity for production, in terms of both manufacturing and storage?

The Earl of Minto (Con): My Lords, a lot of orders are outstanding, as I have just said, with an enormous amount coming through in the next 12 months. We are replacing everything that we have gifted to Ukraine as expeditiously as we can. As I think I have described once before, this is a holistic view. We are not just replacing like for like; we are taking advantage of improvements in technology to ensure that we have the correct weapons to meet the threat that defence faces.

Lord Browne of Ladyton (Lab): My Lords, Russian shell production—not shell orders—next year is assessed to run at 4 million per year. The Secretary-General last week asked member states to increase arms production. In response, arms manufacturers, including Norway's Nammo, suggested that this would be possible only if Governments shared risks with manufacturers, given the scale of the capital investment needed. Therefore, what discussions are we having with our NATO partners about formal mechanisms through which this can be achieved?

The Earl of Minto (Con): The noble Lord raises an extremely important and valid point. Noble Lords will know that NATO placed an order for 155 mm artillery shells on 23 January worth $1.2 billion. We have also placed two orders with BAE Systems and invested in its production capacity to ensure that we can also take delivery of the right amount of 155 mm shells. I understand that it has increased the production rate by eight times.

Lord Stirrup (CB): My Lords, the Defence Command Paper places great emphasis on technology and innovation. A great deal of innovation comes from small and medium-sized enterprises, most of which view the MoD as one of the world's worst organisations with which to do business. What progress is the MoD making to change that culture and eliminate what those enterprises refer to as the "valley of death" between good ideas and commercialisation of those ideas?

The Earl of Minto (Con): The noble and gallant Lord knows only too well that procurement is really difficult when it comes to military assets. We had a conversation last week about appetite for risk, but getting SMEs involved at the correct level will always be quite tricky because of the scale of operation that we need to deal with weapons and munitions. However, it is absolutely a focus in the MoD to ensure that procurement is much more light-footed that it has been in the past.

Lord Swire (Con): My Lords, what is my noble friend the Minister's assessment of Russia's current conventional weapon stocks and its reliance, so we are told, on importing shells from North Korea?

The Earl of Minto (Con): My Lords, the Russian threat is paramount, and Russia must not on any account be allowed to prevail—there is no question about that, and the Government, the Opposition and everybody else are on the same page. Russia has ramped up its production capacity and has been using North Korean equipment, although its reliability is not quite clear. It is certainly something of which everybody is increasingly aware.

Lord Watts (Lab): My Lords, while this investment was welcomed when it was announced, if the Minister's department does not spend the money, the Treasury will claw it back. Is it not about time that he acted to make sure that the money is spent?

The Earl of Minto (Con): My Lords, I could not agree more. We are spending the money and as quickly as we can get it. We have delivered everything to Ukraine that we said we would. We are replenishing our stockpiles as quickly as we can, and we are investing in technology.

Lord West of Spithead (Lab): My Lords, Putin has increased his defence spending to 40% of GDP. That is, in effect, a war footing. I think that, in many ways, he almost thinks that he is at war with us. How, in all conscience, can our Government not immediately increase our defence expenditure?

The Earl of Minto (Con): My Lords, I think that everybody knows where I stand on this. There are competing demands on a finite amount of resource. The Government and the Prime Minister have made perfectly clear the direction of travel; it is just a question of when it is appropriate to get there and how far it goes.

Lord Trefgarne (Con): My Lords, can my noble friend the Minister be a bit more precise about the quantities of ammunition being supplied to Ukraine and the different types?

The Earl of Minto (Con): My Lords, I am afraid that that is information which we do not divulge.

NHS Dentistry

Question

2.47 pm

Asked by ***Lord Young of Cookham***

To ask His Majesty's Government what assessment they have made of the availability of NHS dentistry.

The Parliamentary Under-Secretary of State, Department of Health and Social Care (Lord Markham) (Con): My Lords, since the pandemic this Government have taken decisive action to recover services. There are signs of recovery, with the amount of activity delivered and the number of patients seen increasing, but there is more to do. Our recently published plan to recover and reform NHS dentistry will make dental services faster, simpler and fairer for patients and will fund around 2.5 million additional appointments and more than 1.5 million additional courses of dental treatment.

Lord Young of Cookham (Con): My Lords, I welcome the recent Statement but, with 80% of NHS dentists not accepting new patients and with 190 hospital operations every day removing rotten teeth from children, clearly a fresh initiative was needed. However, the dysfunctional, discredited 2006 dental contract, which is driving NHS dentists out of the business, and which was described by the Select Committee in another place as not fit for purpose, remains in place. When will it be reformed? Given that everyone has a right to register with a GP and if they cannot find one the ICB has to find one, why is there not an equivalent right to register with a dentist if dentistry is an integral part of the NHS?

Lord Markham (Con): I thank my noble friend for raising this and declare my interest as my wife is a dentist, although she is not currently practising. It is accepted that we have made sensible improvements to the dental contract, but a fundamental longer-term overhaul is needed. In terms of the ability to get registered with a dentist, that is what the mobile trucks are all about. We realise that in certain areas it is difficult to get that registration. The idea is for mobile trucks to go into a neighbourhood where there is a particular shortage to resolve the problem.

Lord Birt (CB): My Lords, while working at No. 10 in the early noughties, I was involved in a strategic review of the NHS and was shocked, at the time, to discover how poor the long-term workforce capacity planning was. The total number of dentists currently working in NHS England—around 25,000—has not changed by more than tens or hundreds over the last five years. In that period, more dentists have left than joined. At the same time, fewer than 1,000 dental students have been enrolled each year. Precisely how

many dentists do we need to bring NHS capacity in line with demand? In what year, again precisely, will that point be reached?

Lord Markham (Con): The noble Lord is correct in talking about the supply challenges. That is what the long-term workforce plan is all about, and why we are committing to a 40% increase in training places by 2030. The other issue that he rightly raises is the balance between the cost-effectiveness of providing private versus national health dentistry. The problem is that it is often seen as more lucrative for a dentist to go down the private sector route. That is why we are trying to rebalance that and have introduced an increase in the minimum charge to £28 for a unit of dental activity, and £50 for a new patient, to try to bring services back more in favour of the NHS.

Lord Hunt of Kings Heath (Lab): My Lords, I declare my interests as president of the British Fluoridation Society. The Academy of Medical Sciences reported very recently that nearly a quarter of five year-olds have tooth decay. Unless we deal with this there will be many more queues and great difficulties with access. The Minister will know that shortly there will be a consultation in the north-east to introduce fluoride. Surely the current situation demands that we extend this throughout the country.

Lord Markham (Con): Yes, the noble Lord is correct that there is very good evidence of the effectiveness of water fluoridation, and the report as recently as 2022 showed there are no side-effects. The north-east will increase the number of recipients by about 1.6 million people, and there is a process that that needs to go through but I totally agree that we should expand it as far as we can.

Lord Allan of Hallam (LD): My Lords, further to the question asked by the noble Lord, Lord Birt, I point out that we have very good data on the number of dentists engaged in NHS activity. It shows a pattern of falling numbers—down to 24,151 in the last financial year. Does the Minister agree that it is fair for us to judge the success or failure of the Government's new plan on whether that number increases? Does he have a target for where the Government intend it to reach?

Lord Markham (Con): The absolute measure that everyone cares about is output—the number of treatments—and this plan is all about increasing the number of appointments by 2.5 million. In the last year alone, we increased the number of treatments from 26 million to 33 million. There is more to do, granted, but the real measure of success is how many treatments we get done, which is a function not just of the number of dentists but of their productivity, and of the number of them we can persuade to provide NHS rather than private sector services.

Lord Lansley (Con): Can the Minister confirm that it is nearly 13 years since the then Secretary of State, and his noble friend Lord Howe, initiated negotiations for a new dental contract? We still need that contract, because it would shift towards paying dentists for outcomes for their patients rather than for units of dental activity. It is when we have a shortage of dentists that we need to shift to outcomes and preventive work, to improve the balance of work that dentists must do and reduce demands on the total dental workforce.

Lord Markham (Con): Yes, it is all about outcomes and output. As I mentioned, there have been sensible moves recently in terms of the contract—the £50 for new patients; increasing minimum levels; and ensuring that dentists get more payment for doing, for example, three fillings versus one. I also agree that some fundamental work needs to be done in this space.

Baroness Merron (Lab): My Lords, the Minister has previously suggested that the 15 mobile dental vans would be able to address emergency situations as well as scheduled appointments. How will this work in practice, particularly in view of the size of the areas each van will cover? How will the Government meet the immediate need for thousands more appointments for emergency dental treatment?

Lord Markham (Con): There will be a schedule of when the mobile vehicles will visit each area, with the ability to pre-book so, if someone calls up with an issue, they will know that a truck will come to their area in a week or two's time. That is the idea, or people can queue to receive those services as well. I hope this will be successful. It has worked quite well in some areas already. The case will prove itself and the 14 will be just the start. We can do much more from that, because we all agree that we need to expand supply.

Baroness Finlay of Llandaff (CB): Given that over 8,800 new oral cancers were diagnosed last year, and a fifth of those were in people under the age of 65, do the Government recognise that it is a false economy not to increase dentistry provision, dental hygienist screening for oral cancers and advice on prevention, such as by cutting down on smoking and so on? The cost of treating this, and of early morbidity to the country, is huge.

Lord Markham (Con): Yes, absolutely. That goes back to my noble friend's point about outcomes. I know that a lot of places, if they are fortunate enough to have an NHS dentist, give you check-ups every six months as a matter of course. In fact, NICE says that if you are in good oral health you will need that only every 24 months, with the idea being that you can create more space for other people to come in, because prevention and screening are vital in all this as well.

Baroness Jolly (LD): My Lords, I live in Cornwall, where there are now very few NHS dentists and many people are resorting to do-it-yourself. What plan does the Department of Health have to ensure that all in Cornwall have access to a dentist as and when needed? A kit is available from the high street for less than £10, but this does not buy any expertise or guarantee of success.

Lord Markham (Con): The noble Baroness is quite correct. Cornwall is one of the areas where we piloted the mobile services. It is probably not the number one

[Lord Markham]
area, but it is fair to say that it is one of the main areas where we are putting in more resources for precisely that reason.

Baroness Bennett of Manor Castle (GP): My Lords, I shall switch sides of the country. The campaign group Toothless in England was founded in Suffolk and is calling for contracts for NHS dentists to cover the real costs. It says that this is the only way to solve the drought of dentists in places such as Waveney Valley, where one in three people has been unable to secure an appointment over two years.

Lord Markham (Con): These plans were welcomed by Toothless in England, which was good to see, as well as by Healthwatch. I know personally that making it economic for dentists to work in the NHS rather than in the private sector, or getting that balance right, is fundamental. The changes are a good first step towards that but more probably needs to be done.

Post Office Horizon Scandal: Racism

Question

2.58 pm

Asked by ***Lord Sahota***

To ask His Majesty's Government what assessment they have made of the reports from sub-postmasters involved in the Post Office Horizon scandal that racism affected the way they were treated by the Post Office.

The Parliamentary Under-Secretary of State, Department for Business and Trade and Scotland Office (Lord Offord of Garvel) (Con): I thank the noble Lord for his Question. Some of the evidence that has been brought to light through Sir Wyn Williams's inquiry has been appalling and regrettable. The Government are committed to ensuring that lessons are learned and events are never repeated, but it is important that Sir Wyn is given the time and independence he needs to draw conclusions and report to Ministers on his findings.

Lord Sahota (Lab): My Lords, I thank the Minister for that Answer. My heart goes out to all the sub-postmasters, whatever community they belong to, who were victims of this miscarriage of justice. I thank Balvinder Gill, who is in the Public Gallery and who has been through a horrendous experience, along with his mother. Just like Balvinder's mother, many victims were hard-working, first-generation immigrants, who had accumulated wealth and had a good status in the community. They generally did not have a full grasp of the English language and were treated like second-class citizens by the Post Office. As the Minister will know, over 40% of sub-postmasters were from minority communities. Why was such a high percentage of Asian females prosecuted by the Post Office when, in reality, the prison population of Asian females is less than 5%?

Lord Offord of Garvel (Con): I thank the noble Lord. We are all deeply distressed by the events that have happened during this 25-year sorry saga. The noble Lord refers to one of the documents that was used by Post Office Ltd, which was released in 2023 under the Freedom of Information Act. That did have language in it using descriptors that were very much out of date and should have been updated; it was offensive language and the Post Office has now, rightly, completely changed its methodology. But, once again, Sir Wyn Williams will go into this in great detail.

Lord Fox (LD): My Lords, it is easy to see why the noble Lord was shocked by the racist terms uncovered, which were used by the investigating team in Post Office Ltd. It is even more shocking to note how recently those terms were being used, and still more shocking that many of the people who were using those terms are still employed by Post Office Ltd. We do not need the conclusion of the inquiry to know that Post Office Ltd is rotten to the core. When will the new chairman be appointed and when will the work start on cleaning this rotten business out?

Lord Offord of Garvel (Con): I share the noble Lord's frustration with this process. There was indeed offensive language used in the official documentation, which had not been updated since the 1980s and for which the Post Office has clearly apologised. As far as the culture in the Post Office is concerned, there is a rebuilding job required. The chairman has been removed and live conversations are going on right now to appoint a new chairman. My department is fully focused on rectifying this sorry situation.

Lord Sikka (Lab): My Lords, none of the racist terms in the report, codenamed Project May, could have been used without the approval of directors, all of whom were appointed by the Government. Rather than hiding behind the claim that the Horizon inquiry might look at it, the Minister needs to be accountable to Parliament. An inquiry is not a substitute for parliamentary accountability. So, can he tell us when he first became aware of these racist terms and why he has not already referred the Post Office to the Equality and Human Rights Commission for investigation?

Lord Offord of Garvel (Con): I thank the noble Lord. He is referring to the historical document that was released under the Freedom of Information Act in 2023. It has clearly been identified to have offensive language in it, which had not been updated since the 1980s. There is an ongoing inquiry into this. We all want to know the answer. The reason we got into this position in the first place is that people were deemed guilty rather than innocent without due process. Let us not do the same thing again.

Lord Forsyth of Drumlean (Con): My Lords, is it not obvious, as the noble Lord, Lord Fox, said, that there has been a complete failure of corporate governance here, and the only way to deal with that in the real world is to clear out the people responsible and put in some people who are capable of bringing order and good management to the Post Office?

Lord Offord of Garvel (Con): I thank my noble friend. We both come at this from the same point of view: the private sector board. The board currently in place is not the board that prosecuted any of these postmasters. In fact, of the non-executive directors, three have been appointed in the last 12 months. There is no question that there has been a failure of governance. As we discussed last time, the governance of this company goes through the chair to the Secretary of State to Ministers. That is where we need accountability and where the inquiry will focus.

Lord McNicol of West Kilbride (Lab): My Lords, as we have heard, the BBC recently reported a number of concerns and comments made by Post Office staff. One sub-postmaster was told:

"All the Indians are doing it. They have relatives so they take the money and send it to them abroad".

But neither the terms of reference nor the completed list of issues for the inquiry explicitly mentions racism or discrimination. Is the Minister comfortable that the Wyn Williams investigation will deal with these specific issues of racism and discrimination in his report?

Lord Offord of Garvel (Con): I thank the noble Lord for that question. The inquiry was set up by this Government in 2020, initially on a non-statutory basis, immediately following the case with Lord Justice Parker in 2019. That was then upgraded to a statutory inquiry. So Wyn Williams has the full authority of the judicial process to get to the heart of this matter. We are also being advised, as we know, by the noble Lord, Lord Arbuthnot, and the advisory committee. It is very clear that we will get to the bottom of all these issues.

Baroness Brinton (LD): My Lords, the question asked by the noble Lord, Lord Sahota, about why there were more Asian subpostmasters treated harshly and sent to prison is important. Nick Wallis, who has written the book on this scandal, said:

"As I spoke to them I did start to wonder why Asian sub-postmasters seemed to be getting far more punitive sentences than their white counterparts".

It is good that the Minister said that the Government want to learn from the mistakes. Is anyone looking at the difference in sentencing terms between white and Asian sub-postmasters?

Lord Offord of Garvel (Con): I thank the noble Baroness for that question. Absolutely—this is fundamental to looking at the overturning of the convictions. There were 983 wrongful convictions and the Ministry of Justice is now working through that process and it absolutely needs to understand exactly how these convictions came about and to whom.

Lord Berkeley (Lab): My Lords, the chairman of the Post Office, who has now resigned, was recently quoted in the press as being advised several times on the quiet by officials in Government to go slow with giving money back after prosecutions in order to save government expenditure. Was that the reason he was sacked or was it because the Government wanted to have a new broom there? It does not reflect very well on what the civil servants were reported to be telling him.

Lord Offord of Garvel (Con): I thank the noble Lord for that. I can inform the House that the Secretary of State for the Department for Business and Trade will be giving a detailed Statement in the other place on this in about half an hour's time, where she will categorically refute the allegations made by Henry Staunton—with evidence that we will put in the House of Commons Library to demonstrate that that was absolutely not the case. It does not match the facts. The fact of the matter is that we have compensated 64% of all the postmasters already and in the HSS scheme 100% already had offers in Henry Staunton's time—so the facts do not match the article.

Baroness Jones of Moulsecoomb (GP): My Lords, listening to the noble Lord, Lord Sahota, has made me question whether or not misogyny and sexism played a role in the sentencing of the Asian sub-postmasters. Is that being looked into as well?

Lord Offord of Garvel (Con): I thank the noble Baroness. As I said, these are all issues that will be looked at. Sir Wyn Williams has complete authority to look into all these matters and he will be guided by the public interest—where this is clearly in the public interest—and also by the advisory committee, with the noble Lord, Lord Arbuthnot, and Mr Bates et cetera.

Lord Kamall (Con): I refer noble Lords to my interests as set out in the register. I ask the Minister: does this not show one of the concerns that we should have about arm's-length bodies, where they are supposed to be accountable but there are many questions over their accountability? They can act in this way but actually not be held responsible. I wonder whether that has wider lessons for who regulates the arm's-length bodies and how they are accountable, not only to Parliament but to the British people.

Lord Offord of Garvel (Con): I thank my noble friend for that. I have said at the Dispatch Box before that there will quite a lot of examination required following the Wyn Williams report. There are number of arm's-length bodies that are set up to look like plcs but do not behave like plcs, largely because there has not been the challenge and the scrutiny typical of non-execs and from Ministers in terms of oversight. That is, I imagine, something which will be very much focused on following the Wyn Williams report.

Baroness Lawrence of Clarendon (Lab): The Minister mentioned Wendy Williams as looking into the sub-postmasters. Is it the same Wendy Williams who looked into the Windrush scandal? The mere fact is that the Government took no notice of that and have not implemented anything there, so how is that going to work with this new thing around the Post Office scandal?

Lord Offord of Garvel (Con): My understanding that the judge in this inquiry is Sir Wyn Williams. I will have to write and find out whether there is a connection to Windrush. I am afraid I am not aware of that.

Leasehold: Property Management Companies

Question

3.08 pm

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

To ask His Majesty's Government what plans they have to ensure leaseholders get the best value for money from services provided by management companies appointed by freeholders without their involvement or consent.

Lord Kennedy of Southwark (Lab Co-op): My Lords, I beg leave to ask the Question standing in my name on the Order Paper. I refer the House to the register of interests and the fact that I am a leaseholder.

The Parliamentary Under-Secretary of State, Department for Levelling Up, Housing & Communities (Baroness Penn) (Con): My Lords, I declare my interest as a leaseholder. The Leasehold and Freehold Reform Bill will make long-term changes to improve home ownership for millions of leaseholders in England and Wales. Measures to empower leaseholders and improve their consumer rights, such as better transparency of fees and charges and improved access to the right to manage, will make management companies more accountable to leaseholders who pay for their services.

Lord Kennedy of Southwark (Lab Co-op): Leaseholders are at a complete disadvantage with regard to service charges, and the Bill before the other place does not change that fact, nor do the overoptimistic comments of the right honourable Member for Surrey Heath, which go way beyond what the legislation proposes. When will we get regulation of property agents, following the review by the noble Lord, Lord Best, published in 2019? When will we get proper control over the system whereby leaseholders pay out all the money but have no say in the services provided?

Baroness Penn (Con): I am afraid I have to disagree with the noble Lord's assessment of the Bill. I can set out a number of ways in which the Bill will improve the position of leaseholders regarding service charges. It will require greater transparency of service charges, so that leaseholders receive key information regularly; we will rebalance the legal costs regime, giving leaseholders greater confidence to challenge their service charges; it will replace the buildings insurance commissions system for managing agents, so that transparent admission fees are in place; and it will increase the non-residential limit from 25% to 50% for buying the freehold or exercising the right to manage, giving leaseholders greater rights in respect of taking over the freehold of their property or managing it themselves.

Lord Young of Cookham (Con): My Lords, my noble friend will know that the law of forfeiture allows a managing agent to take possession of a flat worth, say, £500,000 if there is a debt of more than £350 outstanding. In those circumstances, the freeholder pockets the difference between the value of the flat and the debt. Surely the leasehold Bill should put a stop to that.

Baroness Penn (Con): My Lords, the Government believe that forfeiture is an extreme measure and should be used only as a last resort. In practice, it happens very rarely and is subject to the right to relief. However, any changes to forfeiture would require a careful balancing of the rights and responsibilities of landlords and those of leaseholders. As a first step, we have asked the Law Commission to update its 2006 report on this matter, given the passage of time since then, and to take into account the implications of the reforms currently under way, so that we can consider what action should be taken.

Baroness Taylor of Stevenage (Lab): My Lords, it is not just leaseholders who face these practices. What response can the Minister give to freeholders who face the imposition of private management companies charging extortionate and unregulated yearly fees, instead of having public areas adopted by local authorities? I believe this practice is known as "fleecehold". Effectively, this means freeholders paying twice for maintenance: once through their council tax and again through fees to private management companies. What measures will the Government take to regulate these practices?

Baroness Penn (Con): My Lords, the Bill aims to grant freehold homeowners on private or mixed-tenure estates the same rights of redress as leaseholders in this area—equivalent rights to transparency on estate charges and the ability to challenge those charges at tribunal. I believe the CMA is also looking into this matter, and we look forward to receiving its final report.

Baroness Pinnock (LD): My Lords, some freeholders, although not all, treat their leaseholders as a cash cow. I have two examples for the Minister. First, there was a ground rent increase—and there is no value at all to the leaseholder in a ground rent—of 113% this year, which was backdated three years, and the sum was demanded to be paid in full in four weeks. Secondly, there was a 23% increase in service charges this year. There is no accountability. Transparency there is, and challenge there can be, but nothing comes of it—and it seems that nothing in the Bill will change that. Can the Minister tell me that it will?

Baroness Penn (Con): I can. The Government have consulted on a range of options to reform existing ground rents, having legislated in 2022 to set all new ground rents at a peppercorn rate. Following the outcome of that consultation, we aim to legislate in the current Bill before Parliament. As I say, not only will we give leaseholders greater rights to transparency on what service charges are charged for, to ensure that they are reasonable, but we are changing the cost regime in the courts so they can challenge those charges where they think they are unreasonable.

Baroness Butler-Sloss (CB): My Lords, I have a friend who is trying to sell their flat in London. The managing agents took so long to respond to the requirement that they consented that the purchasers went away. Will this Bill do any good for that situation?

Baroness Penn (Con): The Bill contains both a time limit and cost limit for the provision of information from freeholders to leaseholders when they are seeking to sell their properties. I do not know the exact circumstances of the case the noble and learned Baroness refers to, but action is being taken in this area.

Lord Hunt of Kings Heath (Lab): My Lords, the Minister will be aware that legislation in 2000 and 2004 abolished leasehold in Scotland. Given noble Lords' concerns about the current Bill, why on earth can we not be more radical and abolish leasehold in England and Wales?

Baroness Penn (Con): Following previous Questions I looked at the example of Scotland, which we do seek to learn from, but the circumstances there are significantly different. At the time, there were only some 9,000 long leasehold properties in Scotland, compared with around 5 million leasehold properties in England and Wales. The majority of Scottish leases had ground rents of only £2.50 per year, whereas the average ground rent in England is £300 per year. It is more complicated to take reform forward in England, but the Government are committed to doing this. The Leasehold and Freehold Reform Bill will take important steps toward delivering commonhold as an alternative in future.

Lord Best (CB): My Lords, there are some very good things in the Leasehold and Freehold Reform Bill, but the Government have stopped short of instituting a proper regulator of managing agents, which would solve many of these problems and difficulties. Why stop short? Why not do the job properly and have a regulator of property agents?

Baroness Penn (Con): I welcome the work of the noble Lord on this issue, and I know that your Lordships will be looking at it further in Committee. It is already a legal requirement for property agents to belong to one of two government-approved redress schemes. We also welcome ongoing work undertaken by the industry itself to raise professionalism and standards across the sector, which will make property managing agents more accountable to leaseholders. We will keep that and the question of further regulation for the sector under review.

Lord Kennedy of Southwark (Lab Co-op): My Lord, if leaseholders want to change their managing agent, they need 50% plus one of the residents to vote for change. But in many modern blocks of, say, 100 flats, perhaps 40% to 50% are being sublet, and you have no right to know who the people are who need to vote. How can leaseholders who want to change their managing agent exercise their right to change? It is impossible, because they do not have a right to that data.

Baroness Penn (Con): Leaseholders wishing to take forward the right to manage claim will need to obtain the title documents of their building from His Majesty's Land Registry. Those will contain the names and addresses of leaseholders in the other flats in the building, so it should be possible to contact them. On the voting threshold of 50% plus one, we agree with the Law Commission's recommendation that these existing requirements should not be changed, because they make sure that a minority of leaseholders cannot impose changes on the majority.

Post Office Horizon Scandal: Compensation Payments

Private Notice Question

3.19 pm

Asked by ***Lord Touhig***

To ask His Majesty's Government what assessment they have made of claims that the Post Office was asked to delay compensation payments to sub-postmasters who were victims of the Horizon IT scandal.

The Parliamentary Under-Secretary of State, Department for Business and Trade and Scotland Office (Lord Offord of Garvel) (Con): I thank the noble Lord for that Question. I can utterly refute this allegation. This Government have sped up compensation for victims and have consistently encouraged postmasters to come forward with claims. To suggest that any actions or conversations happened to the contrary is incorrect. In fact, upon appointment, Mr Staunton was set concrete objectives in writing to focus on reaching settlements for claimants—clear evidence of the Government's intent. My right honourable friend the Secretary of State for Business and Trade will shortly give an update to the House of Commons with a detailed rebuttal of these allegations.

Lord Touhig (Lab): I thank the Minister for the point that he makes about the Statement in the other place. I am sure that this whole House will welcome it being repeated in this House later in the week. Mr Henry Staunton, the former chairman of the Post Office, said that he was told by a "fairly senior person"—his words—to stall on compensation payments to Horizon victims. The *Sunday Times* yesterday said that the Government utterly refuted these allegations, and the Minister has repeated that today. To make this statement with such confidence, obviously the Government will have had to fully investigate the matter, and I am sure that the Minister would want to confirm this. Can the Minister tell us who carried out this investigation and whether Mr Staunton was approached and asked for the name of the person he said had told him to stall the compensation payments? Can the Minister confirm that the Government will provide a full copy of the investigation report on the Post Office Horizon IT inquiry?

Lord Offord of Garvel (Con): The sadness about this is that the Secretary of State said that she did not want to conduct HR in public, and this is now the situation that we have got ourselves into. We are very clear that no civil servant made that statement; perhaps it is up to Mr Staunton to provide a name, and we can then investigate whether that was the case. In the meantime, it does not make sense, given that the Post Office has been fully funded for compensation already—before the programme "Mr Bates vs The Post Office", two-thirds of postmasters had had their claims met in

[Lord Offord of Garvel]
full. Indeed, of the £160 million paid out so far to sub-postmasters, £138 million was paid out by December, before the television series. Therefore, it was fully funded, and there is no basis for the allegation.

Lord Fox (LD): My Lords, clearly the public statements of the Secretary of State and the former chair, Staunton, are mutually exclusive, and we look forward to hearing the Secretary of State's version, which I hope will be repeated in your Lordships' House. It would be easier to understand in full if it was supported by transcripts of all the relevant meetings. In her social media rebuttal, the Secretary of State said that she

"dismissed Staunton due to very serious allegations about his conduct while Chair of the Post Office".

Can the Minister confirm that that is true and explain to your Lordships' House why those allegations were not in fact investigated, rather than simply dealt with through a summary dismissal? If the Minister is unable to do so now, can he come back when the Statement is repeated and tell your Lordships' House the answer to those questions?

Lord Offord of Garvel (Con): As I have said, a detailed Statement on this will be given in the other place, and there will also be transcripts and meeting notes put in the House of Commons Library for full interrogation. It is clear that there were very serious concerns about governance. The noble Lord himself mentioned a toxic culture in the earlier Question on this issue, and the Government's requirement to clean it up and change it. The most important figure on any board of any company is the chair, and, if the culture is wrong, perhaps the best place to start would be to remove the chair, which is what has happened. A full Statement will be given as to the circumstances of that, but it was not done on a whim and it was not a summary dismissal.

Baroness Ritchie of Downpatrick (Lab): My Lords, ordinary sub-postmasters throughout the UK have had their integrity and reputation impacted upon. I was talking to one of those people this afternoon, from Northern Ireland. They are part of the 33% who have not yet received payment and their simple question is: when will those outstanding payments be made to sub-postmasters?

Lord Offord of Garvel (Con): The Government can go only as fast as the claims come in. Take as an example the GLO 555: 477 of them do not have any convictions. Of those 477, 58 have submitted a claim, of which an offer has been made to 48 and 41 have accepted. We cannot go any faster; we can go only at the speed at which claims are made.

Lord McNicol of West Kilbride (Lab): My Lords, the allegations made by Henry Staunton over the weekend are incredibly serious. Thousands of people, as we have discussed many times in your Lordships' House, have been robbed of their lives, liberty and livelihood. For them to experience any modicum of justice relies on the truth coming out. I have one specific question, because I know we will come back to this, probably on Wednesday, to discuss the Statement being made in the other place. Will the Government publish all correspondence and minutes of meetings between the relevant departments, UKGI and the Post Office, and put them in the parliamentary Library?

Lord Offord of Garvel (Con): Once again, we are in a situation where we are dealing with private individuals and HR. We should not be doing that in this Chamber, or indeed in television studios; individuals' livelihoods are at stake here. We did not want to be in this position, but we have to refute the allegations made against us. A judgment will be made by the Secretary of State as to all supporting documentation, and read-outs of minutes will be put in the House of Commons Library. At the end of the day, it comes back to the fact that we need a full inquiry to find out what has actually happened here.

Lord Forsyth of Drumlean (Con): My Lords, I have seen reports that there are still problems with the Horizon system and that some postmasters are still experiencing the problem of underpayments that created this disastrous position. My question is about ensuring that compensation goes to people as quickly as possible. Can my noble friend assure me that that will be the case and that we will look into the suggestion that this is still an ongoing problem, and, if so, ensure that remedial action is taken?

Lord Offord of Garvel (Con): The response from management on this—and this has now been audited—is that issues with the software system are minimal, and £150 million of government money has now gone in to completely replace the system. A lot of investment is going in to ensure that this does not happen again. On compensation for victims, of the 2,700 claims in the HSS, 2,400 have already had their payments cleared—that is 85% of that category. The more sluggish category is the GLO, because those people have more complicated claims. As I said before, we have received only 58 claims from that cohort. As soon as we get them, we will process them.

Baroness Brinton (LD): My Lords, following on from the question of the noble Lord, Lord Forsyth, on 10 January, the Prime Minister said that postmasters will be cleared and compensated swiftly. On the same day, Kevin Hollinrake MP said at the Dispatch Box that all compensation should be paid by August. However, on 28 January, Kemi Badenoch said on the BBC that the deadline was not a priority and that getting governance sorted out at the Post Office was more important. Given that in the last few days a number of postmasters have said that they have received derisory offers—in the case of Alan Bates, one-sixth—is this limping things along?

Lord Offord of Garvel (Con): The reality is that the Government are not dragging their feet—quite the opposite. We will process the cases as quickly as they are put in. When cases are put in, and if the offer made is rejected, there is a full appeals process for postmasters, which goes all the way up to a High Court judge. At the moment, Mr Bates has not appealed that decision. All these individuals have to have time to assess the offer that was given. We need these offers to be fair

and reasonable. There is a reason for all the offers to be made. We are not here to comment on individual cases, but the money is there for compensation, and all these postmasters and postmistresses will be compensated for the damage that has been done to them.

Baroness Chakrabarti (Lab): My Lords, in answer to previous questions about racism or misogyny, for example, the Minister clearly and repeatedly said that that is a matter for the Wyn Williams inquiry. My question is about process. How do the Government decide that matters should be dealt with by the public inquiry, and how do they decide that it would be useful, expedient and desirable for them to investigate and respond themselves?

Lord Offord of Garvel (Con): The Government are a shareholder, and there is only one shareholder in this company, if you can call it a company—I have never come across a company that has only one. Therefore, the Secretary of State is exercising her shareholder right to reorganise the board of this company to make it fit for purpose to make sure that this does not happen again. In the meantime, the Government, through the Treasury, provided the thick end of £1 billion to pay compensation. The Government also committed to taking full recourse against Fujitsu in due course. In the meantime, a statutory inquiry, with statements being taken under oath, is ongoing. When the truth has emerged, there will be a price to pay.

Lord Stirrup (CB): My Lords, in answer to an earlier question, the Minister said that £150 million of public money has been expended correcting the system. Why is it not £150 million of Fujitsu's money? Will whatever expenditure the Government have made in putting things to rights be extracted in due course from Fujitsu?

Lord Offord of Garvel (Con): That is absolutely the case, and my colleague in the other place, Minister Hollinrake, has made it very clear that we will pursue Fujitsu for its share of the compensation. It is not right that the sole payer of the compensation should be the taxpayer.

Lord Sahota (Lab): My Lords, what is the government advice to the postmasters who, due to their experience, have developed mental health problems, and received all kinds of electric shocks and so on, and are unable to work?

Lord Offord of Garvel (Con): The government advice is that each individual claimant must submit his or her claim, and money is available to them to take legal and medical advice. That is part of the reason why we think that, of the 477 cases, we have 58 claims—because they are more complicated—quite rightly being put together by each claimant and their advisers. When these claims are submitted, we have guaranteed that we will action 90% of them within 40 days of receipt.

Baroness Kramer (LD): My Lords, the noble and gallant Lord's question was about not compensation but the issue of funding the correction of the software to the tune of £150 million. The entirely appropriate question is: why is Fujitsu not paying for the reworking of that software, rather than the Government and the taxpayer?

Lord Offord of Garvel (Con): Perhaps I should have been clearer: the Government are funding this company, Post Office Ltd, to effectively commission a new system to replace Horizon. It might be reasonable to assume that it will not be Fujitsu that does the second system.

Lord Stevenson of Balmacara (Lab): My Lords, I hope whoever takes on this responsibility will bear in mind the point made by the noble Lord, Lord Forsyth, that there may well be continuing problems deep inside the Post Office systems. I speak as an accountant, and I declare my interest. Basic double-entry accounting systems should never have allowed this system to have occurred. What guarantees can the noble Lord give us that a proper accounting-based system will be put in place of the current Horizon?

Lord Offord of Garvel (Con): The issue here is that the sub-postmasters and sub-postmistresses who run these shops know their accounts back to front—that is the whole point. They know to a penny what they are doing from one week to the next, which is why perhaps the greatest sadness in this saga was those honourable people being told that they were alone, when in fact there were thousands of them. We are clear now that, in day-to-day operational matters, we do not have these issues. We are clear that we need to put a new system in place, which is what the Government are committed to doing.

Lord Berkeley (Lab): My Lords, in response to an earlier question, the Minister said that the chairman had to go because he was effectively responsible for the toxic situation within the company, and it was the chairman's job at the top to be responsible for this. I am sure he would agree that that is the case, but what about all the other people within the Post Office? Is the Minister saying that none of them had any responsibility for the toxicity within the whole company?

Lord Offord of Garvel (Con): A company's culture is set by the board and the management. There has not been a prosecution since 2015, and no one on the board of the Post Office today was involved in the prosecutions. The current board is completely different, and we are now dealing with getting the culture right for this company going forward. We always start with the chair, because that is the top position in the company.

Lord Carlile of Berriew (CB): My Lords, can the Minister explain why in 2023, of all things, the Horizon contract was extended?

Lord Offord of Garvel (Con): I am rather relieved to say that I have no idea, so I shall write to the noble Lord.

Baroness Hoey (Non-Afl): My Lords, have His Majesty's Government now put a block on any new government contracts with Fujitsu?

Lord Offord of Garvel (Con): I am not aware that that has happened formally, but the law of common sense says that it must be the case.

Occupational Pension Schemes (Collective Money Purchase Schemes) (Amendment) Regulations 2023

Motion to Approve

3.35 pm

Moved by ***Viscount Younger of Leckie***

That the draft Regulations laid before the House on 14 December 2023 be approved. *Considered in Grand Committee on 13 February.*

Motion agreed.

Nuclear Decommissioning Authority (Pension Scheme Amendment) Regulations 2024

Motion to Approve

3.36 pm

Moved by ***Lord Roborough***

That the draft Regulations laid before the House on 19 December 2023 be approved. *Considered in Grand Committee on 13 February.*

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

Motion agreed.

Automated Vehicles Bill [HL]

Third Reading

3.36 pm

Scottish and Welsh Legislative Consent sought

Motion

Moved by ***Lord Davies of Gower***

That the Bill be now read a third time.

The Parliamentary Under-Secretary of State, Department for Transport (Lord Davies of Gower) (Con): My Lords, before I begin, I will briefly update the House on our engagement with the devolved Administrations. In line with the Sewel convention, the Government are seeking legislative consent Motions from the devolved legislatures of Scotland and Wales. The legislative consent Motion process is engaged for Scotland and Wales in relation to automated passenger services and the powers under Clause 40 to require reports from the police and local authorities. The Welsh Government laid their legislative consent memorandum in November. I am grateful for their constructive engagement to date. The Scottish Government laid an initial memorandum in December and we are awaiting a supplementary memorandum, outlining their recommendation on consent, later this month. UK government officials are working closely with their Scottish counterparts to clarify questions and provide support. The devolved Governments are rightly taking a close interest in this legislation, and we will continue to work constructively with them to progress the consent process.

A privilege amendment was made.

3.38 pm

Motion

Moved by ***Lord Davies of Gower***

That the Bill do now pass.

Lord Davies of Gower (Con): My Lords, I beg to move.

Lord Naseby (Con): My Lords, I will make a short speech, conditioned by my being a former pilot with experience of Boeing, probably the most sophisticated company in the world on unmanned aircraft. The net result so far has been that 346 people died recently, although, thankfully, nobody died in the Alaska experience. Given that situation, although this Bill is supposedly about safety on the roads, we need to take great care; I recognise that we need a framework here, but I hope my noble friend will listen to what the noble Lord suggested earlier in the debate and have the Office of Rail and Road help oversee this Bill as it is implemented in relation to vehicles on the road.

Lord Moylan (Con): I briefly congratulate my noble friend the Minister on bringing this useful, modest and largely technical Bill to its completion. The Government have expressed optimism that the arrival of automated vehicles in large numbers on our roads is going to have no effect whatever on how the rest of the road system and other road users operate. It is the principle on which the Bill is based but, to me, it seems to be credible only in the somewhat artificial reality of your Lordships' House.

My noble friend the Minister and his department still need to address a worry many of us have. He has stated that nothing will change—that facilities for pedestrians, for example, will not be affected—with the arrival of these vehicles, but it is clear that is not wholly credible. The people who have invested in automated vehicles will find that pedestrians and other road users are obstacles to the rollout of their plans, and they will then turn up at the ministry and say, "We have spent all this money, so now you have to do something to make it work for us". At that point, officials will roll over, Ministers will wave their hands and the money will decide what the policy is. All of this will happen without a parliamentary debate considering the effect of the vehicles and what they mean for road users, especially in urban environments. I hope my noble friend the Minister will find an opportunity to allow us, and the public, a debate about what the vision of our cities is when automated vehicles are operating in large numbers as the Bill makes provision for.

Baroness Randerson (LD): My Lords, in line with the usual courtesies of the House, I thank the Minister and his team, all of whom were exceptionally helpful and willing to give their time and expertise in some useful meetings with myself and my Liberal Democrat

colleagues. I also thank my noble friends Lady Brinton and Lady Bowles, supported by Sarah Pughe in our Whips' office, for their work. Finally, I thank noble Lords across the House: there was exceptional co-operation in improving the Bill, and one of the outcomes was the amendment of the Minister which clarified the statement of safety principles.

The Bill was a logical progression from 2018, and I would predict that this second Bill will be followed, I am sure, by a third Bill to try and get this right. There are still unanswered questions, and I will briefly list them. There needs to be a fresh look at the legislative framework affecting delivery vehicles that are already on our streets. Those who operate them are concerned about lacunas in the legislation.

We are also particularly concerned about the issue of disabled access, which is where my noble friend Lady Brinton worked closely with the noble Lord, Lord Holmes. As the noble Lord, Lord Holmes, said,

"the promise of automated vehicles is accessible mobility for all".— [*Official Report*, 6/2/24; col. 1585]

It is, therefore, deeply disappointing that the concept of disabled access—from the physical space of the vehicle to the software that drives it—is not to be built in from the start. It always costs more to adapt things later, and I believe this is yet another missed opportunity.

Finally, it is a great pity that the vote on the amendment in the name of the noble Lord, Lord Liddle, was lost so narrowly. It was just the kind of thing an advisory council could provide a sense of direction on. I hope the Minister will reflect on the need for certainty on the future structure of appropriate bodies to provide advice and regulation.

We remain concerned, in particular, about data protection in respect of the Bill, which is predicated on a future conglomeration of personal and commercial data, and data associated with the security of the state. It will come together in an unprecedented way. It would enable a massive intrusion of personal privacy, but in its entirety would offer massive power to a malign foreign power or even to a clever, meddling, individual hacker. Although it is well intentioned, the Bill hardly starts to tackle the dangers of that accumulation of data.

Having said all that, I thank the Minister again for his co-operation, assistance and leadership on the Bill.

Lord Berkeley (Lab): I join other noble Lords in thanking the Minister for the time he spent explaining things on the Bill. I support everything that has been said in this very short debate. I am also sad that the advisory committee did not get voted through. My idea of having an independent regulator was the same thing.

The noble Lord, Lord Moylan, made the most important point—that behind the technology for this will be very large companies with enormous balance sheets. When equipment starts operating on the road, if the Government and Parliament have to consider how to balance the interests of those companies with disabled people, cyclists, or pedestrians, it will be very hard to do that and resist the pressure from these big companies without some kind of independent scrutiny. As other noble Lords have said, we look forward to the next Bill with interest.

Lord Ranger of Northwood (Con): My Lords, I echo the thanks to my noble friend the Minister and his team for all the work they have done on the Bill. I also echo the thoughts that this is just one Bill. We are on a journey with this technology and these vehicles, and where it will be going.

I would like to address some of the comments that have been made from all sides of the House, because I hear the fear, worry and concern, as technology takes a giant leap forward. We worry about the implications for the world as we see it now. However, the world changes and adjusts. I understand the questions the noble Baroness had about data, its ownership, its power and the responsibility. When we launched the Oyster card in London in 2003, the first time data would be captured en masse—tracking peoples' individual movements—I remember similar challenges being made as to what we would do with it.

We have come a long way in 20-plus years. We understand a lot more about the power of data and how it can be used for the benefit of people, as much as the challenge there is to keep it safe. I hope that will be echoed in the usage of data with these vehicles.

Additionally, I hear the voice of my noble friend Lord Moylan. We worked together many a year ago at TfL, bringing in implementations. Back then, there was a significant challenge to another change we were implementing. We were told pedestrians would be vulnerable; we were told accessibility would be reduced; we were told safety would be jeopardised. What was the change we were bringing in? It was bicycles: the cycle hire scheme for London. There are always challenges to bringing in new schemes. They are always seen as having many problems on safety and security, and vulnerabilities. As I say, this is in the context of the world as we see it, not maybe as we can amend it and make it better.

This is the journey. There will be more Bills, and we will scrutinise further the use-cases and the opportunities that this technology will bring, for the benefit of designing the future with safety in mind, I hope.

Lord Tunnicliffe (Lab): My Lords, I thank the Minister and his team for their co-operation on the Bill. I thank my co-spokesman, my noble friend Lord Liddle, and Grace Wright, our researcher.

When I wrote these few lines down, I was full of unbridled optimism for the Bill—but I had better come back a bit. I am sorry that the concerns of the noble Baroness, Lady Randerson, have not been satisfied; they were good and proper concerns, but I am sure that they will be properly considered.

Proceedings on the Bill have been very much the House of Lords at its best, and that was very much facilitated by the Minister. Like the Lib Dems, we had several meetings with him, and issues were generally treated on their merits. I am sorry that the noble Lord, Lord Moylan, is not more reassured by the changes we made to the safety standard. I believe that the safety standard that is now in the Bill is a good one that regulators will be able to work with and that is robust enough to stand up to enterprises with a great deal of money. I, for one at least, say that we have a better Bill of which this House can be proud.

Lord Davies of Gower (Con): My Lords, it is nearly three months since the Bill had its Second Reading in this House. I am hugely grateful to colleagues on all sides for the very detailed scrutiny and challenge that they have provided over that period, as has already been alluded to. I heard what noble Lords have said.

The Bill has seen real benefit from the open and positive manner in which the opposition Front Benches have engaged. I thank the noble Lords, Lord Liddle and Lord Tunnicliffe, for the series of constructive discussions we have held on safety and other matters. In particular, the noble Lord, Lord Tunnicliffe, brings with him many decades of experience in the world of transport safety, and I am pleased that we have been able to draw on that during the Bill's passage. I am grateful too to the noble Baroness, Lady Randerson, for her contributions, both in the Chamber and in our separate meetings. I also thank those who joined me for our two round-table sessions on data and accessibility, particularly the noble Baronesses, Lady Bowles and Lady Brinton, and my noble friends Lord Holmes and Lord Borwick.

I am also grateful to the teams at Wayve and Oxa, which have been so accommodating in welcoming me and colleagues across the House to experience self-driving technology in action. For those who have not yet had the chance, I can tell them that riding in one of these vehicles is simultaneously astonishing and—for want of a better phrase—reassuringly dull.

I am sure that colleagues will join me in thanking the countless policy officials and legal experts standing behind this piece of legislation. I am very grateful to the Bill team: Josh Kossoff, Marty Zekas, Dani Heard, Fran Gilmore and John Latham. My thanks also go to the policy leads Jenny Laber and Catherine Lovell; to Sam Cook, our drafter; and to Adam Lawless and Sean McGarry in my private office.

Finally, I pay tribute, one last time, to the Law Commission of England and Wales and the Scottish Law Commission. Their painstaking review is the foundation on which this legislation is built, and we have felt the benefit of their expertise throughout our debates. In particular, I thank the review's lead lawyer, Jessica Uguccioni. The Bill receiving its Third Reading today is, in no small part, the product of more than half a decade of her work.

At Second Reading, I spoke of the potential benefits of bringing self-driving technology to our roads: safety, connectivity and new economic opportunity. Thanks to the careful and considered scrutiny of this House, the Bill now moves to the other place all the better able to make those benefits a reality.

Bill passed and sent to the Commons.

Safety of Rwanda (Asylum and Immigration) Bill

Committee (3rd Day)

3.54 pm

Relevant documents: 2nd Report from the Joint Committee on Human Rights and 3rd Report from the Constitution Committee

Debate on Amendment 35 resumed.

The Parliamentary Under-Secretary of State, Home Office (Lord Sharpe of Epsom) (Con): My Lords, the independent monitoring committee was established on 2 September 2022 under the terms of the initial memorandum of understanding. Its role has subsequently been enhanced by the treaty between the UK and Rwanda to ensure that the obligations under the treaty are adhered to in practice. The monitoring committee's role is to provide an independent assessment of delivery against the assurances set out in the treaty. The noble Lord, Lord Coaker, asked last week about how many members of the committee have been appointed, whether the committee has yet agreed the terms of reference that it is supposed to have agreed, and whether they have been published.

The monitoring committee is made up of eight independent experts, whose full details can be found on GOV.UK. Prior to the signing of the treaty between the UK and Rwanda by the Home Secretary and its subsequent laying in Parliament, the monitoring committee met on 4 December 2023 to formally agree the enhanced monitoring provisions the treaty sets out. These build on the terms of reference and monitoring plan that the monitoring committee had produced following the Court of Appeal judgment, the primary purpose being to address the Supreme Court's concerns about real-time monitoring and thus ensure that mechanisms were in place to prevent the risk of harm to relocated individuals before it could occur. The monitoring committee discussed and approved forward-looking changes to the terms of reference and monitoring plan to enhance the monitoring regime in line with the provisions proposed in the treaty.

To make it clear, the terms of reference and enhanced monitoring plan are available publicly on GOV.UK. However, to summarise, it sets out the following details of the committee's remit: monitoring compliance with the assurances given in the treaty and associated notes verbales; reporting to the joint committee on its findings as to, for example, His Majesty's Government's and the Government of Rwanda's implementation of the obligations in the treaty, reception conditions, accommodation, processing of asylum claims, and treatment and support of relocated individuals at all times while they remain in Rwanda; it may publish its reports following notification to the joint committee; it is expected to report any significant issues to the joint committee straightaway; it may provide advice or recommendations to the joint committee on actions which should be taken to address identified issues; monitoring complaints handling by His Majesty's Government and the Government of Rwanda; and developing its own complaints system to allow relocated individuals and their legal advisers to make confidential complaints regarding any alleged failure to comply with the obligations in the treaty—including as to treatment of a relocated individual—or any element of the processing of their asylum claim in accordance with the treaty.

As I set out in earlier debates in response to similar amendments tabled by the noble Lord, Lord Anderson of Ipswich, Article 15 of the treaty provides that the UK and Rwanda must establish and maintain a monitoring committee for the duration of the term of the agreement. This means that both parties are obliged

to ensure that the monitoring committee continues in operation for the life of the agreement, and this obligation is binding in international law.

Noble Lords last week also asked about safeguarding arrangements for relocated individuals. Article 13 of the treaty makes specific provision that Rwanda will have regard to information provided about a relocated individual relating to any special needs that may arise and shall take all necessary steps to ensure that those needs are accommodated. The treaty makes it clear that the agreed monitoring mechanisms must be in place by the time the partnership is operationalised. It specifically provides that there will be an enhanced initial monitoring period for a minimum of three months—from the date removal decisions commence in the United Kingdom—where monitoring shall take place daily, to ensure rapid identification and response to any shortcomings.

Under the treaty, the monitoring committee will have the power to set its own priority areas for monitoring, have unfettered access for the purposes of completing assessments and reports, and have the ability to publish those reports as it sees fit. The committee will monitor the entire relocation process from the beginning—including initial screening—to relocation and ongoing settlement and integration in Rwanda.

The monitoring committee will have the ability to make unannounced visits to accommodation, asylum processing centres and any other locations where documents or information relating to relocated individuals, or their claims and appeals, are held. It will also be able to sit in on interviews by the first instance body with the express consent of the individual being interviewed and to observe hearings before the appeal body.

4 pm

Lord Falconer of Thoroton (Lab): I apologise for interrupting the Minister, but are we right to understand that he is saying that there will be no deportations to Rwanda until the monitoring committee is up and running?

Lord Sharpe of Epsom (Con): As far as I understand it, that is the case.

On a point that we will debate further in relation to Amendment 76A tabled by the noble Lord, Lord Purvis of Tweed, and the noble Baroness, Lady Hamwee, during the period of enhanced monitoring, the monitoring committee will report to the joint committee in accordance with an agreed action plan to include weekly and bi-weekly reporting as required. It will otherwise produce a formal written report for the joint committee on a quarterly basis over the first two years of the partnership, setting out its findings and making any recommendations.

The monitoring committee will be supported in all its work by a new support team—

Lord Kerr of Kinlochard (CB): Will the Minister say whether the reports from the monitoring committee to the joint committee will be made available to the House?

Lord Sharpe of Epsom (Con): I cannot say that at the moment, but, as I have said, they will be published on a regular basis.

The monitoring committee will be supported in all its work by a new support team, as set out in Article 15.(8) of the treaty. The new support team will consist of individuals who do not work for either the UK Government or the Government of Rwanda. The monitoring committee has already met three times since its inception and has agreed to the publication of its terms of reference and enhanced monitoring plan, which are both available online as part of the supporting evidence document that the Government have published. Therefore, we consider that Amendment 86, tabled by the noble Lord, Lord Coaker, is unnecessary.

Amendments 81 and 82 tabled by the noble Baroness, Lady Chakrabarti, and my noble friend Lord Hailsham seek to ensure that the Act does not come into force upon ratification of the treaty but instead requires secondary legislation to be laid before commencement requiring a JCHR report on the safety of Rwanda and agreement on this point from the House of Commons and the House of Lords. Amendment 71 in the name of the noble Lord, Lord German, would introduce a new clause whereby the Secretary of State must lay a statutory instrument before Parliament every six months stating that their assessment is that Rwanda is a safe country. This Bill reflects the strength of the Government of Rwanda's protections and commitments given in the treaty to people transferred to Rwanda in accordance with the treaty. The treaty, alongside the evidence of changes in Rwanda since summer 2022, already enables Parliament to reach the conclusion that Rwanda is a safe country. There is therefore no requirement for any further legislation or additional reporting prior to commencement.

The UK-Rwanda partnership is a long-term policy and forms part of a wider set of measures to tackle illegal migration. A review of the policy every six months or two years would be an inefficient use of both government and parliamentary time. Furthermore, as I have set out, this is not needed, as the functions of the independent monitoring committee have been enhanced to ensure that obligations under the treaty are adhered to in practice. These arrangements, which have been carefully agreed with the Government of Rwanda and will be binding in international law, will ensure continued compliance with all the terms of the treaty.

It is also worth noting that Article 4.(1) of the treaty sets out clearly that it is for the UK to determine the timing of a request for relocation of individuals under the terms of the agreement and the number of such requests made. The treaty does not place on the UK an obligation to make any such request. This means that the Government would not be obligated to remove individuals under the terms of the treaty if there had been, for example, an unexpected change to the in-country situation in Rwanda that required further consideration. As is the case in many scenarios, the Government would be able to respond and adapt as necessary.

I turn to Amendments 69 and 87 in the name of the noble Lord, Lord Coaker, and Amendment 74 in the name of the noble Lord, Lord Purvis of Tweed. This legislation does not impact the financial agreement with Rwanda which was reached in 2022 through the memorandum of understanding for the migration and economic development partnership. Noble Lords will be aware that we have provided Rwanda with £220 million

[Lord Sharpe of Epsom]
as part of the economic transformation fund and £20 million as an advance credit to pay for operational costs in advance of flights commencing. The spend on the MEDP with Rwanda so far is £240 million. In response to a point raised by the noble Lord, Lord Purvis, the £100 million is not a credit line, as he indicated last week.

There was an initial investment of £120 million in 2022 as part of a new economic transformation and integration fund, ETIF, created as part of the MEDP. The ETIF is for the economic growth and development of Rwanda. Investment has been focused in areas such as education, healthcare, agriculture, infrastructure and job creation. A further payment of £100 million was made in 2023 through the ETIF as part of the partnership. We anticipate providing another £50 million in the next financial year. This is not new but follows the same arrangement from 2022. We also made a separate payment of £20 million to the Government of Rwanda in 2022 in advance of flights to support initial set-up costs of the asylum and processing arrangements under the MEDP.

With regard to the question of whether there will be another tranche of funding for the Hope hostel in the next financial year, procurement of accommodation is for the Government of Rwanda. Accommodation costs are covered by the funding stream for operationalisation, and it is then up to the Government of Rwanda as to which accommodation they procure. This legislation also does not impact the process for removals to a safe third country, so the appraisal set out in the illegal migration impact assessment remains unaffected. The published economic note on this legislation explained that the exact cost will depend on the details of the implementation and the level of deterrence. The Government are already committed to disclosing further payments made as part of the economic transformation fund and the per-person relocation costs as part of the department's annual accounts in the normal way.

Your Lordships will also be aware that the National Audit Office will be producing a factual report on the costs of this partnership. Officials have been working closely with the National Audit Office to ensure that they have the relevant information required for this. I cannot give any opinion on the date of publication, but it will likely be in the near future.

Finally, with the—

Lord Purvis of Tweed (LD): My Lords, I am grateful to the Minister for outlining the elements of the ETIF and the MEDP, but could he place in the Library a more detailed breakdown? The £20 million credit line for operational does seem to be one part of a credit line. The Minister says that I was incorrect in stating that there was a total of £100 million. I will happily take him at his word if that is the case, but a more detailed breakdown of how much of the expenditure of the Rwandan Government will be UK taxpayers' money would be helpful. Also, can he confirm whether this is being scored as overseas official development assistance or not?

Lord Sharpe of Epsom (Con): I am happy to commit to providing as much detail as I can in the letter that the noble Lord requests. I am afraid that I do not know the answer to the foreign development aid question, so I will have to look into that and come back to him.

With regard to Amendments 35 and 90 in the name of the noble Lord, Lord German, it is right that this Bill should apply to anyone arriving after the Rwanda treaty enters into force. It is the treaty, working together with the provisions in this Bill, that underpins the safety of Rwanda. As such, once the treaty is in force the basis for removal under this Bill is established. Clause 9(1) ensures that the Bill and the treaty come into force on the same day. This legislation builds on the Illegal Migration Act 2023, the Nationality and Borders Act 2022 and other immigration Acts. To the extent that those Acts have retrospective effect, this Bill does nothing to change that.

Accommodating migrants in hotels is costing us £8 million each day. That is billions per year, which is clearly not sustainable. If people know that there is no way for them to stay in the UK, they will not leave safe countries such as France to risk their lives and pay criminals thousands of pounds to arrive here illegally. It is therefore only right that we stop the boats and break the business model of the criminal gangs who exploit vulnerable people. The Government consider this partnership to be a vital investment and therefore I invite the noble Lord to withdraw his amendment.

Lord Falconer of Thoroton (Lab): My Lords, the noble and learned Lord, Lord Stewart of Dirleton, indicated in an earlier amendment that the Government would say how Parliament was going to keep its judgment that Rwanda was a safe country under review because circumstances could change. He was going to tell us, but then said that it was going to come in a later amendment. I indicated, at the beginning of this group, which was adjourned from Wednesday, that we were assuming that it would be the noble Lord, Lord Sharpe of Epsom, on this amendment, who was going to tell us how Parliament was going to keep its judgment under review. If it will be in a later amendment, by all means say, but if it is intended to be under this amendment, can the Minister tell us how Parliament is to keep the judgment that it is said we are about to make under review going forward in the future?

Separately from that question, the Minister dealt very shortly with retrospectivity. Does he agree that this Act applies to people who arrived in this country and made a claim for asylum before the Act came into force—and therefore applies retrospectively to them? If it does, what is the Government's justification for retrospective legislation?

Lord Sharpe of Epsom (Con): Well, my Lords, I recollect the discussion last week between the noble and learned Lord and my noble friend Lord Wolfson. I think my noble friend pointed out that the right to asylum is not a vested legal right—that there is a right to asylum, but not necessarily in the UK. The Government have consistently won in the courts on the point that you can send somebody to another country for asylum—so this is not, in effect, retrospective legislation. As the noble and learned Lord will be aware, I am not a lawyer, but it seemed to me to make some sense when my noble friend was making the argument, so I suggest we go back to that in this case.

Lord Falconer of Thoroton (Lab): Do I take it, then, that the Government's position reflects the speech made by the noble Lord, Lord Wolfson?

Lord Sharpe of Epsom (Con): No, but I think that the noble Lord, Lord Wolfson, summed up the Government's position rather well, and probably better than I can. I am afraid that we will have to return to the first question asked by the noble and learned Lord in a later group.

Lord Coaker (Lab): Before the Minister sits down, I have a practical question. He says that this will apply retrospectively—what is the Government's assessment of the numbers of people that this applies to?

Lord Sharpe of Epsom (Con): I appreciate that the noble Lord asked me about this in the debate last week as well. I will not give him a precise answer at this moment, but will come back to him.

Lord Scriven (LD): My Lords, I thank all noble Lords who took part in this group of amendments. It has been an interesting group and I think we have teased out quite a bit of the Government's intentions. It is clear that thousands of people will have these rules applied to them even though they arrived on the shores of this country when it was admissible for them to stay in the UK. There is no desire in the Government for this Parliament to have effective monitoring of both the treaty and the operational arrangements of what will happen.

It is very clear from this group, from the Minister's answers and from what noble Lords have teased out, that there is no trigger to determine exactly, on the ground, that Rwanda is safe—it is only a sentiment in this Act of Parliament—and that the treaty arrangements do not have to be in place for Rwanda to be deemed a safe country by the Government. The treaty only has to be signed, rather than the operational arrangements be in place.

It is also clear that the costings and budgets for this are so diffuse that there will be no real public scrutiny or transparency of the costs of this scheme—it will take many years to get to the bottom of that. Even though the monitoring committee will be in place, the important point is that it has no powers of remedy over anything that it sees as wrong.

So this has been a useful part of Committee. There have been very good questions that have teased out some of the issues. I, like many noble Lords, am not convinced that the Government have answered some serious issues regarding the suite of amendments, and I am sure we will come back to some of them on Report. Having said that, I beg leave to withdraw my amendment.

Amendment 35 withdrawn.

Clause 3: Disapplication of the Human Rights Act 1998

Amendment 36 not moved.

Clause 3 agreed.

Clause 4: Decisions based on particular individual circumstances

Amendment 37 not moved.

Amendment 38

Moved by ***Lord Etherton***

38: Clause 4, page 4, line 12, after "question" insert "or, where the person in question is a member of a particular social group within Article 1A(2) of the Refugee Convention 1951, for that group"

Member's explanatory statement

This amendment and the related amendments to Clause 4(1)(b) and Clause 4(4) provide for the situation where the person in question is a member of a particular social group, the members of which have a well founded fear of persecution, and following the decision of the Supreme Court in HJ (Iran) v SSHD [2010] UKSC 31 the focus is on the group and not the individual circumstances of each member of the group.

Lord Etherton (CB): My Lords, in speaking to this amendment I will speak to Amendments 40, 43, 45 and 51, which I tabled, all of which are connected.

The current version of Clause 4(1) enables an applicant to oppose removal to Rwanda on the ground that it is not a safe country for the applicant only if the applicant provides

"compelling evidence relating specifically to the person's particular individual circumstances".

Clause 4(4) provides that the court or tribunal may grant an interim relief

"only if the court or tribunal is satisfied that the person would, before the review or appeal is determined, face a real, imminent and foreseeable risk of serious and irreversible harm"

if removed to Rwanda.

4.15 pm

The defect in these provisions, which the amendments I have tabled are intended to address, is that no provision is currently made for applicants who come within the definition of a refugee in Article 1A(2) of the 1951 refugee convention as persons who have a well-founded fear of persecution because of their

"membership of a particular social group".

The proper approach of courts and tribunals to such a refugee was described in detail by the Supreme Court in HJ (Iran) v the Secretary of State for the Home Department, and HT (Cameroon) v the Secretary of State for the Home Department, especially in the judgment of Lord Rodger of Earlsferry in the first of those cases. That decision concerned gay applicants who faced persecution in their country of nationality if they lived an openly gay life. It is now clear that such persons are members of a particular social group within Article 1A(2) of the 1951 convention.

In such a case, the court or tribunal must ask whether it is satisfied, on the available evidence, that gay people who live openly would be liable to persecution in the applicant's country of nationality. If so, the applicant is a refugee within the convention. If the applicant could and would leave discreetly not because of persecution but for reasons of concern about social relations with friends, family and colleagues, they would not fall within the definition of a refugee in Article 1A(2).

[Lord Etherton]

The focus, then, in these cases is to identify the social group which has a well-founded fear of persecution and ask whether the applicant is a member of it. Although HJ (Iran) concerned gay men, the analysis in that case, relating to the proper approach to persons who have a well-founded fear of persecution because of their membership of a particular social group within Article 1A(2) of the convention, applies across the board—for example, to a group comprising women, or people of a particular race or ethnicity, or people who hold particular religious or political beliefs. Therefore, these amendments relating to groups are important to reflect our own jurisprudence.

What I have said so far looks at the general issue of members of a social group. I will turn from that to the particularity of the position of a special group, comprising LGBTQIA+ people. In view of comments made by the Minister on Second Reading and by the noble Lord, Lord Sharpe, in his letter to all Peers of 12 February 2024, it is necessary to set the record straight regarding the position of members of the LGBTQI+ community in Rwanda in the context of interim relief under Clause 4(4). As I have said, such interim relief can be granted by a court or tribunal only if it is satisfied that the applicant would face

"a real, imminent and foreseeable risk of serious and irreversible harm"

if removed to Rwanda. This reflects the condition for a serious harm suspensive claim under the Illegal Migration Act. On Second Reading, I reminded the Minister, the noble and learned Lord, Lord Stewart of Dirleton, of the assurance given at the Dispatch Box by him and by the noble Lord, Lord Murray of Blidworth, to myself and others—particularly the noble Lord, Lord Cashman—during the passage of the Illegal Migration Act: that the principle to be found in HJ (Iran) would continue to apply.

On Report of the Illegal Migration Bill, addressing an amendment tabled by me, the noble and learned Lord, Lord Stewart, said:

"If the open expression of a person's sexual orientation would prevent them living in a specified third country without being at … 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".—[*Official Report*, 28/6/23; col.768.]

Subsequently, in response to another amendment tabled by me, the Minister, the noble Lord, Lord Murray, said:

"I reiterate two points made by my noble and learned friend Lord Stewart on Report. First, Clause 38 makes it clear that persecution and onward refoulement are examples of harm which constitute serious and irreversible harm for the purposes of a suspensive claim. Secondly, if the open expression of a person's sexual orientation would prevent them living in a specified third country for the relevant period without being at … risk of serious and irreversible harm, they would meet the threshold for a serious harm suspensive claim, in line with the principles set out by the Supreme Court in the case of HJ (Iran)" .—[*Official Report*, 12/7/23; col.1812.].

Those statements from the Dispatch Box make it clear that the Government did not intend to deviate from the principles of HJ (Iran). They also make it clear that, where gay people have a well-founded fear of persecution in the applicant's country of nationality and the applicant is a gay person, that is sufficient for their removal to give rise to a risk of serious and irreversible harm. This is obvious. If it were not so, it would be necessary to distinguish between degrees of harm. Would being beaten up on one occasion for being openly gay not be enough, or would there have to be violence of such a degree as to result in hospitalisation or death? I ask the Minister to address in his reply the approach that is required to be taken under the Bill.

In his reply at Second Reading, the Minister, the noble and learned Lord, Lord Stewart, simply asserted that LGBT people were not at risk of persecution in Rwanda, giving the same explanation as can be found in the Government's policy statement, published on 12 December 2023, which contains evidence of the safety of Rwanda on which the Government rely. At paragraph 43c, the policy says the following:

"LGBTI persons may face some discrimination in practice in Rwanda. However, Rwandan legal protection for LGBTI rights is generally considered more progressive than that of neighbouring countries. The constitution of Rwanda includes a broad prohibition of discrimination and does not criminalise or discriminate … in law or policy".

This statement is far too weak to rebut the generally accepted evidence of institutional homophobia in Rwanda. In the first place, the travel advice on Rwanda given by the FCDO remains the same as at the time of the Illegal Migration Bill:

"Homosexuality is not illegal in Rwanda but remains frowned on by many. LGBT individuals can experience discrimination and abuse, including from local authorities. There are no specific anti-discrimination laws that protect LGBT individuals".

The 2022 US State Department country report on Rwanda, which was published in March 2023—that is, less than a year ago—stated that there was significant discrimination against LGBTQI+ persons, and that LGBTQI+ individuals reported harassment from authorities and abuse by officials of LGBTQ+ persons in transit centres, with trans persons targeted with particularly severe hate speech and physical and sexual abuse. It must also be remembered that there is no equivalent law or legal policy in Rwanda that mirrors the case of HJ (Iran).

Secondly, the fact that the position of LGBT+ people in Rwanda is not so utterly ghastly as in neighbouring countries is neither here nor there, bearing in mind that, in Uganda, same-sex conduct is punishable with life imprisonment and the new anti-homosexuality Act of 2023 introduces the death penalty for several acts considered as what is called "aggravated homosexuality" and increases the prison sentence for attempted same-sex conduct to 10 years, Burundi's penal code criminalises same-sex sexual relations for both men and women and imposes a sentence of up to two years imprisonment, and Tanzania's penal code criminalises same-sex sexual activity for men and women, with a maximum penalty of life imprisonment.

Thirdly, the fact that the constitution of Rwanda includes a broad prohibition of discrimination is neither here nor there if the state fails to take adequate steps to prevent persecution against individuals or groups who carry it out. This is again well-established, and was a point made by Lord Rodger, in HJ (Iran). The

2022 US State Department country report on Rwanda, to which I have referred, stated that there were reports that the Government did not adequately respond to reports of abuses and violence against LGBTQI+ persons. The report noted that the law in Rwanda does not explicitly recognise or protect individuals on the basis of sexual orientation, gender identity or expression, or sex characteristics, and does not explicitly prohibit discrimination against LGBTQI+ persons in housing, employment, nationality laws or access to government services, such as healthcare.

The letter of the Minister, the noble Lord, Lord Sharpe, to all Peers on 12 February this year referred to and relied upon the latest country information on Rwanda published by the Government in this country. This was published in January 2024, presumably for the purposes of bolstering the Government's Rwanda policy and the legislation we are currently considering. We do not know whether the Government of Rwanda played any part in its content. Strikingly, the updated note makes no reference at all to the US 2022 country report on Rwanda.

Finally, I draw attention to the rather curious comment in the letter of the noble Lord, Lord Sharpe, that the assessment of risk faced by LGBTQ+ individuals, in line with the principles in HJ (Iran), is an "exceptionally high bar". I do not understand that comment. Proof of risk is, in this case, like any other factual matter in civil cases, decided on a balance of probabilities.

In order to be consistent in their policy, and to avoid a head-on clash with domestic and international law, the Government need to reconsider their approach, both generally in relation to refugees who have a well-founded fear of persecution by virtue of being members of a particular social group and, more particularly, in relation to LGBTQI+ people who wish to live openly as such. I beg to move.

Lord Cashman (Lab): My Lords, I am in favour of the amendments in this group, including that in the name of my noble friend Lord Dubs, who cannot be in his place. I have added my name to those in the name of the noble and learned Lord, Lord Etherton, and I thank him for so powerfully putting the case for the amendments. I too received the letter from the Minister, the noble Lord, Lord Sharpe, and will refer to it in my submission.

4.30 pm

At the same time, I asked LGBT activists in Africa—in neighbouring countries and within Rwanda—for their reflections. The background information is that, in Rwanda, individuals who identify as LGBT+ face marginalisation and stigma. In order to protect themselves from potential physical and verbal harm, they frequently find it necessary to conceal their sexual orientation and gender identity. By that submission, HJ (Iran) immediately comes into play. Despite homosexuality and same-sex acts not being illegal, as referred to in the Minister's letter, discussing sexual orientation remains a taboo subject in Rwandan society, with little to no open dialogue on the matter. By way of example, months before a planned June 2021 Commonwealth Heads of Government Meeting, authorities rounded up and detained people regarded as "socially undesirable", including over a dozen gay and transgender people, sex workers and street children.

The situation now is that the Government have declared their plan to relocate individuals seeking asylum in the UK to Rwanda for the processing of their claims. This policy, in view of those activists in Africa and within Rwanda, will impact LGBTI+ individuals who have escaped life-threatening circumstances in their countries of origin, and in my opinion such treatment would be cruel in the extreme.

There is further evidence from LGBTI activists. Overall, they highlight the complex challenges and dynamics faced by LGBT+ individuals in Rwanda, and emphasise the need for greater awareness and protection. There is evidence of ill treatment and abuse. On the international front, one must rightly recognise that Rwanda is trying to do the right things, but on the ground there is still much more to do around the protection of what is called the queer community.

Despite no formal criminalisation of LGBT+ individuals, there are significant challenges, such as stigma, discrimination and a lack of protection mechanisms in daily life. Discrimination comes mostly from social attitudes, rather than from the authorities in an organised way. Queer LGBT refugees often face societal pressure and discrimination, with instances of anti-LGBT+ groups fuelling violence. While the police generally maintain decent communications with the LGBT+ communities, there are instances of untrained officers exhibiting homophobic, brutal behaviour.

Social discrimination affects various aspects of daily life for LGBT+ individuals, including things that many take for granted, such as housing, employment and social integration, particularly in rural areas and especially for those who come from lower-income communities. Rwandan officials claim that queer refugees should not fear persecution as they do not criminalise them, but societal discrimination does the very job. The activists would like to see provisions in the UK's Rwanda Bill specifically protecting the vulnerable communities in the country, with a special focus on the LGBT+ community.

I have some direct quotes. One activist said:

> "A case that I know is about a person"

who, thankfully, has now been now moved to Europe. They said that

> "one day, he faced one of the anti-queer groups. He was beaten one night, and they broke his arm".

Another said:

> "The police as an institution has been open to dialogue and discussions about the challenges faced … However, regarding their actual role in protecting LGBTI+ individuals, there have been mixed experiences. While some have found support and understanding from the police, others"

have faced "arbitrary arrests or discrimination".

Sadly, there are more quotes I could continue with. My contention, as a member of this social group, is that you cannot live openly as an LGBT person because to do so would mean facing persecution. Therefore, I contend that these amendments should be adopted.

[Lord Cashman]

I will now speak briefly to Amendment 41 in the name of my noble friend Lord Dubs. He has concerns, which are shared by members of the All-Party Parliamentary Humanist Group. Here, I refer to my interest as a patron of Humanists UK. Concerns were raised at Second Reading that Rwanda retains its blasphemy law, in violation of the right to freedom of religion or belief. The punishment for blasphemy can result in imprisonment and/or fines, as evidenced by the US Commission on International Religious Freedom's *Blasphemy Law Compendium*. This law may be intended to protect the right to worship, but it is open to misuse, as non-religious beliefs can easily be framed as an insult to religion, as we see in other countries.

Therefore, it is our contention that Rwanda cannot be considered a safe place for those who are non-religious or those belonging to minority religions. They may fall foul of this law simply by expressing their beliefs. This is why my noble friend Lord Dubs has put forward this amendment, to make it clear that those who would be at risk due to their lack of religion, or their minority religion, would fall into the scope of Clause 4. Therefore, on behalf of my noble friend, I put forward this amendment.

Baroness Kennedy of The Shaws (Lab): My Lords, I support the two amendments just mentioned by my noble friend Lord Cashman. I remind the Committee, in relation to the LGBT community, that when the law was changed in the mid-1960s in this country it did not end the persecution of homosexuals. For years afterwards, there was a constant terrorising of the gay community. "Queer rolling" is a term that noble Lords will remember—men being attacked simply because it was suspected that they might be homosexual, or they were in a particular place at a particular time of night. The situation was really grave.

When I was a young lawyer in the 1970s and 1980s, one found oneself in court representing people who were being framed for the offence of importuning, which is still a criminal offence in Rwanda. The police harassed and monitored particular venues known to be habituated by gay men. It took many years before we ended that cultural underplay, which exists in societies even when the law is changed. We know that this is the situation in Rwanda, which has a high level of persecution of gay people still.

I also support the amendment in the name of my noble friend Lord Dubs, which relates to freedom of religion and belief. Many of those fleeing Afghanistan are Hazara. It is a religious minority of the Shia tradition, and they are sorely persecuted in Afghanistan and Pakistan. I conducted an inquiry, which concluded at the beginning of last year, into the persecution of the Hazara. It is one of the main reasons that our security services put them on a high level of risk of being persecuted by the Taliban and other extremist groups. Unfortunately, they are likely to continue to be persecuted by others in Rwanda because of their particular religious beliefs.

I, too, feel that there is a misunderstanding about what "safety" means. In this Bill, when we talk about safety, it does not mean that, in declaring that Rwanda is safe, a person cannot say, "It's not safe for me". That is the point. When someone comes to a court and says, "This place is not safe for me because I am gay, or because of my religious beliefs or my non-religious beliefs", those are bases on which any court protecting people's human rights would declare that the place was not safe. I want that to be in the minds of noble Lords as they ruminate on this Bill and the amendments to this Bill—that questions of safety cannot be rubbed out of existence simply by a declaration of Parliament that a place is safe.

Lord Purvis of Tweed (LD): My Lords, I have added my name to these amendments. The noble and learned Lord, Lord Etherton, spoke very powerfully in moving them, and I shall not seek to repeat anything that he said. It is a pleasure to follow the experience and knowledge of noble Lords who have spoken before me in this group.

I just wish to refer to two elements of why I have supported the amendments. I know that my noble friend Lord Scriven will speak to this group after me. The first is a general point with regard to the assessment of safety in a country where the Government have made a political decision that it can be nothing other than safe. This is what we debated on a previous group. That is illustrated in this group to an alarming degree. We can refer to the equality impact assessment with regard to the legislation; that assessment was carried out after the Bill had been agreed by Ministers, as I understand it. Ministers stated that Rwanda was to be a safe country.

The assessment says, in paragraph 3a, in consideration of the duty of eliminating

"unlawful discrimination, harassment, victimisation and any other conduct prohibited by the Equality Act",

that:

"We consider that removal to Rwanda would not risk discrimination or less favourable treatment as it is a safe country"—

and that is it. Ministers had already decided that it was a safe country, so equality impact assessments are now rendered almost completely pointless when it comes to Ministers deciding this.

That is notwithstanding the noble and learned Lord, Lord Stewart of Dirleton, stating in this House that he could not say that Rwanda was safe yet, because safeguards were not in place. So we are in a situation where the contradictory nature of the decisions about safety, especially for those who may be more vulnerable than others if they are relocated, has now become political and not evidence based. That should be alarming for all legislators.

The second point that I wish to make is the inconsistency of what the Government are saying, because it is led from the political decision that was made for this Bill. The noble and learned Lord, Lord Etherton, quoted the current FCDO travel advice for someone travelling to Rwanda voluntarily. If they are travelling to Rwanda voluntarily and are LGBT+, they are warned by the Foreign Office that they

"can experience discrimination and abuse, including from local authorities"—

that is the Government of Rwanda. So the Foreign Office advises voluntary travellers that they can experience discrimination and abuse from the Government. The

Home Office is saying that, for someone being located there involuntarily, there is no possible experience of discrimination and abuse from local authorities. So which one trumps? Is it the Foreign Office or the Home Office that has the best advice to receive on this situation?

On the FCDO traveller advice, with regards to discrimination and abuse from local authorities, the Minister has an opportunity in responding to the amendment from the noble and learned Lord, Lord Etherton, to outline in clear terms at the Dispatch Box some examples of discrimination and abuse from local authorities. The reason why this is important is that it is the Government's policy that those who are relocated to Rwanda, once they have been processed, will then become residents of Rwanda in local authority areas. The Government state in their travel advice that there is a recognition of a general concern about discrimination and abuse but that, with regard to this legislation, only specific and personal high-bar thresholds for potential discrimination and abuse can be considered.

The final thing I consider to be relevant is the country note for Rwanda, which is the basis on which the decision-makers will make their decisions, either for remedies or in seeking some form of injunction or relocation. It was cited by the noble and learned Lord, Lord Etherton. The country advice that was withdrawn had an interesting comment on potential crimes against LGBTIQ+ persons:

"Lack of reporting of crimes against LGBTIQ+ persons, due to stigma and fear of harassment, results in limited information".

The Government, with limited information, can make categorical decisions—but of course, they will be made on a political basis. So perhaps any amendment we move to make this objective is futile, because it is not going to change the fundamental position: that Ministers have politically decided that Rwanda is safe and will always be so.

4.45 pm

Lord Carlile of Berriew (CB): My Lords, we heard this debate opened with great clarity and legal exactitude by my noble and learned friend Lord Etherton, followed by a very good speech from the noble Lord, Lord Cashman. I am not going to go over all that again, but am I right in this simple analysis of the situation in which the Government seek to place individuals who might be affected by this law?

If I can produce compelling evidence that Rwanda is not safe for me—not my brother, but me—I am entitled to a decision from the Secretary of State, no less, or an immigration officer, that I should not have to go to Rwanda. If that decision is not made in my favour, I have all the advantage of the English legal system, through which I can judicially review the decision of the Secretary of State or the immigration officer. But if I can show that there is compelling evidence not that Rwanda is unsafe for me, but only that it is unsafe for a person like me, I am excluded from all the protection of the law, just because I cannot provide evidence that relates to me as a particular individual—who may, as it happens, not be as well-known as someone like me in Rwanda.

If that is the situation, how can His Majesty's Government possibly justify that difference? It seems to me to be fundamentally unjust. If that is the case, I hope the Minister, who is very open with your Lordships' House, will say so, so that the House can decide on Report how to deal with my noble and learned friend's proposal.

Baroness Chakrabarti (Lab): My Lords, it is a pleasure, as always, to follow the noble Lord, Lord Carlile. On this occasion, it is fortuitous to follow him because—without repeating the brilliant points made by the noble and learned Lord, Lord Etherton, and my noble friend Lord Cashman, about the safety of Rwanda for particular groups, which are echoed in my noble friend Lord Dubs' amendments on religious freedom—he pre-empts a point I want to emphasise about the false binary the Government appear to be creating in Clause 4, for example.

As someone who has worked with the refugee convention for about 30 years, I feel that something is missing—well, there are many things missing, but there is something particularly dangerous about tying the hands of decision-makers in the way proposed, be they the Secretary of State, Border Force, or judicial decision-makers in particular. There is a false binary, which the noble Lord, Lord Carlile, began to outline. At one end of the spectrum, the country is particularly dangerous for Josef K, not other people in Josef K's family or political party, or in another social group. The language of the Bill uses the following adjectives:

"compelling evidence relating specifically to the person's particular individual circumstances",

At the other end of the spectrum—the false binary the Bill proposes—is the general safety of Rwanda, the Bill's definition of which includes safety from refoulement in particular. Of course, any refugee lawyer or anyone with experience of dealing with asylum anywhere in the world will tell you that, for a great many refugees, the crucial issue—forget the false binary—is membership of a persecuted social group. Those are the social groups highlighted by these amendments, but they could be other political or ethnic social groups, and so on.

On an ordinary reading of this extraordinary draft statute, I have no doubt that even this odd formulation of the specificity of the person's "particular individual circumstances" would be construed by a court as including membership of a social group. That would be a normal reading of even this draft provision. However, because of all of that odd stuff in Clause 1 about the purposive construction the Government propose—disapplying the common law, disapplying the Human Rights Act and so on—there is now a real question mark about whether social groups are included for the purposes of Clause 4, for example.

To be fair to the Minister, in his letter, which I read, the clear indication is that social groups would be covered, because HJ (Iran) and gay people who are persecuted are alluded to. But, with respect, if that is the case, in the light of the very odd formulation of this draft statute, the noble and learned Lord, Lord Etherton, and others have done the Government an enormous favour. At the very least, they ought to agree to the amendments proposed by the noble and

[Baroness Chakrabarti]
learned Lord. Otherwise, I fear that, because of all these straitjackets in the Bill upon decision-makers, including the Secretary of State, let alone the judiciary—we will come to it later—the Government may find that they are sending people to Rwanda in circumstances where they do not want to, and contrary to the Minister's letter. For those reasons, I support the amendments in this group.

Lord Falconer of Thoroton (Lab): My Lords, I strongly support the amendment of the noble and learned Lord, Lord Etherton, which he moved almost unanswerably. I agree with the support given to it by my noble friend Lord Cashman, and I support his proposal of the amendment of my noble friend Lord Dubs.

The specific point my noble friend Lady Chakrabarti made is key. I can understand the idea that Rwanda is not a safe country in general because it has no adequate system of addressing asylum seekers and is willing to refoul people irrespective of the merits. I strongly agree with my noble friend when she says that, if a person—for example, a member of the LGBTI+ community—says, "I would not be safe if I were sent back to Rwanda", that relates specifically to their "particular individual circumstances", which is the language of the Bill.

The purpose of the noble and learned Lord's amendment, and of that of my noble friend Lord Dubs, as proposed by my noble friend Lord Cashman, is not to determine in this House whether Rwanda is safe for LGBTI+ people; it is to ensure that, if there is a question mark over that issue—if somebody asserts that, because they are a member of the LGBTI+ community, the Minister is not tied by determining that Rwanda is a safe country—the courts would then consider the question.

Key to the House's determination of these amendments is the Government's view of what the Bill, particularly Clause 4(1), means. In responding to the noble and learned Lord's amendment, can the noble Lord, Lord Sharpe of Epsom, tell us whether, if a member of the LGBTI+ community asserts that Rwanda is not safe for gay people, a Minister can take that into account under Clause 4 in relation to that person? Can he indicate whether, if that applicant disagreed with a Minister's conclusion, they could go to the courts? We need to know that to determine whether we need to put the noble and learned Lord's amendment on the statute book.

Lord Scriven (LD): My Lords, I support the amendments in this group and seek to tease out a couple of answers from the Minister on these issues. Under the 1951 refugee convention, membership of a particular social group is one of the reasons forming a guard for people to be able to claim refugee status. One would therefore assume that Rwanda, which has signed up to the treaty, would grant asylum to people who are LGBT based on their being a member of that social group. The Government aim to send people who have arrived here via illegal routes, who may be LGBT, to be processed for asylum in Rwanda. I do not know whether noble Lords or the Minister have read the latest Human Rights Watch country report on Rwanda, but it points out that there is a systematic refusal by the Rwandan authorities to grant asylum to those who have fled their home countries because of persecution on the grounds of their sexual orientation or gender identity.

What due diligence have the Government done in claiming that Rwanda is a safe country, and in ensuring that the way it deals with asylum claims from LGBT refugees is equal to the way it does so for others? What is the refusal rate compared to those seeking asylum in Rwanda who are not LGBT individuals? If the Minister cannot answer those questions, there is no way that the Government can claim as a matter of fact that Rwanda is a safe country for those seeking asylum there, given that asylum claims seem to be turned down, according to Human Rights Watch, on the basis of sexuality or gender identity.

The Government have not referred to their own impact assessment on the first treaty, the memorandum of understanding with Rwanda, from May 2022. It said that the Home Office was concerned about the treatment of LGBT people in Rwanda and that cases of "ill treatment" towards this group were "more than one off". What has changed between May 2022 and the impact assessment for this Bill, which says that ill treatment of LGBT+ people in Rwanda no longer takes place and that these "more than one off" issues of discrimination and ill treatment have stopped?

Finally, I turn to the amendment of the noble Lord, Lord Dubs. The latest US *Report on International Religious Freedom* on Rwanda shows clear evidence of discrimination against certain religious practices, even though the laws of Rwanda protect religious freedom. Examples are cited, including that pressure has been put on religious leaders and organisations on multiple occasions when that religious leader or organisation criticises the Rwandan Government's policy. Recently, the Muslim community has been targeted about its call to prayer practices and has had a number of repressive actions taken against it by the Rwandan police. Noble Lords should remember that many of the people arriving on our shores via irregular routes are of Muslim faith, coming from Muslim countries. I ask the Minister what assessment has been done on religious freedom. Have the Government come across the issues that the US *Report on International Religious Freedom* has identified? What commitments have they got from the Rwandan Government that these kinds of practices will stop?

5 pm

Lord Ponsonby of Shulbrede (Lab): My Lords, this group is concerned with members of specific social groups. I welcome the points made by the noble and learned Lord, Lord Etherton: the Government have repeatedly put forward plans in legislation which appear to ignore the very real danger posed to members of certain social groups, including LGBT+ people, in many countries around the world including Rwanda. It again raises the issue of refoulement and the danger it poses; my noble friend Lord Coaker has already spoken about refoulement and has tabled amendments that would address this concern.

I also welcome the amendment tabled by my noble friend Lord Dubs and spoken to by my noble friend Lord Cashman who, alongside Humanists UK, has pointed out the dangers posed to the religious minorities or those who have no religion in Rwanda.

This group has been interesting. It has been a relatively short debate but has focused on the core issues raised by the noble and learned Lord, Lord Etherton, the noble Lord, Lord Carlile, and my noble and learned friend Lord Falconer and my noble friend Lady Chakrabarti about the false dichotomy between individuals and groups in general. I think it was my noble and learned friend who said that the effect of the amendment in the name of the noble and learned Lord would be that the Minister is not tied to the Government's stated view that Rwanda is a safe country; rather, it would be for the courts to decide that in individual cases where, for example, someone may be gay.

Surely involving our courts in the decision-making process goes to the very heart of the absurdity of the Government making a blanket decision that Rwanda is a safe country. It is doing no more than dipping our toe into the court system by asking it to review individuals who are particularly vulnerable. The amendment is not in any way driving a coach and horses through the legislation; it is trying to reflect concerns for vulnerable individuals through well-established practices within our courts. We support it.

Lord Sharpe of Epsom (Con): My Lords, as we have previously set out, the purpose of the Bill is to stop the boats and end the perilous journeys being made across the channel as it is the busiest shipping lane in the world. These journeys are overwhelmingly made by young, fit men in search of better job opportunities, who are travelling from a safe country. Males represented 88% of small boat arrivals in the year ending September 2023. This is a similar proportion as each year from 2018 to 2021.

Since January 2018, 75% of small boat arrivals have been adult males aged 18 and over. We need a strong deterrent to stop illegal migration and measures to prevent removals being frustrated; we have therefore taken bold steps. However, to ensure that we are meeting our international obligations, Clause 4 provides that a Home Office decision-maker or a court or tribunal can consider a claim that Rwanda is unsafe based on compelling evidence relating specifically to a person's individual circumstances.

As the Government have set out, since the partnership was announced, UK officials have worked closely with the Government of Rwanda to ensure that individuals relocated under the agreement will be safe and that their rights will be protected. The Government's legal position, published on 11 December 2023, further sets out that the treaty, and the evidence pack, provide for compliance with the Government's substantive obligations under international law. Therefore, no one will be removed to Rwanda if they face a real risk of serious and irreversible harm.

I turn to Amendments 38, 40, 43, 45 and 51 in the name of the noble and learned Lord, Lord Etherton, and Amendment 41 in the name of the noble Lord, Lord Dubs, as spoken to by the noble Lord, Lord Cashman. These proposed amendments to Clause 4 would undermine one of the principles that the Bill is seeking to address; namely, to limit the challenges that can be brought against the general safety of Rwanda, even with the signed treaty and updated evidence presented by the Government.

The legislation is clear and affords the appropriate safeguards to ensure that decision makers make a decision about the particular circumstances of each case. The Bill already allows decision-makers and the courts to consider certain claims that Rwanda is unsafe for an individual person due to their particular circumstances, despite the safeguards in the treaty, if there is compelling evidence to that effect.

I of course entirely understand the desire of the noble and learned Lord, Lord Etherton, and the noble Lord, Lord Cashman, to get clarity and certainty on this issue. For people who identify as LGBT+, that consideration would include any assessment of any compelling evidence reviewed in line with the principles outlined in HJ (Iran)—as referenced by the noble Baroness, Lady Chakrabarti—that being LGBT+ would mean that Rwanda was not safe for them in their particular circumstances.

As in all cases under the provisions of the Bill, individuals will be given the opportunity to provide that compelling evidence that they would be at risk in their particular circumstances if they were relocated to Rwanda. That would include any alleged harm as a result of an individual's gender or sexuality. As I say, any such claims would be assessed on a case-by-case basis, and in the case of LGBT+ claims, that would include any assessment in line with the principles outlined in HJ (Iran).

I make it clear that the Rwandan penal code does not punish homosexuality or relations between people of the same sex. The constitution of Rwanda includes a broad prohibition of discrimination and does not criminalise or discriminate against sexual orientation in law or policy. As regards the FCDO advice, which I was asked about, paragraphs 173 and 174 of the policy statement deal with this, stating:

> "As experts on the bilateral relationship between the UK and Rwanda and its development over the past thirty years, FCDO officials based in the relevant geographic and thematic departments working closely with colleagues in the British High Commission in Kigali have liaised with the Home Office throughout the production of this Policy Statement … Information drawn from their institutional expertise as to the in-country situation in Rwanda, and Rwanda's history of compliance with its international obligations is reflected as appropriate throughout".

The noble Baroness, Lady Bennett of Manor Castle, raised concerns about the unequal treatment of women in Rwanda during Monday's debate. The Rwanda country report refers to the National Commission for Human Rights, or NCHR, which is a constitutional commission provided for by the Rwandan constitution. The NCHR is made up of seven commissioners. Each of them has a specific area of focus, including the rights of women. There is a commissioner who is a focal person for or who is in charge of those rights.

The country report concludes that the general treatment of women is good. Women and children's rights, among those the NCHR monitors, have seen an improvement since the creation of the NCHR. That is reflected in

[Lord Sharpe of Epsom]
the laws and the constitution, which provides for specific groups' rights; for example, women, children, and the disabled. The situation is the same for women as for those who are disabled. They are allowed to be elected, and at each administrative level at least 30% of representatives have to be women. In Parliament, more than 60% of representatives are women; the current Rwandan cabinet is 50% women, and five out of the seven commissioners in the NCHR are women.

Women's rights are respected in every area. Although the NCHR receives some complaints about rights to property, Rwandan family law was amended to allow women to inherit from parents in 1999. The country information note also refers to the police response to victims of gender-based violence and the Gender Monitoring Office, which considers specific issues relating to gender-based violence. The National Women's Council is represented from village level and at every level above and is a channel for sharing information on anything regarding gender-based violence. It is the responsibility of local leaders to ensure that there are no gender-based violence issues in their area of control. Police monitor what is going on; they can investigate and come up with a report or action.

Furthermore, the rule of law index, which ranks countries on indicators including equal treatment and the absence of discrimination, ranks Rwanda 26th out of 142 countries worldwide and first out of 34 countries in the region. That is a measure of whether individuals are free from discrimination—based on socioeconomic status, gender, ethnicity, religion, national origin, sexual orientation or gender identity—with respect to public services, employment, court proceedings and the justice system. I add that the 2022 US State Department human rights practices report on Rwanda noted:

"Women have the same legal status and are entitled to the same rights as men, including under family, labor, nationality, and inheritance laws. … The law requires equal pay for equal work and prohibits discrimination in hiring decisions".

As I indicated at the start, this clause provides the foundations for the Bill as a whole; it is fundamental to the effective operation of the scheme, and the amendments put forward would serve only to weaken its effectiveness. I therefore invite the noble and learned Lord to withdraw his amendment.

Lord Etherton (CB): I am very grateful to the Minister for his reply and to those who have spoken. What the debate has shown, short as it was, is that the issue of social groups and how they fit into the legislation is very important. Many points were made on various issues that were all extremely valuable, including the wonderful examples given by the noble Lord, Lord Cashman. The noble Baroness, Lady Kennedy of The Shaws, referred to the ongoing discrimination even after decriminalisation took place here; the noble Lord, Lord Purvis of Tweed, made criticism of the equality impact assessment; and the noble Lord, Lord Scriven, referred to Human Rights Watch's latest report.

In addition to those points, what this debate has teased out—and this fits in with the amendment spoken to by the noble Lord, Lord Cashman, on behalf of the noble Lord, Lord Dubs—is what the noble Baroness, Lady Chakrabarti, referred to as the "false binary". It is a critical issue. For this, I am extremely grateful to my noble friend Lord Carlile, the noble Baroness, Lady Chakrabarti, and the noble and learned Lord, Lord Falconer. Even after the Minister's reply, it remains unclear how one treats someone who has not personally experienced persecution, because, for example, they have hidden their sexuality, their religious views or their political views, but who is a member of a group that has a well-founded fear of persecution were there to be an honest expression of their sexuality or their political and social views or a display of their ethnicity or race. How would one treat those people? The false binary does not allow one to take into account the effect of being a member of a group, as opposed to—as my noble friend Lord Carlile referred to it—being "about me".

I ask the Government to consider carefully whether, without any undermining of the Bill and its purposes, the introduction of the amendments that I have tabled would not add an important element of clarity, both for those assessing claims—the Ministers, the Government and immigration officers—and for the courts. Subject to that, and on that basis, I beg leave to withdraw the amendment.

Amendment 38 withdrawn.

5.15 pm

Amendment 39

Moved by ***Baroness Chakrabarti***

39: Clause 4, page 4, line 12, leave out from "question" to end of line 14

Member's explanatory statement

This amendment, and other amendments to Clause 4 in the name of Baroness Chakrabarti, restore the jurisdiction of domestic courts by rendering the future safety of Rwanda (evidenced by UNHCR advice) a rebuttable presumption and restoring the ability for UK courts and tribunals to grant interim relief.

Baroness Chakrabarti (Lab): My Lords, this group goes to the heart of domestic, constitutional, rule-of-law concerns about the Bill. I share Amendments 39, 44, 49, 50, 52 and 53—the bulk of the group—with the noble and learned Baroness, Lady Hale of Richmond, and the most reverend Primate the Archbishop of Canterbury. The noble Viscount, Lord Hailsham, is also a supporter of this group but gallantly withdrew his name because he is prevented from being here today. These amendments will restore the proper jurisdiction of our courts. In a moment, the noble and learned Baroness, Lady Hale, will explain them, but for now I beg to move.

Baroness Hale of Richmond (CB): My Lords, I shall explain why I am proud to support this vital group of amendments to Clause 4 proposed by the noble Baroness, Lady Chakrabarti. They restore to the courts of this country the role which is properly theirs under our centuries-old constitutional arrangements, which respect the separation of powers between Parliament, the Executive and the judiciary.

I must apologise to the Committee that prior commitments prevented me speaking at Second Reading—although I was there for the all-important closing speeches—and attending the first two days of

the Committee's considerations. I have, however, followed the proceedings closely and have been hugely impressed by the quality of the debate.

I agree with so many noble Lords that reversing the very recent findings of fact in our Supreme Court with absolute and for ever conclusions as to the safety of Rwanda, ignoring international law, and disapplying the Human Rights Act are of the gravest concern. However, it is also of the gravest concern that the Bill ousts the jurisdiction of His Majesty's courts and tribunals to consider matters which are properly theirs to consider, in a constitution which respects the rule of law. It is for the courts to decide whether the Executive have violated, or propose to violate, the rights of individuals—rights they are given, as the Supreme Court made clear, not only by international law and the Human Rights Act but by other UK statutes and by the common law of the land, of which we are so rightly proud.

Amendment 39 restores to the Executive the ability to consider the general safety of the Republic of Rwanda, not just the particular circumstances of a particular individual. This reflects the concerns already expressed in Committee, not only that the situation in any country may change very quickly but that it makes no sense to be able to examine the circumstances of a particular individual but not the evidence that hundreds or even thousands of people may be imprisoned or tortured there. This amendment would also cater for the concerns raised by the previous group of amendments about members of a particular social group.

Amendment 44 restores the same ability to evaluate such vital country information to courts and tribunals considering decisions to remove individuals to Rwanda.

Amendment 49 restores the ability of decision-makers, whether in government or in our courts and tribunals, to look at evidence that the Republic of Rwanda will or may refoule people. Refoulement, as the Committee well knows, means sending people to places where they are at risk of persecution.

Amendments 50, 52 and 53 also restore to our domestic courts and tribunals the jurisdiction to grant interim relief to claimants, preventing their removal to Rwanda until their cases have been properly considered. Amendment 48 in the name of the noble Lord, Lord Coaker, also restores the jurisdiction of courts and tribunals over possible refoulement but not the possibility of granting interim relief, so, with respect, though commendable in itself, it does not go quite far enough.

I remind the Committee that Clause 5 of the Bill allows for the possibility that a Minister of the Crown may comply with interim measures of the European Court of Human Rights. As a matter of sovereignty, it would be odd indeed if an international court could grant relief to people within the United Kingdom when our own courts and tribunals have been deprived by statute of any say at all. In my experience as a judge at the highest level in this country, there is a great deal of respect between our own courts and the European Court of Human Rights in Strasbourg. If and when Rwanda were to become a safe country, our courts would find it so and the Strasbourg court would almost certainly agree. On the other hand, if our own courts are unable to consider the matter, the international court would have to scrutinise the decisions of the UK Government with great care—an outcome which many noble Lords may think regrettable.

The Lord Bishop of Chichester: My Lords, my noble friend the most reverend Primate the Archbishop of Canterbury regrets that he cannot be in his place today to speak to the amendments in this group tabled in the name of the noble Baroness, Lady Chakrabarti, and the noble and learned Baroness, Lady Hale. I wish to associate my remarks with theirs and to emphasise how important the restoration of the jurisdiction of the domestic courts is in considering also UNHRC evidence and the ability to grant interim relief. This is no mere technicality. This jurisdiction might make the difference between sending an asylum seeker to Rwanda while their claim, or an aspect of their claim, is pending or not doing so.

Many of those who have been earmarked for removal will have fled from perilous circumstances in their places of origin. What they need is the certainty of knowing that they will not be removed from the country in which they seek asylum while their cases are pending. Clause 4 includes provisions for a court or tribunal to grant interim relief if they are concerned that the person faces a,

"real, imminent and foreseeable risk of serious and irreversible harm"

in Rwanda.

Through debate on this group of amendments, we are considering whether courts and tribunals may benefit from greater discretion for the express purpose of the well-being and future risk of the individuals themselves. We have seen the multiple difficulties faced by the Government in sending asylum seekers to Rwanda. Bearing that in mind, is it really plausible that, having sent an asylum seeker to Rwanda, the Government will then be able to return them to the United Kingdom on the basis of evidence that should have been considered while their case was reviewed here? This seems neither efficient nor plausible.

There is also a need to consider advice from the UN Refugee Agency in reviewing the safety of Rwanda, recognising its crucial role in administering many of the services to support more than 110 million people who are forcibly displaced around the world. That agency serves on the front line in supporting people, and it understands the particular challenges faced by those seeking safety. The agency knows of what it speaks; the courts and tribunals should be able to draw on this expertise as they make their judgments.

Baroness Lister of Burtersett (Lab): My Lords, I very strongly support what has been said but want to draw attention to the statement, published today, from the UN High Commissioner for Human Rights. I will not read the whole statement, just one paragraph which is supportive of this group of amendments. It states:

"The combined effects of this Bill, attempting to shield government action from standard legal scrutiny, directly undercut basic human rights principles. Independent, effective judicial oversight is the bedrock of the rule of law—it must be respected and strengthened. Governments cannot revoke their international human rights and asylum-related obligations by legislation".

Has the Minister read this and what is his response to the UN high commissioner?

Lord Purvis of Tweed (LD): My Lords, I rise very briefly on that point to support the noble Baroness. We have heard in previous groups the concerns of the noble Lords, Lord Hannay and Lord Kerr, who is not in his place, and other noble Lords, that the debates which we are having in this House are being keenly viewed outside this House and very keenly in the United Nations Human Rights Council.

It is a depressing fact today that the top news story on the UN global news website is commentary on this Bill going through this Parliament. The UN Human Rights Council, which will be gathering next week, will be discussing the atrocities in Sudan and the Israel-Gaza conflict. It is a time of great turmoil and danger for many people, but the fact that the UN Commissioner for Human Rights, Volker Türk, today in the preparatory meetings of the council singled out the United Kingdom and the safety of Rwanda Bill as an illustration of the undermining of basic principles of the rule of law and of the risk of delivering a serious blow to human rights is deeply troubling.

The statement referred to by the noble Baroness, Lady Lister, which was made today, said:

"Settling questions of disputed fact—questions with enormous human rights consequences—is what the courts do, and which the UK courts have a proven track record of doing thoroughly and comprehensively. It should be for the courts to decide whether the measures taken by the Government since the Supreme Court's ruling on risks in Rwanda are enough".

The statement continued:

"You cannot legislate facts out of existence".

I appeal to Ministers considering this Bill. Many in the world are watching us. We have led in these areas. We should be leading the discussions in the Human Rights Council about global abuses of the rule of law and human rights. We should not be being singled out for abusing them ourselves.

Lord Deben (Con): My Lords, I rise to support these amendments for a very fundamental reason. The separation of powers is crucial for the freedom of all our people and I find it very distressing that the Government have not understood how deeply offensive this element of these proposals is.

It is deeply offensive simply because it purports to say that something is true which is not true. It suggests that the sovereignty of Parliament extends to the decision on whether something is or is not. That is a decision which has always been the purview of the courts, simply because the courts have a structure that enables them to listen to the evidence on all sides and make a decision at the end.

I fear that the Government have presented this because it is inconvenient that the courts should take a part in it. The price of liberty is inconvenience. You cannot be a free nation unless you accept that there are processes that are embarrassing to Governments, to Oppositions, to people of standing, to people who have got other views. You have to accept that it is the price we pay. This Government are suggesting that, because they have got to get something through before the end of the year because they said they would, they can claim that inconvenience is something they will not accept.

5.30 pm

Down this route, if we go it, we move towards losing freedom not just of the people we talk about today but all the rest of us. That is why I appeal to your Lordships to accept this fact: by doing this to these people, we do it to ourselves. No man is an island—it is true that we are all part of the same human beings. I am not surprised that the most reverend Primate the Archbishop of Canterbury has put his name to this. There is a deeply important religious, as well as secular, truth. Once you distinguish in the rights between people, you say about people as a whole that they are not each worth something. It is fundamental, and inconvenience is no excuse. We should insist that the Government restore to the courts the rights that people have fought for down the ages, which we have held in this nation as sacrosanct for hundreds of years, and which they have the gall to suggest we should throw aside because it is inconvenient.

Baroness Whitaker (Lab): My Lords, I want to follow the remark made by the noble and learned Baroness, Lady Hale, when she referred to the general safety of Rwanda outside the particular circumstances of anybody who might be sent there for asylum. I apologise that I was not able to be at Wednesday's meeting, but, on reading *Hansard*, I noticed that the noble and learned Lord, Lord Stewart of Dirleton, did not answer a point made by the noble Lord, Lord McDonald of Salford, regarding the renewed imprisonment of the journalist Dieudonné Niyonsenga. These were grave allegations. If the Government are aware of the general safety within the justice system of Rwanda, have they made representations about the renewed detention and alleged torture of this journalist, which has become a source of international concern?

Lord Coaker (Lab): My Lords, it is a great pleasure to follow my noble friend Lady Whitaker, who reminded us of the importance of the law in protecting the rights of individuals against states. It is also a great pleasure to follow the noble Lord, Lord Deben, and yet another speech in which he said that the debates and discussions on these groups of amendments bring us to fundamental principles of democracy, including the rights of law, freedom of speech and the separation of powers. Debating and discussing these in the context of the Bill is an important reminder of the power and responsibilities of this Chamber.

I am pleased to support the amendments of my noble friend Lady Chakrabarti, the noble and learned Baroness, Lady Hale, and the most reverend Primate the Archbishop of Canterbury, on reasserting the role of the domestic courts. To the noble and learned Baroness and my noble friend I say that it shows what a strange world we live in that, when the current Minister for Illegal Migration was Solicitor-General, he is reported to have told the Government that ignoring interim relief would put us in breach of the ECHR and that they should act with great trepidation. Now he is no longer Solicitor-General but is responsible for illegal migration, and he seems to have forgotten the advice he gave the Government. He could do with reading his own advice. All this, of course, is "so we are told".

We are also told that the Attorney-General has had serious worries about this, but of course nobody can know about that because legal advice is always kept secret. Although he is the Advocate-General for Scotland, the Minister is not acting in a legal capacity but as a Justice Minister of some sort, and no doubt he will have read the comments made in the other place by various Members about how the Bill works with respect to the interaction with the Scottish judicial system. This is a parallel universe in which we exist, but, none the less, these are all extremely important amendments.

In speaking to my Amendment 48, I wish to highlight a particular aspect that goes alongside Amendment 39 and the others in my noble friend's name. As a barrack-room lawyer, I take on board the point made by the noble and learned Baroness, Lady Hale, with respect to my inadequate amendment and the fact that it does not include interim relief. I apologise profusely for that oversight. In due course, it may return on Report with interim relief.

On a serious point, the Supreme Court said that the main reason it found Rwanda not to be a safe country in general was the risk of refoulement. The Government have gone to great length, in the treaty and in other things they have published, to say that they have dealt with all the concerns the Supreme Court had—although we note that, in its report published a few days ago, the JCHR continues to assert that there are problems that need to be considered.

I draw attention to Clause 4, which allows individuals who have compelling reasons to argue against their deportation under this Bill and the Illegal Migration Act. I remind noble Lords that even this minor concession of allowing individuals to do so, rather than debating the general safety of Rwanda, was regarded as a step too far by many in the Conservative Party and the Government.

My amendment seeks to delete Clause 4(2). I am grateful for the support of the noble and learned Lord, Lord Hope, although he is not in his place, and the noble Lord, Lord Purvis. The particular aspect I draw noble Lords' attention to is that, although an individual can present compelling circumstances, and try to persuade the Government that this Bill should not apply to them and that they should not be deported to Rwanda, it does not allow them to do so if they say that they should not be sent there as there are reasons why they might be refouled—in other words, sent to a third country.

Under Clause 4(2), they are prohibited from arguing that in the courts. Subsection (2) says this is so

"to the extent that it relates to the issue of whether the Republic of Rwanda will or may remove or send the person in question to another State in contravention of … its international obligations".

It includes the word "will". An individual cannot even argue that they "will" be sent to another country, never mind that they "may" be—the Government included the word "will". I find that extraordinary; it is almost that an individual cannot argue in a court, as a matter of fact, that they will be refouled. They cannot say, "I have compelling evidence that I will be sent to a third country". It is extraordinary that legislation would say that you cannot as an individual—let alone the point about general safety made by the noble and learned Baroness, Lady Hale, and my noble friend Lady Chakrabarti—argue in a court that you will be refouled. The court could dismiss such an argument, of course, but it would be up to the court—that is the whole point of the courts.

I take the point about interim relief, but I want justification from the Government as to why an individual cannot take that argument to a court, an immigration officer or the Secretary of State. The Home Secretary, or an immigration officer, cannot consider an individual saying to them, "I will be refouled if I am sent to Rwanda". How on earth is that consistent with the principles of democracy of this country, of which we are all so proud? That is why I tabled the amendment, and I would like to hear the Government's justification.

The Advocate-General for Scotland (Lord Stewart of Dirleton) (Con): My Lords, I am grateful to noble Lords for their contributions to an interesting debate on this important point.

Clause 4 provides that a Home Office decision-maker, or a court or tribunal, can consider a claim that Rwanda is unsafe only

"based on compelling evidence relating specifically to the person's individual circumstances".

Subsection (2) prevents a decision-maker or the courts considering any claim where it relates to whether Rwanda

"will or may remove or send the person in question to another State in contravention of any of its international obligations".

Where the duty to remove under the Illegal Migration Act does not apply, subsections (3) and (4) prevent the courts granting interim relief unless that person can show that they would face

"a real, imminent and foreseeable risk of serious and irreversible harm"

if they were removed to Rwanda. This is the same threshold that can give rise to a suspensive claim based on serious and irreversible harm under the Illegal Migration Act. Subsection (5) provides that the consideration of "serious and irreversible harm" will be in line with the definition set out in the Illegal Migration Act, with any necessary modifications. Any allegation relating to onward removal from Rwanda is not an example of something capable of constituting serious and irreversible harm, as the treaty ensures that asylum seekers relocated to Rwanda under the partnership are not at risk of being returned to a country where their life or freedom would be threatened.

Regarding the amendments tabled by the noble Baroness, Lady Chakrabarti, which the noble and learned Baroness, Lady Hale of Richmond, spoke to in opening, I remind noble Lords that the evidence pack published alongside the Bill details the evidence the United Kingdom Government have used to assess the safety of Rwanda. It concludes that, alongside the treaty, Rwanda is safe for the purposes of asylum processing, and the policy statement outlines the key findings. As experts on the bilateral relationship between the United Kingdom and Rwanda and its development over the past 30 years, FCDO officials based in the relevant geographic and thematic departments, working closely with colleagues in the British high commission in Kigali, have liaised with the Home Office throughout the production of the policy statement.

[Lord Stewart of Dirleton]

As my noble friend Lord Sharpe of Epsom and I set out in earlier debates, the United Kingdom Government and the Government of Rwanda have agreed and begun to implement assurances and commitments to strengthen Rwanda's asylum system. These assurances and commitments provide clear evidence of the Government of Rwanda's ability to fulfil their obligations generally and specifically to ensure that relocated individuals face no risk of refoulement. In answer to the points raised by the noble and learned Baroness, Lady Hale of Richmond, which were adopted by the right reverend Prelate the Bishop of Chichester, and by the noble Lord, Lord Coaker, from the Opposition Front Bench, among others, the position is that a person cannot argue this fundamentally academic point over a long period of time, occupying court resources. It is a point rendered academic because of the provision of the treaty governing the Bill.

Lord Purvis of Tweed (LD): I am grateful to the Minister for stating clearly that the Government of Rwanda have begun putting the safeguards in place. That is consistent with what he said earlier in Committee—that the Government of Rwanda are moving towards putting safeguards in place—but he accepted that Rwanda will be a safe country only when those are place, which may be after Royal Assent. Will an applicant be able to argue, even after Royal Assent, that Rwanda is not safe until the measures that are being moved towards are put in place?

Lord Stewart of Dirleton (Con): My Lords, on the passing of the Bill, the Act will decree that Rwanda is safe. Just because work is being done to render a place safer it does not make it unsafe.

Lord Purvis of Tweed (LD): The Minister just said that Rwanda is becoming safer, but in his earlier comments he said that it has begun to put measures in place, and he has previously confirmed to me that until they are in place, it cannot be determined that Rwanda is safe. The Bill will decree that it is safe before the measures are in place so that it is safe. Surely someone would be able to argue in a court that it is not safe until those measures are in place. That is what the Minister just said.

5.45 pm

Lord Stewart of Dirleton (Con): My Lords, what I said was that on the passing of the Bill, Rwanda is safe. What I say is that it is—

Lord Purvis of Tweed (LD): You said that the safeguards had to be in place.

Lord Stewart of Dirleton (Con): I did not. I said that just because safeguards have not yet been fully put in place, it does not mean, as a result, that Rwanda cannot be deemed safe.

Lord Deben (Con): If Rwanda is not safe now, but it will be safe, then the period between now and the point at which it will be safe must be one in which somebody could argue that it is not safe, otherwise it does not mean anything. My noble and learned friend has himself said that it is not safe now but will become safe. I am not one who thinks that we cannot have an extraterritorial arrangement, but I do not understand the logic that says that it is not safe now, it will be safe, but you cannot appeal to the courts in between those times otherwise it is just academic. This is a use of "academic" that I do not really understand.

Lord Stewart of Dirleton (Con): I reiterate my previous answer: the fact that further work is being done does not mean that the safety or otherwise of a place is conditional on the completion of that further work.

The noble Baroness, Lady Whitaker, cited the question posed by the noble Lord, Lord McDonald of Salford, concerning a journalist. She is quite correct: I did not address that specifically when I spoke earlier. The question was not pressed on me subsequently, but given that the noble Baroness has returned to it, I will look into the matter with officials and correspond.

Lord Purvis of Tweed (LD): I have one final point for the Minister. If this legislation decrees on Royal Assent that Rwanda is a safe country, what is the point of having the safeguards he has mentioned?

Lord Stewart of Dirleton (Con): My Lords, any work being done to improve a place is desirable of itself.

Lord Falconer of Thoroton (Lab): Does the Minister still stand by the assurance from the noble Lord, Lord Sharpe of Epsom, that nobody will be deported to Rwanda until the monitoring committee is up and running? He is talking as though people will start to be deported the moment this Bill passes, which is not what the noble Lord, Lord Sharpe, led us to believe.

Lord Stewart of Dirleton (Con): My noble friend Lord Sharpe confirmed to me a moment ago that the monitoring committee is already operational; it is up and running.

Baroness Wheatcroft (CB): My Lords, the monitoring committee consists of four people, two of whom are apparently in the pay of the Rwandan Government. Can the Minister reassure us that he thinks it will be completely unbiased?

Lord Stewart of Dirleton (Con): My Lords, in the first instance, the monitoring committee consists of not four but eight people. If I might express the words of my noble friend sitting next to me on the Front Bench, I can give that assurance.

My noble friend Lord Deben quoted John Donne's line that

> "No man is an island, entire of itself".

I think in that piece of prose, which is one of his sermons, Donne also says the familiar passage about asking not for whom the bell tolls; "it tolls for thee". None the less, while accepting everything of a universalist nature that my noble friend says about our obligations one to another as humans, I have to say that the Government's scope for operation is restricted. We can operate within our powers and jurisdiction, must legislate to protect our borders, and cannot seek to exceed our powers.

Both the noble Baroness, Lady Lister of Burtersett, and the noble Lord, Lord Purvis of Tweed, raised the point that the progress and content of this legislation are under scrutiny. His Majesty's Government fully accept that scrutiny and appreciate that it is timely and important because of the scale of the problem that we face. It is a problem faced across all sorts of different countries, and the Government are undertaking to address it by this legislation.

Baroness Lister of Burtersett (Lab): The Minister may be about to speak on this but I did ask a specific question as to the Government's response to the absolutely damning statement from the UN commissioner for human rights, which was published today and which the noble Lord, Lord Purvis, also quoted. It talked about

"drastically stripping back the courts' ability to scrutinise removal decisions"

and

"a serious blow to human rights".

This is serious stuff. I would like to know the Government's response.

Lord Stewart of Dirleton (Con): The noble Baroness indeed anticipated me as I was turning to that point. As she says, the noble Lord, Lord Purvis, had touched on that. I have the statement by the United Nations human rights chief. The Government repudiate the charges that he places when he says:

"The combined effects of this Bill, attempting to shield Government action from standard legal scrutiny, directly undercut basic human rights principles".

We disagree with that.

Lord Hannay of Chiswick (CB): Will the Minister answer a very simple question? Did the United Kingdom vote for the High Commissioner for Human Rights to take his post? If so, by what right does it now repudiate his views?

Lord Stewart of Dirleton (Con): Whether or not we as a country voted for him to take his place does not exclude the possibility of disagreement with anything that any official, be he ever so high, may have to say.

Lord Falconer of Thoroton (Lab): I am encouraged by the noble and learned Lord's statement that the monitoring committee is up and running. He will know that the international treaties committee of this House said that

"the implementation of the Treaty requires not just the adoption of new laws, systems and procedures, but also the recruitment and training of personnel. For example, the Monitoring Committee has to recruit a support team".

Are we to take it that the Minister is saying the committee has indeed already recruited a support team? If not, it is very difficult to see how it could be described as "up and running".

Lord Stewart of Dirleton (Con): That is the information given to me, but I am happy to look into the matter to reassure the noble and learned Lord.

Lord Falconer of Thoroton (Lab): Is it that it has recruited a support team, or that it is up and running?

Lord Stewart of Dirleton (Con): The point I am making is that I have been told the body is up and running. That does not touch on the matter of the recruitment of a support team, which is the basis of the noble and learned Lord's supplementary question.

From the Opposition Front Bench, the noble Lord, Lord Coaker, touched on advice said to have been given by the former Solicitor-General and by the Attorney-General. I think he is aware—I have touched on it from the Dispatch Box at earlier stages—of the existence of the law officers' convention. I will return to it again in a later group, but the essence of that convention is not only that the content of advice given is confidential but also that it is confidential that advice has even been sought. The reason for that, accepted by Governments of every stripe over the years, is to assist with the passage of decision-making and the consideration of legal matters that touch on legislation to be passed. As I said, if I may, I will revert to that in consideration of a later amendment.

The assurances and commitments that the Government have received, together with the treaty and conclusions from the FCDO experts reflected throughout the policy statement, allow his Majesty's Government to state with confidence that the Supreme Court's concerns have been addressed and that Rwanda is safe. As the point has been taken in this debate, albeit in passing, I stress once again that this is a matter not of overturning the findings of the United Kingdom Supreme Court but rather of acting on them.

Lord Purvis of Tweed (LD): The Minister is being generous in giving way, but what he just said contradicts what he said previously in Committee. At col. 70 of 12 February's *Official Report*, I asked about the mechanisms for safeguards. It had been the Government's position—until today, it seems—that the requirements of the Supreme Court would be met by the implementation of the treaty, which includes the safeguards within it. These include the appeals mechanism and the training and capacity-building. They have to be in place. If they are not in place, the treaty is not operative. Progress is being made towards them, as the Minister said, but he has just said that the Government's view is that the requirements of the Supreme Court have been met. These comments are contradictory. This is important because, when I asked,

"can the Minister at the Dispatch Box reconfirm that position: that no individual will be relocated before the safeguards—including the appeals mechanism, the training and the capacity-building—are in place?",

the noble and learned Lord, Lord Stewart, responded:

"I can answer the first part of the noble Lord's question in the affirmative".—[*Official Report*, 12/2/24; col. 70.]

Is that still the case, or did he mislead the House?

Lord Stewart of Dirleton (Con): The point I was making was in answer to the point raised earlier in the debate by noble Lords, who were characterising the Government's actions as going back on, or overturning, the Supreme Court's decision. As I said, the point is that the terms of the Bill and the treaty are a response to the Supreme Court's decision.

Lord Falconer of Thoroton (Lab): But it is absolutely clear from the policy statement, and from answers that the Home Secretary gave to the international treaties committee of our House, that the position is not complete in Rwanda until it implements new Rwandan asylum legislation, which has not yet been passed. The Home Secretary was specifically asked when that legislation would be passed by Rwanda, and he was unable to give a timeframe. For the noble and learned Lord to say that Rwanda is now safe, when even the Home Secretary accepts that this law has yet to be introduced in Rwanda, seems to completely contradict the Government's position. I ask him to reconsider the answer to the question: are the Government saying that Rwanda is now safe, without that legislation in Rwanda?

Lord Stewart of Dirleton (Con): I think the terms of Article 9 of the treaty are clear. The Act comes into force the day that the treaty comes into force. As to the specific Rwandan legislation to which the noble and learned Lord refers, I am not able to give a categorical answer from the Dispatch Box.

Lord Hannay of Chiswick (CB): Will the Minister answer a couple of rather simple questions? Has he read the Rwandan legislation? Does he believe it is in conformity with the treaty?

Lord Stewart of Dirleton (Con): The answer to the former is that it does not fall to me to read the Rwandan legislation; but, given that decisions are taken collectively by the Government, I can answer the noble Lord's second question in the affirmative.

Lord Falconer of Thoroton (Lab): The Advocate-General for Scotland may not be the right person to express a view in relation to Rwandan legislation, but I assume that somebody in the Government has seen a draft of this legislation. Could he indicate who that is and what that person's opinion is?

Lord Stewart of Dirleton (Con): My Lords, I will look into that. Presumably, the Foreign, Commonwealth and Development Office will take this matter under its wing. The noble Baroness, Lady Chakrabarti, refers to the Home Office. We will look into that and provide the noble and learned Lord with an answer.

6 pm

Lord Coaker (Lab): Could the Minister confirm, for the benefit of all of us, that the Home Office team in charge of the Bill has not seen the Rwandan legislation and has no idea who has?

Lord Stewart of Dirleton (Con): My Lords, what I have said was that I have not seen the Home Office legislation. I have not been called upon to review it.

Lord Falconer of Thoroton (Lab): My Lords, I would be keen to know what is the basis for the noble and learned Lord's assertion that Rwanda is safe, which he is putting forward on behalf of the Government.

Lord Stewart of Dirleton (Con): My Lords, it has been a matter that has been canvassed exhaustively already, but it flows from the treaty which the Rwandan Government and His Majesty's Government have entered into.

Lord Kerr of Kinlochard (CB): Could the Minister tell us whether the draft Rwandan law exists?

Lord Stewart of Dirleton (Con): My Lords, again, if the noble Lord is asserting that the relevant Rwandan legislation is a figment of the imagination of the Rwandan Government or His Majesty's Government, I am not quite sure I can answer that. However, the point is that the treaty and the work going on—which has already been substantially completed—between the British Government and that of Rwanda must indicate that there is such a piece of legislation.

The assurance and commitments to which I have referred, given to and drawing upon the conclusions made by FCDO experts, reflected throughout the policy statement, allow us to state with confidence that the concerns of the Supreme Court have been addressed and that, I repeat, Rwanda is safe. We do not, therefore, consider it necessary to make the proposed changes to Clause 4 to permit decision-makers or courts and tribunals to consider claims or grant interim relief on the basis of Rwanda's safety generally or that Rwanda will or may remove persons to another state in contravention of its international obligations. That is contrary to the whole purpose of the Bill. The assurances we have negotiated in a legally binding treaty with Rwanda address the concerns of the Supreme Court and make detailed provision for the treatment of relocated individuals in Rwanda, ensuring they will be offered safety and protection with—it must be emphasised—no risk of refoulement.

I turn to Amendment 48, tabled by the noble Lord, Lord Coaker. If I may build on a point I have been making, the treaty makes clear that Rwanda will not remove any individual relocated there to another country, except the United Kingdom in very limited circumstances. Article 10(3) of the UK-Rwanda treaty sets out explicitly that no relocated individual shall be removed from Rwanda except to United Kingdom in accordance with Article 11(1). Annexe B of the treaty also sets out the claims process for relocated individuals and how they will be treated. Part 3.3.2 of Annexe B sets out clearly that members of the first-instance body, who will make decisions on asylum and humanitarian protection claims,

"shall make decisions impartially, solely on the basis of evidence before them and by reference to the provisions and principles of the Refugee Convention and humanitarian protection law".

Lord Coaker (Lab): If there is no risk of refoulement because of all those processes, all the legislation and all the things the Minister has just read out, in view of his earlier answers will he confirm that all of that is in place now? Or is it due to be in place? And if it is due to be in place, when will that be? How long into the future will all of the various points that the Minister has read out be in place? At the moment, as it stands under the Bill, I cannot go to the Home Secretary or to any immigration official and say I might be refouled, because I will not be allowed to under the Bill. And yet

the Minister cannot tell us that all of the processes to protect me from refoulement are in place. So, what am I supposed to do if I am at risk of refoulement?

Lord Stewart of Dirleton (Con): If the noble Lord were to be threatened with refoulement, it could only happen to him once the Bill and the treaty were in place. A person could not be relocated to Rwanda until the Bill and the treaty are in place, and once the Bill and treaty are in place, there is no risk of refoulement.

Lord Purvis of Tweed (LD): I am very concerned with what the Minister has literally just told us. The Minister has just said that, once this Bill has passed, there is no risk of refoulement. Article 10 of the treaty says:

"The Parties shall cooperate to agree an effective system for ensuring that removal contrary to this obligation does not occur".

Those are not consistent. The effective system has to be in place, because that is what the treaty says; the effective system is not the passage of this Bill. So can the Minister now correct the record?

Lord Stewart of Dirleton (Con): My Lords, the Government are working with the Government of Rwanda to implement new protections to the Rwandan asylum system, including the introduction of new legislation. I am reverting to a point that was taken earlier, but I give the same answer that I gave to the noble Lord, Lord Coaker. Protections offered by the treaty will prevent refoulement from Rwanda to elsewhere.

Baroness Chakrabarti (Lab): I am grateful to the Minister, who has been very patient with so many concerned Members of the Committee, but everything that he says very honestly in relation to each question suggests that the safeguards are not yet in place. Therefore, Rwanda is not yet safe, because that was the whole point of the treaty: to offer additional protections and to attempt to assuage the concerns of the Supreme Court. How can all of this be academic? This is not a bathroom that has been plumbed in and we are now just painting the tiles; we do not have the plumbing yet.

Lord Stewart of Dirleton (Con): My Lords, the treaty guarantees that anyone relocated to Rwanda will be given safety and support and will not be returned to a country where their life or freedom will be threatened. That directly addresses the Supreme Court's concerns about refoulement. As to the matter of the use I made of the word "academic", I was using that in answer to points raised by noble Lords in relation to why the Bill bars the taking of general points of academic interest, which was referring to a point once the Bill and the treaty are in place. Once they are in place, there is no possibility of refoulement from Rwanda without contravention of an international instrument. The point is that, at that stage, argument before the domestic courts would be academic. I give way to the noble Lord.

Lord Falconer of Thoroton (Lab): I do not think that the Minister has taken on board what the noble Lord, Lord Purvis, asked him. Article 10(3), which is the provision in the treaty that allows relocation only back to the UK, contains the following phrase:

"The Parties—"

that is, Rwanda and the UK,

"shall cooperate to agree an effective system for ensuring that removal contrary to this obligation—"

the obligation being to remove only to the UK—

"does not occur".

The parties have not yet agreed that. The parties, the UK and Rwanda, therefore accept that, currently, there is not in place an effective system for ensuring that removal contrary to the obligation only to remove to the UK exists. Could the Minister please explain to the Committee how he can possibly say that, at the moment, under the agreement—that is the overarching agreement, not the agreement to agree an effective system for ensuring non-refoulement—such safeguards currently exist? We need an explanation for that.

Lord Stewart of Dirleton (Con): My Lords, the point is that the treaty, while it has not been ratified, is a matter of agreement. I spoke about the work—

Lord Kerr of Kinlochard (CB): Further to the Minister's answer to the noble and learned Lord, Lord Falconer, does the system—the effective system for ensuring that removal contrary to the obligation does not occur—exist?

Lord Stewart of Dirleton (Con): My Lords, I am not fully clear that I follow the import of the question that the noble Lord poses. If he will bear with me, I am going to defer answering that point and will do so with him in writing.

Lord Kerr of Kinlochard (CB): Forgive me: I am just trying to understand the Minister's position on the point raised by the noble Lord, Lord Purvis, and pursued by the noble and learned Lord, Lord Falconer. The treaty requires the parties to set up a system—it says they shall agree a system. The Minister is saying that Rwanda is safe and implying that that system has been set up, or at least has been agreed, and will come into force the moment the treaty is ratified. Is that the case?

Lord Stewart of Dirleton (Con): The system has been agreed and will come into place along with the treaty.

Lord Kerr of Kinlochard (CB): Could the Minister then tell us what that system is? When will the House see that system? It would help us to judge how real the remaining risk of removal to a third country is if we could see the system that has apparently been created to ensure that that risk does not come to fruition.

Lord Stewart of Dirleton (Con): My Lords, I will expand on the matter in the correspondence to which I referred the noble Lord.

I will go into more detail about the work that has been and is being conducted between Rwandan and British officials. Officials from the UK and Rwanda have worked closely together to strengthen Rwanda's asylum system. We have already developed and commenced operational training for Rwandan asylum decision-makers and strengthened procedural oversight of the MEDP and asylum processes.

[Lord Stewart of Dirleton]

In November 2023, technical experts from the Home Office, working with the Institute of Legal Practice and Development, delivered a training course aimed at asylum decision-makers in Rwanda. It focused on applying refugee law in asylum interviews and decision-making, and on best practice in assessing credibility and utilising country-of-origin information.

Furthermore, as set out in paragraph 14.1.15 of the published country information note on Rwanda's asylum system, once the treaty is ratified there are provisions for Rwanda to move to a case-worker model when deciding asylum claims. Under that model, for the first six months Rwanda's decision-making body will consider advice from a seconded independent expert prior to making any decision in relation to a claim.

Lord Purvis of Tweed (LD): Under CRaG, the scrutiny period for the treaty has now been concluded, so, for clarification, when will the UK ratify the treaty?

Lord Stewart of Dirleton (Con): That is a decision not for me to take. It will be taken by the Government collectively. I am not in a position to give a date to the noble Lord, if he was asking me to give one. In the circumstances, I cannot supply him with any further information.

Lord Falconer of Thoroton (Lab): The Minister just referred to the independent experts who are going to help the Rwandans in relation to their processing of claimants. Our International Agreements Committee said those independent experts have yet to be appointed. Could he give the House an indication of how the appointment process is going? How many have been appointed, and when?

Lord Stewart of Dirleton (Con): My Lords, that is a matter of detail upon which I will have to correspond with the noble and learned Lord.

The Government of Rwanda are committed to this partnership. Like the UK, they are a signatory to the refugee convention and have an international obligation to provide protection to those who are entitled to it. The Bill is predicated on the compliance by both Rwanda and the UK with international law in the form of the treaty, which itself reflects the international legal obligations of the UK and Rwanda.

Taking together the strengthened Rwandan asylum system and the commitment set out in the legally binding treaty—which, once ratified, will become part of Rwandan domestic law—it is unnecessary for a decision-maker, whether that be an immigration officer or a court, to consider any claim made on the ground that Rwanda may remove a person to another state. Furthermore, as I said earlier, that would delay unnecessarily the relocation of individuals to Rwanda, thereby undermining the core of the Bill.

For the reasons outlined, I respectfully ask that noble Lords do not move their amendments.

6.15 pm

Lord Falconer of Thoroton (Lab): My Lords—before the Minister sits down—it becomes crucial to know when this Act will come into force. This is not a personal observation, but the Minister has given the most unsatisfactory series of answers about what the position is in Rwanda. Clause 9 of the Bill says:

"This Act comes into force on the day on which the Rwanda Treaty enters into force".

On Wednesday, I took the Minister through what the statement and the agreement suggest, which is that the Bill comes into force when the steps required for ratification are completed by both countries. The only step required for ratification that is referred to in the policy statement made by the Government, as far as the UK Government are concerned, is the passage of this Bill. So it appears that the Government are envisaging that, almost automatically on the passage of the Bill, they will treat the agreement as ratified. The consequence is that the Bill will immediately come into force. If that is right, it is pretty obvious that the Bill will become law and the Government can deport people to Rwanda when the safeguards are not in place. Could the Minister confirm that my understanding of when the Bill is going to come into force, which I set out in detail last week, is correct?

Lord Stewart of Dirleton (Con): I cannot go beyond the terms of the clause to which the noble and learned Lord refers. Clause 9(1) states:

"This Act comes into force on the day on which the Rwanda Treaty enters into force".

Baroness Chakrabarti (Lab): As always, I am grateful to the Committee for its deliberations, but on this occasion I am particularly happy to welcome the noble and learned Baroness, Lady Hale of Richmond, to those deliberations, and indeed to what I hope will be a long and happy role as a legislator in your Lordships' House. I think the Committee will agree that she dealt with this important group of amendments with the expertise and clarity that we would have expected. She pointed out the dangers of the "for ever" conclusion that Rwanda is safe and therefore the inability of our domestic courts to ever look at that issue—something that I think every speaker other than the Minister found unsatisfactory and said so more than once.

The noble and learned Baroness pointed out the oddity of a situation where there would be at least the possibility of jurisdiction in the European Court of Human Rights in Strasbourg in circumstances where our domestic courts had been stripped of jurisdiction. For those concerned about sovereignty, that seems to be a very odd state of affairs. The one thing that the Bill does not purport to oust is the final jurisdiction of the European Court of Human Rights in Strasbourg—although it attempts to allow Ministers to ignore interim relief from Strasbourg—but it completely ousts all serious jurisdiction of our domestic courts, particularly in relation to the issue of the general safety of Rwanda. That is a very odd and unsatisfactory state of affairs and, again, no one in the Committee other than the Minister appeared to say otherwise.

I am grateful to the right reverend Prelate the Bishop of Chichester and my noble friend Lady Lister of Burtersett for reminding the Committee what the UNHCR said just today about the Government of the UK attempting to shield themselves from judicial oversight. My goodness me—what would we be saying

about any other country or jurisdiction in the world that that was said about by the main refugee monitor at the UN? Furthermore, I am grateful to the noble Lord, Lord Purvis of Tweed, for pointing out the significance of this in places such as the UN Human Rights Council, and how shameful it is that an examination of the UK should now be threatening to eclipse the situations in the Middle East and Ukraine. There are almost no words.

When there are almost no words, thank goodness for the noble Lord, Lord Deben. I refer the Committee to *Hansard* last Wednesday, when he spoke about the "nature of truth" and how we should always be seeking after it and never trying to end that exploration. I say to the Minister that rather more important than any references to John Donne today was the allusion to Al Gore; it is the inconvenient truth that the Government are constantly seeking to avoid with this Bill. It is the inconvenient truth that Rwanda is not yet safe, hence the need for the treaty in the first place and all the mechanisms that need to be brought in and operated under it. This was put so well, repeatedly, by my noble and learned friend Lord Falconer of Thoroton. There is also the inconvenient truth that we still believe in the rule of law in this country. We still believe in anxious scrutiny of individual cases before people's rights are put in jeopardy. There is the inconvenient truth that, even if Rwanda became generally safe tomorrow, things could change quickly, as they do in countries all over the world, as was pointed out once more by the noble and learned Baroness, Lady Hale of Richmond.

I am grateful to my noble friend Lady Whitaker for pointing out very real concerns about journalists currently detained in Rwanda. We wait for responses "in due course" from the Government about reports of torture of the journalists currently incarcerated there. I was grateful for the support of my noble friend Lord Coaker on the Opposition Front Bench. I thought, if I may say so, that the courtesy and deference he gave to the noble and learned Baroness, Lady Hale, and the mutuality of respect between them, boded well for the attitude of a future Labour Government. I will hold him to that in due course, I hope.

Lord Coaker (Lab): In due course.

Baroness Chakrabarti (Lab): Yes, in due course.

I say to the Minister that I am sure the Committee is very grateful for his patience and courtesy, as always, but this was a very difficult couple of hours. I do not know whether the word "decree" was a Freudian slip or just some straightforward, slightly shameless honesty. We now live in a country in which we are going to determine something as important as whether another country is safe for asylum seekers, not by fact finding or seeking after truth, as the noble Lord, Lord Deben, would like, but by decree. I cannot believe that I am now living in a country where facts of such importance are determined, in effect, by Executive decree.

It is not even by parliamentary decree because Parliament will not have the opportunity to examine all these shadowy mechanisms under the treaty. My noble and learned friend Lord Falconer, with the able assistance of the noble Lord, Lord Purvis of Tweed, attempted again and again to get answers about these but answers came there none. When will this legislation be brought into Rwanda? Who has seen the draft legislation? Who are the experts? All these are things that the Supreme Court was concerned about.

I remind the Committee that the Supreme Court never doubted the good faith of the Rwandan Government. It just felt that, on the evidence, the mechanisms and cultures were not yet there on the ground. The Minister, courteously and kindly, could not answer any of those questions. Therefore, in addition to stripping our domestic courts of their jurisdiction over such important matters, the Government have singularly failed to assure this Committee that Rwanda is safe and that we should "decree" it so.

I will end unconventionally with a comment made by one of your Lordships' security staff to me earlier in the day. For obvious reasons, he shall remain nameless.

Lord Scriven (LD): Or she.

Baroness Chakrabarti (Lab): He or she or they—I have sort of admitted that it was a gentleman. He said to me that he had heard various comments I have been making. I said, "I am sorry for that; it is all rather depressing, isn't it?" He said, "My Lady, I think there are all sorts of people that we would like to kick out of our country, but we don't want to kick out our values". I think that was a pretty good summation, worthy of any Member of the Committee.

Finally, I say to the Minister: if Rwanda is so safe, or if it will become safe and be safe for a long time, there is nothing to be afraid of in this group of amendments. The Government should not be afraid of His Majesty's judges or the courts that have been the pride of this country and admired all over the world for so long. For the moment only, however, I beg leave to withdraw my amendment.

Amendment 39 withdrawn.

Amendments 40 to 45 not moved.

Amendment 46

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

46: Clause 4, page 4, line 22, at end insert—

"(c) a court or tribunal from considering, in the case of a person who was but has ceased to be an unaccompanied child, a claim that their removal to the Republic of Rwanda would be contrary to their rights under the European Convention on Human Rights based on compelling evidence relating specifically to the person's particular individual circumstances."

Member's explanatory statement

This amendment ensures that a person previously recognised as an unaccompanied child has the ability to challenge their removal to Rwanda when they cease to be an unaccompanied child at the age of 18 on the basis that removal would be contrary to their rights under the European Convention on Human Rights. In particular, this would enable consideration to be given to any rights accrued under Article 8, right to private and family life, by virtue of having lived in the UK for a period of time, including building relationships and connections etc.

Baroness Lister of Burtersett (Lab): My Lords, I am moving Amendment 46 as an understudy to my noble friend Lord Dubs, who apologises that he cannot be here today because of a long-standing commitment.

[Baroness Lister of Burtersett]

I will speak also to Amendments 54 and 55 in my name. All the amendments in this group are designed to ensure that we do not overlook the best interests of children who stand to be removed to Rwanda and that we provide a degree of protection for them. These concerns were raised briefly on Wednesday.

Amendment 46, the technical details of which I will not go into as I am advised that the wording may not be perfect, aims to ensure that when an unaccompanied child asylum seeker reaches 18, they are able to challenge a decision to remove them to Rwanda. There are two compelling arguments in support of this. First, having lived in the UK for what could be some time, it would be cruel to uproot an 18 year-old from the life they have forged and the relationships they have developed in order to remove them to a country about which they know nothing.

Secondly, there is the concern put forcefully by the Children's Commissioner that there is a real danger that the prospect of removal at 18 will result in these children disappearing. This could open them, in her words, to huge risks of exploitation by the kinds of criminal groups that the Bill is supposed to smash. I refer to the Committee's exchange on morality in our previous sitting. As the Minister, the noble Lord, Lord Sharpe, said:

"It is immoral to facilitate the activity of criminal gangs"—[*Official Report*, 14/2/2024; col. 292.]

and traffickers and it is "our moral imperative" to stop them. This amendment would contribute to this moral imperative.

I turn to the amendments in my name and those of the right reverend Prelate the Bishop of Chelmsford and the noble Baronesses, Lady Neuberger and Lady Brinton, to whom I am grateful for their support. I am also grateful for the help of ILPA, the Refugee and Migrant Children's Consortium, and RAMP, of which I am an associate. I shall begin by making some general points and then speak to each amendment separately.

My starting point for the two amendments is last year's concluding observations of the UN Committee on the Rights of the Child, in which it urged the UK to:

"Ensure that children and age-disputed children are not removed to a third country".

It expressed deep concern about the potential impact of the Illegal Migration Act, which underpins this Bill, and the lack of consideration for the principle of the best interests of the child. This is clear from the failure to provide a child rights impact assessment until the very last minute of the Bill's passage, despite repeated calls from noble Lords—and then it amounted to little more than a post hoc justification of the Bill's measures. Needless to say, there has been no child rights impact assessment of the current Bill. In the debate on the treaty, when I asked whether there would be one, I did not receive a reply.

6.30 pm

UNICEF warned that a blanket provision on inadmissibility and subsequent removal that applied to children without undertaking a best interests procedure and implementing its determinations would not be compliant with the UN Convention on the Rights of the Child, and in particular Article 3, which, as the noble Lord, Lord Hannay of Chiswick, advised on Wednesday, we need to take seriously. Yet the treaty, while acknowledging the convention, makes no reference to determining a child's best interests. Concerns about children's best interests are not assuaged by the treaty's statement that it does not cover unaccompanied children and that the UK Government will not seek to relocate them, as the Minister reminded us on Wednesday.

The treaty does cover accompanied children, which brings me to Amendment 54. Amendment 54 would require consultation with the Independent Family Returns Panel on how best to safeguard and promote the welfare of children and families due to be removed to Rwanda. Veterans of the Illegal Migration Bill might recall that it disapplied the existing duty, introduced in 2014, to consult the panel with regard to families covered by what is now the Act. The purpose of the panel is to provide advice on the welfare and safeguarding aspects of removal arrangements for families of children facing removal, with particular regard to the need to safeguard and promote the welfare of the children in the family. Importantly, it states that its role includes ensuring that the best interests of children are considered. The Children's Commissioner has described this role as vital, and she has asked how the Government will ensure that there is appropriate scrutiny of the plans for the removal of a child. Who will consider their best interests?

While it is difficult to see how it could be in any child's best interests to be sent with their family to a country over 4,000 miles away with which they have no connection, this amendment would at least allow for independent consideration to be given to the welfare and best interests of specific children.

One fear expressed by the Refugee and Migrant Children's Consortium is that removal to Rwanda of accompanied children could have a devastating effect on their mental and physical health, with implications also for their future development. Yet according to the BMA, Rwanda faces a critical shortage of skilled health workers. How can the Government be sure that the complex mental and physical health needs of child asylum seekers will be met, especially as those needs are likely to be intensified by the process of removal on top of what they have gone through to get to the UK in the first place?

Amendment 54 is a very modest amendment, which would do no more than put back in place safeguards introduced by the Conservatives in 2014. These safeguards are needed more than ever, so I hope that the Minister might be willing to concede it.

I turn to Amendment 55, which is about unaccompanied children. The amendment aims to ensure due process by disapplying the provision of the Illegal Migration Act 2023 which would enable the removal of an individual to Rwanda before a court or tribunal can consider whether they are under the age of 18 and which would limit any judicial review to a point of law rather than consideration of whether the decision was wrong as a matter of fact. The amendment would serve to avoid a situation in which an unaccompanied child is erroneously relocated to Rwanda.

As I have acknowledged, the treaty states that it does not cover unaccompanied children, but it goes on to make it clear that the UK Government would have to deem them to be under the age of 18 to remove the possibility of their relocation to Rwanda. It continues:

"Any unaccompanied individual who, subsequent to relocation, is deemed by a court or tribunal in the United Kingdom to either be under the age of 18 or to be treated temporarily as being under the age of 18, shall be returned to the United Kingdom in accordance with Article 11 of this Agreement".

In other words, it is tacitly acknowledged that the UK Government might send a child to Rwanda on the grounds that they deem them, wrongly, to be an adult. Should the child challenge the decision, they may have to continue to do so from Rwanda and only on narrow grounds for judicial review.

There are a number of problems with this. First, and most fundamentally, is the high likelihood of the age assessment being wrong. Just last month, a report from the Refugee Council, the Helen Bamber Foundation and Humans for Rights Network catalogued the existing evidence in the absence of reliable data from the Home Office. Over an 18-month period from January 2022 to June 2023, more than 1,300 children were wrongly assessed to be adults by the Home Office. The organisation found children who had been assessed as adults living in an adult setting, including shared accommodation with an unrelated adult. I do not need to spell out the safeguarding implications, an issue which I know is of great concern to the Children's Commissioner.

I have a statement from the Children's Commissioner, who says that she is

"deeply concerned about children who are wrongly age assessed and the potential removal/or a threat of removal for these age disputed children. This is even more concerning in the context of the potential of children being sent to Rwanda and the risks that could pose. We know that we are not good enough at age assessment and I have seen shocking examples of those who are wrongly assessed being sent to adult prisons for entering the UK illegally. My concern is that the use of so-called scientific methods will only make this worse. We need to support these children to integrate in their new home and community and not face another huge disruption through removal".

During the debate on the treaty and at Second Reading, the Minister sought to reassure us about the safeguards to prevent the wrongful treatment of children as adults occurring. He said that:

"The Home Office will treat an individual claiming to be a child as an adult without conducting further inquiries only if two officers—one of at least chief immigration officer grade or equivalent—have separately determined that the individual's physical appearance and demeanour very strongly suggest that they are 'significantly over 18 years' of age".—[*Official Report*, 29/1/24; col. 1097.]

That sounds reassuring, but according to the Refugee and Migrant Children's Consortium it is precisely this practice, with two officials, that has resulted in hundreds of children being incorrectly assessed as adults. It points out that the Chief Inspector of Borders and Immigration and the Chief Inspector of Prisons have respectively highlighted the failings of this supposed safeguard. Indeed, the Home Office's own guidance for the National Age Assessment Board warns that

"physical appearance is a notoriously unreliable basis for assessment of chronological age"

and that

"demeanour can also be notoriously unreliable and by itself constitutes only somewhat fragile material".

Yet despite the strong evidence of its failings, we are supposed to be reassured by a test that is accepted to be "notoriously unreliable" and "somewhat fragile".

Secondly, the Minister pointed out that a challenge to an age decision can be made through judicial review, but, as he acknowledged, only once the applicant has been removed and, under the Illegal Migration Act, on narrow grounds only. As was pointed out in written evidence to the International Agreements Committee, even taking account of the provision for video conferencing under the agreement, it is unlikely that such an approach could be said to be in the best interests of the child.

Thirdly, even if such an appeal is successful, we have the unedifying prospect of a child being sent back and forth like an unwanted parcel—again, hardly in their best interests. Prior to the Illegal Migration Act, a Written Answer to me set out clearly that this should not happen under the MEDP. It said:

"No one undergoing an age assessment, or legally challenging the outcome of an assessment, will be relocated until that process is fully considered".

Surely, if that was the right thing to do then, it is the right thing to do now, and Amendment 56 would simply take us back to the status quo ante.

I shall finish with a case study from the report I mentioned. Ahmed was a 17 year-old Afghan who arrived on a small boat last June, having been rescued following a frightening voyage. He had photographs on his phone of documents proving his age, but he was not permitted to show them to immigration officers. He was treated as an adult, spent two days at Manston sleeping on the floor in a tent, and ended up in a London hotel, where he had to share a room with an unrelated adult male. He experienced acute distress and discomfort and felt that no one was listening to him. He took himself to a police station and finally, with the help of Humans for Rights Network, was visited by social services and was accepted by them as a child. Under the Bill, Ahmed might have ended up in Rwanda without a civil society organisation to help him. We must try to prevent that happening, so I hope the Minister will seriously consider this amendment. I beg to move.

Baroness Neuberger (CB): My Lords, I support the noble Baronesses, Lady Lister of Burtersett and Lady Brinton, and the right reverend Prelate the Bishop of Chelmsford, and I wish to make only a very few short points in relation to Amendments 54 and 55, to which I have added my name. I apologise that I could not be here for the two previous days in Committee, due to prior commitments.

Once again, we are considering the age-old issue of age assessment of young asylum seekers. I will not rehearse the many arguments about the validity of such age assessments using so-called scientific means or, indeed, any other means; I have spoken in this House on many occasions on this very subject. Now, the consequences of these age assessments may be very much worse than hitherto: as the noble Baroness, Lady Lister, rightly said, you may be sent to Rwanda,

[Baroness Neuberger]
and you might even be sent back and forth like an unwanted parcel. This is really serious: time and time again, we have seen unaccompanied children incorrectly assessed by the Home Office as adults on their arrival in the UK and treated as if they were over 18, only for them to be determined to be children after further assessment.

In addition to the evidence the noble Baroness has just given us from various organisations that have found age assessments to be wrong, we have evidence from local authorities' children's services—and noble Lords might think that they would know. They reveal that in the first six months of 2023 alone, 485 children were wrongly assessed by the Home Office as adults. Under the Bill, those 485 children, as well as all the others cited by the noble Baroness, would face removal to Rwanda. Furthermore, should those children seek to challenge the incorrect assessment, Section 57 of the Illegal Migration Act provides that the Home Secretary can still make arrangements to remove them to Rwanda, as we have heard, while the UK courts and tribunals are considering the challenge of the age assessment. There is a real risk, given the numbers we already know about, that children arriving alone in the UK in search of safety will mistakenly be sent to Rwanda before they can access justice. That is truly shocking.

6.45 pm

We also know that mistakes are made; we have the evidence. The Rwanda treaty itself acknowledges that, so lone children may well in fact be facing the nightmare of being removed alone to Rwanda. The very article, already cited, that sets out that unaccompanied children will not be removed provides that any unaccompanied individual who is removed to Rwanda and subsequently found by a UK court to be under 18 years of age is to be returned to the UK: the parcel that goes back and forward and seems to be somewhat unwanted. So, we have to take this seriously and allow the courts and tribunals to take their time over the assessment, and not allow these children to be removed to Rwanda before a determination is made.

Of course, once these children have been removed to Rwanda, it is another problem to make sure they are even identified as having questions as to their actual age. Their only hope is that their plight might be acknowledged, their challenge quickly progressed through the UK courts while they remain in Rwanda, and the mistake reversed. This is all at devastating risk to their physical and mental well-being; and of course, we already heard in considering the previous group of amendments that there is some question whether systems are in place in Rwanda that might help these young people, who may be so very considerably at risk. A child's best interests cannot be upheld when they are located more than 4,000 miles away from the proceedings to determine their age, with little, if any, access to legal representation and no support from services dedicated to children. We have not heard anything about services in Rwanda that might be dedicated to looking after any of these young people.

The proposed amendment provides for a legal challenge against an age assessment, to be completed before a young person is removed to Rwanda, to ensure that no unaccompanied child wrongly determined to be an adult by the Home Office is removed and that the UK upholds its commitment to give due weight to the best interests of the child. We have national and international commitments to do just that. It is, indeed, the best that we can do.

The Lord Bishop of Chelmsford: My Lords, I too support Amendments 54 and 55, to which I have added my name. I thank the noble Baroness, Lady Lister, and the noble Lord, Lord Dubs, for giving us the opportunity to ensure that the voice of the child is heard in this debate. For we should never forget that both accompanied and unaccompanied children, and those who may well be found to be children, are in the scope of the Bill, which the Government cannot confirm is compatible with convention rights under the ECHR. I spoke earlier in Committee on the universality of human rights, but to remove children from their reach is simply unforgivable. For this reason, I repeat the noble Baroness's request that a children's rights impact assessment be published as a matter of urgency.

I believe strongly that changes are needed to Clause 4 if we are to ensure that the welfare and best interests of children are protected. For safeguarding is not a discretionary requirement, and the UK is legally obliged to protect and promote the interests of the child. The fundamental issue that Amendment 55 seeks to address is that the treaty itself excludes unaccompanied children from the partnership agreement, while acknowledging that they may be sent to Rwanda erroneously. This contradiction means that the treaty, in a section entitled "Part 3—General", provides only vague information about Rwanda's plans to safeguard children, a group surely more vulnerable than any other we could possibly imagine.

It is not my place to doubt the sincerity of the Rwandan authorities' commitment to providing child-suitable safeguards, but good intent is no basis for safeguarding, and sending children before the treaty is fully implemented would be a dereliction of our duty to them. This, combined with leaving a potential child with no suspensive legal redress against their removal, is simply unconscionable. If the treaty has identified the risk of sending a child to Rwanda in error, why has no mitigation been put in place? Has it been decided that the risk is tolerable, regardless of all the anguish and trauma it would cause to a child? Can the Minister assure us that all children would be returned in these circumstances? Although it is in the treaty, it is not a legal obligation in the Bill.

The Home Office's own figures, although incomplete—they do not include the number of children moved into an adult setting—indicate that, last year, 60% of all resolved age dispute cases found the young asylum seeker to be a child. This point was well made by the noble Baroness, Lady Lister, but I will emphasise it because of its importance. There are 2,219 children without a parent or guardian, who, if the Bill had been in operation, may have been eligible for removal to Rwanda if a full assessment had not been completed. I therefore ask the Minister: what assessment has been undertaken to evaluate the impact of removing a potential child from the UK's child support services, and then from the UK entirely, before awaiting the conclusion of all outstanding age assessment challenges?

Age assessments are complex—again, we have already heard this—and therefore it is understandable that visual age assessments by immigration officers can lead to inaccurate judgments. I will not repeat the quote from the Home Office's guidance on this. Given that errors are an inherent part of the age-verification process, can the Minister reassure us that, at the very least, when an individual's age is disputed, they will not be subject to removal before having met with a social worker and child protection team for a more comprehensive age assessment?

Under the Bill, the repercussions of inaccurate age assessments are disastrous. Even if a child were to be returned to the UK after they were verified to be a minor, the impact would be devastating for their physical and mental well-being, and it would likely leave an imprint on them for the remainder of their life. The amendment proposed does not hinder the Government's objective to begin the transfer of asylum seekers to Rwanda, but it ensures that there has been a definitive determination of a person's age before their removal. It supports the Government in meeting the treaty commitment.

The determination that a young person may be a child, and therefore could deserve all the rights of a child, should and must be reason enough to prevent their removal. A child is a child, regardless of whether they remain with their family or not. Amendment 54 simply seeks to maintain a current safeguard when a child is being considered for removal, which requires the Home Secretary to consult with the Independent Family Returns Panel to ensure that their safeguarding needs are appropriately met. Section 14 of the Illegal Migration Act, which is not yet in effect, disapplied this safeguard.

I do not believe that children seeking safety in the UK should face removal to Rwanda. But, at the absolute minimum, the process should ensure that their welfare and best interests are considered, and maintaining a role for the panel would help facilitate this. If the Government proceed to send minors to Rwanda without appropriate safeguards, vulnerable children will undoubtedly face an intolerable level of emotional distress. I therefore implore the Government to give the utmost consideration to these reasonable and principled amendments.

Lord Falconer of Thoroton (Lab): My Lords, I strongly back the amendment of my noble friend Lady Lister, supported by the noble Baroness, Lady Neuberger. I am unclear at the moment about whether the Government are saying that they will do this anyway, even though it is not in the Bill, on the basis that there appears to be a commitment on the part of the Government not to deport any unaccompanied child to Rwanda. Despite the exclusion of anybody, including the Home Secretary, saying Rwanda is not safe, that necessarily involves the Government having a process in mind for how they will deal with any unaccompanied person who comes to this country and says that they are under 18. Can the noble Lord set out for the Committee the process that will be applied and the basis for dealing with an unaccompanied minor saying that an age assessment is wrong and that he or she is under 18? Will there be a right to go to a tribunal or any other court to contest that? If there is not some such process, I am not clear how the Home Secretary can be sure he will comply with his assurance that he will not be deporting unaccompanied minors to Rwanda.

Baroness Mobarik (Con): My Lords, I support Amendment 55, in the name of the noble Baroness, Lady Lister of Burtersett, supported by the right reverend Prelate the Bishop of Chelmsford and the noble Baronesses, Lady Neuberger and Lady Brinton. I also support Amendments 78 and 79, in the name of the noble Lord, Lord Dubs, supported by the noble and learned Baroness, Lady Butler-Sloss. These amendments relate to children who arrive in the UK alone, unaccompanied by any adult.

Lone children have no one. They are some of the most vulnerable members of our society, and their welfare and best interests should be safeguarded. I am glad to see that it is not the intention of the Government of this country or of the Government of the Republic of Rwanda for this scheme to cover unaccompanied children. Article 3 of the Rwanda treaty is clear, stating:

"The Agreement does not cover unaccompanied children".

Therefore, on my reading, this amendment helps safeguard that intention while upholding the best interests of such children.

If the agreement with Rwanda does not cover unaccompanied children, it seems to me common sense that the United Kingdom should make sure that it is not sending unaccompanied children to Rwanda. The constitutionally proper way for us to be sure of that is after an assessment that an individual is an adult, to allow our courts and tribunals to have an opportunity to fully consider whether an individual is an unaccompanied child, as they claim to be, before the individual is removed.

The safeguard this amendment seeks to maintain and restore is nothing more than due process. I am certain that your Lordships' House does not wish to see children forcibly sent to Rwanda on the mistaken belief that they are adults, or to allow them to be wrongly treated as adults in Rwanda, potentially placed in accommodation that is unsafe and unsuitable for them, only to have our courts subsequently confirm they are children and order that they be brought back to the UK.

It appears to me that the Government are conscious that mistakes may happen, because Article 3 of the Rwanda treaty also states:

"Any unaccompanied individual who, subsequent to relocation, is deemed by a court or tribunal in the United Kingdom to either be under the age of 18 or to be treated temporarily as being under the age of 18, shall be returned to the United Kingdom in accordance with Article 11 of this Agreement".

That is a wholly unsatisfactory state of affairs, and it is not in the best interests of the children concerned.

That is not only my view but the view of the Joint Committee on Human Rights, which stated last year that Section 57 of the Illegal Migration Act 2023 was

"clearly not in the best interests of any child and is likely to breach the child's rights under Articles 6, 8, and 13 of the ECHR".

Those rights are to a fair trial, to respect for private and family life and to an effective remedy.

7 pm

While the debate on Section 57 last year related to age assessments for removal to a vast range of countries under the Illegal Migration Act, your Lordships' House is now considering removal to Rwanda under the conditions to be put in place by this Bill. Amendment 55 would disapply Section 57 in relation to this Bill only and Amendments 78 and 79 would remove unaccompanied children from the remit of this Bill altogether. All three go to the heart of the matter. Surely, flights returning traumatised children to the UK from Rwanda are not an image that the UK Government, the Rwandan Government or the public wish to see. Nevertheless, there is strong evidence to suggest that we would see such images if this Bill were to pass unamended and come into effect.

Unaccompanied children are often incorrectly assessed by the Home Office as being adults on their arrival in the UK and treated as over the age of 18, only to be determined to be children after further assessment. As other noble Lords have mentioned, even though two officers must separately determine that an individual's

"physical appearance and demeanour very strongly suggests that they are significantly over 18 years of age",

mistakes can happen, and they have. As the noble Baroness, Lady Neuberger, said, evidence from local authorities' children's services have revealed that, in the first six months of 2023 alone, 485 children were sent to adult accommodation or detention by the Home Office. These 485 children would have been sent to Rwanda, in error, under this Bill.

I worry that, without a lawyer or support from child protection professionals, when mistakes happen, children may never access justice and be returned to the UK. For these common-sense and humane reasons, I support this amendment, which seeks to remove the possibility that unaccompanied children are sent to Rwanda under this Bill, contrary to their best interests and without being able to access due process on our soil.

Baroness Lawlor (Con): My Lords, the purpose of this measure is to deter immigration by unsafe and illegal routes. Your Lordships have mentioned the best interests of the child. Is it in the best interests of the child to be trafficked across the Mediterranean from Libya, their body perhaps being found off the coast by some unfortunate fisherman—I have seen reports of this—whose heart is then broken? Is it in the child's interests to be trafficked across Italy from Lampedusa to the French border, up through France to Calais and then across the channel?

I too believe in serving the interests of the child and agree with much of what your Lordships have said about the horror of such a journey for youngsters under 18, but I strongly oppose any measure or amendment that would weaken the prospect of the deterrence that unaccompanied children, once they are 18, will be removed to a third country, including Rwanda, if it is safe to do so. For this reason, I strongly oppose this group of amendments.

Lord Kerr of Kinlochard (CB): I do not entirely follow the argument of the noble Baroness. If an individual is trafficked across the Mediterranean and the channel, I do not see how the argument about deterrence applies. Their movement to our shores is involuntary; how would the passing of this Bill deter those who did not choose to come here but were trafficked here? I do not really follow the argument.

This is an important group of amendments, for the reasons given by the noble Baroness, Lady Neuberger. When I was a trustee of the Refugee Council, I was struck by the high number of initial age assessments that turned out in the end to be wrong. The noble Baroness gave some statistics on this. What arrangements are we making or have we made for age assessments of those sent to Rwanda? It is very good that we are not planning to send unaccompanied children there, but we will be sending a number of people who, had they been subjected to the age assessment procedures in our country, would have been found to be children, not adults. Therefore, they will have been wrongly sent to Rwanda. The way to remedy that will be to have in Rwanda a system for age assessment analogous to the one we have in this country. I assume that that is the Government's intention. I hope the Minister will tell us about it.

Baroness Brinton (LD): My Lords, I signed Amendments 54 and 55. I thank the noble Baronesses, Lady Lister and Lady Neuberger, and the right reverend Prelate the Bishop of Chelmsford for introducing them. I will not repeat their important comments and scene-setting.

I will also pick up on the comments of the noble Baroness, Lady Lawlor, about deterrence. To say that a trafficker or smuggler of a 14 year-old child in north Africa wanting to come across the Mediterranean will be deterred by the Safety of Rwanda (Asylum and Immigration) Bill is extraordinary. However, I will not focus on that.

Amendment 54 seeks to safeguard and promote the welfare of children within families who may go to Rwanda. I asked at Second Reading about special educational arrangements for children being sent with family groups to Rwanda, because it is not evident from what we have seen of the accommodation in Rwanda under the treaty that appropriate education is provided. I commented that, while Rwanda thankfully now has a good and fairly widespread primary system, it does not have a secondary system at all. As I have no idea, can the Minister tell us what arrangements will be made for this very small number of children—given that the number of people going to Rwanda will itself be very small—to continue their education, which, I remind your Lordships' Committee, is their right under the UN Convention on the Rights of the Child? Will they be living in an environment that is right for family groups and not in the sort of detention arrangements we have in the United Kingdom? Does he know what the living arrangements will be for this small number of family groups?

I will spend the rest of my time talking about Amendment 55 and all the issues, which have been laid out, around a child deemed to have been an adult in the UK. The noble Baroness, Lady Lister, and I tabled regret amendments in November to an SI that arose from the Illegal Migration Act on the use of age assessment techniques, and I continue to have great

concerns about the medical use of those assessments. But it is not just that—it is also visual assessments and, frankly, guesswork by the people assessing them.

The report she referred to, *Forced Adulthood*, spoke very clearly about the fact that some age assessments that happen as young people arrive in our country may take 10 minutes, which also includes discussions about how old they say they are. *Forced Adulthood* says that, quite often, the wrong interpreters have been provided for the young people; we do not even know if they are getting a proper and effective translation that would support them.

A couple of references have been made by the noble Baroness, Lady Mobarik, and possibly the noble Baroness, Lady Lawlor, to support for young people going through the process. It was not at all clear from the SIs or the debates on the Illegal Migration Act that the sort of protection you would expect for somebody who is, or claims to be, a child—which we see in many other European countries that carry out this age assessment—would be provided for by the Bill or the SIs we covered on 27 November last year. I am very happy to see the noble Lord, Lord Murray of Blidworth, in his place, as we frequently had this debate.

Can the Minister say what age assessments are being used now, given that the SIs have come into force? Do they include the medical assessments that the noble Lord, Lord Kerr, referred to? If so, are they happening under the terms the noble Lord, Lord Murray, outlined at the Dispatch Box? These included that the Home Office would ensure that the individual has the capacity to fully understand the process and is communicated with in a child-friendly and clear way, and that interpreters would be available to assist with understanding information. I could go on. The key phrase was that it would be Merton-compliant.

Young people who say that they are children are now arriving in this country; the Government may disagree with them. Therefore, can the Minister confirm that those processes are now under way? Do the children have—as we fought for but did not win—independent representatives to support them in the process to help them with appeals? For all the other reasons that all noble Lords have spoken about in the debate, once a child arrives in Rwanda, they will find it extremely hard to appeal as—given the process—they are deemed to be an adult upon arrival. This amendment in particular is important because there may be a few who are able to articulate that and are finally believed, but who fell through the net.

There are consequences of getting it wrong. The *Forced Adulthood* report, which was published in January and refers to figures for last year but builds on figures from previous years, talks about local authorities' concerns when they have received those deemed to be adults into hotels, but it quickly becomes clear that they are actually children. The consequences of them perhaps being abused and trafficking themselves from those hotels are unconscionable. We must do everything we can to make sure that everyone who is, or believes they are, aged 18 or under gets the support they require—including the transitional support the noble Lord, Lord Dubs, was looking for in his Amendment 46.

I hope the Minister will be able to give us some detail that might provide reassurance on that. Even with that, however, we need a clear pathway back for anyone who has been misdiagnosed as an adult and gets to Rwanda, where it becomes apparent that they are a child. Perhaps the Minister can outline exactly how that will happen.

Lord Green of Deddington (CB): My Lords, I shall be brief but I will widen my remarks beyond just children. The Committee has made a very thorough examination of the Bill. I admire the quality of contributions from our legal colleagues. The debate has, however, been rather one-sided. The noble Baroness, Lady Meyer, is the only person who has touched on the wider issues, which is what the debate is about.

We are not dealing with saints. We are dealing with people entering our country illegally and on a considerable scale. This raises policy issues which are not part of this debate but are very important. Just the backlog of claimants, as I have mentioned, is enough to fill Wembley Stadium. Roughly 80% of the claimants are males aged between 18 and 40. I accept, of course, that children need special treatment, but most of them are young men and virtually all have destroyed their documents, and all have come from a country where they were already safe, mainly France or Belgium.

7.15 pm

Baroness Brinton (LD): I apologise for not being able to rise to intervene. I am grateful to the noble Lord.

The Government have claimed that in almost half the age-disputed cases, the people in question were found to be adults. This figure, however, fails to include the many hundreds of children deemed to be adults by the Home Office who were subsequently referred to local authorities and then found to be children. It is children we are talking about in this group of amendments.

Lord Green of Deddington (CB): I understand that but I said at the beginning of my speech that I was going to range more widely. There are difficulties concerning children, but the point of the Bill is deterrence. If the Government can deter people from coming here, they are saving themselves a lot of difficulties. If the Government can deter people from sending their children here, often alone, they can avoid the difficulties the noble Baroness and her colleagues have so rightly described.

I have just one other point to make. The British public are very angry indeed. Some 68% want to see effective action; I sympathise with them and would like to find a way to deal with the problem. The Bill clearly has some serious difficulties and it has been strongly attacked in this House without much attention given to the real issue facing the Government—and the next Government—of how to deal with the inflow and the state of public opinion.

In reviewing where we have got to, I have looked at the amendments being discussed. There are at least nine that would render the Government's policy completely ineffective; they would torpedo it and, therefore, later in this process, will have to be addressed. I am referring

[Lord Green of Deddington]
to Amendments 1C, 8, 20, 36, 39, 48, 57, 81 and 90. Most of those would pretty much destroy the Government's policy.

I conclude with a quotation from the former Home Secretary, Suella Braverman, who wrote in connection with a paper produced by the CPS:

"The British public are fair-minded, tolerant and generous in spirit. But we are fed up with the continued flouting of our laws and immigration rules to game our asylum system. And we've had enough of the persistent abuse of human rights laws to thwart the removal of those with no right to be in the UK. This must end. Saying so is not xenophobic or anti-immigration".

I recognise that that is a different note and I am quoting the former Home Secretary, but a lot of people outside this Chamber would agree with that.

Lord Murray of Blidworth (Con): My Lords, it is always a pleasure to follow the noble Lord, Lord Green. For my part, I agree with his assessment. However, it is one of the unfortunate features of the area that our more generous arrangements for handling unaccompanied asylum-seeking children are open to abuse and are abused. We needed to take steps to stop that. That is why, in the Illegal Migration Act, we put into force Sections 57 and 58. In the Nationality and Borders Act, authorisation was given for the utilisation of scientific methods of age assessment, all of which aim to prevent adults abusing our special arrangements for unaccompanied asylum-seeking children.

All these amendments, in particular Amendment 55, will not have the objective that the noble Baroness, Lady Lister of Burtersett, sought to persuade the Committee. She says in her Member's explanatory statement that the amendment

"avoids a situation in which an unaccompanied child is erroneously relocated to the Republic of Rwanda".

That is simply not the case. If one looks at the Illegal Migration Act, one will see that Section 57(1) makes it clear that it applies only if the

"relevant authority decides the age of a person … who meets the four conditions in section 2"—

ie, that they are an illegal entrant—and determines their age in accordance with Sections 50 and 51 of the Nationality and Borders Act, using scientific methods. The effect of the provision is to avoid the hazard that there will be repeated challenges which would be suspensive of removal. It does not take away someone's opportunity to challenge completely the finding that they are, in fact, an adult. It simply says that they have to do that from Rwanda, and there is nothing wrong with that. For those reasons, I oppose these amendments.

Lord Ponsonby of Shulbrede (Lab): My Lords, this group has been about children. We spoke at length during the passage of the then Illegal Migration Bill about the danger posed to children by the changes in that legislation. To open, I have a couple of questions for the Government. Can the Government give an update on the number of children who have previously been identified as adults but have later been identified as children? How many of them would have been on the list to be moved to Rwanda had the scheme been working?

It is clear that the asylum system is failing, and failing vulnerable children. Beyond the risk of children being sent to Rwanda before their age has been identified, there have been ongoing reports about missing children, children exposed to assault, and children waiting potentially years for a decision on their protections claims. Given this, how can we trust the Government to make the correct decisions for children when it comes to Rwanda?

My noble friend Lady Lister of Burtersett said that it was cruel for children who come in under the age of 18 and live here for a number of years to be sent to Rwanda when they get to 18. She rightly said that this provides an incentive for children to disappear when they know that birth date is arriving. The noble Baroness, Lady Neuberger, talked about the age-old issue of age assessment. I know that very well because, as a youth magistrate, one of the first bits of training I did was on age assessment. Despite all the processes which are rightly in place, sometimes you are bounced into making those decisions, both as an adult magistrate and as a youth magistrate. I am very conscious of the difficulty in making those decisions. I think it was last week that somebody referred to Luke Littler, the darts player, and how he does not look like a 16 year-old boy.

All noble Lords have set out the case very well, and I will not go over the same points that they have raised. I will raise a different point, which I have raised in previous debates. This arises out of a trip with my noble friend Lord Coaker to RAF Manston about a year ago, facilitated by the noble Lord, Lord Murray. At that trip, it became evident to me from talking to the officials there that there is a reasonably large cohort of young people who identify as adults. I have debated this with the Minister—the noble Lord, Lord Sharpe—before, and he has written me a letter about it. They identify as adults because they want to work when they get here. They may well have been working in their own countries since they were about 14 years old. They identify as adults, they may look like adults, and they move into an economy—maybe an underground economy—because they want to work. It seems to me that by having the provisions within the Bill, they will have no incentive to identify as an adult. That will be taken away from them. They would prefer to identify as a youth. Have the Government made any assessment of the increase in people likely to identify as youths when they are coming irregularly into the country? I suspect it is not an insignificant figure and that it is actually quite a large figure.

Nevertheless, this is a very important group of amendments, and I look forward to hearing the Minister's response.

Lord Sharpe of Epsom (Con): My Lords, I thank all noble Lords who have participated in this debate, which, as we have heard, brings us on to the relocation of unaccompanied children and the subject of age assessments.

Amendment 54 tabled by the noble Baroness, Lady Lister, would reinstate the statutory duty to consult the independent family returns panel in circumstances where we would seek to remove families with children under 18, who fall within the remit of the Illegal Migration Act, to the Republic of Rwanda.

This amendment would effectively undo Parliament's previously agreed position in relation to the removal of families to Rwanda, taking them out of line with those being removed to any other destination, either a safe third country or their home country where it is safe to do so.

I reassure noble Lords that the welfare of a family will continue to be at the forefront of decisions to detain and remove them, regardless of the proposed destination, and we remain in open dialogue with the independent family returns panel about the role that it will have in the removal of families under the Illegal Migration Act.

The intended effect of Amendment 55 is not clear, as the Bill is an additional legislative provision that will apply to removals under the 2023 Act. However, I consider that the amendment is intended to mean that when a decision is made to remove someone under the 2023 Act to Rwanda, Section 57 of the 2023 Act will not apply if there is a decision on age.

I also thank the noble Lord, Lord Dubs, for Amendment 76, which inserts a new clause on age assessments. The intended effect of this amendment is that when a decision is made to relocate someone to Rwanda under the Illegal Migration Act 2023, Section 57 of that Act will not apply if there is an outstanding decision on age. It also seeks to prevent the removal of an age-disputed person from the UK to Rwanda if they are awaiting an age assessment decision under Sections 50 or 51 of the Nationality and Borders Act 2022 or have received a negative decision under these sections and are awaiting a final determination of either an appeal under Section 54 of the 2022 Act or a judicial review application.

It is important that the Government take steps to deter adults from claiming to be children, and to avoid lengthy legal challenges to age assessment decisions preventing the removal of those who have been assessed to be adults. Assessing age is inherently difficult, as all noble Lords have noted. However, it is crucial that we disincentivise adults from knowingly misrepresenting themselves as children. Receiving care and services reserved for children also incurs costs and reduces accessibility of these services for genuine children who need them.

Accordingly, Section 57(2) of the 2023 Act disapplies the yet to be commenced right of appeal for age assessments that was established in Section 54 of the Nationality and Borders Act 2022, for those who meet the four conditions in Section 2 of the 2023 Act. Instead, under Section 57(4) of the 2023 Act, those wishing to challenge a decision on age will be able to do so through judicial review, which will not suspend removal and can continue from outside the UK after they have been removed.

Section 57(5) of the 2023 Act also provides the basis on which a court can consider a decision relating to a person's age in judicial review proceedings for those who meet the four conditions in Section 2 of the 2023 Act. It provides that a court can grant relief only on the basis that it was wrong in law and must not on the basis that it was wrong as a matter of fact, distinguishing from the position of the Supreme Court in the 2009 judgment in R (A) v Croydon London Borough Council, UKSC 8. The intention is to ensure that the court cannot make its own determination on age, which should properly be reserved for those qualified and trained to assess age, but instead consider a decision on age only on conventional judicial review principles.

In the scenario whereby the Home Office has doubts over a person's age, they would not be subject to the duty to remove until such time as a final decision on age has been made by the relevant authority referred to in Section 57(6) of the 2023 Act. We consider that those provisions are entirely necessary to safeguard genuine children and guard against those who seek to game the system by purporting to be adults. The noble Lord, Lord Ponsonby, asked me whether we have looked into the opposite. The honest answer is that I do not know, but I will find out and come back to him if we make any assessment of that.

7.30 pm

To strengthen age assessments further, the introduction of scientific age assessments is a measure to improve our age assessment system by providing additional biological evidence to aid better-informed and more thorough decisions on age. Scientific age assessment will be one piece of evidence used alongside the existing Merton-compliant age assessment process, which is a holistic, social worker-led assessment. Importantly, the UK is one of very few European countries that does not currently employ scientific methods of age assessment. X-rays and MRIs of various body parts will be—

Baroness Brinton (LD): When I spoke earlier, I asked whether the scientific age assessment had been introduced. The Minister has just referred to other European countries. I said that all those European countries gave the child an independent representative to work with them and to help and support them. Is that happening for children going through this process in the UK?

Lord Sharpe of Epsom (Con): Yes. Basically, all individuals will also have access to interpreters. There will be appropriate adults to assist the young person with understanding, as well as providing support with communications. As I said, the interpretation services—

Baroness Brinton (LD): I am very sorry, but the language here is important. An appropriate adult need not necessarily be independent of the process that is assessing them. When we debated this during the passage of the Illegal Migration Bill, it was made clear to us that that person would not be independent of the process. Is that person independent or, in effect, employed by the Home Office?

Lord Sharpe of Epsom (Con): My Lords, this is a new and obviously complex process, and the full plans for integrating scientific age assessment into the current process are being designed. The statutory instrument that is now in place specifies X-rays, MRIs and so on as scientific methods—they are the building blocks. I will have to come back to the noble Baroness on the question of who is also in the room with the individuals, because I am not 100% sure of the answer.

[Lord Sharpe of Epsom]

As has been discussed many times during the course of this Bill and various others, these methods have been recommended by the Age Estimation Science Advisory Committee.

I will respond to the comments made last week by the noble Baronesses, Lady Brinton and Lady Hamwee, on the incidence of potential children being assessed by the Home Office as adults, which was highlighted in a *Guardian* article and the published January report that had input from various children's rights NGOs. According to the assessing age guidance details in the Home Office's age assessment policy for immigration purposes, an individual claiming to be a child will be treated as an adult without conducting further inquiries only if two Home Office members of staff independently determine that the individual's physical appearance and demeanour very strongly suggest that they are significantly over 18 years of age. The lawfulness of that process was endorsed by the Supreme Court in the case of R (on the application of BF (Eritrea)) v Secretary of State for the Home Department [2021] UKSC 38.

Where doubts remain and an individual cannot be assessed to be significantly over 18, they will be treated as a child for immigration purposes and referred to a local authority for further consideration of their age, usually in the form of a Merton-compliant age assessment. That typically involves two qualified social workers undertaking a series of interviews with the young person, taking into account any other information relevant to their age. "Merton compliant" refers to holistic, social worker-led assessments adhering to principles set out by the courts in several court judgments dating back to 2003.

Baroness Brinton (LD): I apologise for intervening again, but the Minister referred to the AESAC's report, which is now being implemented. I will not repeat the detail, but in five different paragraphs it asked questions of the Home Office that it said needed to be further looked at before it could give a clean bill of health. Has that now happened? I will write to the Minister with the references in *Hansard* to our debate on that, which was on 27 November. Does he know whether the AESAC's concerns about some of the science have now been answered? They had not when we discussed it on 27 November.

Lord Sharpe of Epsom (Con): My Lords, as I pointed out in answer to the previous intervention, the system is still being designed, so I do not know the precise answer to that.

Baroness Brinton (LD): Oh!

Lord Sharpe of Epsom (Con): I am sorry if that upsets the noble Baroness, but I do not know the precise answer. I will find out more and write.

Baroness Brinton (LD): I am very sorry for intervening and grateful to the Minister for giving way. We are now back to the same sort of the debate that we had on the previous group, where we are just going round in circles, being told that it is all being developed and that it will all be fine in the future. Yet we are being asked to agree to legislation without protection for children. That is the real issue: it does not provide protection for children.

Lord Sharpe of Epsom (Con): My Lords, the Government fundamentally disagree with that; we do provide protection for children. As I said, I will come back to the noble Baroness's specific points. Any decision—

Lord Falconer of Thoroton (Lab): I apologise for also intervening. I was very interested in much of the answer that the Minister gave, and I am genuinely grateful to him for doing his best on this. He said that a judicial review could be taken against the Government where somebody asserts that he or she is under 18, but they have deemed him or her to be over 18. That can be challenged by a judicial review. So, presumably, the courts could stay the deportation until the conclusion of the judicial review. Is that right?

Lord Sharpe of Epsom (Con): No. As I understand it, the judicial review will take place when a person has been relocated to Rwanda.

Lord Falconer of Thoroton (Lab): I am very interested in that answer, too. Surely that is not right. If a judicial review is possible, it is a matter for the court to decide, in its discretion, whether it should give interim relief pending the conclusion of the judicial review. For example, if it took the view that the person who brings the judicial review would be harmed by being sent to Rwanda before a conclusion of the judicial review, the court would have the power to stay it pending the hearing of the judicial review. There is nothing that I see in this Bill that would prevent that. If there is, could the Minister refer me to it?

Lord Sharpe of Epsom (Con): I have to respect the noble and learned Lord's point of view on that; I am afraid that I am not as well up on the court process as perhaps I should be. I will have to come back to him, if he will allow me to do so.

Lord Murray of Blidworth (Con): My noble friend the Minister might want to make reference to the powers that this Parliament has already passed in Section 57 of the Illegal Migration Act, which provide for those judicial reviews to be conducted abroad once the section comes into force.

Lord Sharpe of Epsom (Con): My noble friend is right; I might very well want to refer to that.

Baroness Hamwee (LD): My Lords, when the noble Lord, Lord Murray, referred to this in his contribution, he used the term "simply". He said that it would simply have to be dealt with by the young person in Rwanda. Does the Minister agree that "simply" is an appropriate word to use in this context?

Lord Sharpe of Epsom (Con): I am not in a position to agree or disagree, because I do not know how the judicial review process take place; I am afraid that I am not a lawyer.

Any decision on age made by the Home Office for immigration purposes is not binding on the civil or criminal courts. Where an individual is charged with a criminal offence and the presiding judge doubts whether the individual is a child, the court can take a decision on the age of an individual before them based on the available evidence or request that a Merton-compliant age assessment be undertaken.

The noble Baroness, Lady Lister, asked me a consider number of questions on safeguarding, so I will go into some detail on the safeguarding arrangements. They are set out in detail in the standard operating procedure on identifying and safeguarding vulnerability, dated May 2023. It states that, at any stage in the refugee status determination and integration process, officials may encounter and should have due regard to the physical and psychological signs that can indicate that a person is vulnerable. The standard operating procedure sets out the process for identifying vulnerable persons and, where appropriate, making safeguarding referrals to the relevant protection team. Screening interviews to identify vulnerabilities will be conducted by protection officers, who have received the relevant training and are equipped to handle safeguarding referrals competently. The protection team may trigger follow-up assessments and/or treatment, as appropriate. In addition, protection officers may support an individual to engage in the asylum process and advise relevant officials of any support needs or adjustments to enable the individual to engage with the process. Where appropriate, the protection team may refer vulnerable individuals for external support, which may include medical and/or psychosocial support, or support within their accommodation; and, where possible, that should be provided with the informed consent of the individual.

Baroness Lister of Burtersett (Lab): Perhaps the Minister can clarify this since he is answering my questions. Are we talking about here or Rwanda? Does Rwanda have those kinds of safeguarding systems?

Lord Sharpe of Epsom (Con): My Lords, as we discussed in previous groupings, with any of these decisions and any of the evaluations that take place in this country, all the relevant information will be shared with Rwanda. I think that answers the noble Baroness's question.

Baroness Lister of Burtersett (Lab): I am sorry, it does not. I raised a concern, asking a specific question: how can the Government be sure that the complex mental and physical health needs of child asylum seekers will be met in Rwanda, especially as those needs are likely to be intensified by the process of removal on top of what they have gone through to get to the UK? You can send all the information you like from here to Rwanda, but—this is not a criticism of Rwanda but being realistic—what kind of support does it have for traumatised children?

Lord Sharpe of Epsom (Con): My Lords, I cannot give details on the very specific question about traumatised children but I will find out, and again, I will come back to the noble Baroness.

Amendments 78 and 79, tabled by the noble Lord, Lord Dubs, seek to prevent the relocation of unaccompanied children aged under 18 from the UK to the Republic of Rwanda. The Government consider these amendments unnecessary. The noble Lord, Lord Dubs, will be aware that Article 3 of the UK-Rwanda treaty makes specific reference to unaccompanied children not being included in the treaty and that the UK Government will not seek to relocate unaccompanied children under 18 to Rwanda.

Amendments 46 and 56, also tabled by the noble Lord, seek to ensure that a person previously recognised as an unaccompanied child has the ability to challenge their removal to Rwanda when they cease to be an unaccompanied child at 18, on the basis that removal would be contrary to their rights under the ECHR. Our asylum system is under increasing pressure from illegal migration and the Government must take action to undercut the routes smuggling gangs are exploiting by facilitating children's dangerous and illegal entry to the United Kingdom, including via such dangerous routes as small boats. These amendments would increase the incentive for adults to claim to be children and would encourage people smugglers to pivot and focus on bringing over more unaccompanied children via these dangerous journeys. The effect would be to put more young lives at risk and split up more families.

The noble Baroness, Lady Brinton, asked a number of questions about the educational opportunities that will be available under the arrangements with Rwanda. I refer the noble Baroness to paragraph 5 on page 3 of the Second Reading letter that I wrote, which details some of those. However, education is also dealt with in paragraph 8 in Annex A to the treaty, and I can go through some of that if it would be helpful. It is headlined "Quality education", and 8.1 says:

> "To support successful integration (and in accordance with the Refugee Convention) … each Relocated Individual shall have access to quality education and training at the following stages (as relevant to their age and needs) that is at least of the standard that is accorded to Rwandan nationals: … early childhood … primary education … catch up programmes and accelerated learning, that is, short-term transitional education programmes providing children with the opportunity to learn content that they may have missed due to disruption to their education or their having never had access to education … secondary education … tertiary education … and … vocational training".

In addition:

> "Rwanda shall recognise foreign school certificates, diplomas and degrees as provided for by MINEDUC regulations".

I think I also referred in an earlier group to the initial investment of £120 million in 2022 as part of the economic transformation and integration fund, which was created as part of the MEDP. I said then, and I will reiterate for the record now, that the ETIF is for the economic growth and development of Rwanda, and investment has been focused in areas such as education, healthcare, agriculture, infrastructure and job creation.

The Government recognise the particular vulnerability of unaccompanied children who enter the UK by unsafe and illegal routes. It is for this reason that unaccompanied children are not considered for third-country inadmissibility action under the current guidance. Furthermore, the duty to remove in the Illegal Migration Act does not require the Secretary of State to make

[Lord Sharpe of Epsom]
removal arrangements for unaccompanied children until they turn 18, at which point they will become liable for removal as an adult, either to their home country if safe to do so, or to a safe third country.

In answer to this debate more generally, it seems self-evident—I think my noble friends Lady Lawlor and Lord Murray, and the noble Lord, Lord Green, pointed this out—that a child's best interests are best served by claiming asylum in the first safe country that they reach. I therefore respectfully ask the noble Baroness to withdraw her amendment and other noble Lords not to press theirs.

Lord Falconer of Thoroton (Lab): My Lords, the Minister did not deal with the question—perhaps understandably—about how this House, which has been constituted as a court by the Government, will get a chance to keep under review the question of whether Rwanda is safe. The noble and learned Lord, Lord Stewart, said it was coming in a later amendment; it has not come in any of the amendments so far. I simply raise it now to ask the Minister: when is it coming? We will end Committee only an hour or two after dinner, so could he give an indication when we might hear the answer to that question, which has been promised on a number of occasions by the Front Bench?

7.45 pm

Lord Sharpe of Epsom (Con): I reassure the noble and learned Lord that we will have an answer by the end of the evening.

Baroness Lister of Burtersett (Lab): My Lords, I am grateful to everyone who has spoken. I hope those who spoke in support of the amendment will forgive me if I do not spell out what they said, but they strengthened the case remarkably, helping to make a very strong case. I am conscious that other noble Lords want to get on with the dinner-break business so I will be as quick as possible.

I wanted to say something in response to the noble Lords who spoke against the amendment, particularly around the point about deterrence, which a number of noble Lords raised, including the Minister. I just remind them about the impact assessment on the Illegal Migration Act, which said:

"The academic consensus"—

I speak as an academic—

"is that there is little to no evidence suggesting changes in a destination country's policies have an impact on deterring people from … travelling without valid permission, whether in search of refuge or for other reasons".

I am sorry, but I do not think that all those arguments about deterrence are very compelling.

The noble Lord, Lord Green, seemed to use what was supposed to be our opportunity to focus on the best interests of children to make a much more general point about a whole list of amendments that are not in this group at all—and I am not sure that that is valid in Committee procedure. He did not make convincing points about children as such. However, he made the point about the British public being very angry. Has anyone asked the British public what they think about children being wrongly assessed as adults and then being put in adult accommodation? I suspect they would not be very happy about that. So I do not see the relevance of the more general point—the noble Lord is trying to get up; perhaps he has some evidence about that.

Lord Green of Deddington (CB): The noble Baroness is probably right that the public are not focused on children, still less on the precise means by which they are assessed. However, they are concerned about large-scale, illegal immigration into Britain, which is what I was referring to.

Baroness Lister of Burtersett (Lab): I remind noble Lords that it is illegal only because we made it illegal in the legislation that previously went through this House. There is nothing illegal about seeking asylum; there is an international right to do so.

The noble Lord, Lord Murray, questioned the explanatory statement. This has been drafted by a lawyer for me; I will not go into all the legal stuff now. The Minister rattled through section this and section that, and I am afraid I could not even keep up with it, so I will not try to address that; obviously, I will read what he said afterwards. The noble Lord, Lord Murray, said that there is nothing wrong with sending children to Rwanda and expecting them to challenge a decision from there. There is everything wrong with it. Think about it.

Lord Murray of Blidworth (Con): There is nothing wrong with sending adults, I said rhetorically, because that is the effect of Section 57. Those who are found to be adults may be sent, and if they wish to challenge that finding, they can do that from Rwanda.

Baroness Lister of Burtersett (Lab): We are talking about children who have been wrongly assessed. I do not think it is reasonable to expect them to challenge a decision. Other noble Lords made points on this: the sort of legal support they will get there; they will have to do it through video; and then, if they are lucky, they will be sent back.

The Minister simply repeated what we said about two separate senior immigration officers assessing people visually, but he did not engage with the arguments that we put as to why that is inadequate. I sometimes feel as though we take note of the arguments that have been put, look at them and come up with evidence that suggests that they are not strong arguments, only for those arguments to be put all over again. There is no real attempt to engage with what we have said. I am sure that we will come back to this. A number of questions have either not been answered adequately or not been answered at all, so I look forward to the Minister's letter. I hope that we will get that letter before Report, because there are important questions that need to be answered.

I finish with the image raised by the noble Baroness, Lady Mobarik, for whose support I am grateful. Do the Government really want us to see images of traumatised children on planes, because we can be sure that when that first plane goes to Rwanda there will be a lot of TV cameras there? Does the Minister really want us to see that image of traumatised children

either being sent to Rwanda or being sent back again like parcels, as I said, because they have managed somehow to be assessed as the children that they are? I do not think so.

I will leave it there for now, although I do not think that my noble friend Lord Dubs will be satisfied with the responses that we have had. We will certainly come back at Report with something around children and probably age assessment, but for now I beg leave to withdraw the amendment.

Amendment 46 withdrawn.

Amendments 47 to 56 not moved.

Clause 4 agreed.

House resumed. Committee to begin again not before 8.37 pm.

Death of Alexei Navalny
Statement

7.54 pm

The Minister of State, Foreign, Commonwealth and Development Office (Lord Ahmad of Wimbledon) (Con): My Lords, with the leave of the House, I shall now repeat a Statement made in the other place by my honourable friend the Minister for Europe on the death of Alexei Navalny. The Statement is as follows:

"I am sure that I speak for the whole House in sending our deepest condolences to Mr Navalny's family, friends and supporters. We are appalled at the news of his death.

Mr Navalny dedicated his life, with great bravery, to exposing corruption. He called for free and fair politics and held the Kremlin to account. He was an inspiration to millions, and many Russians felt that he gave them a voice. The Russian authorities saw him as a threat. President Putin feared even to speak his name. Putin's Russia imprisoned him on fabricated charges, poisoned him and sent him to an Arctic penal colony. Mr Navalny was a man of huge courage and iron will. Even from his remote prison cell, he persisted in advocating for the rights of the Russian people.

No one should doubt the dreadful nature of the Russian system. Years of mistreatment at the hands of the state had a serious effect on Mr Navalny's health. His death must be investigated fully and transparently. The Russian authorities must urgently confirm the location of Mr Navalny's body to his family and allow them access to it.

On Friday, the Foreign, Commonwealth and Development Office summoned the Russian ambassador to express our outrage at Mr Navalny's death. We made it clear that we hold the Russian authorities fully responsible. As the Foreign Secretary said over the weekend, those responsible must be 'held to account'. I assure the House that we are working at pace to explore all options.

As a mark of respect, the Foreign Secretary and his G7 counterparts began their meeting on Saturday with a minute's silence in honour of Mr Navalny. Our ambassador in Moscow laid flowers at the memorial to victims of political repression on Saturday. The ideals for which Mr Navalny stood and died will live for ever."

I commend this Statement to the House.

7.56 pm

Lord Collins of Highbury (Lab): My Lords, I thank the Minister for repeating that Statement. I do not think that anyone in this House could not have been moved by watching Yulia Navalnaya at the Munich Security Conference. She spoke with remarkable strength and poise in moments of clearly utter grief. I join the Minister in sending our deepest condolences to her and her family.

The death of Alexi Navalny was shocking and yet cruelly predictable. He is yet another victim of the oppressive system that President Putin has built. He was not a saint, but he fought relentlessly and optimistically, with good humour, against the corruption and kleptocracy of modern Russia. He challenged not only Russian autocracy and kleptocracy, but also western hypocrisy and enablement. His campaign was not only against Moscow, but also against the corruption that he saw in London. We must deliver the changes for which he campaigned.

I must admit that, when watching the exchanges in the other place, I was disappointed that the Minister had little to say in response to the questions, without bringing forward any further measures in response to last week's appalling news. The most consistent ask from MPs in the other place was for an FCDO Minister to come back to the House, ideally before Easter, with a more comprehensive update, particularly to cover things such as additional sanctions—whether against entities, such as the Deposit Insurance Agency of Russia, or personalities, such as Putin and family members—and the progress being made towards repurposing frozen Russia assets, given that Canada and Estonia have started doing this. I was also disappointed with the response to my right honourable friend Margaret Hodge, who asked what steps we are taking to close the sanction-busting oil practices, particularly through routes such as China and India.

My honourable friend Stephen Doughty asked about the support and efforts to secure the release of Vladimir Kara-Murza, whose health is in a terrible state after previous attempts on his life. He is now believed to be top of Putin's hit list—another brave and vocal opponent of Putin languishing in prison for his beliefs. Of course, he is also a British citizen. I hope that the Minister can tell us what support we are giving to his family.

On all of the above, Leo Docherty said that the Government were working "at pace". I know what the Foreign Secretary said last week and what the Minister has said—that they will continue to keep the House updated. However, it is not unreasonable to ask of these commitments the assessment on the timing and form of these actions. The noble Lord, Lord Cameron, answering Questions last week, gave a very clear commitment on the progress of these points. He was very determined and said that he hoped to raise these issues at the Munich summit. I hope that the Minister can respond. The noble Lord, Lord Cameron, also

[Lord Collins of Highbury]
mentioned last week—somewhat to my surprise as I was unaware of it—the further sanctions that the Russian foreign ministry had issued not only to academics and historians but Members of this House, including me. That is a clear attempt to intimidate and attack our freedom to criticise this appalling regime. I hope that the Minister can tell us what sort of response we have given to the Russian foreign ministry on that point.

Of course, Leo Docherty also said:

"There is no space or place for dirty Russian money in the United Kingdom",

but he did not reference any steps that were being taken or provide an update on the implementation of measures in the recent economic crime Acts. Again, I hope the Minister might reference those specific points. Will the Government launch a new effort to target those networks that are responsible for facilitating and enabling international corruption, which is fundamentally the backbone of Putin's efforts in his attack on Ukraine? Not a single fine has been issued for breaches of Russian sanctions that have been brought in since the full-scale invasion of Ukraine.

I hope that the Minister can update us about the new institutions that he has established. I asked for a timeframe in terms of enforcement when we last debated this issue. I hope that he can give us some clear indication tonight. I hope that the Government will soon be able to support the cause for the establishment of an international anti-corruption court. I welcome the sentiments and the commitments given by the Government in relation to the terrible crime of Navalny's murder but hope that those words can be accompanied soon by bold and urgent action.

Lord Purvis of Tweed (LD): My Lords, some of us in the Chamber will be spending the rest of the day holding the Government to account and asking probing questions of Ministers. Some of us are frustrated, some of the questions are constructive, but we are carrying out democratic duties as politicians. We do so with utter liberty and take for granted that we are not under personal threat. Alexei Navalny, as the Minister said, paid for the liberty that we have with his life. President Biden has said that his death was

"a consequence of something that Putin and his thugs did".

Indeed, the Russian Government is now a Government of thugs. It is painful to see many friendly countries sharing a stage with the Russian Foreign Minister, meeting Vladimir Putin, liaising and trading with the Russian Government and supplying them with goods. We still have to deal with them, of course, but they are dealing with a Government of thugs.

There are others, such as Vladimir Kara-Murza, whom the noble Lord, Lord Collins, referred to, who continue to be in danger. It was a real privilege to join my noble friend Lady Brinton to award the Liberal International Prize for Freedom to Evgenia Kara-Murza on behalf of her husband. Can the Minister state whether there is a higher degree of confidence that those in detention will be safe with the scrutiny that the rest of the world places on Russia? I fear that Putin feels that he has impunity. It is no surprise that the presidential so-called elections in Russia are a month away. This was probably a deliberate act to commence an election campaign in Russia, to show what being in opposition to the Putin regime means.

It seems that Russia is now operating under a war economy. I associate myself with the questions that the noble Lord, Lord Collins, raised, but why are the Government not expanding our sanctions regimes, recognising that Russia now has a war economy? Russia is now spending about 45% of its GDP on the military—an astonishing level. To some extent, it is propping up the entire economy of a nation. Therefore, we need to migrate the focus of our sanctions from individuals and companies towards the whole of the military-industrial complex. That will mean us having difficult conversations with those friendly nations that I referred to, including India and other countries which I have warned about with regard to the rupee-ruble swap for trading in oil for nearly two years now.

If we are to have no impunity for the regime, as the noble Lord, Lord Collins, said, we must ensure that all those involved in the process and associated with Navalny's death—those involved in the process leading up to his detention, during his detention and now—are within the scope of full and punitive sanctions. We have wider tools available to us now. The global human rights sanctions regime allows immediate and rapid designation. Can the Minister state whether that is a tool that could be used?

It is also worth recognising that we are perhaps at a tipping point regarding Russia and Ukraine, as the Danish Prime Minister and others have warned. Ukraine must have the tools to ensure that, as well as his detractors being under threat, Putin cannot state in the election campaign that he is also claiming ground. The noble Lord, Lord Benyon, told me that the Government would potentially be open to considering windfall tax on frozen assets so that we could release money now that could be used for the Ukrainian war effort. Ukraine is in desperate need of our support now. The UK has frozen an extremely high level of assets, but they need to be materialised for active support for Ukraine. Can the Minister clarify the Government's position?

I hope that if anything can jolt us into moving faster, it will be this tragic death. I too saw the video and associate myself with the condolences, but perhaps one of the best ways of showing that the thugs will not win is that there are actions by democratic nations as a result of that tragic death.

Lord Ahmad of Wimbledon (Con): My Lords, I thank the noble Lords, Lord Collins and Lord Purvis, for their statements and questions. I agree with the noble Lord, Lord Purvis, that it is incredible to think that the process of holding Ministers and the Government of the day to account, which we take almost for granted, is something denied so readily in what is called and perceived as a democracy. The irony is not lost on anyone that, at a time of election of the President in Russia, many have been sidelined and taken off the ballot.

As both noble Lords pointed out, the name of Alexei Navalny is not something that Mr Putin can even utter. There were brave souls in Russia who sought to make statements. One individual was taken

off air as he was expressing condolences, which shows the control that people are subjected to and the duress people are under in Russia. I pay tribute—I am sure all noble Lords will agree—to those brave, courageous Russians who have gone out and marked the tragic death of this great leader, who sought to bring about accountability and democracy in Russia. Since he returned on that fateful day after being poisoned, he was, again, immediately detained. Look around the world: who would have the courage and conviction—having been directly targeted by this oppressive culture and regime, as the noble Lord, Lord Collins, pointed out—to return to that very land, knowing full well that this might mean the end to his freedoms? In this case, the tragic end was that he paid with his life.

The noble Lord raised the issue of Russian sanctions on UK parliamentarians; I assure him we take that seriously. The noble Lord, Lord Purvis, asked about other UK allies who also have relationships with Russia; I will be in India later this week and will have bilateral talks with the Indian Government. I assure noble Lords that I will raise these issues, as I have done previously. Both noble Lords asked about further sanctions and steps we are taking; they know that I cannot state anything specific at this time, but I assure them that we are working on these in the usual way. As I have extended the courtesy, I will seek to inform noble Lords on the Front Benches of the Government's intention. I again put on record our thanks for the strong support for the sanctions the Government have imposed in this instance.

Noble Lords will be aware of the so-called Navalny list of sanctions on individuals. The Government have acted; of the original 35 names put forward, 29 were specifically sanctioned. I take on board what the noble Lord, Lord Purvis, suggested about the broadening nature and using our global human rights sanction regime—it is something I personally advocated for. It is there, it can be done quickly, and it is for egregious abuse of human rights.

We hold Russia accountable for this death and, while it has made statements that it will be fully investigated, the importance of transparency was again reiterated in the summoning that took place recently. In terms of further steps, a G20 meeting is taking place, which my noble friend the Foreign Secretary will be attending. There will be an occasion again to see how, in the wider context of the G20—which includes a number of the countries the noble Lord mentioned, and Russia itself—we can hold Russia to account during those meetings and the platform they provide.

Both noble Lords asked specifically about Vladimir Kara-Murza's health. Officials in the UK and Moscow have repeatedly raised concerns for his health with the Russians. I am grateful to the noble Baroness, Lady Kennedy, who is not in her place but who has been a very strong advocate for him. He is a British citizen, and the Russians are in no doubt about the strength of views and advocacy of the British Government in this regard. We will continue to demand that Mr Kara-Murza must be granted all appropriate medical treatment. We are concerned about his health, and we continue to implore answers from Russia about the basis of his continued detention. I assure noble Lords that we are very seized of that, and the cases of other detainees, and are working closely with the families.

The noble Lord, Lord Collins, asked about sanctions and enforcement. The Government have committed £50 million to support the new economic deterrence initiative, which further strengthens our diplomatic and economic tools. The new Office of Trade Sanctions Implementation will strengthen the implementation and enforcement of our trade sanctions. We take seriously the issue of circumvention, allegations of breaches, or evasion of sanctions, raised by the noble Lord. In August 2023, a UK company was fined £1 million in relation to unlicensed trade of goods in breach of the Russian sanctions. I acknowledge the point made by both noble Lords about circumvention of sanctions. We will continue to take evasion of sanctions very seriously. As I have said before from the Dispatch Box, for every step taken forward to tighten the regime there will be those looking at more elaborate ways to circumvent. We are working closely with G7 partners—leaders have tasked the relevant G7 ministries to report back on progress by the two-year mark of Russia's invasion, and I will share that with noble Lords.

The UK remains fully committed to work with allies and we have introduced specific legislation, explicitly enabling us to keep sanctions in place until Russia pays for the damage it has caused. We support the action mentioned by the noble Lord, Lord Purvis, about the EU—that is taken forward. I have said before that we are looking at each step taken by any of our allies and partners on how those seized assets can be utilised effectively. I know that all noble Lords are in agreement that they should be applied specifically to the reconstruction of Ukraine. As I have said, we are focused on that, but are ensuring that the legal basis for asset seizures is watertight.

I hope noble Lords will take the specific answers I have given—I know the noble Lord, Lord Collins, had some reservations but I hope I have provided some degree of detail—and, as I said earlier, I will personally ensure to update both noble Lords, and subsequently the House, on the further steps we will take, including evaluating further sanctions.

8.16 pm

Lord Howell of Guildford (Con): My Lords, I thank my noble friend for his clear response and the very clear Statement. I also thank the noble Lord, Lord Collins, for his very clear support.

What has happened to Alexei Navalny is the same as what happened to Sergei Magnitsky, Bill Browder's lawyer, who was murdered in prison at the hands of the Russian prison service. It is pretty clear that the killing of Navalny went the same way, although obviously it is early days and things have yet to be proved and established.

Would my noble friend agree that, although it took 70 years to get rid of the murderous Stalinist regime—with interruptions when it was actually our ally—we have the tools, as the noble Lord, Lord Purvis, mentioned, to make sure that the life of this present corrupt and killing regime in the Kremlin is considerably shorter?

[Lord Howell of Guildford]
In a way, these murders are themselves signs of the weakness and the fragile nature of the regime in Moscow.

I am not sure that sanctions have much more to add. I am afraid that the Russian economy, for reasons that are nothing to do with Putin, is rather strong, with high oil prices and Russia's continued enormous trade and investment in many parts of Asia and Africa, which we should never forget. This is something we must fight against at all times and is getting extremely intrusive in some areas. Would my noble friend also agree that, with the rapid advance of technology, we now have more and more opportunities to get information to the Russian people about the really evil nature of those who govern them, and that we should mobilise this as energetically as I am afraid the Russians try to do the other way? I would like an assurance that, on the side of the modern hybrid warfare of high technology, cyber intrusion and superintelligence, we will stay as determined as ever to make sure that the truth gets through to the Russian people at some stage.

Lord Ahmad of Wimbledon (Con): My Lords, my noble friend has great insight in this respect: history has shown that, for coercive regimes, an end will be brought about. Normally, it is brought about from within, by the courage of people who stand up for their rights as citizens of a particular country. Although the Russians will determine who will lead them, it is very clear that Mr Putin and his Government have used nothing but repressive tactics on their own citizens, which has culminated in eliminating all political opponents. We will work with key allies and partners to ensure that accountability is very clear. The Government have led on this, and we appreciate the steps that have been taken in the wider context, for example within the ICC against Mr Putin and what he has inflicted on the Ukrainian people.

On sanctions, I remind my noble friend that the UK has sanctioned over 1,900 individuals and entities since the full-scale invasion. The noble Lord, Lord Purvis, referred to assets being frozen. Those amount to about £22.7 billion. Without sanctions, we estimate that Russia would have had in excess of $400 billion more to fund the war. So, although I accept that there is circumvention and that the Russians are seeking new, innovative ways to conduct particular derivative operations, that $400 billion has nevertheless been denied to the Russian war machine.

Baroness Falkner of Margravine (CB): My Lords, I have been in this House for 20 years and periodically we have these Statements. We recall this list of names: Sergei Magnitsky, Boris Nemtsov, and now Alexei Navalny. Members on all sides of the House have mentioned that stalwart of freedom and democracy, Vladimir Kara-Murza, who I have had the privilege to know personally; he has been here in this House to brief me and others. The Minister has been quite careful not to say very much about the condition of Mr Kara-Murza. I am not going to press him on that, but he has also recorded the fact that Mr Kara-Murza is a British citizen. I would like to know what he is doing in terms of speaking to other UN Security Council members to keep him safe and alive, and to allow him to carry that torch of freedom that proves to be so elusive to the Russian people.

Lord Ahmad of Wimbledon (Con): My Lords, I recognise what the noble Baroness raises. As I said, we are very much seized of the situation with Mr Kara-Murza and making sure that his welfare is very much a matter of discussion not just with our key partners in the G7 and the G20 but directly with the Russians to ensure that he is protected, and his welfare and health prioritised. However, there can be no escaping the fact that he too has been detained in a colony that is restrictive. We directly challenge the basis of his detention. The noble Baroness says that I have taken great care and measure. We want to ensure that his welfare is fully protected, but I assure your Lordships that we will leave no stone unturned in our advocacy with key partners, and directly with Russia, to ensure the freedoms that he stands for and his rights as a British citizen, and to make our advocacy very clear to the Russians that we regard him as one of our own. We will do our utmost to ensure, first, that his welfare is protected, and, secondly, that he is allowed to return to our country.

Lord Robertson of Port Ellen (Lab): My Lords, when the Minister expresses outrage, sympathy and sadness at the death of Alexei Navalny, he speaks for the whole House, and indeed, I believe, for the whole British nation. As somebody who has had dealings with President Putin in the past, I would say that the premature death of Alexei Navalny, whether at the hands of the regime or indirectly because of the conditions that were inflicted on him, is not a sign of strength but of weakness; not a sign of authority but of cowardice; not a sign of firmness but of fragility deep inside the regime of Vladimir Putin today.

I therefore ask the Minister, on behalf of the Government, to look again at the sanctions policy see where Vladimir Putin is getting the instruments to continue to conduct the war in Ukraine: for example, through Armenia and Georgia, to which exports of critical material have been increasing exponentially. Secondly, can we not now boost the communication that we have with the Russian people, as we did in the days of the Soviet Union, so that they begin to realise the pariah status that has been inflicted on a great nation?

Lord Ahmad of Wimbledon (Con): My Lords, I agree with the noble Lord. He has great experience and insight: indeed, he has dealt with Mr Putin directly and knows the individual concerned. On his latter point on communications—my noble friend Lord Howell also mentioned technology enablement—that has been a key feature of what we have seen in Russia directly. The fact that at this moment the death of Alexei Navalny was marked in several Russian cities demonstrably shows that, despite the coercion and suppression, people are ready and willing to come out.

We pay tribute to a number of the leaders within the opposition who have also spoken out against these events. If anything, Mr Putin should look to the example of Yulia Navalnaya and her courage and

bravery, as pointed out by the noble Lord, Lord Collins. On looking at the sanctions that we have currently deployed and the broader nature of what can be done, I assure noble Lords that we are very much seized of this. Hopefully, we will be returning to your Lordships' House in the near future to outline additional measures that we are taking. On additional measures and sanctions—the noble Lord, Lord Collins, and I have talked about this extensively on every sanction—I say that these are most effective when we act with our partners. That is why, I assure noble Lords, we are working very closely with the EU, the US and Canada in this respect.

Baroness Brinton (LD): My Lords, I spoke yesterday to members of our sister party Yabloko in Russia. They are very grateful for the reference to all the people who came out on the streets. It was not just a few cities. They say that it was in towns and cities across Russia. For us, that has to be an important sign that there are people who care passionately about the state of Russia. Their concern is that their voices are not being heard outside Russia at all. I always try to refer to the Kremlin rather than to Russia, because the Russian people are as appalled as we are by what has happened to Navalny. They want things to change but they do not have the power to do that.

I want to echo the points made by other noble Lords about Vladimir Kara-Murza. He was poisoned twice in 2015 and 2017. He was imprisoned in 2022. Last year, he was sentenced to a further 25 years for "treason", the treason being membership of an opposition party and trying to use his voice. It would be helpful if the Minister could perhaps brief those who have spoken in today's Statement debate if there is any news of contact. I know that in particular Evgenia, his wife, is very worried about what is happening. But there are many other dissidents also in prison. If the Minister could keep the House informed, that would be enormously helpful.

Lord Ahmad of Wimbledon (Con): Of course I give the assurance that we will keep noble Lords informed. The noble Baroness spoke about the sister party to the Liberal Democrats, Yabloko. Indeed, its leader was also giving a statement when he was taken off air. It shows the strength of the Russian people. I agree with the noble Baroness that we should talk about the Kremlin, Mr Putin and his supporters rather than the Russian people. The Russian people are being denied. As we have said repeatedly when it comes to Ukraine, our fight, our challenge, our disputes and our absolute shock over what has happened to Ukraine have been at the instigation of Mr Putin and the Kremlin, and are in no way a reflection of the Russian people.

As we have seen from the tragic death of Alexei Navalny and the continued detention of Vladimir Kara-Murza, those who speak out, who want to represent the people of Russia, are often silenced. You can do nothing but be inspired. I echo again the sentiments expressed earlier: here we are in a democracy such as the United Kingdom where we take these basic, fundamental freedoms sometimes quite lightly. But actually, we are speaking up for those Russian citizens. We are standing up for those brave souls, some of whom, like Alexei Navalny, have paid the ultimate price, with their life, to ensure that their legacy is not forgotten. The biggest tribute we can give is to continue to advocate as such.

Baroness Fall (Con): My Lords, I want to join others in expressing my dismay and deep sadness at the death of Alexei Navalny. We thank him for his courage, for the hope that he planted and for the reminder, as others have said, that Putin does not speak for all the people of Russia. I lived in Russia as a child; my father was a diplomat and ambassador to Russia. I saw the spirit of the people there, who did defy a regime once—and we hope they will do so again.

Putin's aggression has delivered the one thing he did not want, which is the invigoration and expansion of NATO. Finland's entry has been a great achievement, bringing with it one of the largest armies in Europe and the longest border with Russia. Will the Minister confirm whether Hungary is due to vote on Sweden's membership of the alliance, perhaps even as soon as next Monday? I urge the Government to continue the pressure on Hungary to lift its block.

Lord Ahmad of Wimbledon (Con): Again, the noble Baroness provides a very personal insight of her experiences. I recall the time of the great and late Lady Thatcher and her meeting with Mr Gorbachev—that this was someone "we can do business with". I remember, in my much younger years, the great inspiration that we were seeing the coming down of that wall that was created; the Cold War was coming to an end. Yet here we are in 2024 and many of those issues and challenges, and the antagonistic nature of what Russia presented, are still being realised today.

Therefore, yes, there are many unintended consequences which Mr Putin did not foresee, including the expansion of NATO to new members and a new, increased resilience among existing NATO members, and of course we are looking very much towards Ukraine's accession. On the point about Hungary, yes, I can assure my noble friend we are very much seized of that. Again, at the moment, I am at the Raisina dialogue in India and I saw on the list the Hungarian Foreign Minister, who I know well personally. I have indicated to my team that, if he is present, I wish to meet with him on the very issue my noble friend raises.

Lord Berkeley of Knighton (CB): Given what the Minister and other noble Lords have said, will the Minister comment on the importance of getting the message from the West across to the people of Russia? I am thinking particularly of the BBC World Service, of course—but other news organisations as well. That is part of our soft power. It is one of the few things we can really do in these circumstances.

There is another thing I would ask the Minister to endorse. Mrs Navalny talked about not just the loss of a future, the loss of her husband's future, but the loss of the future that he held for Russia—Mother Russia and the people that he loved there. Having myself been there several times, had music performed there, and been really welcomed extraordinarily by the Russian people, I think—especially given what the noble Lord, Lord Howell, said—of the experience of Dmitri

[Lord Berkeley of Knighton]
Shostakovich, who of course Stalin tried to keep quiet and almost had killed. In fact, he would have had him killed after the first performance of Lady Macbeth of Mtsensk: there was a terrible review in *Pravda,* which normally would have spelled the death of someone. So I endorse the importance of the spirit of the Russian people. We may take succour from these great works of art, whether from Tolstoy, Dostoevsky, Solzhenitsyn or Shostakovich, which show that the human spirit somehow prevails. Mr Navalny would want us to think in those positive terms. As Mrs Navalny said, "We will fight on".

Lord Ahmad of Wimbledon (Con): I totally endorse the noble Lord's statement, views and indeed sentiments. He brings a valuable dimension to the discussion and questions that we have about the strength of UK soft power, including the use of the incredible service that the BBC provides to many countries, including the Russian people. I certainly take on board what he said. As my noble friend said earlier, our fight is not with the Russian people. Indeed, Russian culture through history has enriched not just the Russian people but the world.

Baroness Bennett of Manor Castle (GP): My Lords, I associate the Green Party with the expressions of condolence from all around the House to Alexei Navalny's family, friends and supporters.

A number of noble Lords have talked about extending sanctions. There is obviously work to consider there, but I want to focus on what is happening in the UK. In December, Transparency International Russia, operating in exile, produced an important report about illegal money transfers for fictitious or overpriced invoices, which is what is known as trade-based money laundering. They total hundreds of millions of pounds, and a very large percentage of that involves UK-based shell companies. We are about to see the long-awaited reforms of Companies House, but the second point raised by the report was about the role of enablers—that is, professional companies and individuals in the UK that are facilitating what is known as the London laundromat. We have been through two economic crime Bills since the Russian invasion, but a Minister conceded to me that we needed to do more. Are the Government planning to do more about the enablers who are not just enabling corruption but enabling Putin's war?

Lord Ahmad of Wimbledon (Con): The short answer to the noble Baroness's question is yes. She is right to raise the issue of those who profiteer. I mentioned earlier those who look for innovative ways of circumventing the legislation that has been imposed and the steps that have been taken. We need to ensure that the new bodies that have been set up and the new structures and powers that have been given are applied. There will always be deterrence, but there will always be those who seek to circumvent it. We need to close down the loopholes, including the ones that the noble Baroness has highlighted.

Lord Watson of Wyre Forest (Lab): My Lords, it is reassuring to see all sides of the House with shared purpose in holding the Putin regime to account, but of course it is not just the death of poor Mr Navalny that we mourn. There have been extrajudicial killings on UK soil too. It is not just Russia that we fear; the Government have had to warn China about the intimidation of UK citizens, while the Canadians have accused India of extrajudicial killings of Sikhs in Canada. What reassurance can the Minister give to Russian and Chinese exiles and British Sikhs that they are safe to express themselves freely in the UK?

Lord Ahmad of Wimbledon (Con): My Lords, our freedoms and our civil and human rights were hard fought for. If you go back a century into our own history, you see the challenges of the brave souls who had to fight for the most basic fundamental freedoms that we now enjoy, including the right of women to vote, which we take now as something quite simple, yet there were great struggles in the past. Our own history lends itself to ensuring that the strength of our communities and the diversity of people that we have today is fully protected. One thing is very clear: I am proud to say the UK is a place where we protect all our citizens, including those who take protection in the UK. That is a proud tradition that we have had over many years and it should continue to be the case. Accountability is a feature of our democracy. I speak for many noble Lords, including myself, who, because of the roles we have, the statements we make and indeed the policies we present, are then subjected to abuse that most people do not see, and it is almost second nature for us. But we must fight for those freedoms and protections and ensure that those who challenge our basic freedoms are given a clear and unequivocal message, as we have done today.

Safety of Rwanda (Asylum and Immigration) Bill

Committee (3rd Day) (Continued)

8.39 pm

Clause 5: Interim measures of the European Court of Human Rights

Amendment 57

Moved by ***Lord Scriven***

57: Clause 5, page 5, line 13, leave out subsection (2)

Member's explanatory statement

This amendment would omit the provision that only a Minister of the Crown can decide whether the United Kingdom will comply with interim measures of the European Court of Human Rights.

Lord Scriven (LD): My Lords, this part of the Committee's deliberation is on Clause 5, "Interim measures of the European Court of Human Rights". I will speak to a number of amendments in this group, but it is worth starting by looking at the Government's ECHR memorandum provided with the Bill. On Clause 5, in paragraph 29 of the memorandum, the Government are very sparse in their view about their determination on interim measures. The memorandum says:

"The Government considers that the provision is capable of being operated compatibly with Convention rights".

It does not say how the Government consider that to be the case. When the Minister responds to this debate, I am sure many noble Lords in the Committee will look forward to hearing how the Government consider that the provision can be compatible.

It is probably worth putting what we are talking about in context because, listening to some of the debate regarding interim measures, you would think that hundreds and hundreds of these are scattered around denying—as some would say—the UK courts having sovereignty in determining cases. Since 2017, there have been 660 requests against the UK for an interim injunction and only 15 have been granted—that is 2%—by the European Court of Human Rights.

It is interesting to note that, in 2023 regarding the UK, the court received 61 requests for an emergency intervention and only one was granted. We are potentially talking about only small numbers—on average, between five and six interim measures per year. We are not talking about hundreds of interim measures being ruled on and granted by the European Court of Human Rights against the UK. Of course, interim injunctions are only issued by the European Court of Human Rights pending a full judgment where the applicant faces an exceptional and immediate risk of irreparable harm in the meantime.

In Clause 5 of this Bill, it is for the Minister and the Minister alone to decide whether a person could be removed to Rwanda while their case is being decided by the European Court of Human Rights. My first question to the Minister is: in what circumstances would a Minister not wish to comply with an interim measure from the European Court of Human Rights? Are there any cases within the last four years in which the Government would have presumed not to have abided by an interim measure by the European Court of Human Rights?

Case law on the European Court of Human Rights has been clear for 20 years: failure to comply with interim measures is a violation of Article 34 of the convention, under which states undertake not to hinder in any way the effective exercise of the rights of the applicants to bring their claims before the court. Some noble Lords at Second Reading said they disagreed with the court's view that failing to comply with interim measures was a breach of the European Convention on Human Rights.

However, Article 32 of the convention, which the UK voluntarily signed up to—it was not forced to do so—says that:

"The jurisdiction of the Court shall extend to all matters concerning the interpretation and application of the Convention".

In that sense, the final arbitrator of whether a state should invoke and carry out interim measures is down to the European Court of Human Rights and not a Parliament of one of its states. That is the convention to which we signed up.

8.45 pm

The UK has always complied with Rule 39 interim measures, bar one, and it has publicly declared the need for other states to do so in the last few years—such as Russia, in allowing some of its dissidents to be freed from jail. It is absolutely fine for us to criticise judicial decisions, but that does not mean that we do not have to follow them. Fundamental to the rule of law, and as a matter of international law, they are binding. Failure to comply with interim measures would therefore amount to a violation of the European Convention on Human Rights.

Amendment 57, in the name of my noble friend Lord German, to which I and the noble Lord, Lord Kerr, have put our names, seeks to do one simple thing: it would omit that only a Minister can decide whether the UK will comply with an interim measure of the European Court of Human Rights. It would mean that our courts could determine whether an interim measure is an appropriate fact that needs to be taken into consideration when determining, in the limited cases that are allowed, that an individual should not be deported to Rwanda.

Amendment 59, also in the name of my noble friend Lord German, and also signed by myself and the noble Lord, Lord Kerr, would remove the requirement that a court or tribunal must not have regard to interim measures when considering applications or appeals relating to decisions to remove a person to Rwanda. The obligation to comply with interim measures is not incorporated into domestic law, but they are binding in the UK as a matter of international law. As I have already previously said, if that is in dispute, Article 32 says that it is for the European Court of Human Rights to determine the jurisdiction and implication of an interim measure. Therefore, not to decide to comply would breach international law.

Prior to the discussion on Rwanda and the removal of individuals to that country, it was not a decision to be made by the Government—the Government just complied with interim injunctions. It is worth noting that it is so unusual for this to happen that the Civil Service Code was amended last month. Previously, it said that the Civil Service must comply with interim injunctions; that has now changed to say that, if a Minister makes a decision that it should not then it will not. As I have said, it is unclear whether a Minister would choose not to comply with an interim measure. I have already asked the Minister to give an example of where that would happen.

This clause demonstrates a cavalier attitude to international law which is reckless and dangerous. This is not about a foreign court, as the Prime Minister suggests, interfering in UK law; it ensures that states respect the rights and guarantees set out in the convention, which the UK played an instrumental role in drafting and freely entered into. If we continue with what is in Clause 5, I believe that the UK will undermine its ability to champion the rule of law and human rights abroad. I beg to move.

Baroness Chakrabarti (Lab): My Lords, I have Amendments 58, 60 and 61 in this group, and I share them with the noble and learned Baroness, Lady Hale of Richmond, and the most reverend Primate the Archbishop of Canterbury. I shall also say a few words about Amendment 63, which I have not signed but which is proposed by the noble Viscount, Lord Hailsham, who is sadly unable to be here today, and I said I would say something about his amendment, because I think it is very valuable to the Committee's consideration.

[Baroness Chakrabarti]

Amendments 58, 60 and 61 would require the Government to comply with international law in responding to an interim measure of the Court of Human Rights. They would require domestic courts to take such interim measures into account and would disapply offending provisions in Section 55 of the Illegal Migration Act for those specific purposes.

It is difficult to contemplate why the Government want to take specific powers to disapply Rule 39 measures, given, as we have heard from the noble Lord, Lord Scriven, and others on different days, how few interim measures have been made in the history of the convention against the United Kingdom—something to be proud of—how we have pretty much always complied with them, and how we try to take a position on the world stage to encourage others in the Council of Europe, and powers outside the Council of Europe, to comply with other international courts. I need not develop that too much further; I am sure everyone knows what I am alluding to. I find it difficult to understand.

If certain noble Lords opposite are going to pop up and say there is nothing in international law that says that you have to comply with Rule 39, one answer came from the noble Lord, Lord Scriven: it is ultimately for the court to decide whether Rule 39 is binding in international law or not. When you sign up to the club that is the Council of Europe, do you sign up to the referees of that club, yes or no?

The other thing is this. If it is not a matter of international law that we comply with Rule 39 and we just do it because we are gentlemen—and ladies and noble Lords—then why would we take specific domestic statutory powers to say we can ignore it? It seems very odd and troubling to me—but I would say that, would I not?

Even though I did not sign it, because I take a rather trenchant position on the importance of complying with Rule 39, I think it is important to expose Amendment 63 from the noble Viscount, Lord Hailsham. He was prepared to go a little towards the government position and to say that there might be certain circumstances where a Minister of the Crown may ignore an interim ruling of the court. Remember, the court in Strasbourg makes these only rarely, and only where it thinks there is a real danger that something so bad will happen to the person between the case being brought and a final outcome that the case will be virtually academic, to use a phrase coined earlier by the noble and learned Lord. Here, "academic" means that you will be dead before the final outcome of the case, or you will be sent for torture. That is the territory we are talking about when we talk about interim measures.

The noble Viscount, Lord Hailsham, is prepared to go further towards his noble friends' position than I am. In honouring comments from the Government on previous occasions, he tabled Amendment 63, which says that Ministers may sometimes ignore interim measures but only when the Government were not allowed a proper opportunity to argue against the making of the interim measure.

This goes back to a debate that arose during the passage of what is now the Illegal Migration Act, and that now rages on in certain parts of the media and on Twitter: that the wicked old Strasbourg court is constantly granting these interim measures to frustrate our immigration controls and is doing so behind our backs—so-called pyjama injunctions. I have heard all sorts of people who do not often talk about legal process pick up this soundbite of "pyjama injunctions". The Strasbourg court is granting these ex parte injunctions to applicants without due process—that is the argument that is being made.

The noble Viscount says, "Of course we must have due process, and therefore the Minister can ignore these measures if he thinks we've not been allowed due process". Since the passing of the Illegal Migration Act, which is when this argument was first ventilated, there have been productive discussions between the Government—they are indivisible, but I am talking about that nice bit we call the Foreign Office—and the Strasbourg court, because I believe everybody agrees that there should be due process. Sometimes, you need to make an urgent interim measure to stop someone being put on a plane potentially to ill treatment or death. But, even in that emergency situation, any state or Government should have the opportunity to say, "Actually, you got that wrong, so can we return to that?"

Lord Faulks (Non-Afl): The noble Baroness said that the Strasbourg court would make such an order only in dire straits, when there was a matter of real emergency and death was the almost inevitable result. Can she help the Committee with the reasons the Strasbourg court gave last year, when it issued the rule 39 order?

Baroness Chakrabarti (Lab): No, I will not set that out, given the hour. I am talking about the general principle here, and I will not rehearse the specific details of that interim measure. I want to focus on the fact that everybody agrees that due process requires that any state, including the UK, ought to be able to put its case, and, if it cannot do so in an emergency, it should be able to thereafter. My understanding of the Government's position during the passage of the Illegal Migration Act was that the UK Government were in negotiations with the Strasbourg system to make sure that due process was restored. Even if an emergency interim measure needs to be made, there will be the opportunity to put the other case thereafter—that is the position we are used to in the domestic courts. That seems sensible to me.

I had an amendment to the Illegal Migration Bill, akin to the amendments I have today, and I withdrew it and did not press it at subsequent opportunities because I thought that the UK Government were entitled to have those negotiations with the Strasbourg court. Everything I read suggests to me that these negotiations have been fruitful, presumably because of the endeavours of people like the noble Lord, Lord Ahmad of Wimbledon, who spoke so powerfully about rights, freedoms and the rule of law a few moments ago.

In his reply, can the Minister tell us where we are with those discussions with the Strasbourg court? It seems to me that it would be common sense and better for everybody—not just the UK Government but other states, as well as the Strasbourg system itself, which is

so important in the current dangerous times—if that mechanism worked well, so that, even if there occasionally need to be emergency interim measures, it would be clearly open to any state that felt that it had not had the opportunity to put its case to do so subsequently. An interim measure, if not needed, could be set aside. That is my first question to the Minister.

My second question is this: how can we pursue measures of this kind, taking a specific express power for Ministers of State to ignore interim measures of the Strasbourg court, when there are currently interim measures against, for example, the Russian Federation to prevent the execution of prisoners of war in the Ukraine conflict? I am becoming a little tired of hearing the Government speak with two voices: the Foreign Office voice and the Home Office voice. The poor Minister is of course a law officer and has to sit across all of this, but it is not consistent to talk about international law and how everyone must obey it, including the Russian Federation, which, while it is expelled from the Council of Europe, we say is still bound by interim measures of the Strasbourg court.

That is important because, one day, there will be a reckoning for Mr Putin and his cronies, and it may be in the ICC. It will then be relevant that there were interim measures of the Strasbourg court, and particularly relevant if they ignored them. How does that stand with what the Government propose in this Bill?

9 pm

Lord Kerr of Kinlochard (CB): I strongly agree with the point that the noble Baroness has made. My name is to Amendments 57 and 59. It is rather appropriate that we come to these amendments immediately after the House has considered the murder of Navalny.

There is a precedent for what we are asked to do in Clauses 5(2) and 5(3)—a Russian precedent. In 2016, the Russian Parliament passed a decree enabling the Russian Constitutional Court to ignore rulings from the European Court of Human Rights. It is not a very exact precedent; the Russian Parliament was passing permissive legislation, which permitted the Constitutional Court in Moscow to ignore rulings from Strasbourg.

What we are doing is not permissive but proscriptive and prohibitive. We are being asked to ban all our courts from having regard to or paying any attention to any interim measure from Strasbourg if it relates to a decision on transportation to Rwanda. We are being asked to pass a law which bans any official from paying any attention to a Strasbourg ruling in a relevant case; only a Minister is allowed to decide whether we comply or not. There is no role for Parliament or the courts, and the role of the Executive is strictly at ministerial level. That is extraordinary.

Russia is no longer in the Council of Europe. It lost some of its rights with the second Chechen war and more with the seizure of Crimea, and after the invasion of Ukraine it lost them all. However, we seem to think that we can stay even though the law we are being asked to pass is much more draconian, trenchant, in the words of the noble Baroness, Lady Chakrabarti, and hostile to the convention than the Kremlin's. It is a very strange fact that at this moment—

Lord Jackson of Peterborough (Con): My Lords, I am listening carefully to the noble Lord. In all sincerity, what is the difference between a foreign, unaccountable and anonymous single judge in a court over which the British people have no control, accountability or democratic sanction, and some of the more unappetising and less benign regimes and legal procedures to which he refers?

Lord Kerr of Kinlochard (CB): The noble Lord is well aware that the Strasbourg court has decided to pass various reforms and the anonymity of the judge is a thing of the past. I am not an expert on the Strasbourg court. However, I am a believer that if we maintain that we believe in the rule of law, we cannot pick and choose which bits of international law we comply with. That is a point I put forward at Second Reading and one I feel very strongly about. I do not see how we can, in good conscience, pass Clauses 5(2) and 5(3), which is why I added my name to Amendments 57 and 59 as moved by the noble Lord, Lord Scriven.

Lord Howard of Lympne (Con): My Lords, the words that I am about to utter are largely not mine. They are the words of the noble and learned Lord, Lord Hoffmann, who I am delighted to see in his place, in the preface he wrote to a paper on Rule 39 written by Professor Richard Ekins, professor of law and constitutional government at Oxford, and published by Policy Exchange last year.

The noble and learned Lord, Lord Hoffmann said:

"A ruling of a court such as the European Court of Justice"—

though I think he probably meant, if noble Lords will forgive me, the European Court of Human Rights as his words certainly apply to it—

"is binding upon the parties only if the court had jurisdiction to make it. If it did, a party must comply and cannot complain that it was wrong. If the court did not have jurisdiction, the parties can ignore it.

The European Convention on Human Rights confers upon the Strasbourg Court jurisdiction in all matters 'concerning the interpretation and application of the Convention': article 32. It exercises this jurisdiction by the judgments of its Chambers, which, after submissions and argument by the parties, become final in accordance with articles 42 and 44. In this paper, Professor Ekins demonstrates that the Convention does not confer upon the Court, still less upon one of its judges, a power to make orders binding upon a Member State which require it to do or refrain from doing something on the ground that it might at a later stage be held to have been an infringement of the Convention. Not only is there nothing in the language of the Convention which expressly confers such a power but the usual aids to the construction of a treaty – the travaux preparatoires, the subsequent practice of the court – reflect a clear understanding that no such power exists.

What has happened is that one of the rules which the Court has itself made to regulate its own procedures has included a power to 'bring to the attention of the Parties any interim measure the adoption of which seems desirable' to avoid a violation of the Convention. The existence of a power to fire such a shot across the bows is practical and sensible. It does not involve the assertion of any jurisdiction to impose a legal obligation. But what has happened in the court's recent jurisprudence is that this advisory power has been assumed to be a power to grant legally binding interlocutory relief. As Professor Ekins demonstrates, a court cannot in this way enlarge its jurisdiction by its own bootstraps. And if the Court had no jurisdiction to make such an order, Member States are free to ignore it".

[Lord Howard of Lympne]

The noble Lord, Lord Scriven, referred to Article 32, which gives the court the power to interpret and apply the convention. It does not, however, give the court the power to add something to the convention which simply is not there. As Professor Ekins said in the concluding words of his paper:

"In rejecting the Strasbourg Court's actions in excess of jurisdiction, the UK … would not be failing to honour its international legal obligations; it would be inviting the Court to honour its own legal obligations".

Lord Hannay of Chiswick (CB): My Lords, I would like to follow those who have supported some of this group of amendments. I do not want to follow on to the territory of the European Court of Human Rights. A number of previous speakers, though not the most recent one, have expressed my views perfectly well.

I take issue, briefly, with the lamentable use of the phrase "foreign court" by the Prime Minister, which I regard as an extraordinary breach of British diplomatic history and practice. When he winds up, I would like the Minister to answer the following questions. We accept the compulsory jurisdiction of the International Court of Justice. We have no member of that court at the moment, lamentably, due to diplomatic ineptitude. Is that a foreign court? We accept the International Court's compulsory jurisdiction, do we not? We are delighted when the International Criminal Court indicts Mr Putin for abducting Ukrainian children. Do we accept it? Is it a foreign court? We are pretty pleased when the Tribunal for the Law of the Sea rules that the Chinese are ultra vires in seizing large chunks of the South China Sea. Is that a foreign court? I could go on. We have been trying to sustain the dispute settlement procedure of the World Trade Organization against the worst efforts of our closest ally, the United States. Is that a foreign court? We accept its jurisdiction. Could we please stop talking about "foreign courts", and realise that it is in the interests of this country to stick with the obligations it has undertaken to obey such tribunals?

Lord Jackson of Peterborough (Con): My Lords, I want to speak very briefly to group 5 amendments. Specifically, I go back to the answer that the noble and learned Lord, Lord Hope of Craighead, gave to me earlier. Yes indeed, the plenary court—

Lord Purvis of Tweed (LD): It might just be helpful if the noble Lord would apologise to my noble friend, to say that he was not in the Chamber at the commencement of this group.

Lord Jackson of Peterborough (Con): It was very observant of the noble Lord, Lord Purvis, but I was in here. I left to get my notes that I needed, but I am touched by his interest.

On the issue from the noble and learned Lord, Lord Hope, the plenary session on 13 November did indeed undertake to de-anonymise the individual single judges involved in adjudication, but that has not yet happened, and there is no timetable for that. So I suppose each of us is half right.

The important thing to state, again, is that the wider context, as touched upon by the noble Lord, Lord Green of Deddington, is that the public are exceedingly concerned about the issue of illegal migration. It cannot be brushed aside when we talk about arcane legal and legislative points. People are angry and they want answers. As a Parliament, we have to find a way to face up to those very difficult issues. The point I made a week or so ago is that if there is a change of government, the Labour Party is most likely going to have to face those challenges as well. Instead of just criticising the Government, it will have to come forward with some really significant proposals to address those issues.

The Strasbourg court, as it happens, has never asserted or conferred, via member states, the right to authorise the court to grant interim relief in terms of the ECHR convention treaty. Indeed, domestic courts—the Supreme Court and the Appeal Court—have found quite the contrary, as was mentioned by the noble Lord on the Cross Benches earlier.

There is a concern about this battle between parliamentary sovereignty and accountability in this House and in the other place, and the idea that a decision which could have very profound public safety ramifications—this is a tiny minority, but it could possibly—is taken in foreign court with an anonymous judge where the Government are not permitted to present evidence in a timely way. There is no real accountability. I am sorry to say that the noble Lord, Lord Hannay of Chiswick, finds it disobliging to call it a foreign court, but that is how many voters, taxpayers and British citizens see it.

Lord Hannay of Chiswick (CB): I am grateful to the noble Lord for giving way. My complaint about the use of the term "foreign court" was not due to any discomfort, but because people such as himself and the leader of his party encourage people to call courts which are not foreign courts "foreign". They are courts of organisations which we have endowed with certain powers, and which often have British judges on their tribunals. That is my complaint.

9.15 pm

Lord Jackson of Peterborough (Con): I think that is a moot point, in so far as—

Baroness Chakrabarti (Lab): Oh!

Lord Jackson of Peterborough (Con): I am always delighted to amuse the noble Baroness, Lady Chakrabarti.

Articles 26 and 27 of the ECHR expressly limit the competence of a single judge vis-à-vis the Chamber of the Court or the Grand Chamber. I agree that in a case such as Hirst v UK (No. 2) [2005] on prisoner votes, we—as a Government, Ministers and the Executive—specifically set our face against a decision of the Grand Chamber. That was liable for criticism.

But the fundamental question here is: is the use of Rule 39 interim measures at the heart of what you would call international law? As I will set out very briefly, that is not necessarily the case, because the ECHR makes express provision for the constitution of the court and its jurisdiction. A single anonymous

judge at the court breaches the limit of what the ECHR establishes as the competence of that single judge as the legal authority. Indeed, interim measures are not, in effect, de facto rulings of the Strasbourg court at all, and the Minister is therefore not in breach of "international law". I make reference again to Articles 26 and 27 of the convention.

Baroness Chakrabarti (Lab): I am grateful to the noble Lord for giving way. I am very interested in his points about international law and so on. As a matter of basic common sense and logic, does he understand why there is value in the interim measures of any court, domestic or international? Does he understand why it is sometimes necessary to have some kind of mechanism for preventing a case becoming totally academic and preventing the outcome being decided before the case has been properly and finally heard, whether in a domestic or an international court? If he agrees that there is sometimes value in that, and if he has concerns about the way the Strasbourg procedures work, does he not think that the first thing to do would be to try to negotiate reforms to those procedures, rather than just taking domestic powers to ignore them?

Lord Jackson of Peterborough (Con): I say, gently, to the noble Baroness that this issue with unrestricted, unprecedented levels of geopolitical change and immigration is sui generis. Therefore, one has to see it through that prism. Yes, broadly and in principle, it is better to negotiate than to withdraw from a convention or another legal regime. But you cannot always use the case that, because Putin has been beastly, we self-evidently and axiomatically have to deal with his breach of international law. After all, invading a sovereign country such as Ukraine is a bit different from some of the other cases the noble Baroness used. It does not mean that you cannot be critical of the overall application of the legal regime we are discussing.

In fairness, my noble friend Lord Hailsham's amendment is very fair-minded, enabling the Government potentially to present the evidence that, hitherto, they were not able to do in the 2022 case. Indeed, the amendment in the name of the noble Lord, Lord Coker, is eminently sensible—actually, it is rather otiose, because one would always assume that the Home Secretary would seek the advice of the Attorney-General in proceeding in these small number of cases.

Two of the amendments the noble Baroness put forward are clearly wrecking amendments. The amendment that would disapply Section 55 of the Illegal Migration Act would specifically remove the express parliamentary sanction and authorisation of non-compliance with the interim measure, which, in itself, is a draconian move. Amendments 58 and 60 go to the heart of what we assume to be international law, in terms of what is justiciable in domestic law.

Let us be honest and put our cards on the table. This is about tying up the Bill in endless judicial reviews to stop any people being removed and to stop us tackling one of the biggest, endemic, troubling issues in politics. It is about bringing this back under the purview of domestic legislation in order to establish a roadblock via judicial review.

My final point is about the Human Rights Act 1998. It does not give legal effect in domestic legislation to the Strasbourg court's Rule 39 practice, which is grounded in Article 34 of the European Convention on Human Rights and is not one of the Commission rights set out in Schedule 1 to the 1998 Act. For those reasons, therefore, there is a very big question mark over the use of Rule 39 interim measures. Are they really international law as we would define it? Noble Lords would be wise to consider that when they come to vote for these amendments.

Lord Hoffmann (CB): The noble Lord, Lord Howard, did me the honour of quoting a passage which I had written in a foreword to the paper by Professor Ekins of St John's College, Oxford, on the jurisdiction to grant interim injunctions. I adhere to what I said in that foreword, but I ought to go a bit further. I will not go into the reasons Professor Ekins gave. He looked into the terms of the treaty, the travaux préparatoires and what the court had been saying until relatively recently, and he came to the conclusion that it had simply invented the power to grant interim injunctions. Indeed, the court in Strasbourg does not even have the power to grant final injunctions. If it is determined that there has been a breach of the treaty, what is to be done about it is a matter for the Committee of Ministers and not for the court itself.

However, the power to grant an interim injunction is an important part of the armoury of any court. Anyone who has held judicial office will know that it usually involves not so much any question of law but a practical question of deciding what lawyers perhaps rather frivolously call the balance of convenience between facts, which means the power to balance the possibility of injustice in one direction or the other. That is to say, you say to yourself, "Well, what is the position? Assuming that he turns out to be right but I don't stop this going ahead, what injustice will he have suffered; and likewise, if I do stop it, what injustice will have been suffered by the person who has been stopped?" You weigh these things against each other and come to a practical conclusion.

It seems to me that it was sensible for the original treaty not to have included a power to grant interim injunctions, because this is essentially a practical and local matter which ought to be considered by English courts—by the courts of this country—and particularly not by a court in Strasbourg, whose sole function is to say what the terms of the convention mean. What the convention means is what it says it means, and that is perfectly well understood. However, the power to grant injunctions seems really to be a question for local courts.

If we go ahead with Clause 5, we have the bizarre situation in which the courts are, by virtue of the other clauses we discussed earlier, prevented from themselves granting interim injunctions. For the reasons I have given, I wholly supported the amendments proposed earlier today by the noble Baroness, Lady Chakrabarti, and my noble and learned friend Lady Hale. They seem absolutely essential to enable our courts to give justice.

On the other hand, however, what we have is a provision by which the orders of a court which, in my view, does not have jurisdiction can nevertheless be

[Lord Hoffmann]
enforced, provided that the Minister—like the Emperor at the Colosseum—puts his thumb up rather than his thumb down in relation to those particular orders. That seems an extremely strange situation. For that reason, I am unwilling to support the amendment that gives effect to the interim injunctions in our report, but I certainly supported the amendments that were moved earlier.

The Lord Bishop of Chichester: My Lords, I rise to speak briefly to Amendments 58, 60 and 61, to which my most reverend friend the Archbishop of Canterbury has put his name. I am very glad to be in support of the work of the noble Baroness, Lady Chakrabarti, on these amendments.

We come, of course, to the question of the place of the European Court of Human Rights. I am very grateful for the comments that have been made about that, particularly from the noble Lords, Lord Scriven and Lord Hannay, about it not being a foreign court but an international court. Earlier today, we heard from the noble and learned Baroness, Lady Hale, about the relationship that we have with the European Court of Human Rights—a relationship where we learn from the wisdom of international friends; where we bring our own wisdom and shape each other's thinking and practice. It is a relationship of mutual respect for justice and for each other. These seem to me to be very important qualities as we look at the international situation of a very divided world today.

My most reverend friend the Archbishop of Canterbury referred in his speech at Second Reading to the danger of a "pick and choose" approach to international law, which threatens to undermine our global standing and the principle of universality. I agree. It is profoundly disturbing when, on the face of this Bill, we do not find assurance of compliance with European and UN approaches to human rights or an adequate mechanism for addressing our own processes of law and the risk of serious harm. This is about principles, values and rules to which we should aspire as the foundation of human dignity in an enlightened and humane society.

In the scriptures honoured by Jewish and Christian people alike, the prophet Isaiah speaks of one who will,

"proclaim justice to the nations".

With this Bill, do we run the risk that countries less wedded to the rule of law and justice, seeing us as an example to follow, will do so for all the wrong and tragic reasons?

Lord Falconer of Thoroton (Lab): My Lords, I support the amendments in the name of my noble friend Lady Chakrabarti, and in the names of the noble Viscount, Lord Hailsham, and the noble Lord, Lord Coaker, which are less powerful protections.

We as a country proclaim our compliance with the rule of law. We signed up to a convention that set up a court that would be the ultimate determiner of what that convention meant. That court, over a period of time, habitually issued Rule 39 statements or orders. Almost invariably, they are complied with. The court itself, in a case called Mamatkulov and Askarov v Turkey in 2005, said that those orders made under Rule 39 were binding in international law, not domestic law. If we had set up that court to be the final arbiter of what the convention meant, then we should accept it. How could I not, having heard the noble and learned Lord, Lord Hoffmann, with his leading counsel, the noble Lord, Lord Howard? They are two of the most effective advocates of their generation—therefore, not to be relied on because they are advocates, putting the contrary view.

9.30 pm

Your Lordships' Constitution Committee addressed this issue in paragraphs 60 and 61 of its report on the issue of what to do about Rule 39 orders, saying that:

"Arguments have been made that interim measures are not judgments of the European Court of Human Rights, such that the UK is bound to adhere to interim measures as a matter of international law".

That is the view of the noble Lord, Lord Howard, and the noble and learned Lord, Lord Hoffmann, but the report states that:

"Others have expressed a contrary view. The European Court of Human Rights, drawing on Articles 1 and 13 ECHR, considers it a breach of international law for a signatory state not to comply with interim measures".

Therefore, accepting the Howard/Hoffmann view, they have got it over the net. There is an argument that it might not be binding in international law.

The provisions of the Bill at the moment leave it to a Minister of the Crown to decide whether the United Kingdom will comply with the interim measures. When he replies, can the noble and learned Lord, Lord Stewart, confirm that this decision by a Minister will be subject to judicial review? Assuming that it is, presumably the Minister will regard himself as bound by the Ministerial Code. By committing himself to it, he accepts that he must comply with the law. I am very glad to see the noble Lord, Lord Faulks, in his place, because in 2015, on behalf of the Government—it has never been subsequently tested—he confirmed that despite the omission of an explicit reference to international law in the Ministerial Code, the reference to law in the Ministerial Code applies to international law.

No Minister would therefore wish to break international law. If judicial review was sought of an order by a Minister not to comply with Rule 39, it would presumably be open to the court to say that whether the Minister is acting lawfully depends on whether not to comply with a Rule 39 order is in breach of international law—for which the court could then make an interim order restraining the effect of the Minister refusing to comply with Rule 39.

Lord Faulks (Non-Afl): The noble and learned Lord kindly referred to the Answer that I gave at the Dispatch Box, which I think was a correct analysis of the law, but I am sure that he would agree that it is important not to conflate the Ministerial Code, and the obligations placed on the Minister, with the position in our law, which is the separate law. We have a dualist system as opposed to a monist system so the fact that there is a Ministerial Code does not mean that we are obliged to follow international law, wise though it may be to do so.

Lord Falconer of Thoroton (Lab): I completely agree with that. The Ministerial Code is to be enforced politically, in many respects, not by courts. However, if the position is that it is a breach of international law not to comply with Rule 39, how could a Minister be acting lawfully? I assume that this Government are committed to the rule of law and therefore if it is a breach of international law not to comply with Rule 39—which is what the European Court of Human Rights says, and we are a country that abides by the law—is it not reasonable for that to be struck down on judicial review? I could be wrong about that and would be very interested to hear what the Minister has to say about it.

Lord Etherton (CB): My Lords, I have given notice, with the noble Lord, Lord Anderson of Ipswich, of my intention to oppose the Question that Clause 5 stand part of the Bill. That is because, notwithstanding the eloquence of the noble and learned Lord, Lord Hoffmann, and the noble Lord, Lord Howard, its provisions are in plain breach of the United Kingdom's obligations under international law and in breach of the rule of law.

Although complications have been cited and expanded on, the reasons for this are very simply stated. Article 32 of the convention states that the jurisdiction of the European Court of Human Rights

"extends to all matters concerning the interpretation"

and

"the application of the convention".

Critically, in the event of

"dispute as to whether the Court has jurisdiction, the Court shall decide".

That is an approach that is not unknown to our own law in certain circumstances. Rule 39 of the rules of the European Court of Human Rights provides for the court to make interim orders.

In Mamatkulov and Askarov v Turkey, to which the noble and learned Lord, Lord Falconer, referred, which was a case decided by the court in 2005, and Paladi v Moldova, decided by the same court in 2009, the European Court of Human Rights said that the failure of a member state to comply with interim measures is a breach of Article 34 of the convention. That article states that member states undertake not to hinder in any way the effective exercise of the right of the court to receive applications from any person.

Reference has been made to a lengthy and elaborate argument in a Policy Exchange document, published in 2023 during the passage of the Illegal Migration Bill, by Professor Richard Ekins, in which he contended that the power to make interim measures was outside the jurisdiction of the European Court of Human Rights. That is the document with which the noble and learned Lord, Lord Hoffmann, expresses his agreement. What is clear is that Article 32 confers on the court the right to determine the extent of its jurisdiction in the event that it is disputed. That article says so in the plainest terms, and, as a member state, we have signed up to that.

What is also indisputable, and is accepted by Professor Ekins, is that since the decision of Mamatkulov in 2005, the European Court of Human Rights has repeatedly upheld the binding nature of Rule 39 interim measures, and the UK Government have never once challenged before the Strasbourg court that decision and the binding nature of interim measures. Indeed, the United Kingdom has not only complied with such measures but called on other states to comply with them. It has supported resolutions and declarations that assume that Rule 39 is legally binding.

International law has, therefore, reached a settled state of practice and agreement between member states and the Strasbourg court. Whatever other course might properly be taken in the future—that could include matters concerning the way in which these orders are dealt with, about which the noble Lord, Lord Jackson, complained—it is clear that it would be a breach of international law and the rule of law for that settled agreement and practice to be peremptorily and unilaterally jettisoned by the United Kingdom acting alone. That is a basic principle of international law.

The wording of Clause 5 reflects similar, but not identical, provisions in the Illegal Migration Act. The challenge by Members of this House to those provisions in that Act were rejected by the Government and voted down in the other place. Should we then just placidly accept them now? I believe that it would be quite wrong to do so. This is yet another example of a blatant breach of the United Kingdom's legal obligations. The other amendments in this group are worthy attempts to leave Clause 5 in the Bill but, in effect, to neuter its current intent and effect. My contention is that our constitutional role in this House impels us to reject Clause 5 in its entirety, and not provide it with any blanket of legitimacy, either in its current form or with amendments.

Baroness Butler-Sloss (CB): My Lords, I was in a queue waiting to pay my bill at dinner and therefore arrived a few minutes late. I am very grateful for the Committee allowing me to speak.

I listened with particular interest to two of the most distinguished lawyers in this House: the noble and learned Lord, Lord Hoffmann, with whom I sat on the Court of Appeal regularly, and the noble and learned Lord, Lord Etherton. There is undoubtedly a potential dispute. Without going into what it should be, Clause 5(2) and (3) exclude the English court. The noble Lord, Lord Jackson, complained about the international court; ought we not to be complaining that the English court is excluded?

If there is to be a dispute with the Court of Human Rights, we might bear in mind that we are a member of the Council of Europe. If we blatantly refuse to follow the ECHR at Strasbourg, we might be turfed out, like Russia. Would we want to be the second country after Russia to be excluded from the Council of Europe? Some might not care, but others might think it would not look very good.

What I am complaining about is that Clause 5(2) and (3) will stop our domestic court making a decision. That seems a very good reason to support some, if not all, of the amendments.

Lord Faulks (Non-Afl): My Lords, these amendments all concern the response to interim orders of the European Court of Human Rights—not a foreign court, I entirely

[Lord Faulks]
accept, but a court of which we are a member. At Second Reading, I absolutely accepted that courts, particularly domestic courts, will need to have powers to make interim orders—to stop a child being taken from the jurisdiction, or to stop someone disposing of assets, knocking down a building or any number of different matters that ought to be ruled on immediately, rather than waiting for the worst to happen.

However, the granting of such orders, particularly if they are obtained ex parte—that is, in the absence of the other side—is always subject to stringent safeguards, and none seemed to be honoured when the court in Strasbourg determined that the Government could not remove an asylum seeker to Rwanda. We still do not know who the judge was; there is no record of his or her reasons. That is why I asked the noble Baroness, Lady Chakrabarti, whether she could enlighten us as to the reasons why the order was made. She told us that they would be made only in extremis, when an individual was likely to suffer death or something similar, but there is no explanation of the reasons or any basis on which they came to that conclusion. We do not know what the reasons were.

Baroness Chakrabarti (Lab): Hence, as I think I said, many of us across the Committee agreed with what some Ministers opposite proposed last year: that the Strasbourg process for interim measures should be reformed to encourage greater transparency and the possibility of rectification, and to give states that felt they would like to correct an erroneous interim measure the ability to do so.

Lord Faulks (Non-Afl): Indeed, but not only were reasons not given; the Government were not given an opportunity to come back on a return date, which is the norm on interim applications. All this amounts, effectively, to a breach of natural justice on any basis.

Nor is the comparison with the availability of domestic interim remedies wholly analogous, as the noble and learned Lord, Lord Hoffmann, said. The Government are, of course, a valued member of the court in Strasbourg. If, at a full hearing, the court determined that there had been a wrongful removal then the Government would be expected to comply, as they have always done in the past. But, as the noble Lord, Lord Wolfson, made clear in his address to the House at Second Reading, and as we have already heard this evening, there is very considerable doubt, to put it neutrally, as to whether the court has any power to make such an order. Other countries are extremely doubtful about the legality of the rule. Of course there is talk of improving the procedure, as the noble Baroness said. That may or may not transpire.

But I understand—although it is a slightly peculiar provision—why the Government have decided to give the Minister the powers that he has under Clause 5. Otherwise, the whole policy could potentially be undermined by an unnamed judge's decision, given without reasons. Even the most fervent supporter of the Strasbourg court must be a little uneasy at that state of affairs.

I do, however, echo the question asked by the noble and learned Lord, Lord Falconer: do the Government consider that the exercise of this power under Clause 5 would be amenable to judicial review and, if so, on what grounds? The Government must have taken a view about that. The answer to the question would, I suspect, be relevant to whatever side of the argument you favour.

9.45 pm

Lord Inglewood (Non-Afl): My Lords, as someone who was called to the Bar many years ago and has not subsequently done a great deal of law directly, I have been interested, amused and dazzled by the breadth of learning that we have heard.

I would like to make a couple of remarks. I start with what the noble Lord, Lord Hannay, said. We live in a world where we have domestic jurisdiction, but also where everyday life is very significantly affected by all kinds of international agreements and arrangements, and we all benefit from that. Against that background, it is important that that system remains stable and respected; if it does not, we will all suffer.

We have heard this evening the arguments as to whether there is jurisdiction in respect of interim injunctions from the ECHR. I personally do not feel qualified one way or another to make a value judgment about that. What I do think is important is that, once you have got the interim injunction—and I heard what the noble Lord, Lord Faulks, said—that is a piece of evidence that is relevant to the issues that we are discussing.

On balance, the interim injunctions—there are not many of them, as the noble Lord, Lord Scriven, said—are evidence that something is not quite right. I am therefore concerned about the provisions in Clause 5 that we have been talking about: there will be a power with the Minister to set aside a piece of evidence, which I believe has come from a respectable source, that something is not right.

I think the remarks of the noble and learned Baroness, Lady Butler-Sloss, were very important. Regardless of international law, this is important in the context of domestic law, where there is real evidence—and I think it is real evidence—that something is awry. If you are to have some provision of the kind that we are considering this evening, there has to be a presumption that it will be adhered to but also that, if you are concerned, there is some kind of mechanism to set it aside, rather than the other way around.

Lord Anderson of Ipswich (CB): My Lords, as a signatory to the stand-part proposition in the name of the noble and learned Lord, Lord Etherton, I will confine my remarks to the question of whether it is contrary to the European Convention on Human Rights, and thus to international law, for a contracting state to disregard interim measures issued by the European court under Rule 39. Spoiler alert: it is, and the question is not so difficult as some noble Lords have suggested.

I declare an interest as a member of the Bar who has appeared for 30 years or so in that Strasbourg court, both for applicants and for states, and who has therefore been on the wrong end of some Rule 39 measures, including at least one which the court had

to be persuaded to reverse. So I welcome the steps that the European Court of Human Rights is taking, partly at the instigation of this country's Government, to improve its procedures and make them more transparent, including, as the court itself announced on 23 November last year, the attribution of interim measures to the judges who made them.

We have heard a lot about the Policy Exchange paper of last May. The arguments have been very well summarised in other speeches, particularly those of the noble Lord, Lord Wolfson, who has spoken to them a couple of times. Happily, I do not need to take your Lordships through those arguments or, indeed, the detailed rebuttals of them, which will be found in the Bingham Centre report of July of last year. Both reports are footnoted in the Constitution Committee report, to which the noble and learned Lord, Lord Falconer, has referred. The reason that I do not need to do that is that the position was made completely clear in law by the European court, in a judgment that has been referred to: the 2005 judgment of the Grand Chamber in Mamatkulov v Turkey.

It has been mentioned, but I will say a little more about it. Of the 17 judges who ruled on this issue in the Grand Chamber, a clear majority of 14 held that Article 34 of the convention, which guarantees the effective exercise of the right of application to the Strasbourg court, is violated when a state fails to comply with interim measures. For 13 of those 14, violation follows automatically from a failure to comply. The 14th thought that there was a violation if, as in Mamatkulov itself, applicants are as a matter of fact prevented from effectively exercising their right of application,

Three judges dissented: those appointed by Turkey, Russia and Liechtenstein. Their dissent is long and tightly argued. Policy Exchange would have been proud to publish it. Its authors looked at the text, the preparatory materials, state practice, the analogy with the International Court of Justice and the relevant rules of international law—all ground covered subsequently by Professor Ekins and tonight by the noble Lord, Lord Howard, and the noble and learned Lord, Lord Hoffmann. They accused the court, just as Professor Ekins did, of exercising a legislative rather than an interpretative function.

Court cases, unlike academic debates, produce clear winners and losers. The result of Mamatkulov, since followed in other judgments, is quite simply conclusive of the matter. The arguments advanced by the dissenting judges, and later by Professor Ekins, were decisively rejected. Why does this matter? Again, noble Lords have had reference to it: the reason it matters is Article 32 of the European Convention on Human Rights, which provides two things of importance. First,

"the jurisdiction of the court shall extend to all matters concerning the interpretation of the convention".

Secondly, as my noble and learned friend Lord Etherton said:

"In the event of dispute as to whether the Court has jurisdiction, the Court shall decide".

That is really it. The European Court interpreted Article 34 in Mamatkulov as requiring compliance with interim measures issued by the court because, as the court put it in its judgement at paragraph 125, interim measures

"play a vital role in avoiding irreversible situations that would prevent the Court from properly examining the application and when appropriate securing to the applicant the practical and effective benefit of the Convention rights asserted".

That ruling is binding, as the United Kingdom agreed it would be when we signed and ratified the convention, including Article 32. Perhaps we should not be very surprised that a treaty means what the court constituted to interpret it says that it means. Even the dissenting judges did not suggest otherwise. They did not like the majority judgment, but neither did they describe it, in a word recently used by Professor Ekins, as "lawless". They accepted it.

State practice since the Mamatkulov decision is supportive of it. The Committee of Ministers, of all the Council of Europe states, resolved in 2010 that

"the Court's case law has clearly established that Article 34 of the Convention entails an obligation for States Parties to comply with an indication of interim measures made under Rule 39 of the Rules of Court".

The requirement on states parties to comply with interim measures was reiterated in the Izmir Declaration of 2011 and the Brussels Declaration of 2015, to which of course the United Kingdom was a party. It was endorsed in very clear terms by the French Conseil d'Etat as recently as 7 December last year, when that senior court required a person deported to Uzbekistan in breach of interim measures to be repatriated at the state's expense.

In a recent email to noble Lords, Policy Exchange described its own 2023 paper as "authoritative". I am afraid that whoever wrote that was high on their own supply. It is supported neither by the court whose job it is to provide authoritative interpretations of the convention nor by state practice, nor even, subject to anything the Minister may say, and I will be listening carefully, by our own Government. That at any rate is what I take from the last paragraph of the ECHR memorandum on the Bill.

To throw this established position into doubt might once have been merely eccentric; in current conditions, it is positively dangerous. As recently as 2005 there was a culture of compliance. The Strasbourg court could say, in Mamatkulov, paragraph 105:

"Cases of States failing to comply with indicated measures remain very rare".

However, the "good chaps" theory no longer prevails in the Council of Europe. Russia challenged the jurisdiction of the court in 2021 when it required Alexei Navalny to be immediately released from prison due to the risk to his life and health—interim measures strongly supported by our Government—while Poland challenged it last year when its previous Government refused to comply with interim measures relating to the politicisation of its judiciary.

Supranational courts do not have bailiffs to enforce their decisions. The fabric of international law—that "gentle civiliser of nations", as it was once described—is easily torn but not so easily repaired. It can be torn by

[Lord Anderson of Ipswich]
acts such as that which is proposed to us—acts that enable or facilitate actions in breach of international law.

Clause 5 is peculiar, as the noble Lord, Lord Faulks, and the noble and learned Lord, Lord Hoffmann, have both said. If Rwanda is as safe, as the Government invite us to declare, Clause 5 is unnecessary. If it is not safe, Clause 5 will compound the injustice of Clause 4. Either way, Clause 5 extends the damage already done by Section 55 of the Illegal Migration Act because it severs the link, praised by the noble Lord, Lord Jackson of Peterborough, between non-compliance and procedural reform. If we accept this clause, we will not only be authorising Ministers to contravene this country's obligations; we will be handing an excuse to illiberal Governments across the continent to do the same, and worse. We should be ashamed to do so.

Lord Purvis of Tweed (LD): I am not a lawyer and I do not wish to refer to any of the legal aspects of the amendment; there has already been enough of that in the excellent contributions from noble and learned Lords. I just want to address the point about why the United Kingdom should feel that we are particularly vulnerable to this court.

There has been reference to other countries that have had interim measures granted against them. It is of course the case that the interim measures relating to the Rwanda MEDP have a high profile. The noble Lord, Lord Faulks, seems to continue to be uncertain as to why the interim measures were given. I think he knows that, on the day that the court issued the interim measures, it also issued the statement of the decision when it notified the UK Government of the interim measures. These are public documents and they are online.

The interim measure relating to the case of NSK was put in place on the grounds that that the individual should not be removed to Rwanda until the ongoing domestic judicial review process was concluded. That is the reason the court gave for that case. I am not a lawyer and I know the noble Lord, Lord Faulks, is, but it sounds reasonable to me that while a domestic—

Lord Faulks (Non-Afl): My Lords—

Lord Purvis of Tweed (LD): Just one moment—I will say what is reasonable and the noble Lord can say it is not. I think that, if there is an ongoing domestic judicial review process but the Government decide to deport that individual before it has concluded, there are reasonable grounds there. I will happily give way to the noble Lord.

Lord Faulks (Non-Afl): With respect, a statement of conclusion does not give any of the reasons for coming to that conclusion.

Lord Purvis of Tweed (LD): It gave the decision that the ongoing domestic judicial review process should be concluded.

Lord Murray of Blidworth (Con): Of course it is right that NSK's application for an interim injunction was heard by the High Court—by the lead judge of the Administrative Court—and the interim relief application was refused. That was appealed to the Court of Appeal, which agreed with the single judge that there should be no interim relief. Application for permission to appeal to the Supreme Court was refused by the noble and learned Lord, Lord Reed. It was only the European court that decided to grant the interim relief. It appears that our own domestic courts at all levels and at great levels of distinction were satisfied with the Government's statement that they would return NSK to the UK in the event that his judicial review challenge succeeded. Why does the noble Lord say it is right for the European court to form a view by way of press release when our own courts, in detailed judgments, had considered all the arguments and decided the other way?

10 pm

Lord Purvis of Tweed (LD): I thank the noble Lord. I said that the court issued a press release; I did not say it made a judgment by press release. I think that is taking it a little too far.

The noble Lord states that the domestic judicial processes had been concluded, but the court said that they had not. All I am relaying to the Committee is the decision that was made. In my view it is reasonable, but I am not a lawyer, as the two noble Lords are. That was the reason the court made the decision, and the Government accepted it.

The point I wanted to make is that there were five other cases that day, which are not referred to as frequently. The requests for two interim measures were granted in order for the court to consider the cases in greater detail. That is correct, yes? Two were refused, which has not been mentioned so far, and one was withdrawn because the Home Office had changed policy in the meantime. Looking at the consideration of cases on that day, I do not think you would come to a conclusion—with three accepted, two refused and one withdrawn—that there was some deliberate blocking of the measure.

That prompted me to ask what the record of the UK has been on interim measures over the last years. There have been 178 applications overall, with most of them withdrawn, since 2021. We have fared fairly well against Germany with a total consideration of 264. That compares with 478 cases for France. We are doing quite well as far as cases against the UK go. If this is judicial blocking, and therefore the motives are to empower the courts to stop what the Government want to do, we need to look at the record of the decisions.

In 2021 five interim measures were granted against the UK and nine were refused. In 2022, five were granted against the UK and 12 were refused. In 2023—the most recent data—one interim measure was granted against the UK and 13 were refused. Far from this being judicial blocking—these cases are all to do with expulsions and relocations; this is not just in general terms—the UK's system has worked really rather well, especially when compared with those of Germany and France. I would have thought that this is something that the Government would want to protect.

Lord Wolfson of Tredegar (Con): My Lords, the ancient court known as the Sanhedrin, at its full complement, sat with 71 judges and had a rule that the most junior judge would give judgment first. I understand the reason

was that, if the senior judges had spoken and the junior judge disagreed, that would be arrogant; if they agreed, it would be impudent. I find myself speaking after the noble and learned Lords, Lord Hoffmann and Lord Etherton, who disagreed. Therefore, whichever side of this argument I take, it seems I am going to be guilty of both. I ask forgiveness from each of them.

Like the noble Lord, Lord Anderson, I will spoil any questions as to which way I will go by saying that I respectfully agree with the noble and learned Lord, Lord Hoffmann, and the reasons he gave for supporting Professor Ekins' paper. It was interesting that, in opening the debate, the noble Lord, Lord Scriven, said that for about 20 years the jurisprudence of the European Court of Human Rights has been clear. That is true, but it begs the question: since the European Court of Human Rights has been there for rather longer than 20 years, why did the noble Lord limit his position to 20 years? The answer is that if he had said "for 23 years" the jurisprudence would have said something completely different.

What is remarkable in this area is that this is not a new question. As I said at Second Reading, the question whether the European Court of Human Rights should have the jurisdiction—and this is a question of jurisdiction—to issue interim injunctions or interim measures was specifically debated by the contracting parties back in 1949, and it was deliberately not put into the text in 1950. It was a deliberate omission, not an oversight. The states considered whether the court should have the power and, no doubt for reasons similar to that set out by the noble and learned Lord, Lord Hoffmann, decided that it should not. That caused no problem at all.

Year after year, the court operated perfectly well without this power. It ruled, in terms, that it did not have this power in 1991 and, a decade later, in 2001, it upheld that ruling. As I said at Second Reading, you then have a judicial volte face in 2005, and the judgment from which the noble Lord, Lord Anderson, quoted. It is an open question, and it is interesting to consider why there was this volte-face by the European Court of Human Rights. I suggested that it might have been "jurisprudential envy", because the International Court of Justice held that it had the power to issue interim injunctions. But, of course, that is different, because the statute of the ICJ, particularly the French version, provides a basis in the foundational document of that court for it to have that jurisdictional power.

With respect, question of whether the court has a power to issue these interim measures rests on very slender foundations. How is it now said that the court has the power, and we are bound by it? The primary argument put this evening has been based on Article 32, which provides that the court has jurisdiction to decide on the operation of the convention. What is interesting about that argument is that it is not used by the court itself, which, so far as I am aware, has not based its jurisprudence on the fact that Article 32 gives it the right to say, "This is what our jurisdiction is, and this is what we are doing". It is outside commentators who have tried to find a proper basis—because Article 34, which the court does rely on, is not one—for the court's jurisdiction. It is rather like the archer who scores a bull's-eye not by firing the arrow at the target, but by firing it and then drawing the target around it.

One comes to the conclusion that people would like the court to have the jurisdiction and then say, "Ah, well, there must be a basis for it—what about Article 32?" But it is not an argument that the court itself uses, and it is also a false argument. Article 32 is about disputes about the convention and its operation; they are to be resolved by the court. It is not a grant of unlimited jurisdiction to the court to defy the express terms of the convention, including Article 46.1, which says that states are bound only by final judgments and therefore, by implication, nothing else—and by the history of the convention, which, as I have set out, is contrary to the court having these powers.

Article 32 is not the "get out of jail" card. This is not a new point. A similar point came before the Supreme Court in the case of Pham in 2015—what would happen if the European Court of Justice exceeded its jurisdictional powers? The noble and learned Lord, Lord Mance, dealt with that issue in paragraph 90. I do not need to go through the answer, but it certainly was not, "Well, the European Court of Justice has a power to interpret the treaties, and if it says it has the power to do this, that or the other, necessarily it does", which would be the analogue to the Article 32 argument.

With the greatest of respect, Article 32 simply will not do as a basis on which to found the jurisprudence of the court. Of course, there are other points to be made as to the process of the court, and those have already been set out by the noble Lord, Lord Faulks. For those reasons, the point underlying many of the amendments in this group—that the court has jurisdiction to issue these interim measures and they are binding in international law—is wrong. Therefore, these amendments ought to be resisted.

Lord Ponsonby of Shulbrede (Lab): My Lords, Amendment 62 in the name of my noble friend Lord Coaker would ensure that a Minister of the Crown making a decision on an interim injunction consults the Attorney-General. This would ensure that, before making a decision on compliance with any interim measures issued by the ECHR for the purpose of blocking a person's removal to Rwanda, the relevant Minister consults the Attorney-General, creating an additional safeguard. The noble Lord, Lord Wolfson, introduced his speech by saying he was not going to be arrogant or impudent, so I will adopt the same approach in my speech, which will be brief. I am not going to go into the legal arguments—many eminent lawyers have done that—but I am going to go into the politics and address what seems to me to be the question that has been left hanging in the air.

Yesterday morning, I watched the television and Mr Michael Tomlinson, the Illegal Migration Minister, was on our screens and he was absolutely explicit: he said that the flights will take off as soon as the Bill becomes an Act and the treaty comes into force. He said they will be going pretty much immediately. There was no question of the niceties of Rule 39 and all the other things we have been talking about; the subject

[Lord Ponsonby of Shulbrede]
simply did not come up. That is the politics of it: when the Bill becomes an Act, the treaty comes into force and those flights will be taking off.

My noble and learned friend Lord Falconer went into how the decision on Rule 39 might be made. The question he, and the noble Lord, Lord Faulks, asked, was, would it be subject to judicial review? To me, that is the question hanging in the air, and I look forward to the Minister's answer, because as far as I can see it will be for the Attorney-General to make that decision, on the recommendation of the Prime Minister, and she will be doing that as a law officer. Today's *Daily Telegraph* said—I do not know how it knows this—that when Mr Tomlinson was Solicitor-General, he had written legal advice saying that it would be illegal to go against Rule 39. I know it is private advice; nevertheless, that was in today's *Daily Telegraph*.

So, there are two issues. First, the Illegal Migration Minister was explicit about the flights taking off on the conclusion of proceedings on the Bill. Secondly, what is the status of judicial review of any Rule 39 decision?

The Advocate-General for Scotland (Lord Stewart of Dirleton) (Con): My Lords, I am extremely grateful to the Committee for an exceptionally lively, informed and learned debate on this matter. The consideration of obligations to obtemper interim measures—interim indications from the European Court of Human Rights—seemed to gravitate around two poles. On one hand we had the noble Baroness, Lady Chakrabarti, the noble Lords, Lord Kerr of Kinlochard and Lord Hannay of Chiswick, the noble and learned Lord, Lord Etherton, and others. On the other hand, my noble friend Lord Howard of Lympne spoke powerfully, my noble friend Lord Jackson of Peterborough added his weight, and we heard supportive contributions from my noble friend Lord Wolfson of Tredegar and the noble and learned Lord, Lord Hoffmann, who spoke from the Cross Benches offering, if I may say so, a qualified view as to the obligation to obtemper any such interim measures.

The scheme of the Bill is to enact Clause 5 to put beyond doubt that the decision about whether to comply with an interim measure, in proceedings relating to the intended removal of a person to the Republic of Rwanda under, or purportedly under, a provision of or made under the Immigration Act, is in the hands of a Minister of the Crown. The requirement for a Minister of the Crown is to exercise the decision personally, which reflects the seriousness of the decision to be taken.

10.15 pm

The status of domestic law, as opposed to international law, was a matter of some consideration by your Lordships' Committee. The orthodox legal position is that unincorporated international law—that is, law not incorporated into domestic legislation—is not binding on the domestic courts. Clause 5(3) goes further by preventing the domestic courts from having regard to interim measures. Domestic courts can have regard to interim measures without being bound by them, in the sense that they are not legally required to follow them.

As the noble Lord, Lord Faulks, said from the Cross Benches, the constitutional and legal position in the United Kingdom, so far as international law is concerned, is quite clear and has been reaffirmed repeatedly by the highest court in the United Kingdom. The United Kingdom is a dualist state, which means that international law has effect in it only in so far as it is expressly incorporated into domestic law by or under an Act of Parliament. Once incorporated, it is just as capable of being modified as any other domestic law, and in the same way.

Nothing that I say or have said at any stage in submissions to your Lordships' Committee should be taken as suggesting that His Majesty's Government do not recognise the importance of international law or its relevance to governmental decision-making. We treat international law with the utmost seriousness and pay close attention to our obligations. But, in the case of this provision, the Minister will be accountable to Parliament for the exercise of that personal discretion, and each decision will be dependent upon the individual facts of each case. Nothing in Clause 5 requires the United Kingdom to breach its international obligations.

Amendments 57 and 59, tabled by the noble Lord, Lord German, and Amendment 58, tabled by the noble Baroness, Lady Chakrabarti, seek to remove the statement that only a Minister of the Crown can decide whether to comply with a Rule 39 interim measure. I note first that it is important to make clear that Rule 39 interim measures are not final judgments of the European Court of Human Rights and are not binding on the United Kingdom domestic courts. I reassure your Lordships that, when the Minister is deciding whether to comply with an interim measure indicated by the Strasbourg court, due consideration will be given to the facts in the individual case and careful consideration will be made of the United Kingdom's international obligations. Given the importance of this decision, it is crucial that we are clear in the Bill that this decision rests with a Minister of the Crown.

Amendment 59, tabled by the noble Lord, Lord German, would permit a domestic court or tribunal to have regard to an interim measure when considering an application or appeal from a person subject to removal to Rwanda. Where there is an equivalent domestic remedy, as we have provided for in Clause 4, there should be no need for the Strasbourg court to intervene. In answer to the question raised by the noble and learned Baroness, Lady Butler-Sloss, it is the policy of the Bill that this should be the case and that these matters should be for the Minister.

The decision of the United Kingdom's domestic courts to issue interim relief should be made only when they have reached their own conclusions about whether a person is at risk of serious and irreversible harm, not when the European Court of Human Rights has indicated an interim measure. These provisions are consistent with the measures introduced in the Illegal Migration Act, agreed by the House last year.

There is nothing in Clause 5 to prevent Ministers consulting Cabinet colleagues or seeking advice when appropriate so to do. It would be expected for a Minister so to do. However, this is a decision for Ministers, so I do not believe that Amendment 62, tabled by the

noble Lord, Lord Coaker, which seeks to introduce a requirement to consult the Attorney-General, is necessary. Furthermore, specifying in the Bill that the Attorney-General must be consulted before a decision is made would undermine the law officers' convention, to which reference was made earlier in Committee. This is a long-standing convention whereby advice received from the law officers is not disclosed outside government. It is also the convention not to disclose whether or not the opinion of the law officers has been sought.

Baroness Chakrabarti (Lab): Why, then, does the Victims and Prisoners Bill, as presented by the Government, require the Secretary of State to consult the Attorney-General before amending the victims' code, if there is this long-standing convention that the Government are indivisible and the Attorney-General will always be consulted on important matters? Also, why is this significant decision potentially to ignore interim relief from the Strasbourg court for Ministers and not Parliament, given that the Government's central argument in this Bill is about parliamentary sovereignty?

Lord Stewart of Dirleton (Con): I think the answer to the first point is that the Victims and Prisoners Bill relates to victims, a matter on which the Attorney-General, exercising her supervision over aspects of the criminal legal system, would be in a good position to answer. That distinguishes it from this measure. However, that is only my instinctive answer. So as not to mislead the Committee, if the noble Baroness is content then I will write to her on the topic. I am grateful for her nod of agreement. As to whether this should be for Parliament as opposed to the Executive, in the form of the Minister, I can only repeat that the scheme of the Bill and the Government's intention is that this decision should lie with the Minister responsible.

The noble Lord, Lord Ponsonby of Shulbrede, made two points, the second of which echoed the question anent judicial review posed by the noble and learned Lord, Lord Falconer of Thoroton. Our position is that the decision on the part of a Minister to comply with an interim measure is not amenable to judicial review. His other question related to the views expressed by my honourable friend in the other place the Minister for Immigration about flights taking off as soon as the Bill passes. While this Committee is engaged in detailed legal scrutiny, my honourable friend is speaking in public about the Bill's policy: to see to it that these flights take off as quickly as possible and the deterrent effect of which my noble friend Lord Sharpe of Epsom and I have spoken should take effect.

Lord Falconer of Thoroton (Lab): Why is it not susceptible to judicial review? Ouster of the courts normally involves at least a provision in a Bill. There is no such provision here. Ousting the courts by a statement from the Dispatch Box in the House of Lords is very unusual.

Lord Stewart of Dirleton (Con): My Lords, I am not in a position to go into detailed discussion on this point, but I have given the Government's position on the amenability of judicial review in relation to these decisions.

Lord Falconer of Thoroton (Lab): Could the Minister indicate when he might be in a position to debate it?

Lord Stewart of Dirleton (Con): I undertake to correspond with the noble and learned Lord on that.

Amendments 58, 60 and 61 would bind the United Kingdom Government, preventing a Minister of the Crown or discouraging domestic courts from considering the individual facts of the case or the determination of the domestic courts as to whether a person would face a risk of serious and irreversible harm if returned to Rwanda.

The amendments would also require the United Kingdom courts to take account of an interim measure issued by the Strasbourg court, potentially supplementing the ECHR's decision, rather than making their own independent finding about whether a person would face a real risk of serious and irreversible harm.

Finally, the disapplication of Section 55 of the Illegal Migration Act would lead to a conflict between the duty to remove established by the Act and the effect of an interim measure issued by the Strasbourg court. That would create uncertainty as to which will prevail.

Clause 4 includes a specific provision enabling the United Kingdom courts to grant an interim remedy preventing removal to Rwanda where it is satisfied that a person would face a real, imminent and foreseeable risk of serious and irreversible harm. Those measures have been designed to ensure that our courts are not out of step with the Strasbourg court; the serious and irreversible harm test is broadly the same that the Strasbourg court applies. Clause 4 would have our courts apply the same test as the Strasbourg court when considering the position of a person who might be sent to Rwanda. There is no reason why the United Kingdom courts, which we would expect to be in possession of all the evidence and facts in the case when making such a decision, cannot be relied upon to reach their own decision rather than being required to have regard to another court which may not have complete information on the case.

The Government submit that these amendments risk hampering or thwarting our efforts to stop the boats and to remove people with no right to remain in the United Kingdom.

There have been references from various quarters about the absence of my noble friend Lord Hailsham today. I indicate to the Committee that he was courteous enough to contact me directly and let me know what the position was. He has tabled Amendment 63, which relates to rules governing Rule 39 procedures. In support of that, the noble Baroness, Lady Chakrabarti, was the first to make inquiries of the Government as to what the position is in relation to the changes in the procedures. I am grateful to the noble Lord, Lord Faulks, who also discussed this. On 13 November 2023, the Strasbourg Court announced proposed amendments to its rules and practice concerning interim measures, including the naming of judges who make the decisions on interim measure requests, interim measures communicated as formal decisions, considering state representations before interim measures are indicated, and parties being able to request reconsideration of an interim measure.

[Lord Stewart of Dirleton]

The noble Lord, Lord Faulks, referred to his observations at Second Reading, expressed again today, concerning the differences between procedures when interim remedies are sought in our domestic courts and the case that is hitherto applied in the European court. I do not intend to repeat in any detail the points the noble Lord made. The point was that in relation to that case, as the noble Lord described, there was what amounted to a breach of natural justice, as it would be identified in a domestic court, as the United Kingdom was unable to put its case. As the noble Lord pointed out, in the domestic sphere, a person is able to seek and be granted an interim remedy.

Baroness Chakrabarti (Lab): I am grateful that the Minister was kind enough to inform the Committee about the November reforms from the Strasbourg court, so surely all these natural justice concerns have now been met.

Lord Stewart of Dirleton (Con): I gave the noble Baroness a list of the recommendations, or the proposed amendments to the rules, but I do not see them as answering all of the concerns which the noble Lord, Lord Faulks, expressed, and with which I agree. The question of the ability to go to court directly after an indication has been made, or an interim interdict or injunction in our jurisdictions has been granted, and to argue the point with the court, does not form part of the reforms to the direct ability to challenge which the Strasbourg court has announced.

10.30 pm

The rules will also confirm the practice of the Strasbourg court of granting measures in exceptional circumstances where there is a risk of irreparable harm. The United Kingdom has responded formally to the court's consultation on these measures. While we welcome the review conducted by the court and the changes to be implemented, this does not remove the need for Clause 5—that interim measures should be decided on by a Minister of the Crown and that the court must not take them into account.

To conclude, Clause 5 makes it clear that it is for a Minister of the Crown to personally make the decision about whether to comply with a Rule 39 interim measure indicated by the Strasbourg court. The Minister will be accountable to Parliament for the exercise of that personal discretion. It makes it clear that domestic courts may not have regard to the existence of any interim measure when considering any domestic application or appeal following a decision to remove a person to Rwanda in accordance with the treaty. On that basis, I invite the noble Lord, Lord German, to withdraw his amendment.

Lord Anderson of Ipswich (CB): The Minister said, and I agree, that nothing in Clause 5 requires the United Kingdom to breach its international obligations. Does he agree that, if a Minister, in compliance with Clause 5, decides not to comply with an interim measure, that would place the United Kingdom in breach of its international obligations, or have the Government thrown their lot in with the dissenting judges and with Policy Exchange?

Lord Stewart of Dirleton (Con): My Lords, ultimately the matter for the Committee to take into account—I appreciate that I am not giving the noble Lord an answer—is where this leaves our domestic obligations, not our international ones.

Lord Anderson of Ipswich (CB): Surely it is relevant to this Committee, if we are being invited to pass Clause 5 into law, to know whether or not, in the Government's view, it will enable or facilitate a breach of international law by a Minister acting in reliance on it. The Minister does not seem to be able to tell us whether he takes that view or not. I read the human rights memorandum as taking the orthodox view that there is a breach of our international obligations when interim measures are disregarded by a Minister. Is the Minister telling us that the position has changed since that memorandum was drafted?

Lord Stewart of Dirleton (Con): My Lords, in addressing the Committee, I outlined that the position in relation to international measures is that they must be incorporated into domestic law before they take on binding character for our domestic courts.

Lord Anderson of Ipswich (CB): I do not believe there is any dispute in this Committee about the proposition that the Minister has just delivered himself of. However, we are not talking about domestic law; we are talking about international law. If the Minister cannot answer the question now, will he add it to what is, I am afraid, the lengthy list of questions on which he has kindly offered to write to the Committee in due course?

Lord Stewart of Dirleton (Con): My Lords, in view of the hour and the information which I have to hand, and given the stark terms in which the noble Lord expresses himself, that might perhaps be the better course.

Lord Murray of Blidworth (Con): Is it not the case that the answer to the question of the noble Lord, Lord Anderson, is that it depends? We know from the Policy Exchange paper and many other sources that there have been many cases where Rule 39 indications have not been complied with by states parties, including France, Italy, Albania and Slovakia. It all depends on the circumstances, does it not?

Lord Stewart of Dirleton (Con): I am grateful to my noble friend but the answer "it depends" renders the matter, to a certain extent, even more complicated and emphasises the number of considerations that I will have to take into account in writing to the noble Lord, Lord Anderson of Ipswich. While I am grateful to my noble friend for his contribution, my undertaking to write to the noble Lord remains in place.

Lord Scriven (LD): My Lords, I thank all noble Lords who have taken part in this predominantly technical debate on the view of the UK's legal position if it were to ignore an interim measure from the European Court of Human Rights. The final intervention

from the noble Lord, Lord Anderson of Ipswich, and the Minister's answer leave me just as confused as when we started the debate. It reminds me why, after I graduated 40 years ago, when I was offered the chance of becoming an NHS manager or going to law school, I chose to become an NHS manager. That was hard enough.

Clearly, noble and noble and learned Lords have raised several issues, but because of the lateness of the hour, I will not repeat them all. There is the issue of judicial review, which is quite bizarre. If a Minister's sole decision on such an important issue cannot be judicially reviewed, particularly if the position is completely irrational, I think most noble Lords would agree that it would be easy for international law to be broken and for the individual to have no recourse even to our own domestic courts. As many noble Lords have said, the perverseness of Clause 5 as it stands is that it is preposterous that even our own domestic courts are ruled out from making any interim judgments. The Minister has not been able to give any convincing answer as to why that is.

A number of noble and noble and learned Lords asked this question in different ways, which the Minister, in answering, still ignored: if an interim decision is of such a serious nature, why would a Minister of the Crown wish to ignore it? It is hard to conceive why a Minister would wish to do that, particularly if there is no judicial review. It makes the individual completely reliant on a rational Minister making a decision devoid of the policy of the Government, which is absolutely central to stop the boats. It gets the Minister in a political and legal position that is highly suspect both for the individual on the receiving end of the decision and for the Minister having to make it. I am absolutely convinced of that, based on the views that have been raised.

Of all those views raised, the explanation of the noble Lord, Lord Anderson of Ipswich, about the judgment and Articles 32 and 34 is one that I felt was definitive, as, I think, did many other noble Lords. However, the Government refused to accept that and continue to insist that Clause 5 is not in breach of international law and is not in any way a dilution of the separation of powers. I believe that this issue will come back on Report, and quite rightly so. Depending on what the Government say, I am sure that it will be a bone of contention for the House. Having said that, I beg leave to withdraw my amendment.

Amendment 57 withdrawn.

Amendments 58 to 63 not moved.

Clause 5 agreed.

Amendments 64 and 65 not moved.

Amendment 66

Moved by ***Lord Coaker***

66: After Clause 5, insert the following new Clause—

"Reporting requirement

Within 60 days of this Act receiving Royal Assent the Secretary of State must provide a written report to Parliament setting out—

(a) the number of individuals relocated under the Rwanda Treaty,

(b) the current location and immigration status of any individuals relocated under the Rwanda Treaty."

Member's explanatory statement

This new Clause requires the Secretary to report to Parliament on the operation of the Rwanda Treaty.

Lord Coaker (Lab): My Lords, with Amendments 66 and 67 we get to the meat, in many respects, of the Bill. We also start to try to understand why the Committee has debated at great length many issues of principle, and the contrast between the views of those who see it as perfectly reasonable for this House to overturn the opinion of the Supreme Court and those who think it raises issues of very serious constitutional principle.

It is important that your Lordships understand why the Government are going to such great lengths to give effect to the Illegal Migration Act and to pass this Bill. I have asked the Minister a couple of times now and he will have to come forward with numbers as I have been unable to understand quite what difference this will make.

The first thing is that it is necessary for there to be a reporting requirement, as in Amendment 66, where the Government have to come forward with various numbers with respect to the numbers of individuals who will be deported and what will happen to them when they are in Rwanda. But, for me, Amendment 67 goes to the nub of it. We have heard many of the legal objections, which we support, but we also believe that the Government have yet to persuade any of us that the Act will be workable. In fact, we know that many Ministers have described it both in private and public as unworkable and have criticised it, saying that they do not know why the Government have put all their eggs into one basket and are obsessed with Rwanda, with no visible impact on what has been happening.

Let us see whether the Minister can help us out here. Under the provisions of the Bill and its relationship with the Illegal Migration Act, we know that, despite whatever the Government have done, at a cost of nearly £400 million, no asylum seekers have yet been sent to Rwanda. Given that we have this huge investment of effort, can the Government tell us the number of individuals whom they expect to send to Rwanda? The Appeal Court said 100; Ministers have said a few hundred. What is the actual figure? I say to the Minister that there will be a working paper in the Home Office even if he says the answer is unclear. There will be a working assumption; the Government will have had talks about how many individuals they expect to send.

We know that the Government want a flight off. They do not care how—they just want to get one off as soon as possible so that the Prime Minister can pose with the plane in the background. What is the timetable? Will we have one flight or a couple of flights every week? This is why we have bothered with the Bill; we have had three days in Committee in the House of Lords, it went through the other place, and we have a couple of days coming up on Report. What is the purpose of that apart from being able to say that a plane will take off?

Can the Minister say how many asylum seekers are due for deportation under the Illegal Migration Act? Originally there was going to be a retrospective element

[Lord Coaker]
to that Act from its First Reading. An amendment in the name of the noble Lord, Lord Carlile, got the Government to agree that it would be from its enactment. That was some time in the middle of July, I believe. What is the number of asylum seekers who have come by irregular routes and who are now subject to deportation from this country? I saw in the *Daily Telegraph* today that it was 33,000. Is that wrong? If it is wrong, what is the figure? Michael Tomlinson MP, the Minister responsible for illegal migration, was asked on television yesterday whether it was 22,000. He did not say it was not 22,000; he made some reference to whatever, but he did not say it was not that. I calculated that the number of small boat arrivals since then is 16,628, so is it 33,000, 22,000, 16,628 or another figure? If it is another figure, how many of those asylum seekers who have arrived through these irregular routes do the Government expect to send to Rwanda? If the Government are driving a coach and horses through many of the democratic principles of this country, we would like to know why we are doing it. What is the purpose of it?

10.45 pm

We have had great legal arguments—very, very important legal arguments—but I want to get down to the nitty gritty here. Why are the Government bothering? How many asylum seekers are there who should be being deported under the Illegal Migration Act? How many do they expect to send to Rwanda? What is the timeline for it? All of us want to understand what is going on. That simply goes to the heart of it. We need some numbers from the Government and some explanation of what is actually going on. That is the purpose of my Amendments 66 and 67. I beg to move Amendment 66.

Lord Purvis of Tweed (LD): My Lords, I rise to speak to Amendment 76A, in my name and in the name of my noble friend Lady Hamwee. This is a probing amendment to allow the Minister to expand on some of his helpful comments in an earlier group with regard to how the monitoring committee and the joint committee will operate.

When we started the Bill and I first read the treaty, I was not at that stage quite appreciative of how significant the monitoring committee and the joint committee would be when it comes to making decisions about the preparedness of when Rwanda would be a safe country. I was not aware at that stage, when I read the treaty, because at that stage, I was not aware that I was a decision-maker as to whether or not Rwanda would be safe. According to the Advocate-General, however, I am a decision-maker because I am a Member of Parliament and it is now a decision of the court of Parliament: this creature that has now come up from the grave to sit in judgment of a third country's record on safety.

It is also relevant because the monitoring committee and the joint committee will be the supervising bodies, to some extent, with regard to the overall operation of the start to the end of the relocation processes. The noble Lord, Lord Coaker, is absolutely right: we do need more information about it, because we are gradually learning about what some of the estimates may be for the numbers to be relocated.

The Hope hostel in Kigali can accommodate 200 people, with an average processing time of a fortnight. On the previous day of Committee, we did the maths, as the Americans say. Well, we can do some more maths now, as the noble Lord, Lord Coaker, has helped us. If we believe the *Daily Telegraph*, which occasionally is a reliable journal of Conservative thinking in this country, if there are 30,000 people, on the figures given by the noble Lord, Lord Murray's, impact assessment of the Illegal Migration Act, which, of course, we will take as read, that is £5.6 billion plus the £400 million down payment, so a neat £6 billion.

The Minister, in an earlier group, outlined the very high cost of accommodating existing asylum seekers in hotel accommodation. We know, through the Independent Commission for Aid Impact, that the Home Office decided on the most expensive and least efficient means by which to accommodate asylum seekers. Nevertheless, that is £2.9 billion a year—so, on any reckoning, the number of those who will be relocated to Rwanda will take at least a decade at a cost of at least £6 billion. There is no means by which the Government can have a more effective way for the British taxpayer than efficient accommodation and processing here in this country. There is no way the Government can square any of it to make the Rwanda scheme cheaper for the British taxpayer.

Ultimately, we are looking not just for value for money but for whether we can make the decision that Rwanda is safe and the mechanisms are in place.

Lord Lilley (Con): Before the noble Lord moves on to the other bits, can he give us some estimate of how much it will cost the British taxpayer if he and his friends succeed in perforating this Bill like a sieve so that it has no deterrent effect and we have an ever-growing number of people coming here having to be put up in hotels at immense cost to the UK?

Lord Purvis of Tweed (LD): I am grateful to the noble Lord, who has been here during the various days in Committee. He will have heard last Wednesday what the Government's own estimate is regarding the deterrent effect of the Illegal Migration Act. That ranges towards the top element of deterrence of 50%. That is not ours or the Opposition's but the Government's estimate of the likely impact of the Illegal Migration Act, and that is the mechanism by which this is brought about. A 50% deterrence would be roughly 16,000 people.

Lord Lilley (Con): If it does not rise.

Lord Purvis of Tweed (LD): Well, that is the deterrent effect. Assuming that of those who are coming, 50% on a regular basis are deterred, then over the long term there would still be 50% coming by boats. That is not my estimate, it is the Government's estimate.

Lord Murray of Blidworth (Con): My Lords—

Lord Purvis of Tweed (LD): Before I give way, presumably what the noble Lord wants to get to is a deterrent effect of 100%, so that the boats are stopped, which is what we all want. But so far I have not found anything in any government documentation of policy that says that anything they are going to do will bring about 100% deterrence. Has the noble Lord found it?

Lord Lilley (Con): I asked the noble Lord for his estimate of what will happen if we have no deterrent effect and there is an ever-growing number of people crossing the channel. Is it possible even to reach a figure? It must be enormous.

Lord Purvis of Tweed (LD): The Permanent Secretary at the Home Office was unable to do so. That is why he sought ministerial direction. Home Office civil servants sought ministerial direction because the Permanent Secretary said that the Government's policy was not proven value for money.

Lord Murray of Blidworth (Con): Will the noble Lord give way?

Lord Purvis of Tweed (LD): I will address the point raised by the noble Lord, Lord Lilley, and then happily give way to the noble Lord.

The valid question is, "If this Bill will not work, what would work?" We know that this Bill will not work, so the better deterrent effects are those policies such as relocation and resettlement agreements, which comply with international law and have policing mechanisms attached to them. That is called the Albania deal. I am sure that the noble Lord will agree that this has been a success.

Lord Lilley (Con): A deterrent effect of 90%.

Lord Purvis of Tweed (LD): From a sedentary position. I agree with the noble Lord. I think *Hansard* picked it up: a successful 90% deterrent. The noble Lord heard me at Second Reading saying that we welcomed the Albania deal. An internationally legal, efficient, effective resettlement and relocation agreement is what works. This is not any of those. I happily give way to the noble Lord, Lord Murray.

Lord Murray of Blidworth (Con): It is very interesting that the noble Lord should refer to the effectiveness of the Albania arrangement. The document that the noble Lord likes to refer to in relation to the ministerial direction on deterrence came before the Albania deal, the 90% drop and the tangible evidence that deterrence works that we saw as a result of the Albania deal. We can extrapolate from the experience of the Albania deal to say that deterrence will work more generally if we can be sure that a significant proportion of those crossing the channel in small boats are sent to Rwanda for third-country processing.

Lord Purvis of Tweed (LD): Even for the noble Lord, it is a bit of a leap to say that a negotiated relocation agreement with Albania has been a deterrent because they may have thought we were going to send them to Rwanda. Even factually, I am afraid that he was incorrect. The noble Lord knows that the ministerial direction sought on the migration and economic development agreement with Rwanda was specifically for this Rwanda agreement. He also knows that when the Permanent Secretary was giving evidence in December, after the Albania agreement was agreed, he said that no circumstances had changed with regard to his view for value for money for this agreement. The Permanent Secretary still believes that the Rwanda agreement will not propose to be value for money. I agree with the Permanent Secretary at the Home Office.

The monitoring committee will have eight members, as the Minister said, and its terms of reference are online. The Minister said earlier that it would be independent of government, and that is true to an extent—if you think that four members being appointed by one party and four by another constitutes independence, because when it is being established, each party will appoint them. The key thing from our point of view is the ability of the monitoring committee to, as the Minister wrote in a letter to me,

"ensure all obligations under the treaty are adhered to".

It will not, because it cannot—the monitoring committee has no powers of enforcement. It will be able to refer aspects it considers important to the joint committee, but it is under no duty to publish any of those recommendations or any of its findings, which can be significant. As the noble and learned Lord, Lord Stewart of Dirleton, said, the safeguards that must be in place as far the Government are concerned will be considered to be in place only if the monitoring committee has said that they are in place. We in Parliament will not know; but we are supposedly the decision-makers when it comes to whether Rwanda will be safe.

The joint committee, under Article 16, can make only non-binding recommendations to the parties. So, there is a monitoring committee that does not have a duty to publish its findings and cannot ensure adherence to the treaty. It can make only recommendations to a joint committee, which can make only non-binding recommendations, and which itself is not duty bound to report to the body that is apparently to be making the decisions: Parliament.

I asked how we would then change this if the circumstances changed. Even if we in Parliament found that out from a monitoring committee and joint committee that do not report to us, how would we change it? The noble and learned Lord rightly said that no Parliament can bind its successors. That seemed to imply that a future Parliament could change this arrangement. Well, it cannot, because, of course, no Parliament can bind its successors, but no Parliament can bind a Government on making or ending treaties—that is a prerogative function. How can we in Parliament change the treaty if we decide that Rwanda is no longer a safe country? I hope the Minister can explain that to me when he winds up.

Lord Carlile of Berriew (CB): My Lords, I want to speak in support of Amendment 67, in the name of the noble Lord, Lord Coaker. I have listened to the last hour or two—I have lost count of how many hours of debate there have been—and have restrained myself, perhaps uncharacteristically, from intervening. There were contributions from, for example, my noble friend Lord Anderson, who has great experience, having appeared in courts in which I have not; from the noble and learned Lord, Lord Falconer of Thoroton, who has been a very senior Minister; and from the noble and learned Lord, Lord Hoffmann, who has given judgment in some of the relevant cases. I thought I would leave it to them to deal with the legal aspects.

[Lord Carlile of Berriew]

I come to this as a lawyer who has spent 38 of the last 40 years as a Member of one or other House of this Parliament. I am concerned about the balance between the legal position created by a piece of draft legislation and the role that we legitimately have in these Houses, particularly in the other place, which is more democratically accountable than we are, although we are reluctant to deny at least some level of democratic accountability.

I do not understand this concept of deterrence. There are two views on deterrence, and they are simply stated: either you believe that the provisions are deterrents, or you believe they are not. You can actually make pretty respectable arguments both ways. It seems to me that the deterrent that would stop people coming in small boats is to deal with the cases efficiently, which has not been done at least until very recently—in other words, to ensure that those who make what might well in the vast majority of cases be unjustifiable and inadmissible requests to be allowed to remain in this country, leave this country, after due process, as quickly as possible—and to ensure that Parliament retains some oversight so that it can see that the new law is being dealt with in a way of which we are not ashamed and that accords with British legal standards. Amendment 67, which I am sure the noble Lord, Lord Coaker, will allow me to say is modest, would at least allow Parliament to have that oversight of public spending and the way a new and unusual law operates to ensure it is fair and that there is value for money.

11 pm

There are some very odd things about this Bill. If noble Lords look just for a moment at Clause 5, it encourages the question: when is a Minister of the Crown not a Minister of the Crown? It provides the following in relation to interim measures:

"It is for a Minister of the Crown (and only a Minister of the Crown)"—

it is very unusual to see a sentence such as that in a statutory provision—

"to decide whether the United Kingdom will comply with the interim measure".

There you see the language of judicial review: he or she is only a Minister of the Crown because you can judicially review a Minister of the Crown. But then your eye wanders down to Clause 5(4)(b):

"a reference to a Minister of the Crown is to a Minister of the Crown acting in person".

So he is actually a Minister of the Crown who is not a Minister of the Crown; he is acting in person, so that means, I assume, that you cannot judicially review the decision he has taken, because although he happens to walk into this building as a Minister of the Crown, this decision is taken as though he was sitting in their sitting room in East Cheam or wherever they happen to live.

Lord Falconer of Thoroton (Lab): That is an interesting thought, but I wonder whether it underlays this provision. I had assumed, until the noble Lord spoke, that it is drafted in that way to exclude the Carltona principle—namely, to prevent a civil servant acting in the name of a Minister of the Crown.

Lord Carlile of Berriew (CB): That may not be the reason why it has been so drafted, but it is my interpretation of one of the consequences of that drafting.

The point I am making is that that construct, whereby a Minister of the Crown is a private person only for the purposes of that clause, seeks to exclude Parliament's oversight of the actions of that person. At least Amendment 67 makes a respectable attempt to ensure that parliamentarians in both Houses can review the potential operation of certain issues under this Bill.

The noble Lord, Lord Coaker, raised the issue of numbers—very well, if I may say so. The leader of the Opposition, who was a young barrister in my chambers at one time and was noted for his determination and accuracy, told the nation that about 100 people would go to Rwanda. Others have suggested a figure of about 200. Would the Minister be kind enough to confirm the actual number of places that exist in Rwanda for people who would be sent there under this Bill? I believe it to be certainly less than 200, but that is based only on attempting to find out the figures through various articles I have read online. If we are really talking about fewer than 200 people, then what is all this about, and why is Parliament not to be allowed to draw the country's attention to the fact that this is really a pig in a poke—a political construct designed to deceive people into believing that it will stop the boats—and take appropriate parliamentary steps? That is not what will stop the boats.

Baroness Hamwee (LD): My Lords, the poke is very difficult to interrogate. One of the provisions of the treaty is about reception arrangements and accommodation, which goes to the point that the noble Lord has just made. I hope that the Minister will agree with our Amendment 76A, which is about transparency and the workings of the treaty. It is only through the joint committee that we could have any hope of understanding the day-to-day implementation of the treaty. It is only if we have something like Amendment 76A—we are not wedded to the particular drafting of it—that we will be able to understand. We need a reporting mechanism to Parliament in order to scrutinise, which is one of the major reasons that we are here, what actually happens—if it ever does happen.

Baroness Lawlor (Con): My Lords, are we not in danger of simply adding to the bureaucracy of the Bill by demanding an extra measure of reporting or an extra way of scrutinising? We have Questions four days a week, we have Questions for Short Debate. There is hardly a debate I have been in that did not end with a noble Lord's question to a Minister about one matter or another, seeking precise information.

Baroness Hamwee (LD): My Lords, it is certainly the case that we ask for a lot of information, but if there is no obligation on the Government to provide the information, where do we go from there?

The Parliamentary Under-Secretary of State, Home Office (Lord Sharpe of Epsom) (Con): My Lords, I thank all noble Lords who have spoken in this relatively short debate. Just for the record, I point out that my

noble friend Lord Hailsham extended the courtesy of letting me know that he would be unavailable today, which I appreciate.

This legislation builds on the Illegal Migration Act 2023, the Nationality and Borders Act 2022, and other immigration Acts. It does not seek to replicate the provisions of the Illegal Migration Act for other case types. It is limited to the issue of the safety of Rwanda and makes some consequential changes to give proper effect to the presumption that Rwanda is a safe country.

The Government are considering plans for delivery of the provisions of the Illegal Migration Act in light of the Supreme Court judgment. Provisions in the Illegal Migration Act to support removal of people to Rwanda whose asylum and human rights claims are inadmissible will be commenced after Parliament has given its view on the safety of Rwanda.

As drafted, Amendment 67, tabled by the noble Lord, Lord Coaker, asks for information normally used only for internal government planning. This is not information that is normally shared since it is not Parliament's role to examine the details of internal operational planning, nor is it necessary to meet the Government's primary objective of ensuring that flights can relocate people to Rwanda.

However, I can confirm that, where claims are declared inadmissible for those who are subject to the duty to remove, the Government will provide support and accommodation in line with Section 9 of the Illegal Migration Act. Furthermore, in response to both Amendments 66 and 67, once the partnership is operationalised and flights commence, as soon as practicable following Royal Assent, removal data will be published online in the usual manner as part of the quarterly immigration statistics.

With regard to reporting on the current location and immigration status of any individuals relocated under the Rwanda treaty, it would be wholly inappropriate for the Government to report on personal data pertaining to the locations of relocated individuals in this manner. We believe that is also unnecessary. As we have set out, the treaty provides that no one relocated will be removed from Rwanda except, in very limited circumstances, to the UK. We have also been clear that anyone relocated who wishes to leave Rwanda voluntarily is free to do so.

The UK and Rwanda will co-operate to ensure that removal contrary to this obligation does not occur, which may include systems for monitoring the locations of relocated individuals. However, this would be with their express consent only and would, of course, not be for wider sharing or publication. This is in addition to the robust monitoring mechanisms already in place via the monitoring committee to ensure the effective operation of the partnership in practice and the well-being of those relocated, the findings of which will be reported in line with the agreed procedures set out in the monitoring committee terms of reference and enhanced monitoring plan, which, as set out earlier in this debate, are published online.

I turn to Amendment 76A, tabled by the noble Lord, Lord Purvis. The terms of reference set out clearly that during the period of enhanced monitoring, the monitoring committee will report to the joint committee, which is made up of both UK and Rwandan officials. This is set out in Article 15(4)(b), in accordance with an agreed action plan, which will include weekly and bi-weekly reporting, as required. As per Article 15(4)(c) of the treaty, the monitoring committee will make any recommendations to the joint committee which it sees fit to do. The monitoring committee will otherwise produce a formal written report for the joint committee on a quarterly basis over the first two years of the partnership, setting out its findings and making any recommendations.

Following notification to the joint committee, the monitoring committee may publish reports on its findings as it sees fit. At least once a year, it will produce a summary report for publication. I have set out that the treaty includes enhanced provisions to provide real-time independent scrutiny of Rwanda's asylum procedures aimed at preventing the risk of mistreatment contrary to Article 3 of the ECHR before it has the chance to occur. This addresses the findings in the Supreme Court proceedings that under the previous arrangements, as set out in the memorandum of understanding, the work of the monitoring committee would necessarily be retrospective. The treaty further provides at Article 15(9) for the monitoring committee to develop a complaints system that can be used by relocated individuals to lodge confidential complaints regarding alleged failure to comply with the obligations agreed, and that the monitoring committee will investigate all such complaints received directly during the enhanced three-month monitoring period.

Since the partnership was announced, UK officials have worked closely with the Government of Rwanda to ensure that individuals relocated under the agreement will be safe and that their rights will be protected. For example, the treaty sets out at paragraph 3 of Part 2 of Annex B a new process for Rwanda's first instance body, responsible for making decisions on claims for refugee or humanitarian protection status at first instance. These changes, which will require the introduction of a new domestic asylum law, will move Rwanda's asylum system to a caseworker model and address the Supreme Court's conclusions as to the system's capacity.

The UK Government have already worked with Government of Rwanda to build the capacity of their current asylum system. This work has included agreeing detailed standard operating procedures, reviews of contracts for services the Government of Rwanda have procured—for example, with accommodation facilities and medical insurance companies—and new or revised training programmes. The Home Office has also conducted ground visits, detailed guidance reviews, table-top exercises and walk-throughs to map out the end-to-end process of this partnership and better identify prospective areas for strengthening. This is in addition to ongoing training and capacity building for Rwandan officials within the refugee status determination process. Home Office officials are working on a daily basis with the officials in Rwanda to deliver this partnership.

I do have an answer for the noble and learned Lord, Lord Falconer, as to how the joint committee can report to Parliament. It is not the answer that he will want, but it is all I can say at the moment. The joint committee is due to meet this week, when discussions

[Lord Sharpe of Epsom]
on treaty implementation will continue. Senior Home Office officials will be in attendance, and I hope to have more to say on this before we get to Report.

Lord Falconer of Thoroton (Lab): The question that is being asked all the time is: how does Parliament keep it under review and raise the question that the country is no longer safe? That is not an answer.

Lord Sharpe of Epsom (Con): I appreciate that it is not the answer that the noble and learned Lord was seeking—

Lord Falconer of Thoroton (Lab): Sorry, but it is not an answer at all to the question: how does Parliament in some way or another keep the question under review? The Minister has given an answer to a completely different question.

Lord Sharpe of Epsom (Con): I do not believe I have, my Lords. What I am trying to say here is that the joint committee has to make reports to Parliament in order for Parliament to keep it under review. That is what is under discussion at the meeting this week. So it does answer the question—perhaps not in the way that the noble and learned Lord would like, for which, obviously, I apologise.

Lord Purvis of Tweed (LD): I am grateful for that comment. Just for the record, it is 11.13 pm on the last day of Committee, and it might be that the Government are thinking about something that we have been talking about. I thank the Minister for that. We will have an update with regard to how the joint committee operates. However, in order for Parliament to make its judgment, it must have access to independent information. The joint committee is the two Governments, so it does not really meet the criteria of Parliament making a judgment on the basis of Rwanda being safe, if the only information that we can use to make that judgment is that of the Government of Rwanda.

Lord Sharpe of Epsom (Con): My Lords, we have gone into the operation of the joint committee and various other bodies in considerable detail today, so I am not going to rehash those now. I am sure we can refer back to the record.

The noble Lord, Lord Coaker, asked me about the timetable. Obviously, I would say this, but the treaties need to be ratified and laws need to be passed, so I am afraid I cannot give a timetable at the moment.

With regard to numbers, as we have discussed many times before, the scheme is uncapped so I cannot provide a commentary on the possible likely numbers.

11.15 pm

Lord Falconer of Thoroton (Lab): What steps beyond the passage of this Bill are required for the UK Government to ratify the treaty?

Lord Sharpe of Epsom (Con): Again, I say to the noble and learned Lord that we had a lengthy debate about that a couple of weeks ago on the International Agreements Committee report, and those are the steps that will be required of the Government. Also, as discussed before, the Government of Rwanda still need to pass their new laws in order to be able to ratify the treaty.

Lord Falconer of Thoroton (Lab): I am not sure that is an answer. Apart from the passage of this Bill, which is the only thing that Mr Jenrick's statement referred to for what was required for the UK to ratify the treaty, what else is required?

Lord Sharpe of Epsom (Con): I am sorry, I disagree. I think I answered the question about what has to happen in order for the treaty to be ratified. It was under discussion at considerable length in the International Agreements Committee debate that we had three or four weeks ago, whenever it was.

Lord Carlile of Berriew (CB): The Minister has just said that the numbers are uncapped, but in the walkthroughs and exercises, some of which have taken place in Uganda, someone will have told the Government how many spaces are currently available in Rwanda. How many spaces are currently available in Rwanda?

Lord Sharpe of Epsom (Con): My Lords, I do not have the precise number. I will find it and write to the noble Lord. As I say, the fact is that the scheme is uncapped. In a perfect world, we would not send anyone to Rwanda because the deterrence would work. Surely that is the point, as alluded to by my noble friends Lord Lilley and Lord Murray, and indeed by the noble Lord, Lord Carlile, who pointed out that deterrence is entirely a binary argument. The Government take one view and others take another.

I think I have answered most of the questions—or at least I have tried to, although I appreciate not necessarily to all noble Lords' satisfaction. We will have more to say before Report. The Bill buttresses the treaty. Alongside the evidence of changes in Rwanda since the summer of 2022, it enables Parliament to conclude that Rwanda is safe and provides Parliament with the opportunity to do so. For the reasons I have outlined, the amendments are not necessary, and I therefore respectfully ask noble Lords not to move them.

Lord Coaker (Lab): My Lords, I do not often say this to the noble Lord, Lord Sharpe, but that was a really disappointing response, partly because the Committee is seeking numbers and information and numbers were there none. The Government will have assumptions about what is happening. The other place has spent months and months debating Rwanda and this place has spent months doing so too; we have spent weeks on this Bill, including three days in Committee.

What I was asking with Amendment 67—and I am grateful to the noble Lords, Lord Carlile and Lord Purvis, for their support—was what the Government's assumption is about the number of people who are going to go to Rwanda. It is no answer to say that the numbers are uncapped. That is a Civil Service response; it is what you say when it is difficult to answer and you do not want to do so.

Lord Kerr of Kinlochard (CB): It is quite wrong to insult the Civil Service.

Lord Coaker (Lab): Well, it is someone's idea of how to answer that particular question, but it is not an answer.

I worked out the number of small boat arrivals myself, simply by counting the Home Office's own statistics from the middle of July to the end of 2023, which came to over 16,000. According to the law that the Government have passed, all those people are waiting to be deported, but the only answer that the Government give is Rwanda.

The noble Lord, Lord Lilley, is quite right to make the point about Albania. Albania works because it is Albanians being sent back to Albania. It is not a Rwandan deal with people from all over the world supposedly being sent to a third-party country. I quite agree with respect to that. If the Government had other treaties like this one organised, they would not have half the problems that they do, so the noble Lord is right to make that point.

The Minister has made no attempt to say the number waiting for deportation under the Illegal Migration Act. I worked it out for myself by looking at the statistics. If I can work it out using the Government's own statistics, why can the Minister not come to this Chamber and tell us what the number is? Where are they? We read time and again that the Government have lost most of them or do not know where many of them are. That was part of the purpose of what I said.

I want a timeline because I am interested. If this is the only thing the Government are saying is going to work with respect to dealing with the small boats crisis and it will act as a deterrent, surely, we deserve some idea about the Government's timeline. If it is going to act as a deterrent in the way the noble Lord, Lord Lilley, said, then people would know that there will be planes every week taking hundreds of people. We read from the Court of Appeal that Rwanda can only take a few hundred people, yet there are tens of thousands waiting to be deported. That is not a policy; it is a gimmick. It is a way of trying to pretend that something is going on.

Lord Lilley (Con): Will the noble Lord give way?

Lord Coaker (Lab): I will give way in a moment.

Why can the Minister not give us some numbers and facts? That is all we were asking for. I hope and I would expect, frankly, that we get a bit more about the numbers the Government are working towards. They will have working assumptions they are working towards, and this Chamber deserves to know what they are.

Lord Lilley (Con): I am grateful to the noble Lord for giving way. I bet if he were to ask the Australians their estimate of the number they would have to send to Nauru before it had a deterrent effect, they would not have been able to give a figure. They would have probably given a figure that was much larger than what turned out to be the case. I can, in the privacy of this Room, since no one will report it, say from speaking to civil servants about the Albanian situation that they were expecting to have to deport far more people before it had any effect. It started to have an effect even before they had deported one new person; they were only deporting people who arrived before the agreement took effect.

Lord Coaker (Lab): I have agreed with the noble Lord, Lord Lilley, about Albania. There is no question between us about Albania. Of course, it acted as a deterrent, because it was a situation in which Albanians leaving Albania to come to this country knew that they were going to be sent back there. We got an agreement between the UK Government and Albania. It was a proper returns agreement that people knew was happening, so it had the deterrent effect the noble Lord, Lord Lilley, is hoping for.

Lord Purvis of Tweed (LD): I am sure the noble Lord, Lord Lilley, is fully aware that the people he is referring to are economic migrants who have no right to be here. Therefore, a proper returns and resettlement agreement is completely legitimate. They are not asylum seekers.

Lord Coaker (Lab): With respect to the answer the noble Lord, Lord Sharpe, gave us and the amendment I was speaking to, this Chamber deserves more numbers from the Government. We need to understand what the Government are doing. The whole government policy on small boats is built on deportations. If you ask the majority of people in the country, they would expect that the Government are going to deport thousands upon thousands to Rwanda. The reality is that there will be a few hundred at best. What sort of policy is that to deal with the scale of the problem the Government face? We deserve better than that. I will withdraw the amendment.

Amendment 66 withdrawn.

Amendment 67 not moved.

Amendment 68

Moved by ***Lord Coaker***

68: After Clause 5, insert the following new Clause—

"Return of individuals due to serious criminal offences

(1) A Minister of the Crown must lay a statement before Parliament within 30 days if both of the following conditions are met—

(a) the Secretary of State has approved a request from the Republic of Rwanda to return to the UK a person previously relocated under the terms of the Rwanda Treaty, and

(b) the person specified in paragraph (a) had their permission to remain in the Republic of Rwanda revoked owing to the person's participation in serious crime.

(2) If Parliament is notified of the conditions being met as set out in subsection (1)—

(a) a motion must be moved by a Minister of the Crown to be debated on the floor of the House of Commons, and

(b) the motion must require the House to—

(i) consider the statement laid before Parliament under section (1), and

(ii) consider whether or not as a result of the contents of the statement, there should be a suspension of the Rwanda Treaty."

Member's explanatory statement

This new Clause would ensure that Parliament is notified of any individuals involved in criminal activity who are transferred from Rwanda to the UK, and that the House of Commons is able to both debate the case and discuss its implications for the future of the Rwanda scheme.

Lord Coaker (Lab): My Lords, this is a very small amendment. I tabled this amendment because I read that, according to what the Home Secretary said, it will be possible for people who have sought or been given asylum in Rwanda to be returned to this country if they are guilty of a serious offence.

Can the Minister say whether the Government have any idea of the numbers that they expect to be returned, or is it just a small number, as the Home Secretary said? What is the definition of a serious crime that would require somebody to be returned to the UK from Rwanda? Can we refuse somebody who is in Rwanda and the Rwanda Government are seeking to return on the basis that they have been guilty of a serious crime? Can the UK Government refuse to accept them back from Rwanda, if that is the case? If they are successfully returned to the UK from Rwanda because of the serious crime that they have committed, or the national security threat that they pose, what is their status when they are back in the UK? If we chose to do so, would we be able to deport them to another country?

This is a probing amendment; I was just curious, when I heard the Home Secretary talking about the possibility of criminals who had been deported to Rwanda being returned to the UK. It would be helpful to have a few answers to those questions. I beg to move.

Lord Stewart of Dirleton (Con): My Lords, I thank the noble Lord, Lord Coaker, for Amendment 68, but I cannot support its addition to the Bill. We do not consider such a change necessary, as individuals would be returned from Rwanda only in extremely limited circumstances, which we have agreed to in this legally binding treaty.

The first question that the noble Lord, Lord Coaker, posed was to ask the Government again for numbers, as he had in the previous amendment. I do not think that any attempt to estimate likely numbers of people committing serious crimes is something that the Government could be expected to provide. If somebody who has been relocated to Rwanda commits a very serious crime, there is a chance that they could have their status revoked. In these limited circumstances, they may be removed to the United Kingdom, but only after they have served any prison sentence in Rwanda. This will ensure the non-refoulement element of the treaty will not be breached.

Lord Coaker (Lab): Could the Minister define the prison sentence? Is it any prison sentence, or is it a sentence of two, four or five years?

Lord Stewart of Dirleton (Con): The provision in the treaty is reserved for the most serious crimes—one punishable by five years or more imprisonment.

The amendment would necessitate, in the rare event of such returns to the United Kingdom, parliamentary consideration as to whether the Rwanda treaty should be suspended. However, it does not follow that, because an individual is returned from Rwanda to the United Kingdom because of serious criminality, the whole treaty is called into question. The return of individuals to the United Kingdom, including in these circumstances, is envisaged expressly by the treaty. It would be an example of the treaty functioning as it should, not a reason for its suspension.

Lord Scriven (LD): The Minister quite rightly says that it is in the treaty—under Article 11, I assume. But that article says that the person will come back to the United Kingdom only with the relocated individual's consent. If that consent is not given, what happens in this instance?

Lord Stewart of Dirleton (Con): I will have to revert to the noble Lord with an answer to that question, which is a hypothetical situation I had not considered.

The Government have set out the expense caused to the British taxpayer of billions of pounds in relation to illegal migration. As my noble friend Lord Sharpe of Epsom has pointed out on more than one occasion, our primary concern is the dreadful cost in life that it is inflicting. That is why we need bold and novel solutions towards ending it. Deterrence is a key element of the Rwanda partnership. Ultimately, we need to stop people making dangerous and illegal journeys across the channel. It is vital that we can show those who enter the United Kingdom illegally that they will not be permitted to remain here, thus breaking the model of the people smugglers and helping us to put an end to their vile trade. I therefore ask the noble Lord to withdraw his amendment.

11.30 pm

The Lord Privy Seal (Lord True) (Con): Hear, hear.

Lord Coaker (Lab): I thank the Minister for his reply. I am grateful also to the noble Lord, Lord True, for his encouragement—I have about half an hour now.

The serious point is that that was very helpful. This is a niche little amendment, but it is quite important. I am grateful to the noble Lord, Lord Scriven, because I had not actually picked that up. It is a niche amendment but this is worth asking questions about, to get some detail from the Minister, and I am grateful for his response. With that, I beg leave to withdraw the amendment.

Amendment 68 withdrawn.

Amendments 69 to 76A not moved.

Clause 6 agreed.

Clause 7: Interpretation

Amendments 77 to 79 not moved.

Clause 7 agreed.

Clause 8: Extent

Amendment 80 not moved.

Clause 8 agreed.

Clause 9: Commencement and transitional provision

Amendments 81 to 90 not moved.

Amendment 91

Moved by ***The Lord Bishop of Chelmsford***

91: Clause 9, page 7, line 2, at end insert—

"(3) This Act expires at the end of the period of two years beginning with the day on which it comes into force.

(4) But the Secretary of State may by regulations made by statutory instrument provide that subsection (3) is to cease to have effect and that this Act is accordingly to continue be in force.

(5) Regulations under subsection (4) may not be made unless a draft of the statutory instrument containing the regulations has been laid before and approved by resolution of each House of Parliament.

(6) A draft under subsection (5) may not be laid before Parliament unless the Secretary of State has laid before Parliament a report based on evidence obtained by the United Nations High Commissioner for Refugees that the Government of the Republic of Rwanda is fulfilling its obligations under the Rwanda Treaty."

Member's explanatory statement

This amendment would insert a sunset provision for the Bill to expire two years after commencement unless Parliament decides that it should remain in force and the Government has produced a report containing evidence that the Rwandan government is fulfilling its Rwanda Treaty obligations.

The Lord Bishop of Chelmsford: My Lords, in moving Amendment 91 I am grateful to my friends the noble Lords, Lord Scriven and Lord Blunkett, for their support. The noble Lord, Lord Scriven, is in his seat and the noble Lord, Lord Blunkett, was in touch with me today to apologise for not being able to be here this evening.

I want to keep my comments as short as possible, given the hour and the fact that some of the issues have already been debated in Committee. However, there is merit in discussing the value of a sunset provision, now that each of the Bill's clauses has been scrutinised.

The fundamental issue, which I fear has not yet been fully addressed by the Government Benches, is that we are being asked to make a permanent judgment on the safety of Rwanda on the basis of the yet to be implemented arrangements outlined in the treaty. This is, of course, against the opinion of our highest court. Furthermore, it is simply not arguable on any rational basis that Rwanda is safe at present, when, as the Minister himself has conceded, Rwanda is moving towards having the required protections in place.

At present, it remains the opinion of this House that the treaty should not be ratified until Parliament is satisfied that the protections it provides have been fully implemented. This amendment simply probes what other mechanism could be used to enable Parliament to revise or review its judgment on the safety of Rwanda, if the Government do indeed proceed with ratification.

This is not a wrecking amendment; rather, it enables the Rwandan partnership to continue if the United Nations High Commissioner for Refugees can confirm that Rwanda is fulfilling its obligations under the Rwanda treaty, even if, on these Benches, we do not believe this to be an approach befitting our nation's values.

I have no reason to doubt the sincerity of the UK or Rwanda in trying to fulfil these obligations, and they may well provide the basis for a future assessment of the safety of Rwanda, if fully realised. But good faith is no basis for a sound legal judgment, and this amendment therefore provides Parliament with the opportunity to revisit the issue after a fixed period. At present, the evidence simply is not there that the necessary steps have been taken to ensure that the treaty protections will be in place to protect a very vulnerable grouping from injustices.

The treaty itself envisages initial shortcomings, for which increased monitoring is proposed. UNHCR has yet to observe substantial changes in the practice of asylum adjudication that would overcome the concerns of the Supreme Court. Two years, then, seems a plausible timeframe in which to operationalise the required changes, given that the Minister has stated at the Dispatch Box that the Rwandan authorities are expediting the changes that are needed.

Importantly, the terms of reference for the monitoring committee also stipulate that it will cover the first two years of the partnership. If it is the opinion of the Government that a sunset clause is not necessary, I give the Minister another opportunity to answer the question posed by many in this Chamber: how will the Government ensure that the obligations of the treaty—here I quote the treaty—

"can both in practice be complied with and are in fact complied with"?

This is an even more critical question, given that any recommendations arising from the monitoring arrangements in the treaty are non-obligatory.

I remain of the belief that it is not the role of Parliament to impose a factual and legal determination on all courts, for the fundamental reason that—I hope noble Lords will forgive me for stating the obvious—declaring another nation state safe does not in fact make it so. But, if the Government are choosing to place what some have called a "judicial blindfold" on our courts, we must explore what independent and expert scrutiny can come to bear on the question of the safety of Rwanda. Other noble Lords have commented on what might be an appropriate mechanism, and I implore the Government to give due consideration to this. Surely, we cannot leave a conclusive legal fiction on the statute book, irrespective of the evidence.

By signing off Rwanda as safe without a method to evaluate whether the treaty has been fully implemented, we will expose asylum seekers to a real risk of refoulement, especially given that there is limited suspensive legal remedy for those facing removal. This is no light matter, given that they may go on to face torture or serious mistreatment, from which they once fled—a trauma that cannot be undone. Providing no legal or parliamentary accountability for the terms of the treaty is both absurd and an abdication of our nation's commitment to justice. I therefore hope that a solution

[The Lord Bishop of Chelmsford]
can be brought forward, ahead of Report, to this unprincipled omission. I beg leave to move my amendment.

Lord True (Con): The right reverend Prelate obviously speaks with the authority of the Church of England. Is it the view of the Church of England that Rwanda is not safe?

The Lord Bishop of Chelmsford: My Lords, I cannot speak on behalf of the Church of England. We are not whipped on these Benches, and I speak for myself. I do not know for certain whether Rwanda is safe or not, and our courts seem to think they cannot state whether it is safe or not. I suggest that we need to review that in two years when we have more evidence.

Lord Howard of Lympne (Con): My Lords, I am sorry to detain your Lordships at this late hour. I shall try to be very brief. This amendment, particularly proposed new subsection (6), is remarkably similar to an amendment put forward earlier in Committee by the noble Baroness, Lady Chakrabarti, which I characterised as outsourcing decision-making to the UNHCR. I had a little spat with the noble Lord, Lord Kerr, about that and the right reverend Prelate, who spoke in favour of the amendment, denied that it was outsourcing. Very graciously, the noble Baroness intervened to say that that was the effect of her amendment and that she would consider making it, in her words, less rich when she brought it forward on Report.

This amendment falls into exactly the same trap. In proposed new subsection (6), on the renewal of the Act after two years, the decision is again outsourced to the UNHCR. I will not go through all the reasons I gave in my earlier speech as to why that is entirely inappropriate but, for those same reasons, this amendment is also completely inappropriate.

Lord Faulks (Non-Afl): My Lords, I will briefly comment on the relationship between Rwanda and the United Kingdom contained in the treaty. A lot has been said about the treaty being inadequate and how it depends on what happens in future. The noble and learned Lord took a certain amount of flak during earlier debates in Committee when he was asked what the treaty is doing if Rwanda is safe. He suggested that it might make it safer. The rather scornful response to this observation was somewhat unfair. The treaty contains a number of obligations and is entirely typical of treaties in that respect. These obligations use the word "shall" and are directed to future activity.

The general principle of international law is that a treaty is binding on the parties and must be performed in good faith. That principle is embodied in the maxim "pacta sunt servanda". We take that very seriously. If a party breaks the terms of a treaty, provided there has been a fundamental change of circumstances, as the Vienna Convention on the Law of Treaties makes clear, the treaty in effect comes to an end. The noble Lord, Lord Clarke of Nottingham, spoke of the possibility of a coup and seemed to suggest, as the proposer of this amendment did, that because Parliament had determined that Rwanda was safe, we would be stuck with that determination.

I respectfully disagree. The treaty bears close reading. I will not refer to it at this stage of proceedings, but Clause 8(1) makes its nature clear, Articles 14, 15 and 16 concern the arrangements for monitoring and Article 22 provides a dispute mechanism. Further, the treaty will end on 13 April 2027 in any event. These seem to me to be sufficient safeguards built into the treaty, but if there is a coup or a fundamental change of circumstances, or any Government think that Rwanda is unsafe, the treaty can be brought to an end, at least until a subsequent agreement has been reached. To suggest that Parliament must somehow not be satisfied that there are obligations in international law seems to me unreal.

Lord Purvis of Tweed (LD): I respect the noble Lord and am listening carefully to what he is saying, and as always, he makes well-considered arguments. I have a genuine question. I agree with everything he said, but only the Executive, under the prerogative power, would be able to make the judgment to end that treaty. Parliament cannot do it. Is that correct?

Lord Faulks (Non-Afl): The noble Lord is entirely correct about the prerogative, but Parliament, perhaps unusually, in considering this Bill has the opportunity to see the treaty and the obligations contained within it. Parliament should look at those obligations and see whether it is satisfied with the terms of the treaty and whether it provides sufficient safeguards. These are relevant factors for Parliament to consider but, ultimately, I accept that the noble Lord is right—it is for the Executive to decide.

Lord Purvis of Tweed (LD): I am very grateful to the noble Lord for giving way again. In essence, that was my argument in the previous group when it came to the necessity for us to have the information for the monitoring committee and the joint committee, given the circumstances, to allow us to form that view. Ultimately, we do not have the power to bring the treaty to an end or amend it because it is a prerogative power. We are, therefore, very limited as to what we are able to do if there are changes of circumstances in Rwanda that our Government and their Government do not then wish to change within the treaty.

11.45 pm

Lord Faulks (Non-Afl): That shows very little faith in a Government of whatever colour. This particular Government will take a view as to whether or not there was a breach of the treaty in relation to the various safeguards contained within it. The Opposition are proposing to repeal the legislation in any event, so the matter might well disappear as a result of such an Act. We must credit the Executive, however, with the power to review and seriously consider if there was a sufficient change of circumstances—a coup, for example—to warrant a different approach.

Lord Falconer of Thoroton (Lab): My Lords, I strongly support the right reverend Prelate the Bishop of Chelmsford in moving the amendment. We have gone through, in some detail, the question of when

this Bill is going to become law and whether it will become law before the changes are effected as a result of the new treaty.

Noble Lords will remember that the Home Secretary is asking us to bear in mind the key part of his evidence that the position has changed since the Supreme Court judgment: namely, the treaty for the provision of an asylum partnership, which was laid before this House in December. Obviously, it is only when the provisions of that treaty are implemented that the position will have moved on from what the Supreme Court found, because the Home Secretary quite rightly is not challenging the finding of the Supreme Court; he is saying the position will change when the treaty is given effect to.

Obviously, this House is very sceptical of what Ministers are saying about when the treaty changes take place. Earlier in the afternoon, Ministers were unable to identify when the law in Rwanda would be changed to give effect to it. Ministers were not able to tell the Committee at all when the monitoring committee was going to recruit a support team, independent experts were going to be appointed to advise the first instance body, and all the other things set out in paragraph 19 of the International Agreements Committee report. We have no idea at the moment whether this Bill will be brought into force before the changes envisaged by the agreement and therefore the place will then become safe, so I am very surprised the Government are willing to go ahead with it before the changes are implemented.

That is the beginning. As far as the end is concerned —as this amendment is concerned with—Ministers will be aware that the agreement that gives effect to the changes, which remedies the problems identified by the Supreme Court and accepted as problems by the Government, ends on 13 April 2027, unless the agreement is renewed. I assume, though I invite Ministers to confirm, that if the agreement with Rwanda is not extended beyond 13 April 2027, it is the Government's intention that the Rwanda Bill will come to an end. If that is not the position, how on earth could the Government contend that Rwanda continued to be a safe country after 13 April 2027?

In any event, the possibility of changes of circumstances are something that Parliament should be able to debate. The two-year sunset clause the right reverend Prelate is proposing is a means by which that debate could take place. Everybody who has debated the Bill in this House agrees it is a very grave thing that the Government are seeking to do by promoting the Bill. The idea that it is a permanent state of affairs that can never be looked at again without the consent of the Executive promoting another Bill is an inappropriate way to deal with it.

For all those reasons, I submit that this Committee should agree to the amendment proposed by the right reverend Prelate. However, I am extremely interested to know what the answer is to the position if this agreement with Rwanda is not extended beyond 13 April 2027.

Lord Scriven (LD): My Lords, I have added my name to this amendment. Because of the lateness of the hour, I will not repeat any of the arguments for why the amendment is needed. I will add an extra point, again looking at the treaty. It was partly alluded to by my noble friend Lord Purvis of Tweed. Amendments to the agreement are by executive order. This Parliament is being asked to say that Rwanda is safe. Rwanda is safe on the basis of this treaty; that is the basis on which this Parliament is being asked to say that Rwanda is safe.

However, Article 20 on amendments to the agreement states:

> "This agreement may be amended at any time by mutual agreement between the Parties".

Therefore, tenets that are deemed to make Rwanda safe based on the judgment of the Supreme Court could, by executive order, be amended. This Parliament would not be able to change its view that Rwanda is safe. The treaty could be changed.

Therefore, when this treaty falls on the date that has been said in two years' time, it is quite right that this Parliament should therefore be able to look at everything in the round, including any amendments to this treaty, to determine whether Rwanda is still safe. That is why this amendment is needed.

Lord Sharpe of Epsom (Con): Once again, I thank noble Lords who have contributed to this debate. As we have heard throughout today's debate, we have to do more to break the criminal gangs' business model, and to deter illegal migrants. These journeys are extremely dangerous. People have lost their lives attempting to cross the channel, as is well reported. These journeys are also unnecessary, as those making these crossings are coming from safe countries, such as France, where they could have claimed asylum. I say respectfully to the right reverend Prelate that that is surely the fundamental issue.

While the Government have made progress towards stopping the boats—with small boat crossings down by a third in 2023, while the numbers of illegal migrants entering some European countries have risen by 80%—we still need to do more. By delivering our key partnership, relocating people to Rwanda and not allowing them to stay in the UK, we will prevent people making these dangerous crossings, and we will save lives.

I thank the right reverend Prelate the Bishop of Chelmsford for tabling Amendment 91, but we do not think it is necessary. It is clear from the evidence pack that the Government published on Thursday 11 January, and from the treaty itself, that Article 15 of the treaty enhances the role of the independent monitoring committee, ensuring that obligations under the treaty are adhered to in practice. I am sorry that I will be going over some old ground, but, as my noble friend Lord Howard pointed out, this is not dissimilar to some earlier amendments.

We have repeatedly made clear that the monitoring committee will have the power to set its own priority areas for monitoring, unfettered access for the purposes of completing assessments and reports, and the ability to publish these reports as it sees fit. Crucially, the monitoring committee will undertake real-time monitoring of the partnership for at least the first three months. This period of monitoring can be extended if required. The monitoring committee will be able to urgently

[Lord Sharpe of Epsom]
escalate issues prior to any shortcomings or breaches placing a relocated individual at real risk of harm. This will include reporting directly to the joint committee co-chairs within 24 hours in emergency or urgent situations.

To expand on the points made by the noble Lord, Lord Faulks, I also refer the right reverend Prelate to my remarks earlier. Article 4.1 of the treaty sets out clearly that it is for the UK to determine the timing of a request for relocation of individuals under the terms of the agreement, and the number of such requests made. This means that the Government would not be obligated to remove individuals under the terms of the treaty if there had been, for example, an unexpected change to the in-country situation in Rwanda. As is the case in many scenarios, the Government would be able to respond and adapt as necessary and there is therefore no need to include a sunset provision as suggested.

Rwanda has a long history of supporting and integrating asylum seekers and refugees in the region; for example, through its work with the UNHCR to host the emergency transit mechanism. A specific example of Rwanda's successful work with the UNHCR is the memorandum of understanding between Rwanda and the UNHCR to host a transit facility in Gashora for asylum seekers fleeing civil war in Libya, which has operated since 2019.

The noble and learned Lord, Lord Falconer, is correct: if the agreement is not extended beyond the date he mentioned, in effect, it dies. Rwanda has a strong history—

Lord Falconer of Thoroton (Lab): If the agreement dies, will the future Act die with it?

Lord Sharpe of Epsom (Con): As I understand it, yes.

Rwanda has a strong history of providing protection to those who need it, and it currently hosts more than 135,000 refugees and asylum seekers who have found safety and sanctuary there. The terms of the treaty we have negotiated with Rwanda address the findings of the UK domestic courts and make specific provision for the treatment of relocated individuals, guaranteeing their safety and protection. I invite the right reverend Prelate to withdraw her amendment.

Lord Purvis of Tweed (LD): Before the Minister concludes, I would be grateful if he could say what the mechanism will be for ending this legislation, if the treaty is not extended. Could he also answer my noble friend's question on amendments to the treaty? It is long-standing practice that amendments to a treaty must come before Parliament through the CRaG process. Can he confirm that that would be the case?

Lord Sharpe of Epsom (Con): My Lords, I am not expert on treaty law but, as far as I understand it, that is the case. I am afraid that I do not know the process behind the noble Lord's question; I will have to find out.

The Lord Bishop of Chelmsford: My Lords, I am grateful to those who have participated in this debate. Given the late hour, I hope they will forgive me for not going through the particulars; I am sure that everybody wants to get home at this stage.

It has been genuinely very interesting to hear the different perspectives on this matter. I am not yet entirely convinced; I want to reflect on this and speak to others about whether we might come back to this on Report. For now, I beg leave to withdraw my amendment.

Amendment 91 withdrawn.

Clause 9 agreed.

Amendments 92 and 93 not moved.

Clause 10 agreed.

House resumed.

Bill reported without amendment.

House adjourned at 11.57 pm.

Grand Committee

Monday 19 February 2024

Arrangement of Business

Announcement

3.45 pm

The Deputy Chairman of Committees (Viscount Stansgate) (Lab): My Lords, if there is a Division, which is unlikely, we will adjourn immediately and resume 10 minutes after the Division Bells ring.

Registered Office Address (Rectification of Register) Regulations 2024

Considered in Grand Committee

3.45 pm

Moved by ***Lord Johnson of Lainston***

That the Grand Committee do consider the Registered Office Address (Rectification of Register) Regulations 2024.

Relevant document: 8th Report from the Secondary Legislation Scrutiny Committee

The Minister of State, Department for Business and Trade (Lord Johnson of Lainston) (Con): My Lords, I beg to move that the Committee also consider the draft Limited Liability Partnerships (Application of Company Law) Regulations 2024, the draft Service Address (Rectification of Register) Regulations 2024 and the draft Principal Office Address (Rectification of Register) Regulations 2024, which were all laid before the House on 18 December 2023.

These regulations represent the first substantive tranche of a total of some 50 statutory instruments that will breathe life into the reforms being introduced by the Economic Crime and Corporate Transparency Act 2023, which I will refer to as "the Act". It was my pleasure to help guide that Act through Parliament. I pay tribute to noble Lords for helping deliver a landmark piece of legislation; I am extremely pleased to see so many of them in their usual place today. The Act's reforms will help bear down on the criminals, kleptocrats and terrorists who abuse our open economy, and will enhance the UK's reputation as a place where legitimate business thrives.

I will begin by turning attention to the draft Limited Liability Partnerships (Application of Company Law) Regulations 2024. While the inevitable focus of the Act was on the reform of company and limited partnership frameworks, our policy is generally to apply company reforms to the class of entity established through the Limited Liability Partnerships Act 2000. That 2000 Act provides a regulation power to do so and, where appropriate, to modify the application to suit the limited liability partnership, or LLP, context. We intend to exercise the power through further instruments as necessary to ensure that Act provisions apply coherently as between companies and LLPs.

This instrument forms the first step in that process and serves to transpose the elements of the Act that commenced on Royal Assent in October 2023 and in January 2024 and, most significantly, those planned to commence on 4 March. I remind noble Lords that the intention is that many of these points will indeed commence on 4 March. That date is an important one, as it marks the point from which it is intended that many of the company registrar's new powers will come into effect and from which significant new requirements will apply to companies and, by virtue of this instrument, also to LLPs.

Noble Lords will be pleased to know that I spoke this afternoon to the Registrar of Companies; I was very comforted by her encouraging words about how Companies House is ready for that date and looking forward to it. I am happy to cover further points later around its preparedness and the chronology of other activities feeding off the Act.

Those provisions include: establishment of additional controls around the name an entity chooses to register and that under which it conducts business; a statutory requirement to register an appropriate email address; an obligation annually to confirm that the entity acts with a lawful purpose; and, perhaps most importantly, the registrar's new objectives under the Act to strive to ensure the integrity and accuracy of register information and, within the parameters of her functions, to prevent companies and others carrying out illegal activities. Elsewhere among those powers and requirements are those that relate to the addresses that corporate entities are required to file with the Registrar of Companies.

That brings me to the next instrument in this group, the Registered Office Address (Rectification of Register) Regulations 2024. Instances can arise in which an unsuspecting householder finds that a company with which they have no involvement has misappropriated their address, claiming it as that of the registered office they are required by law to file with the registrar. This not only causes alarm and inconvenience for householders but can be indicative of criminal intent on the part of the company in question.

Through the Act, we are strengthening the registrar's powers to combat this practice by tightening the requirements around what constitutes an appropriate registered office address; streamlining and expanding upon existing avenues of redress for those impacted; introducing criminal sanctions for those who fail to take corrective action; and, ultimately, providing the registrar with the ability to strike from the register those companies that persist in offending.

The purpose of this supporting instrument is to establish a flexible framework within which the registrar can act to address this abuse. It puts flesh on the processes to be followed where the registrar believes it appropriate either to act unilaterally and expeditiously to change a company address or to provide it with the opportunity to object to a proposed change. It sets out how criminal penalties will apply to companies, and their officers, which fail to take corrective action where the registrar has replaced an erroneous office address with a default address. It also outlines the process the registrar can follow to strike a company off the register when corrective action is not taken.

[Lord Johnson of Lainston]

These registered office address regulations apply these procedures and processes in the limited company context. The limited liability partnership regulations I introduced earlier serve to transpose them to apply with similar effect in the LLP setting.

I will now cover the Service Address (Rectification of Register) Regulations 2024 and the Principal Office Address (Rectification of Register) Regulations 2024. They are, so to speak, two further chapters in the same story. Just as companies are required to file particular address details, so are persons associated with them. It may be helpful if I set out in a little more detail what these requirements are and where they apply.

I turn first to service addresses. A service address must be filed in respect of all company directors, company secretaries and any individual registered as a person with significant control, or PSC.

I move on to principal office addresses. Certain companies have directors or company secretaries that are other corporate entities rather than individuals. Companies may also have what is termed a relevant legal entity, or RLE, which is a company or organisation that has a significant degree of influence or control over another. They are effectively the same as people with significant control but are entities, not individuals. A company must provide address details in respect of all three of these categories and, in doing so, has the option of filing either a registered office or a principal office address.

These two sets of regulations establish similar processes around the rectification of false or erroneous service and principal office addresses as the service address regulations referred to earlier. However, there is one material difference. Because these addresses relate to individuals or corporate entities other than the company itself, the ultimate sanction of striking the company at issue off the register for persistent non-compliance cannot apply.

All three sets of these address-related regulations are also applied in an LLP context by the draft Limited Liability Partnerships (Application of Company Law) Regulations 2024 that I presented at the outset. In combination, they will deliver a robust and comprehensive safeguard, encompassing, for example, instances in which an address is misappropriated for multiple abuses within the one company, as well as providing scope for much quicker redress for those who still fall victim. At present, the registrar can act only following an application from the victim, and she has to provide companies with 28 days in which they can challenge the claim that an address is being misused. These registrar powers are available only in respect of the registered address; they are not currently provided for service and principal addresses.

Once these improved mechanisms are in place, not only will the registrar also be able to change an address to a default address of her own volition but she will have the discretion to do so immediately, affording the company the opportunity to challenge only after the event. Therefore, in cases of prima facie abuse, it will be possible to deliver much quicker and more efficient resolution. I know that noble Lords on all sides of the House were particularly focused on that topic during the passage of the Act.

In conclusion, these measures are all crucial to the Act's effective implementation. I hope that noble Lords will support them and their objectives. I beg to move.

Lord Bourne of Aberystwyth (Con): My Lords, I thank the Minister for setting out clearly and crisply the details of the four sets of regulations. I declare my interests as set out in the register. It is certainly not my aim to do otherwise than to support these regulations, which are consequential from the Economic Crime and Corporate Transparency Act 2023, as the Minister explained, but I want to raise some brief points in relation to them.

I appreciate that, in relation to the address of a company's registered office, one major concern is companies opting for PO box addresses or inappropriate addresses that are not the address of the company or any of its officers. I take the point about the importance of tackling this, particularly in relation to crimes of fraud, money laundering and so on. Does the Minister have any idea of the incidence of this type of misleading activity? If he does not have the figures to hand, I would be grateful if he could write to me.

I have two brief additional points. More widely, I wonder if the Minister can provide any details—he has given some indication—of when other provisions of the Economic Crime and Corporate Transparency Act 2023 will be brought into force. I appreciate what he said about 4 March but I wonder whether Section 60 of that Act, on confirmation of lawful purpose, is to be brought in on that date. I think it is but would be grateful for an identification in the regulations and any other regulations expected in that regard. It would be good to have that mapped out.

Lastly, is the Minister in a position to say something about a review of company law more widely? The last far-reaching review of company law took place in 2006. It was then the most far-reaching review we have ever had and led to the longest piece of legislation on any subject ever seen at Westminster, so it would be quite a task, but that was some 20 years ago and it is in need of some review and refresh. When the Minister responds, perhaps he can give some indication of when that might be tackled. I am most grateful.

Lord Vaux of Harrowden (CB): My Lords, it was good to hear that Companies House is making such good progress. I wonder if it might make sense for the Minister to arrange an update session at some point with Companies House for interested Peers, as we had during the process of the Economic Crime and Corporate Transparency Act.

I will speak briefly on the three rectification of register SIs. I greatly welcome these regulations. They will enable people whose address is being used without their permission as the registered or service address, or principal office, of a company to have that remedied. We heard during the passage of the Economic Crime and Corporate Transparency Act of the case of the unfortunate individual in Wales whose address had been fraudulently used to register 12,000 companies, and how hard it was for him to have that corrected. It must be deeply stressful for such an innocent party to worry about whether they will find themselves being

chased by HMRC for unpaid VAT or tax, or indeed by other creditors, and possibly even finding the bailiffs at their door chasing payment for debts of companies that are nothing to do with them. Until now, they were getting little or no help from Companies House or HMRC in that situation, so it is good that action is being taken but I have a few questions to ask.

First, when Companies House decides to change the company address to the default address, it must in most cases give written notice to the company. I am curious how that will work in practice if the original address was fraudulent, or even just an error. The Committee will be able to see a bit of a circularity there. It presumably just means that the innocent party receives yet more mail addressed to a company that he knows nothing about, which might add to his stress. If it was a genuine mistake, the company might never find out until it was struck off, so there is a practical issue there.

More importantly, though, the regulations relate only to the single company in question. As we know, when a false address is used many companies—in the case of the man in Wales, thousands of them—may often be registered at the same address. It would surely make sense to include a duty on the registrar to investigate all other companies registered at the same address when the decision is taken to change the address to the default; otherwise, the innocent party whose home is being fraudulently used will have to make an individual application in respect of every company of which he becomes aware. In the case of the Welsh gentleman, that would be 12,000 individual applications, which would be an enormous and rather unfair burden on an innocent person. Can the Minister confirm that the registrar will investigate all companies registered at the same address, even if that is not an actual requirement under these regulations?

Related to that, the regulations are not clear about how an application for an address to be changed can be made. Does it have to be in writing or will Companies House make available a more user-friendly system—online, email or whatever—to minimise the effort that an innocent party has to make to sort out the matter? In most cases, I imagine that a fraudulent company will use the same address for the registered office, service address and principal place of business as relevant. Under these three SIs, the innocent party will in that case have to make three separate applications for each such company—or indeed more than three if for each individual director. That 12,000 could then turn into 36,000 or more applications to sort out the issue for our man in Wales. Can the Minister explain to me how this will be streamlined to minimise the burden on the innocent parties?

As I mentioned, such fraudulent companies are often used for the purpose of VAT fraud. Would it not make sense, therefore, also to include an obligation on the registrar to inform HMRC every time such a situation is found? During its evidence sessions, the Fraud Act 2006 and Digital Fraud Committee heard how it is common for fraud victims to check Companies House as a sensible due diligence step before parting with their money. If a company has been moved to a default address, would it not make sense to highlight that on the register and flag the company as being a fraud risk, during the period before it is struck off, to protect potential fraud victims?

Overall, these regulations are a good, important step but they could usefully be added to in order to provide better, simpler remedies for the innocent parties in these cases.

4 pm

Lord Sikka (Lab): My Lords, it is pleasure to follow the insights of the noble Lord, Lord Vaux. I will speak to the second SI, the Limited Liability Partnerships (Application of Company Law) Regulations 2024. I broadly welcome the thrust of the proposals but I have a number of questions; I hope that the Minister will be able to answer them.

First, the words "company law" appear in the statutory instrument, obviously, but can the Minister tell the Committee whether there is in the UK any central enforcer of company law—or for LLPs, for that matter? I have not been able to find one in all these years, so it would be helpful to know where the buck stops. Who, in the final analysis, is responsible for regulating these entities? This matters, especially when companies and LLPs engage in unlawful practices such as paying dividends without sufficient distributable reserves—something that damages the interests of creditors, including pension schemes with a deficit.

Let me go back a little while, because I have always been interested in this topic. In a Written Question on 14 September 2017, Kelvin Hopkins, the then Member of Parliament for Luton North, asked the Business Secretary

"what checks his Department carries out to ensure that dividends paid by companies do not exceed their distributable reserves".

This was the reply, on 12 October 2017:

"The Department is not responsible for carrying out checks on dividends paid by companies to ensure that they do not exceed their distributable reserves".

That is still the position. Nothing has changed. We still do not know who is responsible for looking at these things.

In recent years, companies such as Domino's, Dunelm, Games Workshop and Hargreaves Lansdown have admitted to paying dividends that were, strictly speaking, unlawful; after a while, they noticed that they were unlawful. They therefore paid illegal dividends but, in the absence of an independent enforcer of company law, no one really examines such instances. The Business Department has long washed its hands of such matters. I hope that the Minister can tell us where the buck stops and which external agency is responsible for enforcing both company law and LLP law. That is my first question.

Secondly, LLP and company financial statements are prepared in accordance with what are sometimes called generally accepted accounting principles—or GAAP, although there are many variations on that—and are promulgated by the Financial Reporting Council in the form of accounting standards. They have an important bearing on whatever counts as an asset, a liability, income, an expense, wages, a tax, liquidity, accountability and much more. Ultimately, the rules or standards have a bearing on the distribution of income, wealth and risks.

[Lord Sikka]

In a democratic society, only Parliament has the social mandate to adjudicate on competing claims concerning the distribution of income and wealth. However, that authority has been subverted by the Government, and none of the accounting standards issued by the Financial Reporting Council is ever debated in Parliament. Why is that? Why has Parliament's authority been subverted? I hope that the Minister can explain why the Government do not bring accounting standards to Parliament for approval because they affect the distribution of income and wealth and form the basis of taxation.

Thirdly, through the FRC, committees dominated by partners of LLPs make their own accounting and disclosure rules. They operate through a private company, which is named CCAB Ltd and is dominated by the accountancy bodies. No one in the Government has ever suggested that the hungry should set food standards, the homeless should set housing standards or the poor should set the minimum wage, but the partners of LLPs are allowed to make their own accounting rules without any kind of parliamentary oversight.

If noble Lords look at LLPs' accounts, they will see that these LLP partners do not like transparency. For example, LLPs are not required to disclose their partners' share of profits, which is the nearest equivalent to director remuneration in limited liability companies. We do not know their exact share of the profit, even though they may be enjoying government or other public contracts. Why is the partners' share of profits not disclosed in LLPs' financial statements, and why is setting the rules for LLP accounting and disclosure considered private? Surely it is not.

Lord Fox (LD): My Lords, as someone who has spent a lot of his professional life working on annual reports, I have often had questions about GAAP, but the Minister will be pleased to know that I will not ask them today.

The four SIs before us are to be welcomed. They are steps on the way from our discussions on both the last economic crime Bill and the one before that. We are moving forward, in a sense. I am glad that the noble Lord, Lord Vaux, introduced what I call the Knighton collection of companies that were registered to a terraced house in the Welsh borders, not far from where I live—as I believe does the noble Lord, Lord Bourne. I would like some reassurance that the statutory instrument on registered office addresses would deal with that.

As the noble Lord, Lord Vaux, eloquently set out, there are a lot of steps to go through to eliminate falsely registered companies. It comes back to the question of whether Companies House is capable of really handling this, ceasing to be a filing cabinet and starting to be an investigative organisation. To echo the point made by the noble Lord, Lord Vaux, it would be very helpful to have an update on how the huge cultural change that Companies House needs is going. Many of us were impressed by the team that we saw, but also a little frightened by the huge task that it has in front of it to make these SIs and the next 51—or however many there are—come to life.

I have some trepidation on the second of these SIs, on limited liability partnerships, because the noble Baroness, Lady McIntosh, seated opposite, is our Scottish legal expert. I wondered where Scottish partnerships come in, because the territorial extent of that statutory instrument is the whole UK. Where do Scottish partnerships sit within that?

The service address and principal office address regulations are useful and important too, but expose the central weakness that is still within our system. After all the work we did on the Bill, those with control still have the ability to hide that control. We welcome the Service Address (Rectification of Register) Regulations and the Principal Office Address (Rectification of Register) Regulations, but can the Minister set out, either now or in writing, how we are going to eliminate the cancer within this system of people obscuring the real ownership of assets to the authorities and wider society? With that, we welcome these four statutory instruments.

Lord Leong (Lab): My Lords, I thank the Minister for setting out these regulations and everyone who has spoken in this short debate. I will take these instruments one at a time.

Under the current system, criminals can—often by using data unwittingly shared or stolen and for sale on the dark web—fraudulently register an individual residential address as a registered office with Companies House, without the knowledge of the actual residents. Since 2011 it has been possible for companies to be incorporated within 24 hours for as little as £12, with Companies House making no checks on the veracity of the address. Once this has been done, the perpetrators can apply for credit, business loans and other financial arrangements. This fraud often does not come to light until the individual wants to apply for credit and finds that they are unable to do so, often resulting in considerable problems.

This instrument relates to where individuals have had their residential address hijacked. It allows the registrar to change the address to a default address and to strike the company from the register of companies if a genuine new address is not provided. It establishes criminal offences for companies and officers where they do not comply. We welcome the streamlining of this process and expansion of the registrar's powers that this instrument provides, including that, as well as acting on the basis of applications, the registrar can when necessary act unilaterally based on any information in their possession to move swiftly to change a company's registered office address without giving notice in advance.

However, I would like to know how the Government seek to protect and support victims of these fraudulent practices, as mentioned earlier by the noble Lords, Lord Vaux and Lord Fox. Can the Minister say how they will be informed of developments? Will victims be supported if issues continue for them beyond the changing of the registered address—for example, if they have negative notes or ratings on their credit file? If so, how will this be addressed?

Given that this is clearly a widespread practice, does the Minister have any information about provisions to actively check business addresses? There could be existing situations in which fraudulent addresses are in

use but currently unchanged or undetected; they may not come to light until the innocent victims have their lives blighted by the discovery of a fraudulent registration of which they were unaware, as in the case in Wales that was mentioned. Does the Minister have accurate figures for how many addresses are registered? Surely it must be in the millions. If, as I suspect, it is on that scale, what analysis has been done on whether this instrument will create an influx of work for the registrar? Has resource been allocated for this?

I move on to LLP. This instrument will ensure that the reforms to company law made by the Economic Crime and Corporate Transparency Act 2023 also apply to the law governing limited liability partnerships. It will ensure that company law applies without arbitrary differences between companies and LLPs. It pertains to straightforward administrative amendments relating to a company's name, registered office and email addresses, its directors, annual confirmation of accuracy on the register, information about persons with significant control and so forth. We support this legislation, which seems both reasonable and straightforward, and so on this occasion I do not have any further questions for the Minister.

I move on to the Service Address (Rectification of Register) Regulations 2024. As many noble Lords will know from personal experience, directors and secretaries of companies and persons with significant control over companies are required to notify the companies registrar of their service address—that is, a location where documents may be deemed effectively served on that person.

This instrument empowers the registrar to change the registered service address to a default address nominated by the registrar where the registrar is satisfied that the registered service address does not meet the necessary legal requirements. The registrar may change the address by their own motion or on application and may also, at their discretion, change the address without notice or after a period for objections, the length of which may also be at the registrar's discretion. Clearly, the situation in which company directors, secretaries and persons of significant interest could attempt to delay or evade being held to their legal responsibilities by providing non-compliant addresses would be unsatisfactory.

4.15 pm

It will be obvious to noble Lords that this could be abused by those with dubious motivations, and we broadly welcome the additional powers that this instrument grants the registrar to close loopholes to prevent abuse and malpractice. However, it is not difficult to foresee situations in which the service address falls outside the necessary requirements—administrative errors, relocations, changes of ownership, deaths and so forth—where perhaps overeager actions, unrealistically short notice periods or both could create more problems and considerably more bureaucracy than benefits. Can the Minister inform us what checks and balances are in place to ensure that the registrar acts reasonably and proportionately?

Accuracy is important, of course, and if serious criminality is suspected, so too is speed. Does the Minister have any indication of what might be the standard period for registering objections? Will it be a week, 28 days or three months, for example, unless there are compelling reasons otherwise? Given that individuals will be deemed to have committed an offence if they do not notify the registrar of a compliant new service address once the registrar has changed it to a default address, what recourse might there be for those who encounter additional costs or complications that impact upon their legitimate business if there is no general guide for consistently applying the new powers that this instrument introduces?

Finally, on the Principal Office Address (Rectification of Register) Regulations 2024, it may be necessary to empower the registrar to change the principal office address of a registered company. It could be in response to a motion from a third party, which may be due to deliberate fraud or poor administration, or if the registrar is satisfied that the address given is not in fact the principal office. I do not want to rehearse the arguments heard earlier in support of these powers, but I seek reassurance from the Minister that there will be guidance in place regarding standard timescales to ensure that the registrar acts reasonably and proportionately unless they have specific and clear justification to impose immediate changes with potentially no period for objection. As ever, we should keep in mind that our public bodies, when granted additional powers, must also be aware of the responsibility to apply them responsibly and that there are clear routes for appeal if individuals believe that this is not the case. I look forward to the Minister's response to noble Lords' questions, especially the question asked by the noble Lord, Lord Bourne, about whether the review of company law will happen and the question asked by my noble friend Lord Sikka on who enforces company law.

Lord Johnson of Lainston (Con): As always, I thank noble Lords for a very powerful and constructive debate around this essential legislation. I genuinely think it will make an enormous difference to the quality of Companies House activities and of our business activities, reducing crime in a magnitudinous way and making the data that companies provide far more valuable in terms of them being able to operate legitimate businesses, to borrow money and to give confidence to customers. Markets are based on trust, so the more the Government can do—and have done, I am pleased to say, with the support of all Peers in the House—the better the business operations underneath that framework.

I will briefly go through some of the significant points. If I have missed anything I will be delighted to follow up after this discussion, but I am keen to make sure that everyone is answered as broadly as possible. If I do not have specific data requested, I will write and copy in all noble Lords.

I thank my noble friend Lord Bourne for his contribution; I hope I understood his question correctly. I do not have to hand a number for the instances of PO boxes being used as registered addresses, but I would be comfortable supplying it to him. The whole point is that this legislation will end the practice of having PO boxes. I think that only about 21,000 or 22,000 addresses are classed as default; of course, that is in effect the registrar's own address. If you think about the however

[Lord Johnson of Lainston]
many million companies that are registered—perhaps 5 million or so—that is a very small proportion. A lot of these figures sound high—when you talk about tens of thousands, it seems an enormous number—but the reality is that, in proportion, they are relatively small. A lot of these default addresses—I am covering several points at the same time—are not for nefarious purposes. They might exist simply because, for example, an individual who had a company has died or the accountant who was registering it has gone out of business. So there are administrative reasons why default addresses are used.

Forgive me but I cannot remember whether it was the noble Lord, Lord Vaux, or another noble Lord who made the point about advertising—that because it is a default address, issues around concern and risk may be raised. I have some sympathy with that, although it is not for me to say. A default address does not necessitate that there is nefarious activity; it is often administrative. Clearly, if noble Lords go on Companies House, they will be able to see the date on which an address became the default address, which would potentially give one an indication of the situation.

It is worth talking about the chronology here. I so enjoyed the passage of the Economic Crime and Corporate Transparency Bill. The time went by so fast; it feels like only yesterday that we finished it. It became an Act towards the end of last year. As I said, I am pleased that, following a helpful conversation with the registrar, Louise Smyth, she has been extremely co-operative with my office in promoting our ambitions for Companies House. I am sure that—the noble Lord, Lord Vaux, asked a question about this—it would be extremely helpful for us all to arrange an update. I found speaking to Louise today, ahead of this debate, very helpful. It is important that we have an element of checking to see whether the resourcing is appropriate and whether the speed of activity is there, but I have the fullest of confidence in Louise and her team.

Let us look at the chronology going forward. Assuming that everything today goes to plan, these powers will come into force on 4 March. That will in effect enable the registrar to have far more discretion over how she acts.

I turn to the points made by the noble Lord, Lord Leong, about multiple registrations, how the registrar will effect her duties and the appellate process around that. It is clearly listed in the statutory instrument that you will not have to have 21,000 to the power of however many different applications, as the noble Lord, Lord Vaux, may have suggested. The point is this: currently, people may register my address as their company address. This is one of the core sparks that lit the blue touchpaper, or the rocket, that was the Economic Crime and Corporate Transparency Bill—this iniquitous situation in which any of us could be registered as a director and our address could be used as a company address. It is a completely bizarre situation that will come to an end on 4 March.

It will then be up to the registrar to make those inquiries; at the stroke of a pen, she will be able to cancel out however many thousands of companies registered to one address. How are we going to do this? The registrar will use the intelligence hub; it is already in existence, as far as I am aware, and is being significantly resourced and expanded. I am encouraged that she will have—this is what we discussed in great detail as the Bill passed through the House—the discretionary powers to do the work and do what is clearly the right thing.

The noble Lord, Lord Leong, rightly mentioned the appeals process. It would be unreasonable to suggest that a single agent of the Crown should be able to, at their whim and discretion, change the fortunes of businesses; that is simply not the case. There is a clear appeals process and, ultimately, the courts would adjudicate. Let me be clear: it is not in the interests of Companies House or the registrar to strike companies off if they believe that they are doing legitimate business. That would be a highly unusual scenario, but there are safeguards and checks and balances around that.

I hope I have covered some of the questions asked by my noble friend Lord Bourne and the noble Lord, Lord Vaux. I will cover two other short points on the chronology. These powers will come into effect on 4 March. In May we will get the statutory instrument for the fees—I believe it is being laid in Parliament, in the other place, today—which will go to £50 for incorporation and £34 for verification at the end of every year. The increase is quite significant in percentage terms, but I think all noble Lords in the Committee will agree that, in real terms, that is not a significant amount of money for the incorporation of a company, with all that that entails. I think we have reached quite a good place there.

The all-important work on verification is the real meat of the additional hard work by the noble Lords, Lord Vaux and Lord Fox, and other noble Peers. Our friends the ACSPs hope, as do Companies House and the registrar, that by the end of this year they will have begun the process of ensuring that the verification process around ACSPs is well under way. They expect to bring in the appropriate processes for individual verification in 2025. As noble Lords know, these include photo identity card and passport verification and so on; we have done so much work on this.

Lord Fox (LD): On chronology, am I right in thinking that there is a commencement statutory instrument that needs to be brought forward for the overall Bill? When might we see that being tabled?

Lord Johnson of Lainston (Con): That will happen next week, I am told. I look behind me hopefully on questions like that, but we will do that next week and I hope we stick to this timetable. As I have said, various SIs relating to fees and so on are being laid in the other place today.

I believe I have answered most of the questions from the noble Lord, Lord Vaux, and my noble friend Lord Bourne. The noble Lord, Lord Sikka, made some important points about dividend payments and the stability of our company system. I would not necessarily say that they are relevant to the Companies House regulations that we are looking at today. They are separate from Companies House's requirement to make sure that the proper accounts are filed. The noble Lord asked who the enforcer for company law is; the court system is. It is important to stress that.

There have been discussions about when company law will be reviewed. As far as I am aware, we have no specific plans to do a full review, but I am happy to take all the noble Lord's comments and issues back to the Department for Business and Trade, which has particular responsibility over certain reporting areas, to make sure that he is content that the work we are doing is effective.

I believe I covered the points from the noble Lord, Lord Leong, related to ensuring that the Registrar of Companies can operate effectively and the appellate process. Very importantly, on his comment about the powers of the registrar, these are new powers, so we will have to see how they develop. It is absolutely right that the House and the Government continue to keep a close watch on Companies House and the team there to ensure that they have the necessary powers and resources to deliver on a truly transformative regime for how companies are registered and how Companies House operates. As the noble Lord, Lord Fox, rightly said, it needs to move from simply being a repository of information to becoming a truly dynamic activator in overseeing how companies operate. This is exactly what these statutory instruments allow.

I am happy to follow up with any noble Lords who have specific requests, but I very much hope that I have their support on these statutory instruments.

Motion agreed.

Limited Liability Partnerships (Application of Company Law) Regulations 2024

Considered in Grand Committee

4.28 pm

Moved by ***Lord Johnson of Lainston***

That the Grand Committee do consider the Limited Liability Partnerships (Application of Company Law) Regulations 2024.

Motion agreed.

Service Address (Rectification of Register) Regulations 2024

Considered in Grand Committee

4.28 pm

Moved by ***Lord Johnson of Lainston***

That the Grand Committee do consider the Service Address (Rectification of Register) Regulations 2024.

Motion agreed.

Principal Office Address (Rectification of Register) Regulations 2024

Considered in Grand Committee

4.29 pm

Moved by ***Lord Johnson of Lainston***

That the Grand Committee do consider the Principal Office Address (Rectification of Register) Regulations 2024.

Motion agreed.

Mesothelioma Lump Sum Payments (Conditions and Amounts) (Amendment) Regulations 2024

Considered in Grand Committee

4.30 pm

Moved by ***Viscount Younger of Leckie***

That the Grand Committee do consider the Mesothelioma Lump Sum Payments (Conditions and Amounts) (Amendment) Regulations 2024.

The Parliamentary Under-Secretary of State, Department for Work and Pensions (Viscount Younger of Leckie) (Con): My Lords, I will also speak to the draft Pneumoconiosis etc. (Workers' Compensation) (Payment of Claims) (Amendment) Regulations 2024 and the draft Pneumoconiosis etc. (Workers' Compensation) (Specified Diseases and Prescribed Occupations) (Amendment) Regulations 2024.

The schemes we are debating today provide vital support for sufferers of dust-related diseases often caused by occupational exposure to asbestos and other harmful dusts. This includes diseases such as pneumoconiosis and mesothelioma. Although both schemes aim to provide compensation to sufferers within their lifetime, each scheme also allows for claims by dependants if, sadly, the person suffering from the disease passes away before they are able to claim. This is in recognition of the suffering these diseases can bring to whole families.

The changes we are debating today will apply equally to those in England, Wales and Scotland. The Government recognise that addressing Great Britain's asbestos legacy, particularly in public buildings, remains a key issue. We also understand the crucial role that research and early detection can play in the fight against cancer and other diseases covered by these schemes. We continue to make progress in this space, with the rollout of the NHS targeted lung cancer screening programme, and around £122 million invested in cancer research in 2022-23 through the National Institute for Health and Care Research. However, while individuals continue to be diagnosed with these terrible diseases, the lump sum schemes remain a vital source of financial support for sufferers and their families.

I will now take a moment to provide some additional background to the schemes. The Pneumoconiosis etc. (Workers' Compensation) Act 1979, which—noble Lords will be relieved to hear—for simplicity I shall refer to as the 1979 Act scheme, provides a single lump sum compensation payment to eligible individuals who suffer from one of the diseases covered by the scheme. This includes diffuse mesothelioma, pneumoconiosis and three other dust-related respiratory diseases. It was designed to compensate people who were unable to claim damages from former employers that had gone out of business and who had not brought any civil action against another party for damages. To be entitled to a lump sum award, claimants must have an industrial injuries disablement benefit award for a disease covered by the 1979 Act scheme.

The 2008 mesothelioma lump sum payments scheme, which I will refer to as the 2008 Act scheme, was introduced to provide compensation to people who contracted diffuse mesothelioma but were unable to

[Viscount Younger of Leckie]
claim compensation through the 1979 Act scheme. This may have been because they were a self-employed worker or their exposure to asbestos was not due to their work. The 2008 Act scheme provides support quickly to people with diffuse mesothelioma, at their time of greatest need.

This Government recognise the suffering that diseases such as mesothelioma and pneumoconiosis cause to sufferers and their families. I know that many noble Lords will be aware of friends and close colleagues from your Lordships' House who have lost their lives as a result of these dreadful diseases. I have known two people who have succumbed. We must remember the great impact these illnesses have on people and their families.

Each year, the schemes continue to provide vital financial support to sufferers and their families. Between April 2022 and March 2023, the latest financial year for which data is available, 2,860 awards were made across both schemes, with expenditure totalling £42.3 million. However, between now and 2028-29, expenditure on the schemes is forecast to fall by 8% in real terms. In part, this may reflect historical changes in the domestic workforce but also improved health and safety provision more widely. This may provide some hope that fewer families will suffer the impacts of these terrible diseases going forward.

Two of the instruments we are debating today seek to increase the value of one-off, lump-sum payments made under the 2008 Act scheme and 1979 Act scheme respectively, this time by 6.7%. These new rates will apply to those who first become entitled to a payment from 1 April 2024. As many noble Lords will be aware, these two schemes are not included in the main social security benefits uprating procedure. However, a 6.7% increase is in line with the September 2023 consumer prices index and mirrors the proposed increases to industrial injuries disablement benefit payments and other disability benefits. As I outlined this time last year, there is no statutory requirement to review the level of these payments annually. However, the department has decided to uprate payments under both lump-sum schemes together, in line with inflation, since 2010. I reassure noble Lords that this year will be no different, which reflects the continued importance of the support provided by these schemes.

This year, in addition to the uprating instruments, I ask that the Committee considers a third draft instrument. Unlike uprating, this instrument will not form part of an annual process. Instead, it seeks to extend the eligibility criteria under the 1979 Act scheme. This instrument will simply realign the diseases which may bring entitlement to a payment under that scheme with those that may bring entitlement to IIDB, ensuring that the original policy intent of the 1979 Act is reflected in the legislation. In doing so, it will widen the 1979 Act scheme entitlement to customers suffering from two additional dust-related conditions; first, unilateral or one-sided diffuse pleural thickening and, secondly, asbestos-related primary carcinoma of the lung where there is no accompanying asbestosis.

As many noble Lords are aware, the department is advised by the Industrial Injuries Advisory Council—an independent scientific body, called IIAC—on changes to the list of prescribed diseases for which IIDB can be paid. At the point that they were added to the 1979 Act legislation, the specified diseases exactly mirrored diseases listed in the relevant IIDB legislation. Over time, IIAC has recommended several changes to IIDB prescribed diseases that are also specified in the 1979 Act, which have been accepted by the department.

The unintended impact of accepting these recommendations was that people who suffer from one-sided diffuse pleural thickening and primary carcinoma of the lung with occupational exposure to asbestos, but no accompanying asbestosis, are now potentially eligible for IIDB but not eligible for an award under the 1979 Act scheme. This divergence was first identified in September 2023, when officials were asked to provide clarification on entitlement for an individual case. Officials have worked at pace since September to bring forward the legislation that we are debating today.

The proposed amendments seek to address this divergence by realigning diseases specified in the 1979 Act legislation with those which may bring entitlement to IIDB. If approved, this instrument will mean that the diseases specified in the 1979 Act legislation are based on an improved clinical understanding and that the original policy intent of the 1979 Act is reflected fully in legislation.

Historically, payments have been made to sufferers of these two diseases, despite the divergence identified in the legislation. This was because the department was using diseases set out in the IIDB legislation when considering entitlement to a lump-sum award under the 1979 Act scheme. Importantly, our understanding is, therefore, that customers who made claims for these two diseases historically have not missed out as a result of the change not being made sooner.

As of 16 February, the department was holding 94 claims made since September 2023 where it has not been possible to establish entitlement under the current legislation, but where the criteria would be met under the proposed legislation. If it is approved today, we will pay these customers as soon as possible.

Overall, we estimate that this change will extend legislative entitlement to a 1979 Act scheme lump-sum award to approximately 300 people a year with one-sided diffuse pleural thickening and asbestos-related primary carcinoma of the lung—a reflection of the vital role the schemes play in providing compensation to those affected by these terrible diseases. I am sure—I hope—that noble Lords here today will join me in recognising the continued importance of the compensation provided by these schemes.

Finally, as a part of my role, I am required to confirm that each of these three provisions is compatible with the European Convention on Human Rights, and I can gladly do so. I commend the proposed amendments to these schemes to the Grand Committee and ask noble Lords' approval to implement them. I beg to move.

Baroness Blower (Lab): My Lords, as general secretary of the National Union of Teachers, I was aware of a number of members who died from school-acquired mesothelioma. I declare an interest: having worked in

an asbestos-contaminated school myself, I have that registered on my medical record, although I am in good health at the moment.

These lump-sum payments are meant to provide some compensation for asbestos victims who cannot get civil compensation from a former employer, but there is an inconsistency in the schemes. If a surviving partner or dependant must claim after their loved one has died, they receive a substantially lower payment. In 2019-20, a 77 year-old with mesothelioma would have received £14,334 if they claimed themselves, but if they died before claiming, which can of course happen with a cancer that is both aggressive and difficult to diagnose, their surviving partner or dependent child would have received £7,949. Mesothelioma patients typically have months left to live at the time of their diagnosis.

Many surviving partners, often women on modest wages or pensions, suffer financial hardship after the loss of their loved one. Their household income falls, but many of their outgoings remain the same. In that situation, they are further disadvantaged if they can receive only the much lower posthumous payment, so there is a clear moral case for raising that payment. Of the 3,830 payments made in 2018, only 260 were posthumous claims, according to the figures I have from the TUC. It estimates that it would cost £1.5 million to equalise payments. In its view, and indeed mine, raising the level of posthumous payments is therefore affordable.

In 2010, the Government acknowledged that there was no justification for the differential payments, stating that the inequality in payments could put pressure on victims' families when they are most vulnerable. Does the Minister agree that it is now time to change this and equalise the payments?

Baroness Donaghy (Lab): My Lords, it is ironic that the all-party group on asbestosis is meeting as we speak. The noble Baroness, Lady Finlay, and I had to leave that meeting early to be here. That group is doing good work. I also pay tribute to the staff at the DWP for all the work they do in this area. They do not always get the thanks that they deserve.

My interest in this is not related to what I am going to say. I chair the oversight committee of the mesothelioma compensation fund on behalf of the Department for Work and Pensions. That committee consists of all the interests involved: victims, unions, employers and insurance companies. I have been doing this since the creation of the Act.

I simply want to support what my noble friend Lady Blower just said. This inconsistency has existed for 14 years now, and the Government themselves have always acknowledged it: if a claim is not made before the person is deceased, the family ends up with a pitiful amount of money. This is really a plea to underpin what my noble friend said, as something ought to be done to rectify this terrible anomaly.

4.45 pm

Baroness Finlay of Llandaff (CB): My Lords, I also declare that I am a member of the all-party group on asbestos. Following what has been said about schools, which is incredibly important, it is also worth remembering that many of the people who die of mesothelioma have been healthcare workers, because they were in hospitals where the pipe lagging, often done with asbestos, was poorly maintained and loose. When they ran through the corridors, sometimes the basement corridors, to get to emergencies they would have been inhaling this fine dust without realising it. I was one of the junior doctors working in that type of hospital.

The all-party group is desperate—I use that word advisedly—for these regulations and for this compensation scheme to come through. I undertook in the meeting today to make that representation here. I was interested in the Government's figures, if I heard right, of 2,860 awards in a year, because new cases are estimated to be around 2,700 a year, which tallies completely with the appalling survival rate of only 2% at 10 years. Mesothelioma is an awful malignancy from which people die very quickly. We have heard repeated stories of people who suddenly became ill and were dead within months, so it is devastating. It is also devastating in the younger age groups, who may leave children bereaved of a parent.

The other thing I want to flag up and keep on record is the fact that we still have many school buildings with asbestos in them. That problem has not been solved and I have particularly brought it to the attention of the Government from Wales, where there has been dispute over how it will be ameliorated. As well as this compensation scheme for the victims, we need to remember that prevention is absolutely crucial and to make sure that all buildings where there is asbestos are adequately managed. It may well be that what has been done in many of those schools and hospitals to date has been inadequate, thinking that it could be covered up, because the walls get nails put into them and if children bounce against them, the walls crack. Water can also get in, and you can easily get a leak of asbestos fibres.

There is no current requirement to monitor the air quality in an ongoing way. Individual sampling is inadequate because these fibres will fall to the ground, so a one-off air sample may not detect them. There needs to be continuous air quality monitoring in schools, and I suggest that it might be a preventive and public health measure.

Lord Allan of Hallam (LD): My Lords, the first two instruments are of course welcome in providing the inflation-based uplift, particularly because the schemes do not require that from their inception, so it is certainly welcome that those payments will be made. I have only one question on that, which is to understand how the process of the change occurs around 1 April, as the Minister said would happen. Given the rate of inflation, the 6.7% is quite material.

I am curious to understand whether it is something that the claimant exercises some control over—in other words, if they decide to put in their claim in March, it will be at the lower rate; if they choose to wait until after 1 April, it will be the higher rate—or is there some other mechanism taking place that determines that it has to be before or after the uplift date? That will be a question for a lot of people now that we have the gap between approving the new rates and when those rates kick in. People will have questions about whether they control that or the department does. What is it that determines whether they get the old

[Lord Allan of Hallam]
rate or this new rate, which is materially increased? I say that not to complain but to welcome it—it is extraordinarily welcome—but if somebody applied and found that by applying a week earlier, they had missed out on a significantly higher payment, it would be frustrating. I hope the Minister can deal with that.

On the final instrument, I again thank the Minister for the very clear and comprehensive explanation of how we got there. It touched on questions that I had when I read the instrument. I will play back to the Minister what I think I heard, and perhaps he can confirm in his closing remarks whether I have understood it correctly.

There are around 300 people a year in the category that we are talking about who were technically excluded from the old payment scheme. These people have been getting their money but, in effect, they have been getting it ultra vires. They should not have been getting it, technically; they have been getting it—that is not a complaint; it is extremely welcome if that is the case—but, in September last year, somebody spotted the fact that they should not have been getting it, and now we have 94 people sitting in the queue until we can fix that. Can the Minister confirm that that is the sort of number of people; that they have been getting the money and no one from the group that we are talking about was being turned away; and that it is just that from a technical, legislative point of view, we have been more generous than we should have been? If that is the case, that is great; I am happy to go with that.

I hope the Minister can just clear that up for us and confirm that, extending into the future, from the point of view of understanding whether someone is eligible, there is not a group of people who will not have applied because, under the prior definition, they thought they were ineligible. If it is the case that there is a group of people who are now eligible who were not previously eligible, I am keen to hear from the Minister how we are making sure that they are all made aware of that and encouraged to apply to the scheme.

On balance, these three instruments seem very welcome. They uplift a much-needed payment for people suffering from serious illness. The one question I have is around the mechanism for when that uplift kicks in between now and 1 April. On the third instrument, again, it is welcome, but I just seek reassurance that people in that category have not been turned away and that future claimants will be made aware of their eligibility effectively.

Baroness Sherlock (Lab): My Lords, I thank the Minister for introducing these regulations to the Committee and all noble Lords who have spoken. As we have heard, the Government have decided to increase the lump sum awards payable under the 1979 Act scheme and the 2008 Act scheme by the 12-month CPI rate last September, namely 6.71%. That is obviously very welcome.

We also welcome the fact that the Government have decided to align the definitions of these diseases as set out in the 1979 Act scheme with those in the industrial injuries disablement benefit—it was helpful to get that background and the amplification from the noble Lord, Lord Allan—hence the need for the third instrument we are debating here. It will have the effect of expanding the pool of people who are definitely entitled to the lump sums payable under the 1979 Act to include those with unilateral diffuse pleural thickening and asbestos-related primary lung cancer. This expansion is welcome but, just to follow on from the question from the noble Lord, Lord Allan, for people who are in that queue and waiting for these regs to take effect in order to be able to get it, if they die before they take effect, are we in the position raised by my noble friends in terms of the differential between dependants and other schemes? Can the Minister comment on that?

The Minister is absolutely right that these schemes continue to provide crucial compensation to those who are suffering from these awful diseases and their families. Although money is obviously no substitute for a life, it can help with practical issues, especially if it is paid out fast.

Annual deaths from mesothelioma in Britain increased steeply over the past half-century, mainly due to the widespread industrial use of asbestos from about 1950 to about 1980. That accounts for the current high death rate among men over 70, whose younger working life coincided with the period of peak asbestos use. Thankfully, death rates for those below 65 have been falling. I looked through the latest statistics published by the HSE last July. They showed that there were 2,268 mesothelioma deaths in Great Britain in 2021, which is a fall of 302 from 2020 and below the average of the previous few years.

The HSE says that this reduction remains consistent with the earlier projections that the annual deaths would fall gradually during the 2020s and suggests that the variability in the figures for 2020 and 2021 may have been something to do with Covid, but it also says that predictions suggest that there will continue to be 400 to 500 deaths among females in the 2020s. If I am reading that right, that suggests that while male deaths will continue to fall, female deaths will not. Last year, in the same debate, I asked the Minister whether he could comment on that discrepancy. I did not get an answer. Can he help this year?

It occurred to me to wonder whether this had anything to do with asbestos being uncovered in schools and hospitals, which was mentioned by my noble friend Lady Blower and the noble Baroness, Lady Finlay. After all, there are reports that a lot of asbestos has been found in schools uncovering RAAC, which is not surprising given that that DfE has previously said that 81%, I think, of state schools have asbestos. I gather that attempts are being made to launch studies into the impact on teachers and students. Last year, the *Guardian* reported that official data had already shown that female former teachers born between 1935 and 1954 have a 40% increased rate of mesothelioma. It also reported that statisticians have now detected a rate of mesothelioma deaths that "borders on statistical significance" among teachers born between 1955 and 1974. I hope fervently that my noble friend Lady Blower will not turn out to be in this cohort.

As the noble Baroness, Lady Finlay, said, there is also a problem in hospitals, and I hope very much that she will not turn out to be caught up in this terrible situation. Last July, the *Times* reported on the death from mesothelioma of Guru Ghoorah, an NHS nurse, at the age of 45, leaving two children aged four and

seven. Four NHS hospital trusts were ordered to make a combined compensation payment to him of £650,000. The thing that struck me about that report, apart from that tragedy, was that it noted that ONS figures state that 177 NHS staff died from mesothelioma between 2002 and 2015 and that occupations are not recorded if a person dies aged more than 75. Two-thirds of mesothelioma deaths occur after that age. Interestingly, the *Times* reported that a freedom of information request by Sheffield University to NHS Resolution found that, between 2013 and 2022, 360 asbestos-related mesothelioma claims were made against the NHS. Sadly, each of those will have resulted in a death. That suggests a rather higher death rate than the official ONS figures. Can the Minister comment on the risks of asbestos in these settings, which were raised by my noble friend and the noble Baroness, to which the HSE is presumably alert? What action is being taken to protect staff, students and patients? Does he think this will impact mortality rates in future?

Looking at the statistics I was struck again that the north-east always stands out in so many depressing tables. Three of the top 10 geographical areas for male deaths are in the north-east, the region I live in: North Tyneside, South Tyneside and Hartlepool; as are two of the top 10 for women: Newcastle and Sunderland. Of course, these diseases are a product of our industrial past. If my noble friend Lord Jones were here, he would talk about south Wales miners suffering from pneumoconiosis. This debate is an important annual reminder of the price paid by so many people for our industrial heritage, our infrastructure and the society we all benefit from, but it is also a reminder of the need for government and industry to take health and safety seriously. The link between mesothelioma and asbestos was found in the 1960s, but asbestos was still being used widely throughout the 1970s. The schemes that we have been debating today were needed because, as my late and much lamented friend Lord McKenzie of Luton reminded noble Lords in the past, some employers and some people involved in liability insurance did not act as they should have done with regard to their liabilities, hence the need to create these schemes, so this is a good annual prompt to be alert to new and emerging risks to health.

The position of dependants has been raised again by my noble friends Lady Donaghy and Lady Blower. I would be interested to know the Government's current position on this. My noble friend Lady Blower mentioned the TUC's figure of £1.5 million as the cost of equalisation. Do the Government agree with that figure? If not, will the Minister tell the Committee the figure the Government have for the cost of equalising payouts to dependants and victims?

Finally, I am sure that the Minister will have seen the reports in the news over the past few days about a new drug breakthrough to treat mesothelioma. Does he have any more information that he can share with us on that?

I am grateful to the staff who have worked on this, to the All-Party Parliamentary Group, to the charities and to all those who work in this space. It is incredibly important that we keep up the work on research, on campaigning and on support. I look forward to the Minister's reply.

5 pm

Viscount Younger of Leckie (Con): My Lords, I start by thanking all noble Lords here today for their contributions to this short debate. As has been the case in previous years, it has demonstrated the profound interest in these schemes that is present in the House—indeed, in this Committee.

I should start off by saying this: it is important that we all remain mindful that these debates are about those whose lives have been impacted by these dreadful diseases. I particularly appreciate the attendance of the noble Baronesses, Lady Donaghy and Lady Finlay, who have broken off from their committee; again, it emphasises the importance of this subject.

The Government recognise that the two schemes we are debating today form a crucial part of the support that is available to people suffering from dust-related conditions and their families. It is right that we ensure that the value of these compensation schemes is retained, especially in these difficult times. In addition to ensuring that these awards are uprated for those who first become entitled from 1 April 2024, the Government are also proposing to make changes to the list of diseases that may bring entitlement to compensation under the 1979 Act scheme.

A number of questions were asked. I will attempt to answer them all; I hope that there will not be any duplication in what I say. I shall mark my own homework on that; I am sure that noble Lords will do so too.

First, the noble Baronesses, Lady Blower, Lady Donaghy and Lady Sherlock, referred to equalisation and dependant awards, asking: why do dependants get lower awards than sufferers and when will the Government equalise these award rates? It is clear that whole families can be devastated by these diseases, as I said earlier; that is why dependants can claim compensation following the passing of their loved ones. The Government remain of the view that available funding should be prioritised to those people who are currently living with the disease. This position is in line with the main purpose of these schemes: to provide financial support to people living with certain diseases, and to help them deal with the issues that illness brings. I hope that I have a figure for the noble Baroness, Lady Sherlock; I will address that in a moment.

The noble Baronesses, Lady Sherlock and Lady Blower, asked further questions about disparity, including on the number of recipients of payments under the 1979 scheme who were aged 77 or over and the number aged 37 years and under. They also asked for the breakdown of payments by industry. I can tell the Committee that, in the last full financial year for which published data is available—April 2022 to March 2023—2,460 awards were paid under the 1979 scheme. Some 1,400 of the awards paid—57% of them—were for individuals aged 77 and over, while fewer than five awards paid were for individuals aged 37 and under. Unfortunately, information on the occupational and industry breakdown of recipients of the lump sum schemes is not published and is not readily available; this would require analysis of multiple datasets for the 1979 scheme and the industrial injuries disablement benefit in order to determine occupational

[Viscount Younger of Leckie]
and industrial formation. I have probably gone a bit further than the question that was asked but I hope that that is helpful.

The noble Baronesses, Lady Blower and Lady Finlay, asked further questions about equalisation. Around 90% of the payments made under both schemes are paid to sufferers of the diseases covered by the schemes. As I have said already, we are prioritising those living with the diseases.

We estimate that to equalise awards for people diagnosed with the disease and dependants in 2024-25 would require an additional £1.4 million a year from the DEL budget. No provision has been made for this in the current spending review settlement. I think the figure that the noble Baroness, Lady Sherlock, might like to have is the £1.25 million figure that has been raised today.

The noble Baronesses, Lady Finlay and Lady Blower, raised important questions about asbestos in schools and public buildings. I will attempt to address these questions. It is obviously incredibly serious, and the Department for Education expects all local authorities, governing bodies and academy trusts to have robust plans in place to manage asbestos in school buildings effectively in line with their legal duties. Well-maintained and safe school buildings are a priority for the Government, and we have allocated more than £15 billion of capital funding since 2015, including £1.8 billion this financial year. This comes on top of our 10-year school rebuilding programme, which will transform buildings at more than 500 schools. Where there are serious issues with buildings that cannot be managed by responsible bodies, the Department for Education provides additional support on a case-by-case basis.

Moving onto public buildings, the Government agree that continuing to build on the evidence base around the safe management and disposal of asbestos is fundamental in ensuring that the risks posed by its past use are minimised. The Health and Safety Executive has a mature and comprehensive regulatory framework to ensure that legacy asbestos risks in Great Britain are managed that aligns with the best evidence currently available. This is reflected throughout the approaches outlined in the Control of Asbestos Regulations 2012—CAR. Correct implementation of CAR not only ensures management of risks of exposure but will eventually lead to the elimination of asbestos from the built environment without the need for any target deadline.

The noble Baroness, Lady Finlay, raised supporting research into mesothelioma. Research is crucial, as I am sure the noble Baroness will tell me, in the fight against cancer. The Department of Health and Social Care invested around £122 million in cancer research in 2022-23 through the National Institute for Health and Care Research, which I think I mentioned in my opening remarks. For several years, DHSC has been working actively to stimulate an increase in the level of mesothelioma research activity from a rather low base. This includes a formal research priority-setting exercise, a National Cancer Research Institute workshop and a specific call for research proposals through the National Institute for Health and Care Research. I hope that chimes with the knowledge that the noble Baroness no doubt brings to this Committee.

In 2018, the British Lung Foundation launched the UK's first Mesothelioma Research Network, the MRN, with the involvement of key stakeholders, including DHSC. The vision of MRN is to improve outcomes for people affected by mesothelioma by bringing researchers together and therefore driving research progress and improving the quality of research. The network is supported by a £5 million donation from the Victor Dahdaleh Foundation, which matches the funding given to Imperial College London by the Government to establish the National Centre for Mesothelioma Research. I could say more about this, but it might be better if I write more to the noble Baroness on this important matter. I suspect she knows a lot of it, but it is important, and I will copy in all Members of this Committee.

The noble Lord, Lord Allan of Hallam, asked which cases might lose out on the uprated rates if they are paid before April. Perhaps I can provide some form of reassurance. The uprating regulations apply only in relation to any case in which a person first fulfils the conditions of entitlement to a payment under the 1979 Act scheme on or after 1 April 2024. As the cases being held will have first become entitled to a payment under the 1979 Act scheme before 1 April 2024, the amount they will receive is unaffected by the uprating. I hope that clarifies that. I think I might have mentioned that in my opening remarks, but I just say it to re-clarify it.

The noble Lord, Lord Allan, and the noble Baroness, Lady Sherlock, asked about historic claimants paid ultra vires. I reassure both of them that their understanding of my understanding or perhaps my understanding of their understanding is correct, whichever way around that reads best.

The noble Lord, Lord Allan, asked whether anybody has missed out. I probably covered that okay in my previous responses, but perhaps to go a bit further the department understands that historic claims made for these two conditions will have already received lump sum payments. As a result, to reclarify, these claimants have not missed out on a payment because this change was not made sooner.

The noble Baroness, Lady Sherlock, asked whether in situations where a sufferer dies before a successful claim is paid the lump sum payment is paid to the estate of the deceased at the same rate. If someone with the disease makes a claim but dies before payment is made, the payment is made to their estate at the same rate that they would have received had they received their payment while they were alive.

The noble Lord, Lord Allan of Hallam, asked who will benefit from this change and whether this will benefit only new claims or historic claims. I think have covered that. The noble Lord may wish to rise if I have not.

Lord Allan of Hallam (LD): I am grateful to the Minister. The question also relates to the previous answer that he gave. If somebody in the new category that we are talking about had applied in August last year, they would have received the payment; however, had they applied in October, they would be held in the queue. We want to understand that a person who has been held in the queue because they applied in October—at that point, the department understood that it did not

have the legal authority—will not lose out in any way, particularly if, sadly, they have passed away between their application and now, the point at which we can release the funds because we have passed this statutory instrument. I do not want to delay this any longer; the faster we get it, the better.

Viscount Younger of Leckie (Con): Absolutely. That was my understanding too. My understanding is that they would not lose out, given the case raised by the noble Lord. If that is not correct for any reason, I will certainly write to him; however, I have made it clear that nobody will lose, and I should stick to that point.

The noble Baroness, Lady Sherlock, asked about gender differences. Her question was interesting; she asked it last year but did not get an answer, I think. There is always a degree of uncertainty in predicting future disease incidence, but the annually published data from the HSE show that annual mesothelioma deaths were broadly similar in the period from 2012 to 2020 but lower in 2021. Before that, annual deaths had been rising steadily since the late 1960s, but current projections suggest that annual mesothelioma deaths in both males and females are expected to decline over the long term as a consequence of past reductions in asbestos exposure for both males and females.

How soon the decline in annual deaths will become evident is expected to be different, with deaths among males declining during the 2020s and deaths among females remaining broadly level during that period before starting to decline. The reason for this lies in different patterns of asbestos exposure in males and females in the past—the noble Baroness will appreciate that, I think—with heavy exposures being reduced or eliminated sooner in specific industries where fewer females worked, such as shipbuilding, insulation work and asbestos product manufacturing.

The noble Baroness, Lady Sherlock, asked about regional variations. Some asbestos exposures, such as during construction work, were widespread across all regions whereas other exposures, for example those I alluded to earlier associated with shipyards and asbestos product factories, were associated with particular regions. Of course, those regions still tend to have higher mortality rates today, sadly.

I should make a point of clarification to do with equalisation. We estimate that to equalise awards for people diagnosed with the disease and dependants in 2024-25 would require an additional £1 million to £4 million a year—I think I said £1.4 million and I apologise for that—from the DEL budget and no provision has been made for that in the current spending review settlement.

With that, I hope I have answered all the questions.

Motion agreed.

Pneumoconiosis etc. (Workers' Compensation) (Payment of Claims) (Amendment) Regulations 2024

Considered in Grand Committee

5.14 pm

Moved by ***Viscount Younger of Leckie***

That the Grand Committee do consider the Pneumoconiosis etc. (Workers' Compensation) (Payment of Claims) (Amendment) Regulations 2024.

Motion agreed.

Pneumoconiosis etc. (Workers' Compensation) (Specified Diseases and Prescribed Occupations) (Amendment) Regulations 2024

Considered in Grand Committee

5.14 pm

Moved by ***Viscount Younger of Leckie***

That the Grand Committee do consider the Pneumoconiosis etc. (Workers' Compensation) (Specified Diseases and Prescribed Occupations) (Amendment) Regulations 2024.

Motion agreed.

East Midlands Combined County Authority Regulations 2024

Considered in Grand Committee

5.16 pm

Moved by ***Baroness Scott of Bybrook***

That the Grand Committee do consider the East Midlands Combined County Authority Regulations 2024.

Relevant document: 8th Report from the Secondary Legislation Scrutiny Committee

The Parliamentary Under-Secretary of State, Department for Levelling Up, Housing & Communities (Baroness Scott of Bybrook) (Con): My Lords, these regulations provide for the implementation of the devolution deal agreed between the Government and four councils—Derby City Council, Derbyshire County Council, Nottingham City Council and Nottinghamshire County Council—on 30 August 2022. Since then, we have been working closely with the councils on the implementation of the deal, which is an important contribution to the Government's levelling-up agenda increasing opportunity, investment and prosperity in the East Midlands. The four councils consented to the making of these regulations on 15 December 2023.

The regulations, if approved by Parliament and made, will establish the East Midlands Combined County Authority and the office of mayor for the area. This will be the first of a new type of local government institution, a mayoral combined county authority, made possible by the Levelling-up and Regeneration Act 2023. The essential feature of a combined county authority is that only upper-tier authorities, that is county councils and unitary authorities, can be constituent members of the combined authority, with a requirement that there must be at least two constituents. This does not mean that, where a constituent authority is a county council, the district councils in the area cannot be involved and have a voice within the combined county authority on matters which could affect them.

[Baroness Scott of Bybrook]

In the East Midlands it is envisaged, as set out in the devolution deal, that the constituent members will invite the district councils to be represented by four non-constituent members, two from Derbyshire districts and two from Nottinghamshire districts. It will be for the district councils to decide who their representatives will be. These non-constituent members can be given voting rights on certain matters, as decided by the constituent members. In addition, district councils will be invited by the combined county authority to nominate certain of their members to serve on the combined county authority's overview and scrutiny committee and audit committee. These committees will have important roles for the accountability of the combined county authority and of the mayor to the people of the East Midlands.

The central feature of the East Midlands Combined County Authority that the regulations provide is that there will be a directly elected mayor for the area. The mayor will provide a single point of accountability essential for the powers and budgets being devolved.

The regulations provide for the first mayoral election to take place on 2 May 2024. The elected mayor will then take up office on 7 May, with a four-year term ending after the next mayoral election in May 2028. Thereafter, there will be elections every fourth year, to be held on the ordinary day of election for the year, which is the first Thursday in May. Following the enactment of the Elections Act 2022, these mayoral elections will be on a first past the post basis.

The regulations also make provision for the overall governance arrangements of the combined county authority. Each constituent council will appoint two of its members to the combined county authority. One of these members will act as the constituent council's lead member. This means that the combined county authority will have a mayor and a total of eight constituent members.

The mayor will be the chair of the East Midlands Combined County Authority and will appoint a deputy mayor from one of the constituent members. The combined county authority may, in addition, arrange for there to be up to eight non-constituent or associate members. As I have mentioned, it is the intention of the East Midlands authorities that the district councils should nominate four non-constituent members.

The combined county authority will be established the day after the day on which the regulations are made. Until the elected mayor takes office, it will be for the constituent members to decide how they will conduct business, including arrangements for chairing any meetings.

In addition to certain generic functions that all mayoral combined county authorities have, the regulations also confer significant functions on the combined county authority, as agreed in the devolution deal. Many of these functions are currently functions of a public authority, such as Homes England or the Greater London Authority, or indeed functions of the Secretary of State. As required by the 2023 Act, alongside these regulations we have laid a Section 20(6) report, which provides details about the public authority functions being devolved to the combined county authority.

Certain of the functions conferred on the combined county authority are to be exercised only by the mayor. In addition, the mayor will have powers, as mayors of combined county authorities generally do, to issue a precept, if they so choose, to cover the costs of mayoral functions which are not being met by other resources available to the combined county authority. The functions conferred by the regulations include those on housing and regeneration, mayoral development corporations, transport, public health, and education and skills. I will address each in turn. The essential features of these functions are as follows.

To improve the supply and quality of housing and to facilitate the regeneration of the East Midlands, Homes England powers will be conferred on the combined county authority and will be held concurrently with Homes England. These powers will enable the combined county authority, working closely with Homes England, to promote housing and regeneration, and will include the compulsory purchase of land. This will be a mayoral function, and any decisions will also require certain local consents, including the consent of the district council if the proposed land for purchase falls within its area, and that of the Peak District National Park Authority should the land fall within its geographical boundary.

The regulations provide for the mayor to have power to designate mayoral development areas within the geography of the East Midlands Combined County Authority to support the development of strategic sites. This is the first step in establishing a mayoral development corporation; further regulations would be necessary to create such a body. Powers relating to such a corporation are to be exercised by the mayor. As with the compulsory purchase powers, local consents are also necessary. District council consent is required should the proposed development area sit within a district's geographical boundaries. Similarly, the consent of the Peak District National Park Authority would be required if any part of the development area were within the national park.

The combined county authority is to become the East Midlands transport authority. The mayor is to have control over a consolidated and devolved transport budget, with the power to pay grants to the constituent councils in relation to the exercise of their highways functions to improve and maintain roads. The mayor may also pay grants to bus service operators for eligible bus services operating within the East Midlands area. Grants must be calculated in accordance with any regulations made by the Secretary of State.

Local authority public health functions are to be conferred on the combined county authority, enabling it to deliver public health initiatives throughout its area and in support of the local authorities in the East Midlands. The combined county authority is to be required to adhere to Section 2B(1) of the National Health Service Act 2006, which places a duty on a local authority to take steps as it considers appropriate to improve the health of the people in its area. This responsibility will be held concurrently with the combined county authority's constituent councils. None of the constituent councils' public health functions is transferred from the councils to the combined county authority.

Finally on functions, I mention that the devolution deal also provides for the devolution of certain education and skill functions, together with the adult education budget. As agreed with the area, further regulations for these functions will be brought forward later this year with the aim, subject to Parliament's approval, of the combined county authority being responsible for these functions from the academic year 2025-26.

These regulations will be made, if Parliament approves, under the Levelling-up and Regeneration Act 2023. As provided for by that Act, Derby City Council, Derbyshire County Council, Nottingham City Council and Nottinghamshire County Council consulted on a proposal to establish the combined county authority based on the East Midlands devolution deal. They promoted the consultation by a number of means, including a dedicated website; two online events in which residents and stakeholders could make their views known; and a communications campaign. Responses could be made online or directly by email or paper. The councils also undertook stakeholder engagement with businesses, the voluntary sector and key institutions in the East Midlands.

The public consultation ran from 14 November 2022 to 9 January 2023. A total of more than 4,800 people responded to that consultation. As required by the 2023 Act, the councils preparing the proposal provided the Secretary of State with a summary to the responses to the consultation on 1 November 2023, after the enactment of the 2023 Act. The Act provides that a consultation carried out before it came into force can be considered as fulfilling the requirement in it to consult. The majority of respondents supported all aspects of the proposal with one exception. On the establishment of the mayor, 48% of those who took part in the consultation supported the proposal, with 52% opposing it.

The role of the mayor is integral to the proposal. Many aspects of the proposal supported by residents are available only to an institution that is led by a strong, accountable, directly elected leader such as a mayor. Those opposed to a mayor raised concerns about the cost of a mayor, the consolidation of power in an individual and adding an additional tier of governance to local government. In contrast, those supporting the approach of a directly elected mayor referred to the benefits that it could bring to the area in accountability, leadership and providing a voice for the region at national and international levels.

5.30 pm

In laying these regulations before Parliament, the Secretary of State is satisfied that the statutory tests in the 2023 Act are met, namely that no further consultation is necessary and that the constituent councils have consented to the establishment of the combined county authority, which would: be likely to improve the economic, social and environmental well-being of some or all of the people who live or work in the area; be appropriate, having regard to the need to reflect the identities of local communities and to secure effective and convenient local government; and achieve the purposes specified in the constituent councils' consultation.

Most importantly, the making of these regulations opens a way to providing very considerable funding for the area, as set out in the devolution deal. The combined county authority will have £38 million per year of investment funding for 30 years. That total of £1.14 billion is to be invested by the combined county authority to drive growth and take forward its priorities over the long term. The combined county authority will also have access to: £17 million-worth for the building of new homes on brownfield land, which will be available in 2024-25 subject to sufficient eligible projects for funding being identified; £18 million of capital funding to support the delivery of housing priorities and drive net-zero ambitions in the East Midlands area; and the East Midlands allocation of the UK shared prosperity fund.

At this point, I pay special tribute to local leaders and their councils for all that they have done, and continue to do, to address local priorities and support businesses, industry and communities across the East Midlands. These regulations, which are supported locally, are a significant step forward for the East Midlands, its businesses and its communities. They are key to the future economic growth and regeneration of the East Midlands and will enable local leaders to invest in and address local priorities effectively. I commend the draft regulations to the Committee.

Baroness McIntosh of Pickering (Con): My Lords, I am grateful to my noble friend for setting out the contents of the regulations before us, which follow the same sort of model that has been used for the York and North Yorkshire Combined Authority and its mayor, as well as the North East Combined Authority and its mayor. I have a couple of questions.

If the housing responsibilities are transferring from the combined authority to the mayor, what will happen in the instance of planning for a major housing scheme? For example, if people have concerns about the impact of flooding and the lack of sustainable drains or similar, which authority will consider that application? It concerns me that the planning process seems to be separated out from what has previously happened in a straightforward way. If all the county councils to which my noble friend the Minister referred are now being transferred to a higher authority, it may not have the facility or means to understand planning issues. It may focus on what it perceives to be the need for increased housing; for example, it may focus on a four or five-bedroomed housing scheme and not on a one or two-bedroomed scheme, which might be preferred or more required in a rural setting.

My noble friend referred to the power to issue a precept. How much of the funding that she set out to the Committee this afternoon is new funding and how much is simply replacing what is already available in the terms of schemes? I will draw a parallel with the area that I know best. For example, if we look at the Tees Valley Mayor, he has an awful lot of new funding at his disposal at virtually every turn. I understand that that will not be the case for new combined authorities and mayors, such as the subject of these regulations. What new funds are going to be available? Are the funds being transferred from the combined authority

[Baroness McIntosh of Pickering]
to the mayor? Is it going to be the case that there is no new money so, in fact, as set out in the regulations, the power to raise a precept will be relied upon in virtually every case, in which case the council tax will have to go up? Was that put in the consultation that was put to the public to which my noble friend referred?

Finally, on the consultation, as a democrat I find it incredibly difficult to accept that when 52% of those responding, if I understand the Minister correctly, rejected the model for a mayor in this instance, the Government and the Minister's department are proceeding. Would it not be a good idea to pause, reconsider and go back on the proposals? Even though my noble friend says authoritatively that all the legal requirements of the consultation have been met, I urge her to consider the democratic implications of rejecting what 52% of the population said.

Lord Shipley (LD): My Lords, the noble Baroness, Lady McIntosh of Pickering, has raised a number of pertinent points and I am looking forward to hearing the Minister's response to them. She particularly raised the consultation and the responses. There has been a continuing problem with consultation on combined authorities because the number of people who respond is very low. In the case of the East Midlands, I think Ministers have taken the view that elected councillors would have to make the decision about the mayor. Nevertheless, there is a question about how the Government and combined authorities can engage with people to a much greater degree so that response rates to any question would be much higher than in this case. Having said that, I thank the Minister for her explanation of these regulations. It is very good to see the close working of the local authorities in the East Midlands Combined County Authority. I wish it every success in its work. We want it to succeed.

I have previously raised issues of scrutiny, audit and risk in relation to this combined county authority and other mayoral combined authorities. I noticed that the Secondary Legislation Scrutiny Committee commented on this public consultation. Paragraph 45 of the report cites the Department for Levelling Up, Housing and Communities explaining that

"the Secretary of State has noted respondents' concerns about the EMCCA's governance model and the position of a Mayor but is satisfied that these draft Regulations would 'provide the necessary check and balances on the governance of the EMCCA and its Mayor'".

I draw the Minister's attention to the *Tees Valley Review* dated 23 January 2024. I will quote from it, because what it says is important to all combined authorities. The question I pose to the Minister relates to whether any of the deficiencies identified in that report, published a few weeks ago, could occur in the East Midlands Combined County Authority. I quote specifically from paragraph 1.7 of the report's executive summary, which said that

"there are issues of governance and transparency that need to be addressed and a number of decisions taken by the bodies involved do not meet the standards expected when managing public funds. The Panel have therefore concluded that the systems of governance and finance in place within"

the Tees Valley Combined Authority and the South Tees Development Corporation

"at present do not include the expected sufficiency of transparency and oversight across the system to evidence value for money".

Recommendation 6 then went on to say that the Tees Valley Combined Authority cabinet should

"review its current delegations and directions to STDC to ensure it meets its statutory obligations, including appropriate oversight by Overview and Scrutiny Committees, to enable value for money to be delivered and evidenced through effective scrutiny of significant decisions".

The Secretary of State has said that the draft regulations would

"provide the necessary check and balances on the governance of the EMCCA and its Mayor".

Can the Minister, either now or perhaps later in writing, explain how these draft regulations actually provide the checks and balances necessary to ensure that a report such as that written on Tees Valley could not be written on the East Midlands?

The Minister is aware that I have raised issues of security, audit and risk repeatedly during the passage of the levelling-up Bill and on other occasions, and I find those words in the *Tees Valley Review* worrying. I hope that this cannot possibly happen elsewhere. I am surprised by what has been said on Tees Valley but, given that, what structure is in place—I cannot find it in these regulations—to prevent a repetition of what seems to have occurred in the Tees Valley from happening in the East Midlands or in any of the other mayoral combined or combined county authorities?

Baroness Taylor of Stevenage (Lab): My Lords, I thank the Minister for setting out the basis for this new type of mayoral combined county authority. The regulations establish the East Midlands combined authority and are required in advance of the first planned combined authority mayoral elections in May this year. We consider them to be very important for the economic and social development of the region and its population, so we will not be objecting to this important SI, but that does not mean that we do not have any questions about it. Indeed, we are very excited and hopeful that our candidate, Claire Ward, will be the first East Midlands mayor elected and, as mayors do up and down the country, will make a great difference to communities in the areas that the Minister set out—housing, transport, public health, and education and skills.

We also noted the degree of consultation that took place from 14 November last year to 9 January this year, but further note, as did the noble Baroness, Lady McIntosh, and the noble Lord, Lord Shipley, that the numbers are very low in these consultations. We need to think about how we engage the public more in these very important discussions about the future of their areas. We also noted that there is a distinctive emphasis in this devolution deal on the combined authority reflecting the local communities within the combined authority area. We can do more of that, and I think that might help to engage people even more.

5.45 pm

I pay tribute, as did the noble Baroness, Lady Scott, to the local authorities within the combined authority area, especially the leaders who have worked together with the Government to bring us to the point where

we have this instrument before us today. As I know from experience, achieving consensus across local government boundaries can be demanding and challenging. We should thank all concerned for putting the interests of their area first above their very parochial issues in their own areas.

However, it cannot be ignored that the financial pressures facing local government are profound, particularly in the East Midlands region. The combined authority will be only as successful as the component local authorities beneath it. The Government really must address the financial uncertainty in local government. It is a fact that devolution under this Government has, to date, been fragmented, piecemeal and has not gone far enough or fast enough. The powers and resources do not touch the sides of what is required for communities to have real control over their areas and futures. Like much else, what appear to be very large sums of money being allocated to areas—of course, you cannot blame local authorities for wanting to get deals in place that attract that funding—are not compensating areas for the considerable amounts of funding that they have lost since 2010. Therefore, will the Government please set out the extent of that funding lost in government grants since 2010 across all the authorities in the combined authority area so that residents can see whether this is a good deal for the East Midlands or whether it does not even replace the funding that they have already lost?

In relation to funding, all local authorities are having to place a heavy burden on council tax payers as funding reduces, demand continues to rise and inflation takes its toll. Of course, most council tax payers do not access the specialist services that are the high-spend areas for councils, and the services that they do use are increasingly being cut to meet the demands of those high-need areas. In other words, they pay more council tax and get less for it. I note that the mayor in this combined authority will be able to levy another precept on council tax payers, a point referred to by the noble Baroness, Lady McIntosh. Can the Minister say more about the limit of this precept and what it is intended to cover? What responsibility do the constituent councils have for funding support for the mayor's office should the mayor decide not to levy a precept?

On a separate issue, will the independent remuneration panel be set up immediately on approval of this SI so that those seeking office can understand what their remuneration might be before they set out to seek office and the election takes place? Will the Minister clarify why mayors are not being given equal status to PCCs and MPs in relation to pension arrangements? I understand that the mayors of Greater Manchester and West Yorkshire have already written to the Secretary of State on this issue. The removal of access to the pension scheme for all councillors was a retrograde step. I always remember the noble Lord, Lord Pickles, saying that we should be treated like scout leaders. For many people with responsibility for huge budgets and the whole of their areas, that was a step too far. For mayors, who have responsibility for even bigger areas and powers over the functions that we have already discussed, it is incomprehensible.

I have a number of questions for the Minister relating to governance matters, but before I ask them, and without labouring the long discussions that we had during the passage of the Levelling-up and Regeneration Bill, I highlight again that district councils in this area are to be given the reductive role of non-constituent members of the combined authority, as the Minister set out. Again, I ask for it to be noted that, quite apart from sidelining their independent electoral mandate, in two-tier areas it is district councils that hold planning, economic development and housing powers, so shutting the door in their face when it comes to strategic decision-making about any local area seems at best unwise and, at worst, could lead to chaos in trying to implement the decisions of the strategic body.

I have a few questions on the governance. First, is it the intention that the post of political advisor to the mayor be politically restricted? Looking at the SI, that seems to be the case, but it seems a little unusual. Secondly, is it the case that the mayor will need to have the agreement of each constituent council, not just the combined county authority, to make changes to transport arrangements, even after transport powers have been completely transferred after the transition period? Thirdly, as responsibility for public health is conferred on the combined authority, is it the intention that any money will be allocated by government grant to enable the combined authority to meet that responsibility? As the mayor requires the consent of two-thirds of authority members to pass significant decisions, have the Government given any thought to what mediation might be carried out in the case of a deadlock which prevents the mayor moving on the strategic plan in a timely manner?

I refer to the points made by the noble Lord, Lord Shipley, about the Tees Valley issues. I will not go into the detail, because the noble Lord has already read out pieces from the report, but if there is to be a mayoral development corporation, significant lessons of audit and oversight need to be learned from what happened in Tees Valley. Clear requirements are needed for procurement transparency, and so on. Have the Government fed into this process the outcome of that report on Tees Valley, which was so clear in saying where the deficiencies were?

In conclusion, my party fully supports devolution. In fact, Labour would push power out of Westminster with a take back control Act that would give communities a direct say in their future, starting by giving all mayors the powers and flexibility to turbocharge growth in their areas on matters such as planning, housing, transport, net zero and adult education offering all places the right to negotiate with the Government for powers that have been devolved elsewhere. The principle will be no area left out or held back. Areas that can move faster will be supported to do so. We have seen that true devolution can be transformational but, too often, at local level it has felt like a further extension of the Government's *Hunger Games* approach to funding, which has seen local partnerships and coalitions having ongoing battles to be allocated powers over the services that they believe can be transformed to the benefit of their area. We need a position of default devolution. Only by doing this can we give Britain its future back.

[Baroness Taylor of Stevenage]

Baroness Scott of Bybrook (Con): My Lords, I thank noble Lords who have spoken in this debate, particularly for their support for the East Midlands. I know that will be well received. Once again, we all wish it well. I will respond to a number of questions—I will look at *Hansard* and write if I miss any—starting with my noble friend Lady McIntosh.

The response rate to the consultations the constituent councils did was very low. The noble Baroness, Lady Taylor of Stevenage, and the noble Lord, Lord Shipley, mentioned that 4,800 responses from 1.6 million people is not a lot, but you cannot force people. My experience is exactly the same. People will tell you, "We just want people to lead our council, keep us safe and economically viable and to spend our money wisely". Sadly, that is what happens in all these cases, but that is how it is.

My noble friend Lady McIntosh of Pickering asked whether this funding is new. Yes, the funding to the East Midlands is new, as was the case in Tees Valley; that was new funding, too. My noble friend also mentioned planning powers. No planning powers or housing powers are being transferred from existing planning and housing authorities. We made that clear in passing the then Levelling-up and Regeneration Bill, which is now an Act. Therefore, those authorities will be responsible. That is part of the challenge; they must work together for the good of their area.

The East Midlands devolution deal is a level 3 deal, with strong devolution alongside the establishment of a mayor. There was concern that 52% of those who responded to the consultation did not want a mayor; the problem is that they also said they wanted a level 3 devolution deal, with the large amounts of money and power that come with it. It was for the Secretary of State to make the decision that the result of the East Midlands consultation should be a level 3 deal, which requires a mayor.

The noble Lord, Lord Shipley, the noble Baroness, Lady Taylor of Stevenage, and my noble friend Lady McIntosh brought up Tees Valley. As they will know, the report came through very recently. We are considering the two recommendations in it. The noble Lord, Lord Shipley, is absolutely right: risk, scrutiny and audit are very important here, as they are in all local government. The mayor from Teesside has been asked for his response by early March; once it comes through, I will write a further letter on the Government's response. What I think will happen is that we—the Government—will learn from that report, as will the East Midlands. As with all local government, as I say, scrutiny, audit and risk are important.

Lord Shipley (LD): Since we are on that specific issue, may I ask two questions? The Minister said that there were two recommendations but, actually, there are 28 altogether.

Baroness Scott of Bybrook (Con): I was talking about the ones on scrutiny.

Lord Shipley (LD): Right, but there are others which relate indirectly to the scrutiny, risk and audit function.

Secondly, this is not just about the East Midlands Combined County Authority. This issue relates to all mayoral combined authorities: those that currently exist and those that are about to come into existence. I hope that, when the Minister writes to us, there will have been an in-depth examination by the department of how the criticisms of Tees Valley's arrangements could not occur in all of those other authorities. I hope that I am making myself clear: there needs to be an examination of the constitutional and working arrangements in all those combined authority areas.

Baroness Scott of Bybrook (Con): I agree with the noble Lord. This is what we will do: we will look at the report in detail and respond accordingly on the things in the report that reflect, first, on the department itself and, secondly, on future combined authorities of whatever type because of the importance of that.

There are currently no limits on mayoral precepts; the power does exist to set limits. That would need the approval of the Commons, though, if it were to happen so we will watch that as it moves forward. I think it was the noble Baroness, Lady Taylor of Stevenage, who brought up the issue of a political adviser. The combined county authorities can have one political adviser; the post, like local authority political advisers, is not politically restricted in the way that other officers' posts are, but they can have one.

6 pm

There was quite a lot of discussion, as always, on the engagement with district councils and the role they play. They are not losing any of their powers—I think we have discussed this enough in other debates—but throughout this whole process, the district councils have been very much part of the discussions and will continue to be so. In fact, not long ago, Minister Young was in Lancashire with its county council, discussing their concerns about the establishment of combined county authorities in that area. I know that the Secretary of State met the District Councils' Network quite recently, at the end of last year, to discuss this whole issue. We are listening to and talking to them throughout this process.

I will just check whether there is anything else; I think that covers most of the questions that were asked. If there is anything that I have missed I will write, as I have said, and put a copy in the Library.

I go back to saying that the important thing about these regulations is that they are widely welcomed by the people of the East Midlands. This is a huge and significant development for the whole of that area, which benefits from having two cities alongside large towns and rural areas, and being the home for industry such as Toyota UK, Rolls-Royce, Alstom and Boots, with expertise in the area in aerospace, rail, life sciences and transport. The establishment of the East Midlands Combined County Authority is an important step in contributing to the Government's levelling-up agenda.

In short, the regulations and the devolution deal they implement will make a significant contribution to the future economic development and regeneration of the East Midlands. That will empower its local leaders to invest in local priorities. Once again, I wish it well and commend the draft regulations to the Committee.

Motion agreed.

Water Industry (Special Administration) Regulations 2024

Considered in Grand Committee

6.04 pm

Moved by ***Lord Douglas-Miller***

That the Grand Committee do consider the Water Industry (Special Administration) Regulations 2024.

The Parliamentary Under-Secretary of State, Department for Environment, Food and Rural Affairs (Lord Douglas-Miller) (Con): My Lords, these regulations and the Water Industry Act 1991 (Amendment) Order are part of a package that updates the water industry special administration regime legislation. The package is made up of two commencement orders and three statutory instruments. The first commencement order was made on 11 January and the two affirmative statutory instruments being debated today were laid in draft on 15 January. The second commencement order and the negative resolution statutory instrument will follow shortly after the affirmatives are debated.

The purpose of these statutory instruments is to enable the Government to facilitate a more effective water industry special administration regime. They apply to England and Wales, and ministerial consent has been secured where necessary. The Government already have powers in the Water Industry Act 1991 to apply to the High Court for a special administration order. However, updates are required as the current legislative regime is outdated and modelled largely on the Insolvency Act 1986, which has since been modernised. The most notable legislative updates were the Enterprise Act 2002; the Small Business, Enterprise and Employment Act 2015; and the Insolvency (England and Wales) Rules 2016. These updates to insolvency legislation are not automatically applied to the legislative framework of the water industry special administration regime. Instead, the Government must assess how to adapt these insolvency law changes to each industry's specific special administration regime. Legislation relating to special administration regimes is laid periodically; recent examples of this are the Payment and Electronic Money Institution Insolvency (England and Wales) Rules 2021 and the Energy Act 2023.

It is vital that the Government are prepared for a range of scenarios, particularly regarding the continued provision of public services. This is why an updated water industry special administration regime is so important. I want to make it clear that the two main grounds on which a water company can enter special administration are unchanged by this legislation. They are insolvency, where a company may be unable to pay its debts or its liabilities are greater than its assets; and performance, where the company has failed to carry out its statutory functions or licensed activities to such an extent that it is inappropriate for the company to continue to hold its appointment or licence. During a special administration regime, customers' water and wastewater services will continue to be provided.

The first statutory instrument for noble Lords' consideration is the draft Water Industry Act 1991 (Amendment) Order 2024. This order implements hive down provisions through amending Schedule 2 to the Water Industry Act, which makes provision about transfer schemes upon the termination of an appointment or the transfer of a licence for a water industry company and is amended by this order to include provisions about transfer schemes in cases where there is a transfer by hive down. This amendment is necessary to ensure that the hive down provisions commenced last month by the Flood and Water Industry Act 2010 (Commencement Order 10) Order 2024 are fully operable. Hive down is a common commercial restructuring practice to ring-fence value and attract potential buyers. This amendment allows the administrator to hive down the regulated business to a subsidiary in order to protect its business and facilitate a sale process that may be more attractive to a potential buyer.

The second statutory instrument that I ask the Committee to consider today is the Water Industry (Special Administration) Regulations 2024. This instrument will apply, disapply and modify general insolvency provisions as they apply in relation to water companies, including licensed infrastructure providers, and special administration orders made in respect of those water companies under the Water Industry Act 1991.

These regulations make general modifications to the Insolvency Act 1986 and other enactments about insolvency provisions, alongside specific modifications to Schedule B1 to that Act. The amendments adapt Parts 26 and 26A of the Companies Act 2006 via specific modifications for the purpose of the water industry special administration regime and amend Section 26 of the Water Industry Act, and Schedule 1 to the Water Industry (Specified Infrastructure Projects) (English Undertakers) Regulations 2013. In addition, this set of regulations will give government the power to lay a negative statutory instrument in the coming weeks, which will revoke the Water Industry (Special Administration) Rules 2009, replacing them with updated special administration rules for water companies, based on the 2016 general insolvency rules.

These statutory instruments update the water industry special administration regime legislation to ensure that, should a water company ever be required to go into special administration, a modern, efficient water industry special administration can be implemented. I am grateful for the support of the Committee and am happy to take questions, which I will endeavour to answer in my closing speech.

Baroness McIntosh of Pickering (Con): My Lords, I am most grateful to my noble friend Lord Douglas-Miller for setting out the content of the SIs before us. I am in great support of them and have just a couple of questions to press my noble friend on.

[Baroness McIntosh of Pickering]

When my noble friend set out the circumstances behind these instruments, he seemed to indicate that we are just putting into effect existing legislation here and updating it. I would just query the timing of this, which was also queried in the House of Commons when these measures were debated there. At the moment, there are additional investments that we are, rightly, asking water companies to make and which are of a very high order: £60 billion of capital investment over 25 years for storm overflows and other investments such as the self-monitoring programme, which was embarked on under the Labour Government and which we vigorously and enthusiastically pursued. Might these additional responsibilities on water companies be causing the Government some concern, or is it literally about putting in and updating the background, as my noble friend set out? Obviously, we all want to ensure that the water companies are fulfilling the legitimate investment that we have asked them to make.

I have a rather cheeky question. My noble friend knows of my interest in Schedule 3 to the 2010 water Act. Why has Schedule 5 been preferred to be implemented before us in these instruments, and when might we get the orders implementing Schedule 3 to the same 2010 Act? That would put into place the sustainable drainage systems and end the automatic right to connect, which has been called for since the Pitt review and surface water flooding of 2007. That is my rather cheeky interjection, which my noble friend might either want to respond to today or write to me on.

Parallels have been drawn in the report before us with energy companies. When energy companies have failed over the last two or three years, the existing customers of a company which was asked to take on the customers of a failed energy company have found, regrettably, that their tariffs and charges have gone up. This is obviously a matter for Ofwat, but can the Government give any undertaking to customers in the event of a water company failing—which, heaven forfend, we would not wish to see—so that, essentially, what happens in the water sector will not be what we saw happen in the energy sector?

6.15 pm

Finally, in what specific circumstances does my noble friend the Minister imagine the special administrator might be applied for? Paragraph 7.6 of the Explanatory Memorandum to the Water Industry (Special Administration) Regulations 2024 talks about, in essence, going into special administration—that is, being allowed to

"restructure its debts and then exit the SAR as a going concern".

Is there a parallel to that in the UK or is chapter 11 in the US the nearest one? I cannot think of any other scenario where a company is allowed to divest itself of its responsibilities and restructure. I am not saying that it is a bad thing but is there a parallel in another area?

With those few remarks, I support the instruments before us this afternoon.

Baroness Bakewell of Hardington Mandeville (LD): My Lords, I thank the Minister for his introduction to these two SIs, which make provision for the continuation of water supply to households should a water company be teetering on the verge of insolvency. I welcome this move to protect householders and businesses if that happens.

A special administration regime—SAR—allows the Government to prepare for all eventualities to ensure uninterrupted provision of this vital public sector service. Each service SAR is unique. Those governing the water industry—the WISAR—are distinct and come into play when a water industry company becomes insolvent. This is obviously a serious matter. I ask the Minister: how many of the country's water companies are on the verge of bankruptcy? Is it a couple or is the prediction in double figures? Is the number of water companies struggling confined to England or are there similar threats of insolvency in Wales, Scotland, and Northern Ireland?

Paragraph 7.5 of the Explanatory Memorandum indicates that the High Court will appoint a person to manage the affected water company and that this will be on the recommendation of Ofwat or a Defra Minister. I would like an assurance from the Minister that this person will not be someone who has previously been involved in the running of the water company under consideration, nor someone who has been involved in the running of another insolvent water company. This must be someone who is completely independent in every sense of the word.

Apparently, the Flood and Water Management Act 2010 (Commencement No. 10) Order 2024 covers the arrangements for hive down provisions, which the Minister referred to. The Explanatory Memorandum states:

"This will allow otherwise viable water industry companies to enter a special administration, restructure its debts and then exit the SAR as a going concern".

Not being a legal expert, I searched for the meaning of a hive down. I found this:

"A hive down is the transfer of all or part of the assets or business of a company to a subsidiary—usually a new subsidiary".

Paragraph 7.6 of the Explanatory Memorandum indicates that this would allow the new subsidiary

"to benefit from potential tax savings".

The process allows new owners to acquire a "clean" water industry company that has no existing liabilities. This is exactly what the current water companies inherited at the point of acquisition in the 1980s.

I sometimes despair at the way in which we as a country conduct ourselves. It seems to me that a water company facing insolvency would welcome the chance to create a subsidiary company, get rid of its debts—or restructure them, as the Explanatory Memorandum euphemistically calls it—and start again, delivering the same lack of investment and poor repair service. Unless I have missed it, there is nothing in the Explanatory Memorandum that prevents previous CEOs or directors carrying on their inefficient ways from the insolvent water company into the new subsidiary. Can the Minister comment on the likelihood of this happening under the proposals for a hive down?

I understand that the SAR rescue purpose applies only where the special administration was based on economic insolvency grounds, not performance grounds,

but I am not sure that that is what the Minister said. Can he give more information on poor performance and not meeting the government-set vital environmental targets and say whether this is also a consideration? Will violation of environmental law constitute a failure to fulfil statutory duty, under the terms of Chapter II of the Water Industry Act? Do the Government commit to applying for a special administration order where a company shows consistent and flagrant breaches of its environmental duties?

Paragraph 7.12 gives a lot of detail about the process with a list of modification orders. These modifications indicate that only the Secretary of State or a Welsh Minister can make an application for a water industry company to go into administration. It further states that the interests of the customer should always be considered. I would have assumed it would be a given that the customer would always be the first to be considered.

There is also a section in the EM, at Paragraph 7.18, indicating that the appointed special administrator's conduct may be challenged by the relevant Minister or Ofwat. Can the Minister give an example of what kind of conduct might qualify for a challenge by the Minister or Ofwat?

There is reference in paragraph 7.21 of the EM to paragraph 91 and the power of the sponsors to apply to the court for the replacement of the special administrator. Since it is necessary to put this information in the EM, this would indicate that it is not a one-off occurrence and is something that has happened in the past. Would the Minister care to comment?

The changes that the Government are proposing will also enhance the ability of special administrators to dispose of fixed-charge property without the consent of the charge holder. In this case, the fixed-charge holder receives only "appropriate value" rather than the standard test of "market value". Can the Minister say whether this will lead to an increase in valuation disputes in challenges to the administration of sales of water company fixed-charge assets?

There has, as usual, been no guidance to accompany this instrument and no impact assessment. The reason given for no impact assessment is that the impact is alleged to be minimal, with the net present value of the SI over a 10-year evaluation period likely to be less than £55,000. Is this £55,000 a one-off or annually? If the latter, that is more than half a million pounds. Can the Minister say whether this figure includes the bankruptcy costs? If the debt is to be restructured so that the new water company can continue debt free, there will surely be some impact on the creditors of the water company at the point of insolvency. Can the Minister comment?

I understand that if a water company is about to be insolvent, something has to be done to allow water and sewage services to be provided on a continual basis to domestic householders and businesses, some of whom use vast quantities of water every day. However, I remain concerned about this process. It seems to me that those who had been running the previous, now insolvent, water company can simply transfer to running the wholly-owned subsidiary which will be set up under the WISAR. I also remain concerned that the SI makes no reference to the sewage crisis. The noble Baroness, Lady McIntosh, referred to that. Can the Minister confirm that the special administrator will be able to discharge environmental duties as well as financial duties?

I realise that I have asked a number of questions, but I hope that the Minister will be able to answer them. The Liberal Democrat policy is to reform water companies into public benefit companies. While this may not solve all the problems of the ailing water industry, it would certainly bring a great deal more transparency to the issues. I am looking forward to the Minister giving considerable reassurance on this extraordinarily complex matter.

Baroness Hayman of Ullock (Lab): My Lords, I start by thanking the Minister for his thorough introduction to these two SIs. As he said, the first one updates the special administration regime for water industry companies, looking at general insolvency issues. We welcome that; it needs to be looked at and sorted out.

The second SI is pretty technical. It allows part or all of a water company's undertaking to be transferred to a wholly owned subsidiary, as we have heard, and for securities to be passed over to another water company. The noble Baroness, Lady Bakewell of Hardington Mandeville, talked about this to some extent, so I will not go into detail, but I stress the importance of minimising costs to the taxpayer if and when the companies need extra support, even if that is temporary.

We support these regulations because they give more security to people's water provision. Clearly, it is essential that customers have a continuous provision of water services, irrespective of how the water company is performing. Water is needed for life, so this is important. However, I am sure that the Minister is extremely aware that further challenges face the water sector at present. Some pretty fundamental issues need to be tackled that clearly go beyond the SIs in front of us.

The fact that these legislative changes are necessary reflects the serious situation in which many water companies are not just failing to protect the environment but struggling financially. The noble Baroness, Lady Bakewell of Hardington Mandeville, asked about the number of water companies that are facing such problems. Of course, Thames Water is the one that has been in the media recently and there have been serious concerns about its solvency, but I also understand that Thames Water, Southern Water and South East Water have been using up to 25% of customer bills to service the huge debts that they have built up. Clearly, the customer should not be picking them up.

The noble Baroness, Lady McIntosh of Pickering, talked about the impact on consumers, picking up on paragraph 7.6 of the Explanatory Memorandum. I underlined the bit that she referred to specifically to ask the same questions that she did, so I would be grateful for a clear answer about that and the impact on consumers in this area, for example.

It is important that we have a radical rethink of how the water sector, regulators and Government all work together to ensure stability. I am sure the Minister

[Baroness Hayman of Ullock]
would agree with me on this, but it would be good to get confirmation that the Government are looking more broadly at stability issues for water companies.

We know that the special administration order is intended to ensure that water services are not interrupted when a water company becomes unviable. The noble Baroness, Lady Bakewell of Hardington Mandeville, talked about environmental duties and impacts which could be interrupted when a company becomes insolvent. I am particularly concerned about that. When this was discussed in the other place, the Minister was asked whether

"the new regulations … guarantee that any special administrator will continue to discharge a company's environmental obligations, including investment commitments under the water industry national environment programme, catchment plans and infrastructure upgrades".

I remind the noble Lord of the Minister's response during that debate. He said:

"Every water company is specifically regulated by the Environment Agency, as well as Ofwat. The Environment Agency will have powers if water companies are owned and operating under the regime they operate under now, or should they enter special administration".—[*Official Report*, Commons, Fourth Delegated Legislation Committee, 6/2/24; cols. 5-9.]

I am not sure whether that answers the question, particularly asked by the noble Baroness, Lady Bakewell, about what those environmental obligations and duties would be if it is interrupted. You may potentially have a gap; how can we ensure that it is managed smoothly if it has been transferred across and who, outside the Environment Agency, is responsible for that? Someone has to report that to the Environment Agency and it has to go through that due process, but where does that environmental obligation sit during an insolvency, potentially with a move to a subsidiary? It may well be that the Environment Agency takes it away and manages that separately, but these things are normally done with Ofwat and all the water companies together. I just want clarity around that. In talking about clarity, I hope that I have made myself clear.

6.30 pm

On that note, I support the questions from the noble Baroness, Lady Bakewell, on whether a breach of environmental law constitutes a failure to fulfil the statutory duty under the terms of Chapter II of the 1991 Act. That is an important point to pin down.

Having said all that, as I mentioned earlier, we support these SIs. We think they are important, but we need to ensure that there is proper consideration of how water companies manage their environmental responsibilities.

Lord Douglas-Miller (Con): I thank noble Lords for all their questions, which I will now endeavour to have a go at, and for their very welcome support for these instruments. As I mentioned in my opening speech, these statutory instruments will enable the Government to facilitate a more effective, efficient water industry special administration regime, ensuring that we are prepared for all eventualities to ensure the uninterrupted provision of vital services. A number of noble Baronesses touched on that today.

I will start with the several questions asked by the noble Baroness, Lady McIntosh of Pickering. I might have three out of four answers for her; the second one probably eluded us all.

Everyone will be aware that there has been some recent instability and speculation around the financial resilience of some of our companies in the water sector. This has led Defra to carry out due diligence work on our water industry special administration regime legislation. This exercise identified unmodernised provisions in the current legislative framework. These statutory instruments update water industry special administration regime legislation to ensure that it reflects modern insolvency practices, as is the case for special administration regime legislation for other public services. Ensuring that legislation on special administration takes account of modern insolvency and business practices is important, regardless of the financial resilience of the sector, to ensure proper preparedness.

The noble Baroness, Lady McIntosh, also asked whether customers will be paying for water companies' failures. I think that was the gist of her question, which cropped up in a number of noble Lords' concerns. I want to make it clear that we will always act to protect consumers as a priority. Any intervention that puts pressure on the public purse will be considered very seriously and only as a last resort. The purpose of being able to utilise a more efficient insolvency practice is to protect consumers and ensure not only that they do not pay for those mistakes but, more importantly in the short term—a point raised by the noble Baroness, Lady Hayman—that we can provide that service. We can have an argument later about who paid for what and whether somebody needs some money back, but it is crucial that that service—water and wastewater—is delivered for everybody. That would be critical if we had to go through an insolvency, so I reassure the Committee on that front.

The final question that I can answer from the noble Baroness, Lady McIntosh, is whether the public would end up paying to bail out a company in special administration. I again make it clear that we will always act to protect consumers as a priority and that, as I have said, any intervention that puts pressure on the public purse would be considered very seriously and as a last resort.

The noble Baroness, Lady Bakewell, asked a lot of questions. I am not sure that I will get to all of them but I will reflect on the ones I have missed and make sure that she gets a written response. The first question was about the Government's position on Thames Water. As the noble Baroness is probably aware, water companies are commercial entities; it is not appropriate for me or any member of the Government to comment on the position of a specific company. It is for the company and its investors to manage the company's financial resilience in the context of its licence and broader statutory obligations.

The second question was about why no companies are listed in Ofwat's leading category, or how many are failing—I think that was the gist of the noble Baroness's question. It is clear from Ofwat's performance report that there has been a marked decline in the performance of a number of water companies over the past year or

so. This has been driven by company-specific factors but also by the effects of extreme weather, including an unusually hot, dry summer and a winter that brought multiple freeze-thaw events in 2022 and 2023. There are also live enforcement cases against six companies, which precludes a leading rating where an enforcement case is under way. Specifically, there was a question on how many companies we think are going to fail; I am not aware of any companies that are about to fail. I do not have any information on that at all.

The third question was about why the hive down provisions have been introduced. Without them, only a direct sale of assets would be possible. This is likely to be much more expensive and complex to implement from a tax perspective as you would not benefit from the no-gain, no-loss treatment on transfer. It is probably also important to recognise that, if you get to the point of insolvency, the quickest route to providing the services that are absolutely critical is to package up what the company has to deliver in that hive down and get it back into the hands of somebody who can operate the business in the most effective way. Tying it up, with all the debt and the other complications that go with an insolvency, will just complicate and delay the issue.

I turn to the question from the noble Baroness, Lady Bakewell, about breaching environmental standards. As I stated in my opening speech, a water company can be placed into special administration on performance grounds where there is either a serious breach of their principles or statutory duties or an enforcement order that it is no longer appropriate for it to continue to hold its licence. One of the principal statutory duties held by a water company is under Section 94 of the Water Industry Act 1991, which says that a water company has a duty to deal with the contents of sewers effectually and provide the necessary infrastructure for that purpose, including meeting the requirements of the Urban Waste Water Treatment (England and Wales) Regulations 1994. This is key as, without treatment, urban wastewater has significant adverse impacts on our water environment.

Finally, the noble Baroness, Lady Hayman, asked a number of questions. I think I have touched on a few of them as I have gone through here. One of the issues that she focused on specifically was how Ofwat will regulate underperformance. Following the publication of its performance report in November 2023, Ofwat published the financial penalties and payments for all water companies. Ofwat required 13 companies to return £193 million to customers for underperformance in 2022-23. This money will be returned to customers through bills over the 2024-25 year. On the action that the Government are taking on underperformance, industry performance is below the level that the Government and regulators expect and the Government are taking action, alongside Ofwat, as we progress.

Baroness McIntosh of Pickering (Con): Both the noble Baroness, Lady Bakewell, and I asked about the unusual position in which we will find ourselves, where a subsidiary company can be set up, meaning that the company is not competitive or living up to its responsibilities financially. I drew the parallel with chapter 11. Is this the first time that we have done this in the UK or is there another parallel? My noble friend could write to me on this.

Lord Douglas-Miller (Con): It might be easier if I wrote specifically on that. Is my noble friend referring to the special administrator's duties?

Baroness McIntosh of Pickering (Con): If I have understood correctly, if a subsidiary company is set up for the purposes of the company continuing to act, does that mean, as with chapter 11, that it does not need to pay off its creditors or debtors? Is this the first time that it has happened in this country?

Lord Douglas-Miller (Con): I am a little unsure on that, so perhaps the best thing for me to do is write.

I think we have covered the questions for which I have answers, and I will write to the noble Baronesses on a number of other questions. With that, I commend these instruments to the Committee.

Motion agreed.

Water Industry Act 1991 (Amendment) Order 2024

Considered in Grand Committee

6.42 pm

Moved by ***Lord Douglas-Miller***

That the Grand Committee do consider the Water Industry Act 1991 (Amendment) Order 2024.

Motion agreed.

Committee adjourned at 6.42 pm.