

PARLIAMENTARY DEBATES

HOUSE OF COMMONS
OFFICIAL REPORT
GENERAL COMMITTEES

Public Bill Committee

NATIONALITY AND BORDERS BILL

Seventh Sitting

Thursday 21 October 2021

(Morning)

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CLAUSE 10 under consideration when the Committee adjourned till this day at Two o'clock.

No proofs can be supplied. Corrections that Members suggest for the final version of the report should be clearly marked in a copy of the report—not telephoned—and must be received in the Editor’s Room, House of Commons,

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Monday 25 October 2021

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The Committee consisted of the following Members:

Chairs: SIR ROGER GALE, †SIOBHAIN McDONAGH

Anderson, Stuart (<i>Wolverhampton South West</i>) (Con)	† McDonald, Stuart C. (<i>Cumbernauld, Kilsyth and Kirkintilloch East</i>) (SNP)
† Baker, Duncan (<i>North Norfolk</i>) (Con)	† Owatemi, Taiwo (<i>Coventry North West</i>) (Lab)
† Blomfield, Paul (<i>Sheffield Central</i>) (Lab)	† Pursglove, Tom (<i>Parliamentary Under-Secretary of State for the Home Department</i>)
† Charalambous, Bambos (<i>Enfield, Southgate</i>) (Lab)	† Richards, Nicola (<i>West Bromwich East</i>) (Con)
† Coyle, Neil (<i>Bermondsey and Old Southwark</i>) (Lab)	† Whittaker, Craig (<i>Lord Commissioner of Her Majesty's Treasury</i>)
† Goodwill, Mr Robert (<i>Scarborough and Whitby</i>) (Con)	† Wood, Mike (<i>Dudley South</i>) (Con)
Gullis, Jonathan (<i>Stoke-on-Trent North</i>) (Con)	
† Holmes, Paul (<i>Eastleigh</i>) (Con)	Rob Page, Sarah Thatcher, <i>Committee Clerks</i>
† Howell, Paul (<i>Sedgefield</i>) (Con)	
† Lynch, Holly (<i>Halifax</i>) (Lab)	
† McLaughlin, Anne (<i>Glasgow North East</i>) (SNP)	† attended the Committee

Public Bill Committee

Thursday 21 October 2021

(Morning)

[SIOBHAIN McDONAGH *in the Chair*]

Nationality and Borders Bill

Clause 10

DIFFERENTIAL TREATMENT OF REFUGEES

11.30 am

Stuart C. McDonald (Cumbernauld, Kilsyth and Kirkintilloch East) (SNP): I beg to move amendment 88, in clause 10, page 13, line 13, leave out paragraph (a).

This amendment would remove a provision allowing the Government to treat refugees differently depending on whether they are Group 1 refugees or Group 2 refugees.

The Chair: With this it will be convenient to discuss the following:

Amendment 89, in clause 10, page 13, line 15, leave out paragraph (b).

This amendment would remove a provision allowing the Government to treat refugees differently depending on whether they are Group 1 refugees or Group 2 refugees.

Amendment 90, in clause 10, page 13, line 17, leave out paragraph (c).

This amendment would remove a provision allowing the Government to treat refugees differently depending on whether they are Group 1 refugees or Group 2 refugees.

Amendment 91, in clause 10, page 13, line 19, leave out paragraph (d).

This amendment would remove a provision allowing the Government to treat refugees differently depending on whether they are Group 1 refugees or Group 2 refugees.

Amendment 92, in clause 10, page 13, line 25, leave out paragraph (a).

This amendment would remove a provision allowing the Government to treat refugees' family members differently depending on whether the refugee is a Group 1 refugee or a Group 2 refugee.

Amendment 93, in clause 10, page 13, line 26, leave out paragraph (b).

This amendment would remove a provision allowing the Government to treat refugees' family members differently depending on whether the refugee is a Group 1 refugee or a Group 2 refugee.

Amendment 94, in clause 10, page 13, line 28, leave out paragraph (c).

This amendment would remove a provision allowing the Government to treat refugees' family members differently depending on whether the refugee is a Group 1 refugee or a Group 2 refugee.

Amendment 95, in clause 10, page 13, line 30, leave out paragraph (d).

This amendment would remove a provision allowing the Government to treat refugees' family members differently depending on whether the refugee is a Group 1 refugee or a Group 2 refugee.

Stuart C. McDonald: It is a pleasure to see you in the Chair again, Ms McDonagh. I will also speak to the other amendments in the group.

We have now come to one of the most fundamental clauses of one of the most fundamental parts of the Bill. As my hon. Friend the Member for Glasgow North East and I set out on Second Reading, we regard both as totally outrageous. In essence, the avowed policy aim is to give the Secretary of State powers to treat certain refugees dreadfully in order to deter others from coming to this country. I find it extraordinary just to be saying that.

Over the course of this debate and the three to follow, we will ask lots of questions in the hope that the Minister will explain a little more what the Government intend to do with these extraordinary powers. We will also challenge the legal policy and, indeed, the ethical basis. We will make the case that in fact the clause will make the asylum system worse, not better. To all intents and purposes, the measure is an attempt to close the asylum system down to a large degree.

There are all sorts of problems with the asylum system: 70,000 asylum applicants were waiting for a decision as of June 2021, more than three quarters of them outstanding for longer than six months. Work has to be done to fix the system, but this measure is not what is required. In fact, as I said, the clause will make it worse.

Most of the broad discussion will take place in the stand part debate; the amendments are designed more to get the Government to flesh out exactly what they want to do with the powers. In doing so, as on Second Reading, I will speak about the implications for a Uyghur asylum seeker, a Syrian asylum seeker and a persecuted Christian seeking asylum, because I want to ensure that the Home Office is tested on its assertion now, and later on Windrush, that it is looking at the face behind the case—it is important to keep in mind who we are talking about. The clause will be particularly disastrous, allowing the Secretary of State almost to punish the individual, to make an example of them, as a form of deterrence.

Of the amendments in the group, amendments 88 and 93 would remove the power to grant so-called group 2 refugees and their families shorter periods of leave to enter or remain. Currently, refugees receive five years' leave before becoming eligible for settlement. Nothing in the Bill or the explanatory notes tells us what the Government intend to do with the powers. The new plan talks vaguely of no longer than 30 months, with continual assessments thereafter of potential return to a country of origin or of removal to another safe country. My first question is, what is the Government's proposal? Is it 30 months or, as dreadful as that prospect is, is it worse? Will it be a shorter period?

That is my first question, but the key point is that reducing leave to 30 months or less will have dreadful consequences for our three refugees. Having fled serious persecution, having endured a dreadful journey and having survived six months or more of going through the tortuous inadmissibility procedure—perhaps even an asylum claim—within an accommodation centre, our refugees require stability, a sense of home and the possibility of putting down roots, finding work and rebuilding their lives. All that is being taken away if the powers in the Bill are used as proposed in the new plan.

Mr Robert Goodwill (Scarborough and Whitby) (Con): Would the hon. Gentleman describe a person who has come directly to the UK from France as a person escaping persecution? If so, will he describe the sort of persecution that that person might have experienced in France?

Stuart C. McDonald: That point was made repeatedly on Second Reading, but the big problem with the right hon. Gentleman's question is that the language of the Bill itself recognises that such people are refugees. The Uyghur is clearly fleeing persecution, the Syrian is fleeing persecution by the Assad regime and the persecuted Christian is fleeing persecution. A refugee does not cease to be a refugee because he has gone on to a different country. We will come to a different debate under clause 14 on the circumstances in which it might sometimes be legitimate for a state to say, "Actually, you are in France and it would be appropriate for France to assess your asylum claim." I am not saying that is never permissible—far from it—but we will have that debate on clause 14.

The people we are talking about here, however, have been through all that. The Home Office has attempted to move them to France or another country, it has not had any success in doing so and they have been recognised as refugees, so the question is how we treat those three people.

Neil Coyle (Bermondsey and Old Southwark) (Lab): Does the hon. Gentleman share my concern that those who purport to demand that France take more asylum seekers need to be mindful of the fact that France already takes three times as many asylum seekers as the UK, and that we need to meet our international obligations rather than seeking to demand that others take more of a share than we are taking?

Stuart C. McDonald: I agree with the hon. Gentleman. That is exactly why the Government are embarking on a dangerous slippery slope. If the case is that the UK cannot cope with the number of asylum claims that have been made here, which I do not think can remotely be the case, because it is not a remarkable number in the grand scheme of things over the past 25 or 30 years, and therefore we need to take all these steps, then clearly France and Germany and Italy will all be perfectly entitled by that same logic to do the same thing. When that chain of dominoes finishes up and we get to Lebanon and Pakistan, the countries neighbouring the countries where these people have been persecuted, the whole system of international protection falls apart.

Returning to the point I was making about how reducing the period of leave will be fundamentally detrimental to people's ability to put down roots, to integrate and to feel part of UK society, I wanted to finish by saying that the VOICES Network, people who know the asylum system first-hand, in their response to the new plan consultation remarked that the proposal would

"perpetuate the insecurity and uncertainty of the lives of these people with damaging implications for their mental health."

I think they are absolutely right.

I have a number of questions for the Minister. How many people does the Home Office anticipate will fall into this group in the first years of the policy? What impact does he believe the policy will have on the mental health, employment prospects and levels of integration for refugees such as a Uyghur, Syrian or persecuted Christian? It seems apparent to me that the measures will undermine all that. What will happen to children? What will the cost implications be for the local authorities and health services that are supporting them?

Similar moves in Australia have had exactly the impact I am talking about. As the Australian Human Rights Commission reported in 2019:

"Uncertainty about their future, the inability to make long-term plans and the stress associated with having to reapply for protection (including the anticipatory distress of potentially being returned to the country from which they had fled) caused significant distress and anxiety amongst TPV holders, hampered their capacity to recover from past trauma and resulted in poorer settlement outcomes."

The Australian Red Cross said that

"temporary protection institutionalises uncertainty, and often poverty, amplifying pre-existing trauma and suspending the process of settling into a new country."

I have no reason to think that that will not be the fate of the Uyghur, the Syrian or the persecuted Christian if these provisions are enforced for them. That, unfortunately, appears to be exactly what the Government want to achieve, and that is the shame of the whole policy.

On the other side of the coin, given the record delays and problems in processing asylum claims that the Home Office already faces, why on earth do we want to require the Home Office to process the same cases and applicants over and over again over a 10-year period, adding exponentially to caseworker workloads? Can the Minister confirm what exactly the review process will entail? What will be the targeting for these decisions? What happens to refugees whose 30 months or less have expired while they were waiting? How many additional decisions does the Home Office anticipate it will have to make from the third year onwards, and how many extra staff will that require? This is not only disastrous for asylum seekers, but pretty bad news for Home Office caseworkers.

Amendments 89 and 94 would remove the Secretary of State's right to punish a Uyghur, Syrian or persecuted Christian by denying them indefinite leave to remain on the same basis as other refugees. That settlement provides the ultimate safety and security and is currently available after five years. Again, the Bill does not say what the Government's intentions are with this power, but it is understood that they propose 10 years of short-term visas before settlement would become available. Can the Minister confirm precisely how the Secretary of State intends to use these powers? What else will be required of a refugee at the 10-year stage? Will there be a fee? What tests will we require to be met? These arguments are similar to those I made for amendments 88 and 93, so I will not repeat them. The key point is the same: instead of offering security, integration and the opportunity to rebuild their lives, the Syrian, the Uyghur and the persecuted Christian have been faced with uncertainty, re-traumatisation, stress and anxiety.

Amendments 90 and 95 are designed to remove the Secretary of State's power to impoverish these three asylum seeker groups. The power would see universal credit, child benefit and local authority homelessness assistance among the crucial safety nets torn away from them. The explanatory notes say that the power will not be applied in cases of destitution. Minister, if the power must be kept, why not put that in the Bill? Fundamentally, how will it work, and how will it be assessed? Especially after months and years of being excluded from work, refugees will be destitute from the point that they are recognised. Will it happen automatically? How will the Secretary of State review that? How much more work will that entail for Home Office staff?

Mr Goodwill: Does the hon. Gentleman not agree that these amendments play into the business model of the people smugglers in that they would discourage people from claiming asylum in the first safe country they reach, tempting them to make the hazardous journey in a non-seaworthy craft across the channel, feeding into the organised criminals who prey on those poor vulnerable people?

Stuart C. McDonald: I have absolutely no problem with measures that go after the people smugglers. We all share the goal of disrupting their model. We draw the line at punishing the victims and going after them in an attempt to disrupt and undermine people smuggling. First, I find that morally indefensible. Secondly, as I will come to later, there is no evidence that it will work.

Neil Coyle: Does the hon. Gentleman share my concern, which is twofold? First, the best way to tackle the people smugglers is to provide safe routes, because then they are denied the chance to smuggle people to begin with. Secondly, a Xinjiang Muslim who faces forced sterilisation and forced labour is not going to be aware of UK law and what status they enter under. It is complete nonsense to think that refugees and asylum seekers fleeing persecution and torture are going to be aware of UK law, whatever goes into the Bill.

Stuart C. McDonald: I absolutely agree. The hon. Gentleman makes two points. Yes, safe legal routes can and will make an impact. If people have safe legal routes, they do not need to turn to people smugglers. The Government acknowledge this when they speak about the safe legal routes they support.

There are various other measures we have to take. Our intelligence and police and security forces need to do everything they can to interrupt these networks. It is about international co-operation, including with France, as the Minister alluded to at Home Office questions on Monday. We support those measures, but we do not support deliberately impoverishing the Syrian, the Uyghur and the persecuted Christian and denying them universal credit, homelessness assistance or the child benefit that other citizens in this country get if they need it. I will come back to that in the clause stand part debate.

The Home Office knows this. It did research 20 years ago. If it has done any more since, it is not published. There is no evidence to show that people sit down with a nice table comparing family reunion rights and asylum procedures in all the different countries and then say, "Let's go for that one." They come here for a whole host of reasons. Many go to other countries for a whole host of reasons—language, family links, the influence of people smugglers, or they may have a friend or colleague here. Perhaps they just identify with the culture. There are myriad reasons why people end up in France or the United Kingdom, but it is not for these reasons. That is why these provisions will not work.

Mr Goodwill: Does the hon. Gentleman agree that one of the other reasons people come to the UK is that the payment to the people smugglers is only the deposit and the main payment is through modern slavery, forced labour or other ways in which those people are being exploited when they get here? Often, for example, Vietnamese people coming here are put into prostitution

or nail bars and that type of work. That is why they want to get here, because that is the business deal. They come here to work in the black economy.

11.45 am

Stuart C. McDonald: The right hon. Gentleman fairly describes the circumstances that many find themselves in and it is another policy route that I would be fully behind. In this country, we are way behind where we need to be. We have statutes on the book and we will come to modern slavery later, but some of the measures in part 4 of the Bill will undermine the Home Office's good work on modern slavery from just a few years ago, which the right hon. Gentleman was part of. Even with those statutes on the book, the system for inspection and finding where this is happening is just not up to scratch. The national referral mechanism takes forever to make decisions. The way it has been implemented is not effective at all; in fact, it is a boon to people traffickers and people who undertake exploitation. So yes, I am happy to support any work that addresses those concerns.

Amendments 91 and 92 would remove the Secretary of State's power to strip the Syrian, Uyghur or persecuted Christian of their right to family reunion—the right of the Secretary of State to keep their families split apart. Under current law, having been recognised as a refugee, they could apply for reunion with their spouse or partner and with children under 18. For years, parliamentarians across the House have been pushing for broader family reunion rights and it is only a few years since Parliament voted in favour of the private Member's Bill that my hon. Friend the Member for Na h-Eileanan an Iar (Angus Brendan MacNeil) promoted on the subject. It is another crucial building block in allowing refugees to rebuild their lives, as that Bill recognised.

The Government say it is all about safe legal routes, but this is pretty much the only place where the Bill says anything about them, and now it seems the Government intend to reduce family reunion rights. The crucial question for the Government is simply: is that correct? How will they use the power? Will they prevent spouses and partners from being reunited? Are they going to prevent children from reuniting with a parent? Family reunion is probably the most pivotal safe legal route there is to safety in the UK and it is all the more imperative because without the safe legal route, it seems obvious that the most likely people to try to come here via unsafe routes are those who have family members here.

With around 6,000 family reunion visas issued every year over the past five years, let us also be clear that around 90% are issued to women and children. The real danger is that any restrictions will ultimately mean that many more women and children end up on the boats in the channel or taking other unsafe routes. The danger here is that the Government do the opposite of what they say they intend, and drive people into the arms of the smugglers the Bill is designed to foil.

Again, that is what the Australian experience tends to show us. The Kaldor Centre for International Refugee Law notes that after temporary protection visas were introduced,

"there was an increase in the number of women and children who arrived in Australia by boat. According to personal accounts, this was because the TPV regime precluded family reunion. The ineffectiveness of TPVs is the very reason that they were abolished by the Rudd Government."

Instead, we should do what my hon. Friend's Bill would have done: expand rules to allow adult children and siblings up to 25 and make other changes. That would reduce the numbers in boats.

In conclusion, all the examples of discrimination in the Bill are just that: examples. The Bill is drafted so as to leave the Secretary of State's power to discriminate completely and utterly unconstrained. That is pretty shocking. While the amendments test the Government on their intentions in relation to those particular subjects, it is also important to know that the Secretary of State could plan all sorts of other forms of discrimination. Can the Minister clarify what other methods of discrimination the Secretary of State is contemplating?

Anne McLaughlin (Glasgow North East) (SNP): Thank you, Chair, and good morning, everybody. The Government say they are introducing this Bill because they want people who need our protection to use safe and legal routes, but where are those routes? Where in the world and where in the Bill are they? On several occasions, the Minister has made it sound as if this Bill is all about those safe and legal routes, but it is not, because there is no provision for them and they are barely even mentioned.

I have heard those of us who oppose what the Bill does characterised as wanting people to make those dangerous journeys. Of course we do not want that. Our solution is the safe and legal routes that we keep hearing about but not have. They need to be set up and promoted, and people need to be able to use them. One of the safer legal routes that does exist, and is the most likely to be used, is the family reunion route, but this Bill takes that away from people who do not arrive by the mode of transport or in the way that the Government want them to.

Turning to amendment 91, I want to use the example of somebody from Afghanistan, which will also speak to amendment 15. I am using the examples of people, or their family members or friends, who I represent—I know that we were all inundated with requests from people in our constituencies who needed help for people in Afghanistan.

Mr L worked for a British charity in a programme funded by the UK Government around preventing violence against women. He has made an application for relocation, but he has heard absolutely nothing and I cannot get him any information. He and his wife had to go into hiding because his family was being targeted. The Taliban have already made threats against his wife, who, like him, is just 22 years old. The Taliban got messages to her that she will be raped multiple times if they can find her. His father has already been kidnapped by the Taliban and has been tortured by them. Who knows what will become of him?

Mr L's wife has had such a severe mental breakdown that he had to make the decision to send her to what he hopes is a safe house in Afghanistan, as he thinks he has more chance of securing relocation for him and his wife if at least one of them can get out of Afghanistan. He is now paying illegal traffickers to get him out because he is so desperate to get this situation resolved and is hearing nothing, and weeks and months have gone by. Of course the traffickers are wrong, but is he wrong? Is he wrong to pay them? If he is wrong, what should he do instead? What options have we given him? I do not want him to do this. As an MP, I am not in a position to

give him any kind of legal advice, and I know this is not safe for him to do. Does the Minister want me to go back to him and say that, despite all the promises we made to the people of Afghanistan, I do not have options to offer him?

I want to quote a couple of things that were said by Conservative MPs in August, when everything escalated in Afghanistan. The right hon. Member for South West Surrey (Jeremy Hunt) said:

“There is something we can do right now: cut through bureaucracy and ensure that we look after every single Afghani who took risks for themselves and their families because they believed in a better future and trusted us to deliver it.”—[*Official Report*, 18 August 2021; Vol. 699, c. 1307.]

I am sure we all agreed with that at the time. The right hon. Member for Esher and Walton (Dominic Raab) said:

“Like the Home Secretary, let me just say that, as the son of a refugee, I am deeply proud that this Government are continuing the big-hearted tradition of the British people in offering safe haven to those fleeing persecution.”—[*Official Report*, 18 August 2021; Vol. 699, c. 1370.]

The right hon. Member for Scarborough and Whitby gave a welcome from the Scarborough community and talked about

“refugees who had left, in many cases with nothing more than the shirts on their backs. They will have gone through a very traumatic process to even get to the airport and now they have arrived in Scarborough. For many people, the consequences of not getting out of the country would be certain death.”

So, I know he completely understands the trauma that people are going through and their desperation.

That was in August and we are now in October. The people I am talking about are no less desperate—they are more desperate—and I do not know what to say to them. I will have to tell Mr L that if he somehow manages to have his wife looked after, while she tries to recover her mental health, and he manages to get here, he could be offshored, sent away or jailed. He may never see his wife again because we will take away the right to family reunion. That cannot be right.

The people of Afghanistan are desperate—I have read out only a few of the quotes, but I know that all members of the Committee understand that. Time is just not on their side, so we must remove the provision—I would remove all of it. I ask the Committee to support amendment 15, at least to remove those consequences for the people coming from Afghanistan, to whom we absolutely owe safe refuge.

Mr Goodwill: Does the hon. Lady accept that the 242 Afghan refugees who are temporarily in Scarborough before being relocated around the country came here by safe and legal routes? I am sure that when the Minister responds, he will explain how we can set up different, and better, legal routes to get some of those vulnerable people here. That must not be done by feeding into the people-smuggling industry.

Anne McLaughlin: I absolutely endorse the ambition for everyone to be able to get here by safe and legal routes, but nothing in the Bill will set up any safe and legal routes. In fact, they will be taken away from some people.

We should be doing that, but we will never be in a position where everybody is able to access safe and legal routes. We will never be in a position where everybody

[*Anne McLaughlin*]

who is entitled to claim asylum can access it, and we should not be punishing them if they cannot. Right now, there are 242 people in Scarborough, but how many thousands more are there in Afghanistan? They need to get out. If they feel that their lives are at risk and they cannot stay any longer, but they can only get here by their own means—I would rather they came by the Government's means, but nothing is happening there—I could not say to them, hand on heart, that they should just stay where they are.

Paul Blomfield (Sheffield Central) (Lab): To respond to the earlier intervention, does the hon. Lady recognise that people from Afghanistan are currently one of the four largest national groups risking their lives on channel crossings?

Anne McLaughlin: Absolutely, and I thank the hon. Gentleman for reminding me of that. For me, it is wider than that: Afghanistan just showed us what is happening throughout the world. It may have been escalated and was very intense at the time, but things like that happen throughout the world. Right now, people from Afghanistan are coming over by boat, and honestly—I am looking at the right hon. Member for Scarborough and Whitby, but I should really be looking at the Minister—I do not think that anyone can morally justify telling those people that they face jail or offshoring, and that they may never see their families again because of new rules that we are introducing.

Mr Goodwill: Nobody doubts anyone in this Parliament on their compassion or their feeling for people who are in very vulnerable situations. We should not agree, however, on the route that the hon. Lady is almost advocating—using people smugglers—which is, in effect, means-testing the refugee process so that only those who have the money to pay the people smugglers can come, not the people who are perhaps most vulnerable and most likely to be suffering persecution. Indeed, the gender balance favours men, who seem to be the ones who get here by illegal routes, and not women, who are the most vulnerable people in Afghanistan.

Anne McLaughlin: I do not know where to start with that. I take real exception to what the right hon. Gentleman said about my endorsement of people smugglers and those routes. I have been very clear that we do not want anyone to use people smugglers. I have given the Committee an example of somebody's experience, and perhaps the right hon. Gentleman can tell me what that man should do. His wife is seriously ill and is being looked after following a mental breakdown, because the Taliban told her that many of them will rape her multiple times if they catch her. How desperate would any of us be in that situation? I am not endorsing people smugglers in any way, and I wish he would take back that remark, because it is very unfair.

Another thing I want to mention, as I have a number of times in this place, is the gender balance. To say that men are not vulnerable is just not true. Often, men seek asylum because they would otherwise be conscripted into the army or tortured. I know many male asylum seekers who faced torture or conscription and had to flee. The other reason that more men come over is that they are coming to safety so they can then send for their family.

As my hon. Friend the Member for Cumbernauld, Kilsyth and Kirkintilloch East said, all the measure will achieve is that women and children will come with the men and make that dangerous journey as well. He said something else that, if I remember, I will come back to later

12 noon

Mr Goodwill: I was not suggesting that the hon. Lady was advocating people smuggling, but unfortunately the law of unintended consequences comes into play. Taking Syrian families under our vulnerable persons resettlement scheme was the right way to proceed. None of the people I visited in refugee camps in Jordan had the means to pay people smugglers. In many ways, it is a means-tested operation if the route used by people smugglers is perceived to be of equal standing to legal and lawful routes, like those by which we took people from Afghanistan and took the people chosen by the United Nations High Commissioner for Refugees in refugee camps in Syria.

Anne McLaughlin: I give way to the hon. Member for Halifax.

Holly Lynch (Halifax) (Lab): I remind the hon. Lady of the right hon. Gentleman's earlier point. Unfortunately, the abhorrent models of people smuggling result in people coming to this country who are locked into debt relating to their journey. It is not as simple as saying it is means tested. There are lots of unfortunate arrangements in that model, which we all want to end, but safe and legal routes will be how we achieve that.

Anne McLaughlin: Exactly. I thank the hon. Member for saying that. The right hon. Member for Scarborough and Whitby argues that those who have money are not vulnerable or in danger of persecution. In the case of the 22-year-old I was talking about, I have no idea how much money the couple have. They may be wealthy beyond our wildest dreams, but that does not stop her being under threat of multiple rapes by the Taliban. The money is a bit of a red herring.

Often, a vulnerable young man will pay the people smugglers with money gathered by the wider family selling property, because they need somebody to get out and get help for the whole family. We cannot assume that they have the money in the first place, or that they are not clocking up a debt that they will have to pay back, or that the fact of having money will make any difference to their safety.

The right hon. Gentleman says that the effect of my opposition to the proposal leads to people not using safe and legal routes. He says that he is not saying that I am endorsing the people smugglers, but equally, I could say that his refusal to push his Government to set up safe and legal routes before bringing in any other legislation is a case of him endorsing people smugglers. What other option do people have? Now, I am not saying that, but I hope he takes my point.

Mike Wood (Dudley South) (Con): The hon. Lady is misrepresenting the point my right hon. Friend made. He was not in any way suggesting that those with wealth cannot be vulnerable, but it cannot possibly sit comfortably with people who describe themselves as socialist to suggest that there should be channels that

are, in effect, available only to those with substantial wealth, on a scale different from much of the rest of the vulnerable population.

The Chair: Order. I am sorry to intervene, but I think we have to stop reinterpreting what the last person to speak said. We are all quite clear that no one in this room supports people traffickers. We should move on.

Anne McLaughlin: Thank you, Ms McDonagh. That was a rather ridiculous intervention, so I was unsure whether to reply to it.

Neil Coyle: As UK law stands, an Afghan who had dared to work for and with the UK, protect the UK, in the past 20 years or so—perhaps as a guard at the embassy in Kabul—and who feared the threat to their family of the Taliban takeover so much that they gave their child to the US to evacuate from the country, cannot come into the UK under the family reunion visa. Perhaps one thing that we can agree on, and that the Minister could include in the Bill, is an extension of the family reunion visa beyond spouses and dependants.

Anne McLaughlin: I would absolutely support that. I had no intention of speaking for any more than five minutes, but Members keep on interrupting and goading me. I want to make two more little points, if I may. The Bill is being brought in because there is a mistaken belief that asylum seekers across the world are desperate to get to the UK. I am not sure why they would be if they ever watch parliamentlive.tv, but the fact is that most people coming to Europe as a whole think that Europe is one homogenous place. They do not think in terms of countries. This is not anecdotal; studies have been done on people who come to live here. Similarly, people often think that Africa is a country, when it is more than 50 countries.

Asylum seekers are not looking to go to a particular country. If they choose to come to the UK, it is perhaps because they have family or friends here, which is hugely important, or because they speak the language. They do not speak French or German, but they do speak English and do have family here. Imagine the turmoil when people's city is bombed. They do not recognise the streets any more, and they do not know where their family are. They know that they could be raped, tortured or murdered at any moment. Imagine the trauma from that. People know that they have to get away. Of course they do not want to leave, but they have to do so. We should all think about that happening to us. We are so lucky that it will probably never happen to us. If it did, we would want to be with people who made us feel safe. If someone has family or friends in the UK, they should be able to join them. Yes, that is a pull factor, as is the language. There is also a mistaken belief that the great British empire was all-welcoming, all-democratic and all-supportive of human rights, which is another reason why people come to the UK.

The truth is that most people who arrive by boat have not decided that they are coming here; the smugglers have decided it. As my Friend the Member for Cumbernauld, Kilsyth and Kirkintilloch East said, we should be targeting the smugglers, not their victims. We should take away their market, and the only way to do that is to provide the safe and legal routes on which we apparently all agree. But where are they?

I will make one more point, which is about France. We have established that, under the international legislation that the UK played a major role in developing, there is no requirement to claim asylum in the first so-called safe country that somebody arrives in. However, it is important to understand why someone fleeing persecution, and probably suffering from mental health impacts such as post-traumatic stress disorder, might not want to claim asylum in France—I am using France as an example. Why would an asylum seeker choose to make a dangerous crossing? As I said, most people are not choosing; the people smugglers are choosing. Why might they choose to make a dangerous channel crossing, when they could claim asylum in France? I have spoken about the fact that people do not choose their route, but it is well established that the asylum system in France has a reputation for being harsh. I know there are Members present who like the idea of harshness, but we do not.

A 2020 ruling by the European Court of Human Rights condemned France for inhumane living conditions for asylum seekers. Having spent a few days with my hon. Friend the Member for Cumbernauld, Kilsyth and Kirkintilloch East in the jungle in Calais a few years ago, I saw exactly what the court meant. France might take in many more people than we do in the UK—I believe that we do not treat asylum seekers as well as we should do when they arrive here, and we certainly will not do so if the Bill passes—but France is not where I would want to be if I needed international protection, especially if I had to recover from trauma.

Even during the pandemic last year, when we all agreed that there should be a break in evictions and that everyone should have a roof over their head, asylum seekers sleeping in tents in France were thrown out of their tents and tear-gassed, no doubt triggering terrible memories for many of them. When I was in the jungle, parents there told me that their children no longer played in the little playpark nearby because far-right activists set off fireworks to terrify them, and terrify them it did, as these kids fled, thinking that they were being bombed again.

In addition, the housing situation for asylum seekers in France has only got worse, with asylum seekers such as Hussain, interviewed by the New Humanitarian in April, being forced to sleep rough on the streets of Paris over a year after he submitted his application. The French National Consultative Commission on Human Rights went so far as to say:

“It is true that the conditions in France make people want to leave”.

Nicolas De Sa-Pallix, a French asylum lawyer, condemned the French Government's approach, and his words should act as a warning for Government Members:

“They talk about being both humane and tough in migration policies, but these don't go together... You can't have both.”

I agree, so why not just respond to the plight of these people, facing things that none of us will ever have to face, with humanity?

Bambos Charalambous (Enfield, Southgate) (Lab): We have heard two excellent speeches, and the Opposition totally support the position of the Scottish National party.

The Parliamentary Under-Secretary of State for the Home Department (Tom Pursglove): I thank the hon. Members for Cumbernauld, Kilsyth and Kirkintilloch East and for Glasgow North East for all their hard work in this area, and for their engaging speeches. I do not doubt for a moment the sincerity of their contributions. Nobody should be in any doubt about the sincerity of the deeply felt views expressed by all Members of this House, who I genuinely believe want to see appropriate action to tackle dangerous channel crossings. I wanted to make that point at the outset, because it is important to remember that in the context of today's debate.

As hon. Members will know, the clauses that they seek to amend are crucial to the Government's intention to uphold the first safe country of asylum principle. In that respect, the clauses are designed to deter dangerous journeys across Europe by no longer treating migrants who come directly to the UK and claim without delay in the same way as those who do not. I am sure that hon. Members will agree that we must do everything in our power to stop people putting their lives in the hands of smugglers and making extremely perilous journeys across the channel.

Stuart C. McDonald: I echo what the Minister says: everybody present wants to see an end to such crossings. He used the word "migrants" a couple of times, but as the Bill reflects we are talking about people who have gone through the refugee process. They are refugees, and it is very important that in this debate we speak about the fact that this is happening to refugees—hence the term "group 2 refugee".

Tom Pursglove: I am grateful to the hon. Gentleman for his intervention.

I will take amendments 88 to 95 in one go, as they individually seek to remove key constituent parts of clause 10 in order to prevent the exercise of the powers to differentiate. That is not the effect of the amendments as drafted, but I shall none the less assume that the intent is as I just set out. Hon. Members are no doubt familiar by now with the way in which the policy is proposed to operate. For the avoidance of doubt, though, clause 10 provides a non-exhaustive list of examples of where differential treatment may be applied to group 2 refugees—in other words, those who do not meet the requirements set out in clause 10, which are based on criteria set out in article 31 of the refugee convention. That includes in relation to the length of leave issued, requirements to achieve settlement, recourse to public funds and family reunion rights.

As mentioned, the clause is extremely important because it acts on our commitment to do everything that we can to deter people from making dangerous journeys to the UK at the hands of smugglers, when they could claim asylum in a safe third country. I will pick up on a number of important points that were made, as it is right to provide clarification on them.

First, the question was raised of how the Secretary of State intends to use these powers. As we talked about in relation to the earlier provisions in the Bill, this will be set out in the normal way in the immigration rules and guidance in due course.

12.15 pm

With regard to differentiation, a question was rightly asked about the assessment of mental health needs. The process in the Bill contains enough flexibility for decision

makers to take vulnerabilities, such as mental health conditions, into account when determining group 2 status. Details will, again, be set out in guidance, and I would expect that to be properly taken into account when decisions are made on individual cases.

Neil Coyle: The Minister is seeking to reintroduce a system that the UK has used before. In the 1930s, German Jews who had reached these shores were, in some cases, sent back if they had been through other countries. Famously, in one case, Jewish brothers who were deported back to Belgium went on to be murdered by the Nazis. Why are the Government seeking to turn back the clock with such potentially disastrous consequences? Why is the Minister not more proud of the British tradition and of the British contribution to creating the refugee convention?

Tom Pursglove: I thank the hon. Member for that intervention. What I am proud of is this country's long-standing tradition of doing right by those fleeing persecution from around the world. That is a proud tradition in this country, and something that I think Members on both sides of this House can agree on. It is something that this Government remain absolutely committed to. We are very clear that people should come here utilising safe and legal routes. That is the right way to come into this country.

Neil Coyle *rose*—

Tom Pursglove: Let me just make this point, because I am conscious of the comparisons that the hon. Member sought to draw to the 1930s. We are, again, very clear—I say this for the record—that we do not return people to countries where they would be in danger.

Neil Coyle: The Minister simply must give way on this.

Tom Pursglove: I have not accepted the intervention. I would like to finish the point that I was making. We are very clear that we do not return people to countries where their return would put them in danger. Of course, we also look at cases on a case-by-case basis.

Neil Coyle: Will the Minister give way?

Tom Pursglove: I will give way, but I have made this point, and I am very clear about it.

Neil Coyle: The Minister can say it as clearly as he wants. The reality is that I have constituents whose casework—correspondence from the Home Office—tells me that it was safe for them to be sent back to Afghanistan in June, when the Taliban were marching across Afghanistan and beginning to take over the country! There is a big difference between the nonsense and rhetoric we get and the reality—the dangers and risk that this Government are putting people in.

Tom Pursglove: In response to the specifics that the hon. Member is raising on Afghanistan, I would make the point that returns to Afghanistan have been ceased, given the current circumstances, given the circumstances there at the moment. That takes into full account the considerations around the circumstances on the ground

at any given point in time, and the Government have rightly been responsive to that ever-changing situation. I am not able to comment on the detail of the individual cases that the hon. Member is referencing, but I would ask him to please write to me with that detail so that I can take that away and look at it.

Neil Coyle: I think Members will be somewhat sceptical of the invitation to write, given that we were writing about hundreds of cases in Afghanistan in emails that were not even opened by the Foreign Office, the Home Office or the Ministry of Defence. I will write. I will take that opportunity. I still have hundreds of cases, including four Brits who are still in Afghanistan because they were abandoned by this Government. The Minister says he is proud of our tradition and proud that we offer safe and legal routes, but where in this Bill do we extend the ability to access safe and legal routes that avoid the need to use human traffickers and people smugglers?

Tom Pursglove: I thank the hon. Gentleman for that further contribution. I look forward to receiving the correspondence from him—it was a genuine offer made in the right spirit and I look forward to him taking it up.

As I say, this Government have a strong track record of providing safe and legal routes. This country has a proud record of providing safe and legal routes. It does not escape me that overall since 2015 we have settled more than any EU member state. That is something this country can be incredibly proud of. Various examples of safe and legal routes that people may avail themselves of include the UK resettlement scheme, the mandate resettlement scheme and the community sponsorship scheme. I am keen for communities to participate in that sponsorship scheme.

Neil Coyle: Will the Minister give way?

Tom Pursglove: I have been generous, but I will give way once more.

Neil Coyle: I welcome the Minister's generosity and I am grateful for it, as I am sure Afghans will be if he can tell us when the Afghan citizens resettlement scheme will actually open, given that it has been two months since Kabul fell.

Tom Pursglove: The hon. Gentleman will appreciate some of the genuine difficulties for people in trying to leave Afghanistan—[*Interruption*—]and doing so in the safest way possible—[*Interruption.*] He keeps interrupting from a sedentary position. Will he let me finish the point that I am trying to make?

The bottom line is that we are firmly committed to that resettlement scheme. We will announce details of it as quickly as possible, having taken proper account of the very real difficulties that exist in getting people safely, as far as that is possible, out of Afghanistan. Ministers and officials are working tirelessly to work that up in an appropriate manner.

Stuart C. McDonald *rose*—

Tom Pursglove: I will give way to the hon. Gentleman as well, because I want to be generous and to hear what he has to say.

Stuart C. McDonald: The Minister is being generous. I want to push things back to some of the questions—

Tom Pursglove: I have some answers on those to come.

Stuart C. McDonald: Great, because the purpose of the amendments is to probe exactly how these very broad powers will be used. It will be useful if he could talk about some of what the Government intend.

Tom Pursglove: I am keen to do just that. I have made the point about safe and legal routes. There are many examples in the past and that are still active.

Paul Blomfield: Will the Minister give way?

Tom Pursglove: I will give way, but I am keen to move on to answer some of the questions.

Paul Blomfield: I am grateful to the Minister for giving way. He talked again about the UK's leading role in accepting refugees. Does he not accept that the most recent data from the UNHCR on refugees in Europe—from 2019—has Germany resettling more than three times as many refugees as the UK, or 9,640 compared with 3,507? Also, smaller countries such as Sweden and Norway accepted more than the UK.

Tom Pursglove: I refer the hon. Gentleman to my earlier point.

I want to move on to the points made by various members of the Committee about a number of areas related to the amendments. In answer to the question about section 95 asylum support, those who are already in receipt of such support will not face any condition restricting access to public funds. The power to differentiate in respect of public funds is flexible and there is no obligation to use it in inappropriate cases. Again, detail will be set out in the guidance and rules to follow. The House will have the opportunity to scrutinise those in the normal way.

A number of points were made about family reunion. It is wrong to say that the Bill will remove family reunion rights. Family reunion will be protected in line with article 8 of the European convention on human rights. The Bill will allow us to take steps to disincentivise people from taking risky, life-threatening journeys. There is, I suppose, a philosophical debate about this: I think we all agree that we need to end those dangerous journeys, but how we achieve that is the area of dispute.

Paul Blomfield: The Minister is right to say that we all agree on the objective and that the dispute is about the effectiveness of the Government strategy. Is he not even a little unsettled by the fact that the Government's own impact assessment states that their strategy is unlikely to work? It states that

“evidence supporting the effectiveness of this approach is limited.”

Tom Pursglove: It is right that we break the business model of these evil criminal gangs and take steps that help to achieve that endeavour. The point the hon. Gentleman has made, which runs through the Bill, is that people should come here by safe and legal routes

[Tom Pursglove]

and that we should take steps as appropriate to break that business model. I am confident that the steps we are taking in the Bill will achieve exactly that.

Paul Blomfield: So the Minister is saying that the Government's impact assessment is wrong.

Tom Pursglove: I genuinely believe that the policy we are pursuing through the Bill will make a significant difference in deterring dangerous channel crossings, where people pay evil people smugglers to try and get to the United Kingdom. It is right that we prioritise safe and legal routes and make it very clear that they are the way to arrive in this country, and that we deter people from making those very dangerous, irregular journeys. I am confident that the Bill will make a significant difference in tackling that challenge.

Mr Goodwill: When I was in Nigeria I heard from the Nigerian Home Secretary that the system often contributed to family break-up rather than reunion. The people smugglers perpetuated the lie that people who could get a teenage child to the UK would be able to follow. In fact, it has always been the principle of family reunion that children must travel to where their families are and not the other way round.

Tom Pursglove: In terms of the deceit and the appalling treatment of so many people, I have heard heartbreaking stories of the way that individuals have been treated by these evil people smugglers. That has only redoubled my determination to render their business model redundant.

This point goes to the heart of the intervention a moment ago from the hon. Member for Sheffield Central: the measures in the Bill do not just stand alone—it is not just about these measures. Tackling the problem requires a strong and co-ordinated response that also involves our international partners. For example, the collaboration through the arrangement we have with the French is very important contextually in tackling this issue. Clearly, supporting French law enforcement to try and stop some of the crossings happening in the first place is crucial, and the evidence is clear that that support is having a positive effect in achieving that goal.

Our international diplomacy is also important, because we want to send out a clear message that human rights must be respected and upheld across the world. The measures in the Bill, as important as they are, are not the only element in responding to these huge challenges. That international collaboration is very important as well, as is our diplomatic work.

Neil Coyle: I thank the Minister for giving way; he has been very generous. It is extraordinary to hear a Minister trash their own department's equality impact assessment and point out its inadequacies.

Tom Pursglove *indicated dissent.*

Neil Coyle: That is exactly what the Minister did. However, my question is around family reunion visas, which he mentioned. The number of family reunion visas granted in the UK fell by nearly 10% in the last

year for which numbers were available. Will he agree to a review of the system to look at some of the issues around entitlements for those other than dependants or spouses?

Tom Pursglove: I will take that away to look at it. I refer the hon. Gentleman to my previous point in trying to address the matter of family reunion. I am conscious that in his earlier remarks he raised the particular case of an Afghan family. I will also go away and speak about that to the Minister for Afghan Resettlement, who is the Minister responsible for Operation Warm Welcome and our refugee policy in relation to Afghanistan. I undertake to take that point away and ensure that my hon. Friend is aware of it. It is very important and I will do that. It is crucial that that happens. I ask that the hon. Gentleman leave that with me, and that will happen later today.

To finish on this point, the powers under clause 10 enable the Secretary of State to differentiate in respect of family reunion. It is important to recognise that the power is flexible and will not be used where a refusal of family reunion would breach our international obligations. The policy will be set out, again, in guidance and in rules, but I thought it was important to get that point on the record. Suffice it to say that of course this Government will always act in accordance with our international obligations and the law.

With all that in mind, I ask the hon. Member for Cumbernauld, Kilsyth and Kirkintilloch East to withdraw the amendment.

12.30 pm

Stuart C. McDonald: I am slightly frustrated—actually, pretty frustrated—that we have not managed to tease out more about what the Government intend. We will no doubt come back to the point about article 31 justifying the provision.

We are being asked to hand hugely significant and broad powers to the Home Secretary, and we are being told, “Well, everything will be set out in immigration rules and guidance,” when we all know that scrutiny and opportunities to amend such provisions are incredibly limited. Let me ask the Minister this: what more do I know now about the Government's intentions than I knew before half-past 11 this morning? Not very much. I am not sure I even understand the answer in relation to no recourse to public funds. I do not see how a person who is a refugee would still be on section 95 support; having been recognised as a refugee, such a person would obviously move on. At least I get the sense that there would be some sort of automatic decision not to put an NRPF condition on them, but I am none the wiser about how some of the other powers will be used.

Tom Pursglove: As I have said previously, I am very keen to be helpful to the Committee, so if I may, I will study *Hansard* to look back at the questions that the hon. Gentleman posed on this matter. I will gladly write to him to clarify the position and try to provide further detail.

Stuart C. McDonald: It would be hugely helpful for Members of this House, ahead of Report, and for Members of the other place, who will be wanting to scrutinise the Government's intentions, to be told more about that

support and about precisely how the clauses on family reunion can be consistent with article 8, and the answers to my questions about leave. That was the purpose of tabling the amendments, so if the Minister undertakes to do that, there is no reason to put anything to a vote. I beg to ask leave to withdraw the amendment.

Amendment, by leave, withdrawn.

Stuart C. McDonald: I beg to move amendment 15, in clause 10, page 13, line 34, at end insert—

“(7A) An Afghan national who is a refugee because they face a risk of persecution by the Taliban is not to be treated as a Group 2 refugee and in particular—

- (a) must not face a restriction on their leave to enter compared to group 1 refugees;
- (b) must have access to indefinite leave to remain on the same basis as group 1 refugees;
- (c) must not have no recourse to public funds conditions attached to any leave to enter or remain given to them; and
- (d) must have access to family reunion on the same basis as group 1 refugees.”

This amendment would prevent the Secretary of State from treating Afghan refugees at risk of persecution by the Taliban as Group 2 refugees.

I can be brief, because a lot of the territory in relation to Afghanistan was covered in the previous debate. Again, Members across this House have been forceful, powerful advocates. Whatever our views on the manner of the withdrawal, its timing and so on, I do not doubt for a minute that every Member of the House intended to ensure the UK did what could be done to assist the people of Afghanistan. The problem with this Bill, as far as I can see, is that that generosity of spirit, that determination to help, seems to come to a shuddering halt should a person from Afghanistan end up claiming asylum in this country.

The amendment confronts hon. Members with, to use a Home Office expression, a face behind the case. We are talking about creating an exemption where the Home Office has assessed a person’s case and accepted that they are at risk of persecution from the Taliban in Afghanistan, such that it will not be permissible for the Secretary of State to discriminate against them—to make them subject to no recourse to public funds, to deny them family reunion, to refuse to give them settlement after five years and to perpetrate all the other discriminations that the clause allows. In a sense, it would be nonsensical to create an exception only for such people, but the amendment is designed simply to confront hon. Members with the fact that that is who we are talking about. Those discriminations will apply to these people, whom we have all been championing, just as they would to any other asylum seeker. I do not need to say any more than that, but I will press the amendment to a Division.

Tom Pursglove: I do not think it would be appropriate for clause 10 to include an exemption from group 2 refugee conditions for Afghan national refugees. Although I have great sympathy for the plight of Afghan citizens who are fleeing the brutal reign of the Taliban, a blanket exemption for Afghan citizens who are recognised as refugees would be inappropriate for two reasons.

First, we cannot exempt any particular nationality, because situations of conflict and repression are fluid. There may come a time when that country is no longer unsafe and those from it who claim asylum are no

longer genuinely in need of protection; I am sure that is something that we all wish to see. If there were still an exemption for them in primary legislation, it would serve as a huge pull factor to the UK for migrants seeking to claim asylum in order to work or otherwise make a new life in the UK.

Secondly, any blanket exemption would inevitably lead to people posing as Afghans in an attempt to benefit from the hon. Gentleman’s very principled generosity. That would, perversely, prevent us from protecting Afghans who were genuinely in need. I am sure hon. Members agree that that would be in no one’s interest.

Anne McLaughlin: I wonder whether the Minister agrees or disagrees with the Conservative former Immigration Minister, the right hon. Member for Ashford (Damian Green), who said in August:

“There are times and places where we should be strict with asylum applications. Afghanistan today is the exact opposite. We should take anyone who can make a case”.

Tom Pursglove: I simply cannot in all conscience support anyone of any nationality putting their lives in the hands of evil people-smuggling gangs, and I think that that would be the unintended consequence of what the hon. Lady is trying to achieve. I do not doubt the generosity of spirit behind the amendment, but I do not think that putting it into the Bill is the right thing to do. It is right that we continue to develop the safe and legal route as quickly as possible, and make sure that people are able to come here. I cannot, in all good conscience, support an amendment that would simply afford opportunity to evil criminal gangs. With that, I ask the hon. Member for Cumbernauld, Kilsyth and Kirkintilloch East to withdraw it.

Bambos Charalambous: The Afghan resettlement scheme would have a cap of 5,000 per year. If that 5,000 limit had been met, anyone who came here via other routes would be deemed to be in one of the group 2 categories, and they would have fewer protections. On guidance, which my hon. Friend the Member for Bermondsey and Old Southwark mentioned, the issue around how they would be treated would certainly be in play. They would be treated as group 2, and we must bear in mind that the guidance would say that they could not return to Afghanistan. Does the Minister have any comments on that?

Tom Pursglove: I am grateful to the hon. Gentleman for the intervention. I think there is a timing issue here. We are debating this Bill in Committee today and we have several more weeks of Committee, and then Report and Third Reading in the Commons, followed by Lords consideration in full, and consideration of any amendments that those in the other place wish to send to us. As a result, we are some way away from this Bill becoming law. By that time, I fully expect that the safe and legal route will have been established and people will be able to avail themselves of it. The overriding point is that all cases are considered on a case-by-case basis, taking into proper account all the relevant considerations.

Anne McLaughlin: The Minister says that he hopes that, by the time the Bill is enacted, the safe and legal route will be up and running. We are talking about Afghanistan. Does he mean that, by the time it is

[Anne McLaughlin]

enacted, all the safe and legal routes that are required in different parts of the world where people need to flee to seek protection will be and up and running, or just the Afghan route?

Tom Pursglove: Amendment 15 is very specifically about Afghanistan. I would not wish to invoke your wrath, Ms McDonagh, by going wider than that, so I must keep my remarks to Afghanistan. The point that I have made stands, and I reiterate that cases are considered on a case-by-case basis, as the hon. Lady would rightly expect.

Neil Coyle: The Minister has been very generous in giving way. I am particularly concerned about this. He is suggesting that a safe route is available, when the Government guidance currently says not to make applications for family reunion for Afghanistan cases. Perhaps he can explore that issue in more detail with his hon. Friend the Member for Louth and Horncastle (Victoria Atkins), who is the Minister for Afghan Resettlement, and get back to us—certainly before Report.

Tom Pursglove: I am very happy to reflect the sentiment in my conversations with my ministerial colleague. As I was about to say before I took the intervention from the shadow spokesperson, I urge SNP Members to withdraw their amendment.

Stuart C. McDonald: For the reasons given by the hon. Member for Sheffield Central in particular, I do not accept the argument about creating incentives. All we are asking is for Afghan asylum seekers to be treated in a few months' time precisely in the same way as they are treated now, to be given a fair hearing, and, once they are recognised as refugees, to be treated in the same way as other refugees.

I have a second quick point before I conclude. Towards the end of his speech, the Minister referred a couple of times to things being looked at on a case-by-case basis. It is very important that, when we get to the clause stand part debate, he expands on what exactly he means by that. From what I heard from the Home Secretary, my understanding was that clause 10 would apply to Afghans in precisely the same way as it would to everybody else. The Minister's reference to a case-by-case basis seems to suggest some sort of discretion, whether between nationalities or between individual cases. He has opened up a whole series of questions about how exactly the scheme is going to operate. Perhaps we can revisit that during the clause stand part debate.

I agree with the Minister that it does not make sense for legislation to carve out a particular nationality. However, what makes even less sense, as I said at the outset, is for all of us to be champions of Afghans so long as they are—

Tom Pursglove: I am keen to clarify that point. The point that I was making was exactly as I alluded to earlier: that, for example, we would not return someone to a country that is fundamentally unsafe.

Stuart C. McDonald: I am grateful for that clarification. I had thought that the Minister was saying that the powers in clause 10 would be applied on a case-by-case basis depending on individual circumstances, rather

than what seems to be suggested by the clause: depending on their mode of arrival. He has clarified that what the Home Secretary said was correct: it will apply to Afghans, Uyghurs and everybody else in the same way.

Amendment 15 is not the most perfect or wonderful amendment, but even less perfect are the provisions in the Bill that would see Afghan asylum seekers stripped of public funds, stripped of family reunion rights and treated, frankly, abysmally. I would therefore like to put amendment 15 to a vote.

Question put, That the amendment be made.

The Committee divided: Ayes 7, Noes 8.

Division No. 8]

AYES

Blomfield, Paul	McLaughlin, Anne
Charalambous, Bambos	McDonald, Stuart C.
Coyle, Neil	Owatemi, Taiwo
Lynch, Holly	

NOES

Baker, Duncan	Pursglove, Tom
Goodwill, Mr Robert	Richards, Nicola
Holmes, Paul	Whittaker, Craig
Howell, Paul	Wood, Mike

Question accordingly negated.

12.45 pm

Stuart C. McDonald: I beg to move amendment 96, in clause 10, page 13, line 36, at end insert—

“(8A) Immigration rules made under the power in subsection (8) may not apply to any individual who has submitted a claim for protection prior to those rules coming into force.”

This amendment would prevent the differential treatment described in subsections (5) and (6) from applying to anyone who submitted a protection claim prior to the relevant immigration rules coming into force.

The Chair: With this it will be convenient to discuss amendment 97, in clause 10, page 13, line 36, at end insert—

“(8A) Notwithstanding section 3(2) of the Immigration Act 1971, any regulations made under the power in subsection (8) shall be subject to the draft affirmative procedure.”

This amendment would mean that any regulations made under the power in subsection (8) could not enter into force until they had been approved by Parliament.

Stuart C. McDonald: I will take the amendments in reverse order. To go back to part of Tuesday's debate about Parliament, rather than the Executive, taking back control, nobody—regardless of whether they were for or against anything else I have said this morning—could deny that these are sweeping powers, with next to no limits or constraints on how they may be used. In theory, the Secretary of State could put everyone up in palaces or prisons, expand or restrict family reunion rights, and give 50 years' leave or 50 days' leave. Because it can all be done by changes to the immigration rules, there might as well be no oversight at all.

The process is even weaker than the negative procedure that we use for some statutory instruments. Not since 2008 has a statement of changes to the rules been properly debated by MPs. Although the other place has

a better record of holding debates, 87 changes to the immigration rules have been made since 2008 without the procedure being fully invoked. Even if either House disapproves the changes within 40 days, all that means is that the Home Secretary has to lay further rules, making any changes that she thinks appropriate. In short, these are massive powers that could fundamentally change the asylum system in the UK. More important, they will have a profound impact on hundreds of thousands of people. The powers need proper oversight, which is essentially what amendment 97 supplies.

Amendment 96 is designed to retrieve a sliver of hope from an otherwise horrendous clause. Even if the Government are hellbent on proceeding down this road, by their own logic they surely cannot apply these changes and disincentives retrospectively to somebody who has already claimed asylum. The Minister says that the Bill is about disincentives to stop people crossing, or coming by other dangerous routes. I do not think that that will work, or that it is right, appropriate or ethical to do that. Although the Government take the opposite view, they cannot possibly argue that we can disincentivise someone who is already here.

There are 70,000 people in the asylum system, many of whom claimed for refugee status many months ago. It is a source of stress and anxiety, according to organisations that work with refugees, such as the British Red Cross, that the threat of being put into limbo, and of family separation and destitution—all the things that we have just spoken about—will hang over them if the provisions of the Bill apply to them.

Tom Pursglove: I hope that I can give the hon. Gentleman the reassurance he seeks in relation to amendment 96. It has never been our intention to apply differentiation retrospectively.

Stuart C. McDonald: That is a hugely welcome assurance, which many people will be very pleased to hear. The Minister can say in his response why he objects to that going in the Bill, but, as I say, it will make a profound difference to 70,000 lives, and to family members further afield.

Tom Pursglove: I reassure the Committee that amendment 96, which seeks to ensure that only asylum claims made after commencement are considered under clause 10, is not needed. For many good reasons, not least for purposes of practicality, we have always intended to apply clause 10 only to asylum claims made after commencement. The position is similar in respect of amendment 97, which seeks to ensure that any regulations required to implement the policy should be subject to the affirmative procedure in Parliament. Clause 10(8) is not a regulation-making power; rather, it is a power to make immigration rules. In any event, the amendment is not needed since the rules are subject to their own parliamentary procedure, set out in section 3(2) of the Immigration Act 1971. Parliamentarians may pray against them within a 40-day period. I therefore urge the hon. Member for Cumbernauld, Kilsyth and Kirkintilloch East to withdraw his amendment.

Stuart C. McDonald: I am grateful to the Minister for his response. After a day and a half of debate, I feel I have achieved one small positive, which is reassurance in relation to retrospective application of clause 10.

That is welcome. I have moved millions of amendments to Bills over the years in relation to scrutiny and oversight of immigration legislation, and they have all been rejected, so I am not going to press this to a vote. However, I make the point that if we parliamentarians are serious about scrutinising legislation and profound changes that have an impact on people's lives, we have to come up with better ways of scrutinising what goes on in the immigration system. I shall leave that debate for another day. Having made my point, I beg to ask leave to withdraw the amendment.

Amendment, by leave, withdrawn.

Stuart C. McDonald: I beg to move amendment 87, in clause 10, page 13, line 40, at end insert—

“(10) Before this section comes into force, the Secretary of State must lay before Parliament a report on the implications of this section for local authorities, the Scottish Government, the Welsh Government and the Northern Ireland Executive, and the report must be approved by a substantive vote in both Houses.

(11) A report under subsection (10) must include the following information—

- (a) an assessment of the financial implications for the bodies listed in subsection (10);
- (b) an assessment of the functions and powers of those bodies that will be affected by this section;
- (c) details of any consultation and engagement with those bodies, and the outcome of such engagement and consultation;
- (d) the Secretary of State's findings, conclusions and proposed actions.”

This amendment would require the Government to report on the implications of clause 10 for local authorities and the devolved administrations, and to obtain Parliamentary approval for such a report, before the clause enters into force.

The Chair: With this it will be convenient to discuss the following:

Amendment 161, in clause 10, page 13, line 40, at end insert—

“(10) Nothing within the Act or this section authorises any treatment or action which is inconsistent with the UK's obligations under the Refugee Convention.”

This amendment seeks to ensure consistency of clause 10 with the UK's obligations under the Refugee Convention.

Clause stand part.

Stuart C. McDonald: You will be sick of the sound of my voice pretty soon, Ms McDonagh—[HON. MEMBERS: “Never!”] I am reassured by hon. Members. I will speak in opposition to what I regard to be a dreadful clause in the Bill.

Amendment 87 makes an important point in seeking to test how the Government have engaged with other tiers of government for which the clause will have significant implications. It is clear from everything that has been said that there will be implications for health services, housing and welfare services, devolved social security, and the legal aid and justice systems. How have the Government engaged with all the devolved Governments and local authorities on the implications of the Bill? What joint ministerial meetings have there been? What is the outcome of the suggested assessments about the impact on them? Of course, asylum is reserved, but what has been proposed here will have significant implications for all sorts of devolved functions and for

[*Stuart C. McDonald*]

the functions of local authorities. Far too often, experience shows us that the Home Office is happy to pursue policies that leave local authorities, in particular, to pick up the pieces with destitute families.

The Minister may say that there was a consultation on the new plan for immigration but, significantly, that consultation period ran, almost to the day, for the entire period of purdah for the recent Scottish and Welsh elections, and for some local government elections. That made it virtually impossible for civil servants and some local authority officials to engage in any work on the matter because it was politically contentious. It is fair to say that the timing of that consultation was, at best, rather thoughtless and it makes it all the more imperative that engagement with other tiers of government happens before the Bill is passed.

Fundamental questions are raised by amendment 161 and clause 10 more broadly. Indeed, amendment 161 takes us to the question of the Bill's consistency with the refugee convention. What I regard to be inconsistency with the convention is a key reason why I do not believe the clause should stand part of the Bill. The Minister has already answered my intended question about whether he maintains that there is consistency with the refugee convention. The issue was not spoken about at the Dispatch Box on Second Reading, but if that is the Government's position, presumably amendment 161 or an alternative along those lines is entirely unproblematic. All it does is call for everything in the Bill to be construed in accordance with the refugee convention, so if there is no problem with the consistency, presumably the Government do not have any problem with that amendment either.

Some may not be particularly vexed about whether the Bill complies with the requirements of the refugee convention, but we believe that is a fundamentally vital question. It is vital because the 70-year-old convention is crucial, simply as it ensures that some of the most vulnerable people in the world, at risk of persecution in their own countries, have a safe place to go to and appropriate rights.

The convention is crucial to ensuring that responsibility is at least to a degree not entirely dumped on neighbouring countries—we heard on Second Reading about how the overwhelming majority of refugees are situated in developing countries. If one country is able to rip up the refugee convention—in particular, one that was instrumental in drafting the convention, as the UK was—then absolutely nothing stops others following suit.

I said earlier that the UK Government have been saying that too many people are making claims in this country, but if we make that argument, the Governments to follow will be France, Germany and Italy. Everything would fall back on Lebanon, Jordan, Pakistan, Kenya and other countries that have to take significant populations from neighbouring countries.

That matters, too, for the reputation and influence of the United Kingdom. I do not want to repeat all the arguments we have had in recent months about the importance of abiding by international law and not breaking it, even in a “specific and limited way”. The Minister also referred to that being important. The problem, however, is that when a Foreign Secretary is busy telling Pakistan—already home to several million

Afghan refugees—to keep borders open and take people in, or the Taliban to abide by international norms, at some point, if the widely accepted view is that the UK is itself busy ignoring or totally contradicting advice from the UNHCR and riding roughshod over the spirit and letter of the convention, that will come home to roost. How can we tell other countries to comply with international obligations if we are, as we are with the Bill, ripping up not only the refugee convention, but the statelessness convention, the trafficking convention, international maritime law and probably the European convention on human rights?

Let us be in no doubt, the UNHCR has said over and over again that the attempt to create two different classes of recognised refugees is inconsistent with the refugee convention and

“has no basis in international law.”

Regardless of what the Minister said earlier, that view requires significant deference and respect. I appreciate that Governments do not like publishing legal advice, but I can find no respected refugee lawyer who disagrees with what the UNHCR said. The Minister has his work cut out to explain how the Government believe the UNHCR to be wrong. The convention contains only one definition of a refugee, and only one set of rights to go with it. For someone to be outside their country of origin because of a risk of persecution for reason of one of the characteristics set out in that convention is all that is required.

Turning to the specific provisions and how they breach the refugee convention, the Minister must explain in particular how he reconciles the clause with article 23 of the refugee convention:

“The Contracting States shall accord to refugees lawfully staying in their territory the same treatment with respect to public relief and assistance as is accorded to their nationals.”

In contrast, the clause expressly authorises one group of refugees to be deprived of recourse to public funds that UK nationals would have. The human rights memorandum to the Bill seems to acknowledge a problem, noting the apparent contradiction, but then blithely states that

“the Department will ensure that the powers in clause 10 are implemented in a way which is compatible with Articles 23 and 24.”

The huge question is, how? I do not accept—neither does the UNHCR—that there is a way in which that can happen. It is completely insufficient as a justification or an explanation. It is a promise to do the impossible. Any reasonable person looking at the clause and at article 23 will see that they are completely and utterly incompatible.

Other articles are also contradicted. For reasons I set out earlier, the provisions of the Bill will significantly undermine any possibility of refugees' integration into society, in contravention of the requirement to facilitate integration and naturalisation under article 34. Going further, the proposals in the Bill and policy documents make it clear that the short periods of leave and the constant reviews are designed to lead to the expulsion of those refugees, regardless of the question of whether they are still refugees and in need of international protection. That is in contravention of article 32 of the convention, which prohibits expulsion except on the grounds of national security or public order.

The principle of family reunion is not in the body of the refugee convention itself, but the conference of plenipotentiaries at which the convention was adopted affirmed that

“the unity of the family, the natural and fundamental group unit of society, is an essential right of the refugee”.

Furthermore, as we heard, article 8 of the European convention on human rights enshrines the right to respect of family life. Given the insurmountable obstacles that those recognised refugees will face—they cannot enjoy that family life in their home country—and that, if they have got to this stage, clearly no other country will accept them, then it is impossible to see how the UK will not be breaching the convention routinely if it does not allow for family reunion.

As the Minister alluded to earlier, the clause is drafted to circumvent such clear breaches by cutting and pasting certain words and expressions from article 31 of the refugee convention into a completely different context. That article was meant to apply to refugees who are lawfully settled in another country, who have found protection there and who have then moved onwards irregularly for reasons unconnected to their need for international protection. In those restricted circumstances, administrative penalties for unlawful entry or presence are permissible. The article is clear that one condition

for its applicability is that the person has an unauthorised presence in the country. This measure in the Bill includes no such restriction so, again, it is not compliant with the article.

Article 31 is also clear that, even when it is available to a state, the penalties that are permissible to put in place cannot breach other parts of the refugee convention, which is what the clause does. It also breaches international human rights law on family unity. The clause breaches the convention by applying unlawful penalties to an unlawful range of people. In coming days, we will address further breaches by new offences under clause 37, which will criminalise refugees, and clause 34, which will limit certain defences.

In short, for all the reasons I have given in the earlier debates, the clause will not work. It will not achieve what the Government want it to achieve. It is morally repugnant—it is completely unethical to treatment victims like this—and illegal, so the whole idea should be ditched and clause 10 should not stand part of the Bill.

Ordered. That the debate be now adjourned.—(Craig Whittaker.)

1.1 pm

Adjourned till this day at Two o'clock.

