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HOUSE OF COMMONS
OFFICIAL REPORT
GENERAL COMMITTEES

Public Bill Committee

NATIONALITY AND BORDERS BILL

Tenth Sitting

Tuesday 26 October 2021

(Afternoon)

CONTENTS

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Saturday 30 October 2021

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The Committee consisted of the following Members:

Chairs: †Sir Roger Gale, †Siobhain McDonagh

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

Rob Page, Sarah Thatcher, *Committee Clerks*

† attended the Committee

Public Bill Committee

Tuesday 26 October 2021

(Afternoon)

[Siobhain McDonagh *in the Chair*]

Nationality and Borders Bill

2 pm

The Chair: I have been asked to remind Members and staff that they are asked by the House to have a lateral flow test twice a week if coming on to the parliamentary estate. That may be done either at the testing centre on the estate or at home.

Clause 18

Priority removal notices

Amendment moved (this day): 60, in clause 18, page 22, line 26, leave out "10(1) or (2)" and insert "10".—*(Tom Pursglove.)*

This amendment is consequential on clause 43 of the Bill.

The Chair: I remind the Committee that with this we are discussing the following:

Government amendment 61.

Clause stand part.

The Parliamentary Under-Secretary of State for the Home Department (Tom Pursglove): I was about to conclude by saying that paragraphs (a) and (c) of subsection (7) suffice to capture every scenario. Removing paragraph (b) does not affect how the clause operates or who it impacts. I commend the amendments and the clause to the Committee.

Bambos Charalambous (Enfield, Southgate) (Lab): We intend to oppose the clause standing part of the Bill. The clause is an entirely new provision. Its stated aim is to reduce the extent to which people may frustrate removals through sequential or unmeritorious claims, appeals or legal action. It does so by providing for a priority removal notice, or PRN, to be served on anyone who is liable for removal or for deportation. Factors might include where a person has previously made a human rights or protection claim.

According to the explanatory notes, subsection (3) defines a PRN. It states that the notice imposes a duty on the claimant to provide a statement setting out the reasons for wishing to enter or remain in the United Kingdom, any grounds on which they should be permitted to do so, and any grounds on which they should not be removed or required to leave the United Kingdom. The notice also requires them to provide any information relating to being a victim of slavery or human trafficking as defined by clause 46.

The notice also requires them to provide any evidence in support of any reasons, grounds or information. The statement, grounds, information and evidence must be provided before the PRN cut-off date included within the notice. Intended as a warning to the person that they are being prioritised for removal, the notice gives them a period of time—the cut-off period—within which to access legal advice and to inform the Home Office of any grounds or evidence that they want to provide in support of a claim to be allowed to remain in the UK.

The clause and the introduction of priority removal notices are part of wider proposals to fast-track claims and appeals, and to create a one-stop process for claims to asylum to be brought and considered together in a single assessment up front. The consequences of the clauses related to priority removal notices will make it harder for people to bring evidence after making an initial asylum claim and penalise delayed disclosure. Indeed, if anything required by the PRN is provided after the specified cut-off date, a decision maker—when determining a protection or human rights claim, or making a decision as to whether the person is a potential or actual victim of trafficking—will treat it with scepticism and it will be considered damaging to the person's credibility and their claim.

The requirements related to the PRN are extensive. It requires all manner of claims and evidence to be provided, covering all grounds for resisting removal and all evidence in support. When implemented, that could have incredibly damaging consequences for people seeking asylum, as it requires them to provide extensive supporting evidence by a specified date. For example, it will seriously disadvantage vulnerable people and victims, such as those who suffer from post-traumatic stress disorder, or those who have been trafficked, as well as those who are LGBTQ, as I have mentioned previously.

The introduction of priority removal notices fails to acknowledge the reality of situations that people seeking asylum may encounter. There are many reasons that evidence may be provided late but in earnest, as we have explored already, for example with traumatised victims. The ultimate consequence of people not being able properly to present evidence relating to their claim, or being deemed to lack credibility as a result of failing to present such evidence on time, is that claims may be rejected and people may be wrongly subject to removal. The Opposition are very concerned that these measures may give rise to a significant risk of refoulement and will consequently abandon the UK's obligations under international law.

In short, the proposals are unacceptable. They form a package of measures that seek to create a one-stop process for asylum claims and fail to do so in a fair or humane way. They are widely condemned by the sector. The Opposition are vehemently opposed to the introduction of priority removal notices and, when they are taken in conjunction with the series of clauses in part 2, are incredibly concerned about these measures. Its potentially strict application risks having a severe impact on asylum seekers and refugees, in terms of both procedural fairness and ensuring that people are protected by the refugee convention. We therefore oppose the clause.

Amendment 60 agreed to.

Amendment made: 61, in clause 18, page 22, line 28, leave out paragraph (b).—*(Tom Pursglove.)*

This amendment removes a superfluous paragraph (any person within paragraph (b) would in any event fall within either paragraph (a) or (c)).

Question put, That the clause, as amended, stand part of the Bill.

The Committee divided: Ayes 8, Noes 6.

Division No. 18]

AYES

Anderson, Stuart	Howell, Paul
Baker, Duncan	Pursglove, Tom
Goodwill, rh Mr Robert	Whittaker, Craig
Holmes, Paul	Wood, Mike

NOES

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

Question accordingly agreed to.

Clause 18, as amended, ordered to stand part of the Bill.

Clause 19

PRIORITY REMOVAL NOTICES: SUPPLEMENTARY

Tom Pursglove: I beg to move amendment 62, in clause 19, page 22, line 43, leave out paragraphs (a) and (b) and insert—

"(a) the PRN cut-off date, or

(b) if later, the day on which any appeal rights of the PRN recipient in respect of a relevant claim are exhausted.".

This amendment and Amendments 63 and 64 provide that a priority removal notice will remain in force for 12 months after a PRN recipient's appeal rights are exhausted in relation to any protection or human rights claim brought while the notice is in force.

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

Government amendments 63 to 66.

Clause stand part.

Tom Pursglove: This clause is supplementary to clause 18, which we have just discussed. It makes provision for the validity and effect of a priority removal notice. A priority removal notice imposes requirements to provide any reason and supporting evidence as to why a person should be allowed to remain in the UK. This will reduce the extent to which removal can be frustrated.

Where a priority removal notice has been issued, it will remain in force for a period of 12 months after either the cut-off date specified in the notice or after the recipient has exhausted their appeal rights. A period of 12 months will provide sufficient time for the person's removal to be enforced. Following the service of a priority removal notice, any previous evidence notice, slavery or trafficking information notice, or notice under section 120 of the Nationality, Immigration and Asylum Act 2002, will cease to take effect. Any appeal right arising from a protection or human rights claim received after the cut-off date will be subject to the expedited process as provided for by clause 21, unless the claimant provides good reasons for late disclosure.

The amendments are minor and technical and are intended to ensure that the new priority removal notice will work as effectively as possible. Amendments 62 to 64 provide for a priority removal notice to remain in force for a period of 12 months after the recipient's appeal rights are exhausted. Amendments 65 and 66 clarify that a priority removal notice will remain in force where the recipient is no longer liable to removal or deportation from the UK. This makes it clear that where the recipient of a priority removal notice makes an application to the EU settlement scheme that is later refused, they will remain subject to the priority removal notice.

Bambos Charalambous: The Opposition will oppose the clause standing part of the Bill. It forms part of the Bill's new PRN regime, as initially set out in clause 18, and states that the PRN will remain in force until 12 months after the cut-off date or the person's appeal rights become exhausted, whichever comes last. The Opposition believe that preventing people from being able to bring further evidence for 12 months after they have been issued with a PRN is wrong. It is unfair and it fails to consider the reasons for delayed disclosure, which range from psychological and cultural barriers to the crucial fact that those who are seeking asylum have fled their homes and may not have access to evidence immediately.

When applied narrowly and in conjunction with other clauses in part 2, the proposed provisions potentially risk significant breaches of the refugee convention and the principle of non-refoulement. For those reasons, and reasons discussed in the debate on clause 18, we will be voting against clause 19.

Amendment 62 agreed to.

Amendments made: 63, in clause 19, page 23, line 3, at end insert—

"(1A) In subsection (1) 'relevant claim' means a protection claim or a human rights claim brought by the PRN recipient while the priority removal notice is in force."

See the explanatory statement to Amendment 62.

Amendment 64, in clause 19, page 23, line 4, after "rights" insert

"in respect of a claim".

See the explanatory statement to Amendment 62.

Amendment 65, in clause 19, page 23, line 11, at end insert—

"(2A) A priority removal notice remains in force until the end of the period mentioned in subsection (1) even if the PRN recipient ceases to be liable to removal or deportation from the United Kingdom during that period."

This amendment clarifies that although a priority removal notice can only be served on a person if they are liable to removal or deportation, the fact that the person ceases to be so liable does not mean that the notice will cease to have effect.

Amendment 66, in clause 19, page 23, line 23, leave out subsection (6) and insert—

"(6) Expressions used in this section that are defined for the purposes of section 18 have the same meaning in this section as in that section."—*(Tom Pursglove.)*

This amendment is consequential on Amendment 65.

Question put, That the clause, as amended, stand part of the Bill.

The Committee divided: Ayes 8, Noes 6.

Division No. 19]

AYES

Anderson, Stuart	Howell, Paul
Baker, Duncan	Pursglove, Tom
Goodwill, rh Mr Robert	Whittaker, Craig
Holmes, Paul	Wood, Mike

NOES

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

Question accordingly agreed to.

Clause 19, as amended, ordered to stand part of the Bill.

Clause 20

LATE COMPLIANCE WITH PRIORITY REMOVAL NOTICE: DAMAGE TO CREDIBILITY

Paul Blomfield (Sheffield Central) (Lab): I beg to move amendment 139, in clause 20, page 23, line 40, at end insert—

"(3A) For the purposes of subsection (3) 'good reasons' include, but are not limited to—

(a) evidence of post-traumatic stress,

(b) potential endangerment to the PRN recipient caused by collecting evidence for anything mentioned in subsection (1)(a) before the PRN cut-off date.

(3B) The Secretary of State must publish guidance including a non-exhaustive list of 'good reasons' within the meaning of subsection (3) within 30 days of this Act receiving Royal Assent."

This amendment would illustrate potential interpretations of "good reasons" for late compliance and require the Home Secretary to publish a non-exhaustive list of potential "good reasons" to aid asylum decisions.

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

Amendment 154, in clause 20, page 23, line 40, at end insert—

"(3A) The Secretary of State or competent authority must accept that there are good reasons for the late provision of anything mentioned in subsection (1)(a) where—

(a) the PRN recipient's protection or human rights claim is based on sexual orientation, gender identity, gender expression or sex characteristics;

(b) the PRN recipient is suffering from a mental health condition or impairment;

(c) the PRN recipient has been a victim of torture;

(d) the PRN recipient has been a victim of sexual or gender based violence;

(e) the PRN recipient has been a victim of human trafficking or modern slavery;

(f) the PRN recipient is suffering from a serious physical disability;

(g) the PRN recipient is suffering from other serious physical health conditions or illnesses."

This amendment defines "good reasons" for the purposes of subsection (3).

Amendment 41, in clause 20, page 23, line 38, leave out

", as damaging the PRN recipient's credibility,"

This amendment would mean that – whilst late provision of information would still be taken into account – it would not necessarily be deemed as damaging the claimant's credibility.

Paul Blomfield: I will try to be brief, because the amendments cover ground similar to our previous discussion. Clause 20 seeks to damage the credibility of claimants producing evidence outside the time period dictated by a priority removal notice. There is a general point to make here. As we all know well, completing processes in time is not really the Home Office's strong point. What is worrying is that the provision makes things worse. As Women for Refugee Women has pointed out:

"As well as causing harm to women in desperate need of safety, these clauses are likely to lead to greater unfairness in the system, an increasing number of incorrect decisions and ultimately therefore an increase in the backlog of asylum cases."

That is something we all seek to avoid.

2.15 pm

Around 125,000 asylum seekers are currently awaiting a decision on an initial claim or appeal, or are expecting removal. Many have been in limbo for more than six months, and some for years. At the end of March 2021, 66,185 were people awaiting an initial decision, which is the highest number for over a decade. The number of people awaiting an initial decision for more than a year increased almost tenfold between 2010 and 2020, from 3,588 to 33,016.

The number of children—this will be of interest to my hon. Friend the Member for Bermondsey and Old Southwark—awaiting an initial decision for more than a year increased more than twelvefold between 2010 and 2020, from 563 to 6,887. The idea has been created, and heightened by the appalling images we have all seen of channel crossings, that that is due to rising numbers, but the number of asylum applications actually fell.

Mr Robert Goodwill (Scarborough and Whitby) (Con): Does the hon. Gentleman accept that not all the delays are down to the Home Office? In many people's view, the thousands of judicial reviews that are done, the vast majority of which fail, are there to buy more time for the applicant possibly to come up with a reason for an article 8 application.

Paul Blomfield: There is an exception to every rule, so I am prepared to accept that not all the problems are down to the Home Office. We discussed that issue earlier. The fact that some people may seek to abuse the system does not mean that the system should be changed to focus on those cases. We should operate on the basis that everybody has a right to access and utilise the judicial processes that are available.

As I was saying, the backlog has risen at a time when the number of asylum applications for the year ending June 2021 fell. We know that is reflected across the system; it is not just a problem with asylum. In the relatively straightforward area of EU settled status, recent data from the Home Office in response to a freedom of information request showed that, in June, more than 26,000 EU citizens had been waiting for more than a year for a decision; more than 216,000 had been waiting for more than six months; and more than 680,000 had been waiting for more than three months.

The problem of delays is endemic in the Home Office, and there were no JRs involved in those numbers. In the asylum process, delay is not only seriously detrimental

to the individuals, but—we have returned to this point a number of times, and will again—hugely costly to the taxpayer, so any measure that will exacerbate rather than correct the issue is unconscionable.

The assumption behind the measures in clause 20 and related causes is that those trapped in the system are to blame, as was echoed in the exchange we just had. Blaming others is a common approach of the Government on a wide range of issues such as covid, where GPs are the lightning rod for discontent, and Brexit, where we blame everybody going other than those who negotiated the deal. That ignores the reality that those trapped in the system want decisions to be expedited as soon as they can. They want to move on with their lives. Those who are successful want to take the opportunity to work and contribute to our society.

We need more resources from the Home Office to tackle the backlog. It is welcome that there has been some acknowledgement of that. I saw that the permanent secretary said at the Home Affairs Committee last month that the Home Office is planning to almost double the number of caseworkers, which is extremely positive. It is delayed recognition of where the problem might lie, but they should not be seeking to undermine applicants, which subsection (3) of clause 20 does by specifying that the Secretary of State or the competent authority must consider evidence being brought late as damaging to a claimant's credibility unless there are good reasons why it was brought late. We come again to this issue, which we debated in relation to an earlier clause, of good reasons.

As there is no explanation before us, either in the legislation or in the explanatory notes, of what might constitute good reasons, amendment 139 seeks to help the Government, in a collegial spirit, by inviting the Secretary of State to publish a framework that allows the consideration of the effect of post-traumatic stress and potential endangerment on the provision of evidence. I do not think that any of us could object to the idea that post-traumatic stress and potential endangerment would be good reasons, so I will be interested to hear the Minister explain, if in fact he does not embrace the amendment, why that is the case, because we go on to suggest that he might also publish the other factors that would be seen to be good reasons.

The clause serves to shift from a presumption of guilty until proven innocent, again echoing an earlier discussion, back to our legal system's norm of innocent until proven guilty. As it stands, unamended, it is not in the spirit of the law or of British values, and it should not be in the Bill.

Stuart C. McDonald (Cumbernauld, Kilsyth and Kirkintilloch East) (SNP): It is a pleasure to serve under your chairship again, Ms McDonagh. As the hon. Member for Sheffield Central said, clause 20 instructs decision makers to take into account

"as damaging the PRN recipient's credibility…the late provision"

of information and evidence. I absolutely support the hon. Gentleman's amendment to explore "good reasons" for evidence, including post-traumatic stress. Our amendment 154 provides other examples, such as mental health issues or where a person has been a victim of torture or other crimes that can impact on their ability to provide information. That is similar to debates we have already had.

Amendment 41 revisits earlier arguments about taking into account all the evidence, including lateness in providing it, when assessing a case. It is not appropriate to tell decision makers what conclusions to draw. We say decision makers will often find people to have credibility if lots of new information is provided with respect to that explanation. That is a matter that should be left to them. It is not for parliamentarians to tell decision makers how to analyse claimants.

Bambos Charalambous: Clause 20 introduces the concept of a priority removal notice and, under subsection (3), specifies that the Secretary of State or the competent authority must consider evidence being brought late as damaging to a claimant's credibility, unless there are good reasons why it was brought late.

As we have made clear during the course of the Bill's passage, the Government are trying to make it harder for refugees and asylum seekers to gain protection here in the UK. That is undeniable. The priority removal notices regime is part of a package of measures and provisions to achieve that end, both in deterring refugees from seeking protection and in making it more difficult for refugees admitted to the UK to be recognised as such.

One of those measures is directing decision makers, including judges, to doubt an applicant's credibility if they fail to provide evidence under the strict conditions described in clauses 18 and 19. It is worth noting that the Home Office and the courts have always been able to consider the timing of a claim as a factor in determining credibility, and that might determine an appeal. None the less, clause 20 seeks to reduce the weight that is given to any evidence that is submitted after the cut-off period stipulated by the PRN.

According to the Immigration Law Practitioners' Association:

"Rather than allowing decision-makers to sensibly consider whether the late provision of evidence is a reason to doubt its credibility, weighing all the evidence on the whole, the government proposes to strait-jacket decision-makers with a series of presumptions. The caveat that decision-makers will be allowed to use their own judgment if there is a 'good reason' why evidence was provided late does not mitigate these concerns."

Indeed, there are many so-called bad reasons that evidence might be provided late that do not indicate dishonesty, and many more reasons that it may not be possible for someone to present all relevant information in support of their claim at the earliest opportunity. We have already heard in detail the problems felt by certain groups and individuals with this approach, such as LGBTQ asylum seekers and victims of torture, sexual or gender-based violence, or trafficking.

One long-standing concern for the sector, which we have yet to cover in detail, is failings within the asylum process itself, particularly poor-quality, shortened or inadequate interviews. The consequences of poor interviews conducted with an individual can be devastating in the moment and potentially have grave long-term effects, including the risk of being returned to persecution because the Home Office did not have the information it needed to make a fair and informed decision.

For the Home Office, asylum appeals have been rising steadily over the last decade, which points to the importance of protecting asylum appeals as a vital safeguard for the most vulnerable and to the fact that

[Bambos Charalambous]

the Home Office often gets decisions wrong first time. More widely, a system that relies on the appeal process to correct its errors is inefficient, costly and inhumane. For that reason, we can describe the asylum system in the UK as broken, and we can point to the last 11 years of Conservative government as a reason for us having that broken system.

Mr Goodwill: Would the hon. Gentleman include foreign national offenders who are being removed, who may have committed crimes including rape and murder or been involved in the drugs trade, among the people who should be given the sort of latitude he is talking about?

Bambos Charalambous: Priority removal notices will apply to all people to whom they apply. If they qualify, they will qualify under that regime. I do not think people can be distinguished on the basis on their offences.

Clause 20 and the wider proposals around priority removal notices will penalise the most vulnerable and those who have been failed by the system by reducing the significance of any evidence submitted after the applicant has been through the one-stop process. That could include independent expert medical evidence, such as medico-legal reports, which often prove determinative in asylum appeals.

Ultimately, the provision around late compliance risks people not being given protection even though they deserve it and are in need of it. For the reasons I have specified, we will oppose clause 20 standing part of the Bill.

Tom Pursglove: By introducing the statutory requirement to provide information or evidence before a specified date, clauses 16 and 18 will contribute to the swift resolution of protection and human rights claims, enabling decision makers to consider all the evidence up front and, where appropriate, grant leave. It is right that where evidence or information is provided late, that should impact on a person's credibility, and that the decision maker must consider whether to apply the minimal weight principle, unless there are good reasons why it was brought late.

Clauses 20 and 23 both recognise that it may be harder for some people to engage in the process and provide evidence before a specified date. That may be the result of trauma they have experienced, a lack of trust in the authorities or the sensitive and personal nature of their claim. Amendment 41 removes the possible credibility implications stemming from late evidence in response to a priority removal notice. It is right that where evidence or information is provided late, that should impact on a person's credibility, unless there are good reasons why it was brought late. Where there are good reasons that information or evidence was provided late, the penalties in clauses 20 and 23 will not apply.

Clause 20 recognises that there may be good reasons that evidence was provided late. Where there are good reasons, the associated credibility provisions in clauses 20 and 23 will not apply. Therefore, amendment 41 is unnecessary, as the clause already meets its aim that late evidence should not necessarily be damaging to the claimant's credibility. As with amendment 39, by removing the possible credibility implications stemming from late provision of evidence, amendment 41 would make such a measure inappropriate for primary legislation and render it pointless. Amendment 154 places a statutory obligation on decision makers to accept that there are good reasons for late evidence where an individual's claim is based on certain factors, or the individual falls into a particular category. That would apply to Home Office decision makers and, under amendment 154, the competent authority as well as the judiciary.

2.30 pm

Compelling a judge to accept good reasons for late evidence based solely on the grounds of the person's claim raises significant issues and interferes with their fact-finding role. It also ignores the possibility that a claim may fall within a particular category or that a person may identify as one of the listed categories, but their evidence may be late for unrelated reasons. The amendments would therefore create a blanket acceptance for late evidence in specific prescribed circumstances, yet a vulnerable individual who does not fall within the specified groups may have late evidence and face a different test for whether or not they have good reasons. That is unfair.

Amendment 139 would have a perverse impact, with some vulnerable claimants facing different evidential requirements and penalties, simply because their particular vulnerability was excluded from the amendment. Individuals may be unable to provide evidence as a result of the trauma they have experienced, without having been diagnosed with post-traumatic stress. They may be unable to provide evidence for practical reasons for example, where an expert report was not available. That would be outside the scope of amendment 139, but that does not make it any less valid. In addition, amendment 139 could create a situation where individuals who do not fall into one of the categories identified by the amendments could abuse the process by falsely claiming that they did.

Neil Coyle (Bermondsey and Old Southwark) (Lab): This comes back to the point that we were discussing this morning about PTSD. The Minister seems to be saying that if PTSD were on the list and someone could not prove that they had it that would advantage those who could prove that the condition had been diagnosed while disadvantaging those who had not had a diagnosis. However, they would not get a diagnosis within the timeframe specified in the legislation. Perhaps a means to address that anomaly is the Government providing their own list of good reasons that could be used to distinguish between cases—on a case-by-case basis—based on how long someone has been in the process and whether they are undergoing assessment for PTSD. That could be a way to resolve that predicament. As it stands, the Minister seems to be saying that he cannot accept the amendment because it would advantage those whom the Government's plans disadvantage.

Tom Pursglove: Our intention is to publish guidance to help operationalise the measures in the Bill that will set this out in more detail. We would expect, as I have said in relation to several amendments and clauses, that caseworkers will consider those factors properly when reaching judgments about individual cases.

Mr Goodwill: I am sure the Opposition understand that when someone is given a police caution when they are about to be arrested they are told, "It may harm your defence if you do not mention when questioned something you later rely on." Is the clause not basically about the same principle being applied to immigration cases?

Paul Blomfield *rose—*

Tom Pursglove: I will take an intervention from the hon. Member for Sheffield Central.

Paul Blomfield: I am trying to explore the contradiction in what the Minister has just said. He said that the Government intended to produce guidance that set out what good reasons were subsequent to the legislation, but he cautioned against requiring good reasons, because that would exclude some people from justice. Would he square that circle for me?

Tom Pursglove: We think that the appropriate place to be clear about these matters is in the guidance, rather than the Bill. As I say, I would expect decision makers to take into account all the relevant factors at play in an individual case when making decisions relating to it. Rather as we have discussed in relation to other clauses and amendments, there is flexibility in certain circumstances, where good reasons can be shown as to why evidence would not be produced sooner. We recognise that people may be in difficult circumstances and that issues arise in their lives. We want the system to be responsive to that and to take proper account of it, which is why we are proposing to proceed as we are doing.

To return to the point that I was making on amendment 139, it would perpetuate the issues that the clauses are designed to address to the detriment of genuine claimants, undermining their usefulness. Amendment 139 would also introduce a requirement to publish guidance on good reasons within 30 days of the Bill receiving Royal Assent. That is an arbitrary deadline and it is not necessary to include it on the face of the Bill. As I have indicated, good reasons will be set out in published guidance for decision makers and will be made available when the measures come into force.

Neil Coyle: Will the Minister give way?

Tom Pursglove: Very briefly.

Neil Coyle: It is a brief intervention. I am reminded of what the right hon. Member for Scarborough and Whitby said about being cautioned by the police. Will the good reasons clauses cover children specifically? We need to know, given that they represent almost a quarter of asylum claims, and given the issue of age and maturity.

Moreover, what evidence would a gay man trying to escape Iran or another oppressive have to provide in order to prove his circumstances? What would the threshold be, given how hard it has been to provide proof in multiple cases under the existing system?

Tom Pursglove: I can confirm that it will refer to children. To conclude my remarks, I respectfully invite the hon. Member for Sheffield Central to withdraw the amendment.

On clause 20, the unnecessary provision of late evidence, statements and information delays justice for those with genuine claims, and wastes valuable resources. Clause 20 will work in parallel with clauses 18 and 19 to support the new priority removal notice. Its focus is on encouraging persons liable to removal or deportation to provide at the earliest opportunity any information or evidence in support of their protection or human rights claim, or, for potential victims of modern slavery, in relation to a decision by the competent authority. Where information or evidence is provided on or after the cut-off date, as set out in the priority removal notice and without good reason, it is right that that should be taken into account as damaging to the person's credibility. I hope that the Committee will agree to the clause standing part of the Bill.

Paul Blomfield: I am afraid that I am unconvinced by the Minister's response, so I wish to press amendment 139 to a vote.

Question put, That the amendment be made.

The Committee divided: Ayes 6, Noes 8.

Division No. 20]

AYES

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

NOES

Anderson, Stuart	Howell, Paul
Baker, Duncan	Pursglove, Tom
Goodwill, rh Mr Robert	Whittaker, Craig
Holmes, Paul	Wood, Mike

Question accordingly negatived.

Question put, That the clause stand part of the Bill.

The Committee divided: Ayes 8, Noes 6.

Division No. 21]

AYES

Anderson, Stuart	Howell, Paul
Baker, Duncan	Pursglove, Tom
Goodwill, rh Mr Robert	Whittaker, Craig
Holmes, Paul	Wood, Mike

NOES

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

Question accordingly agreed to.

Clause 20 ordered to stand part of the Bill.

Clause 21

Priority Removal Notices: Expediated Appeals

Stuart C. McDonald: I beg to move amendment 155, in clause 21, page 24, line 21, at end insert—

"(2A) The Secretary of State must accept that there are good reasons for P making the claim on or after the cut-off date where—

(a) the PRN recipient's protection or human rights claim is based on sexual orientation, gender identity, gender expression or sex characteristics;

(b) the PRN recipient is suffering from a mental health condition or impairment;

(c) the PRN recipient has been a victim of torture;

(d) the PRN recipient has been a victim of sexual or gender based violence;

(e) the PRN recipient has been a victim of human trafficking or modern slavery;

(f) the PRN recipient is suffering from a serious physical disability;

(g) the PRN recipient is suffering from other serious physical health conditions or illnesses."

This amendment defines "good reasons" for the purposes of section 82A(2) of the Nationality, Immigration and Asylum Act 2002 (as inserted by this Bill).

If someone makes a protection claim after the PRN cut-off, then unless the Secretary of State is satisfied there are good reasons, she must certify the appeal right and it will be subjected to an expedited appeal straight to the upper tribunal. Tribunal procedure rules, then, must make provision for this. If it is in the interests of justice for an appeal not to be expedited, the tribunal may order that it is no longer subject to that process. This, too, prevents any onward appeal.

In the next debate I will set out our opposition to the clause as a whole, but amendment 155 sets out a situation where the Secretary of State must accept there has been a reasonable excuse, similar to before. It would surely be wrong to subject survivors of human trafficking, or gender-based violence or torture—to use but three examples—to an accelerated appeal, simply on the grounds that they were late making a claim in response to a PRN. We have heard very powerful reasons already today, including in Home Office guidance, why that can be an incredibly difficult process.

I suspect the Minister will again reject this amendment on the same grounds as before, but it is at least useful for him to state on record that these are the types of claimant that he envisages should not be pushed through any accelerated appeal process. I will listen carefully to what he has to say in that regard.

Tom Pursglove: I thank the hon. Gentleman for tabling amendment 155, which seeks to define good reasons for the purposes of proposed new section 82A(2) of the Nationality, Immigration and Asylum Act 2002. I appreciate the concerns this amendment is attempting to address but the Government must oppose it. The amendment would result in all individuals who meet any of the descriptors listed being exempt from the expedited appeal process, even where their reason for lateness may be completely unrelated and make redundant any need to submit a claim by the date specified in the PRN.

I acknowledge that the experiences and circumstances listed in the amendment can inform why a person has made an application late. However, the duty on the Secretary of State will see all and any reasons for lateness being considered. Guidance for decision makers will be published and made available when these measures come into force. For that reason, I invite the hon. Member to withdraw his amendment.

Stuart C. McDonald: I beg to ask leave to withdraw the amendment.

Amendment, by leave, withdrawn.

Tom Pursglove: I beg to move amendment 67, in clause 21, page 24, line 27, after "are" insert "brought and".

This amendment and Amendment 68 clarify that the Tribunal Procedure Rules establishing the new expedited appeals process must aim to ensure that both the bringing of an appeal and its determination are expedited.

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

Government amendments 68 and 69.

Amendment 42, in clause 21, page 24, line 37, leave out subsection (2).

This amendment would protect the right to an onward appeal from an expedited appeal decision by the Upper Tribunal in certain cases.

Clause stand part.

That schedule 2 be the Second schedule to the Bill.

Tom Pursglove: The Government propose three amendments to clause 21. Two amendments relate to the timeframe for bringing an expedited appeal. Accordingly, they clarify that the tribunal procedure rules must provide that an expedited appeal is brought more quickly than a standard appeal. That will ensure that individuals bring appeals promptly. The third amendment provides that, where the upper tribunal exercises its discretion to order that an expedited appeal should not be treated as such, the appeal will be transferred to the first-tier tribunal. This amendment provides an important clarification about the impact of the upper tribunal's discretion to remove a case from the expedited appeal route. I therefore urge the hon. Members to support the Government amendments.

I thank the hon. Members for tabling amendment 42, which concerns the finality of decisions by the upper tribunal in expedited appeals. However, the Government oppose the amendment. The expedited appeal process provides effective access to justice while protecting the appeals system from abuse by individuals who deliberately act to prolong their case, thereby delaying a final decision.

We believe that where recipients of a priority removal notice who have received an offer of enhanced legal advice bring a late human rights or protection claim without good reason, any subsequent appeal should be dealt with expeditiously by experienced senior judges, and that their decision should be final. We believe that that strikes a balance, ensuring that appellants have access to justice, while protecting the appeals system from abuse. Section 13 of the Tribunals, Courts and Enforcement Act 2007 provides for various upper tribunal decisions to be excluded from onward appeal. It is appropriate that expedited appeals are included within the list of excluded decisions that are not appealable.

2.45 pm

Clause 21 creates a new expedited appeal that will be heard in the upper tribunal. Frequently, those who face removal or deportation from the UK utilise delay tactics, such as bringing late claims and launching repeated appeals, to thwart removal action. That leads to unnecessary costs to the taxpayer and increased burden on the courts and tribunals system. The clause will ensure that appeals in relation to late human rights or protection claims brought by recipients of a priority removal notice, as provided by clause 18, are determined quickly, with

decisions being final. By creating an expedited appeal, the clause will also remove the incentive for bringing claims late, and protect the appeals system from abuse.

The clause provides the safeguards needed to ensure that the expedited appeals route is fair and provides access to justice. Where a person provides good reasons for a late claim, their right of appeal will not be certified as an expedited appeal. In addition, the upper tribunal will have discretion to order that an expedited appeal is no longer to be treated as such, when it is in the interests of justice to do so.

Schedule 2, which is supplementary to clause 21, creates a new expedited appeal to the upper tribunal under proposed new section 82A of the Nationality, Immigration and Asylum Act 2002. Schedule 2 makes several consequential amendments to part 5 of that Act to ensure that the relevant provisions apply to the upper tribunal in expedited appeals.

Schedule 2 is a necessary accompaniment to clause 21. This important part of the Bill will disincentivise the use of delay tactics to thwart removal actions, while protecting appellants' access to justice by establishing an expedited appeal for persons who bring unjustifiably late claims.

Bambos Charalambous: We will oppose clause stand part.

Mr Goodwill: When we discussed the previous clause, there were a lot of complaints about the time it took to process people whose claims were rejected and who were removed, and those who had genuine claims. Should the hon. Gentleman not welcome the expedited process because it will enable people to get their decisions more quickly and stop those whose vexatious use of the law delays things?

Bambos Charalambous: There is such welcome generosity from Conservative Members. The measures will do no such thing; all they will do is clog up the upper tribunal system, which I will address later.

The Bill's system of penalisation includes curtailing appeal rights, as set out in clause 21. The clause creates an expedited appeal route for those who have been served with a priority removal notice and who have provided evidence or a claim after the PRN cut-off date. Most importantly, the right of the appeal will be limited to the upper tribunal.

According to the Law Society, the proposals would essentially result in single-tier appeals with increased pressure on judges and more appeals to the Court of Appeal, as well as undermining access to justice, which is crucial in asylum cases. The Government's proposals on priority removal notices and expedited appeals risk impinging on people's rights and access to justice. In many instances, asylum seekers are highly vulnerable and may experience difficulties when it comes to the legal intricacies of the asylum process—studying legal determinations, gathering evidence and preparing submissions for appeals, for instance.

It is also worth clarifying that when unfounded or repeat claims are made, accelerated procedures as part of the asylum process are necessary and important safeguards. The difficulty is that more complex cases—where there are legitimate reasons for evidence being provided at a later date, for example—may be included in those accelerated processes, with devastating consequences. The Committee has heard some of examples of that today.

The Committee heard from Adrian Berry of the Immigration Law Practitioners Association about clause 21 during our evidence session. It is worth revisiting his evidence and the severe concerns that he raised on 23 September. First, he spoke about the expedited appeal, which begins in the upper tribunal. Therefore those who introduce a claim for asylum and provide evidence after the cut-off date in a priority removal notice receive an expedited appeal and lose their right of appeal and a hearing in the first-tier tribunal. Secondly, he raised concerns that the upper tribunal hearing is final. There is no onward appeal to the Court of Appeal. That is wrong for a number of reasons.

Mistakes, unfortunately, do happen in asylum claims, but under the current provision, individuals would be left, in the words of Adrian Berry, "one shot" to appeal and correct the mistakes. The fact that the first instance tribunal decisions cannot be reviewed has serious implications for the rule of law. It also creates a wider time-pressured, accelerated decision-making process operating on the tribunal system, which is likely to have a negative effect on the quality of decisions made. That is well documented and an issue that we have touched on previously, but it is worth repeating for the benefit of the Committee.

Appeals have been rising for many years. Between 2016 and 2018, 57% of first-tier tribunal asylum appeals were dismissed. It was only 52% in 2019-20. The right of appeal is fundamental in protecting individuals' rights and preventing potential miscarriages of justice.

I should like to cite an example to illustrate that point and wider concerns about the priority removal notices regime introduced in part 2. I will call my example AT, a Gambian national who unsuccessfully sought asylum in the UK. He was married to a Gambian woman who had been granted indefinite leave to remain in July 2016 as she was unable to return to Gambia. His wife was heavily pregnant with their child but their relationship had not been raised or considered by the Home Office as part of his asylum claim. He was given a "notice of liability to removal" and was detained after the notice period had ended. Before his detention, he was unsuccessful in securing an appointment with his solicitors.

During AT's detention, his wife gave birth to their son—a British citizen. The Home Office refused AT's human rights claim based on his family life, focusing on the late stage at which he raised it. He was removed from the UK before he could access legal advice and challenge that decision. His subsequent judicial review proceedings were successful and he was allowed to return to the UK to exercise his right of appeal to the first-tier tribunal against that decision. The Home Office subsequently conceded his article 8 family life claim, and granted him leave to stay in the UK with his wife and son. If the priority removal notice provisions of the Bill had been in force in this case, AT's right of appeal, even after he had succeeded in a judicial review, would have been severely circumscribed. He would only have been able to appeal directly to the upper tribunal. The appeal would have been decided on an expedited basis and the tribunal would have been required to treat AT's claim to a family life as lacking credibility. If the upper tribunal had found against him, he would have had no right of appeal to the Court of Appeal.

[Bambos Charalambous]

That case highlights some of the severe consequences of clause 21. Are Committee members, on all sides of the debate, happy to put speed over justice? That is what the Bill's attempts to expedite appeals seeks to do, and without acknowledging the harm that that will cause. It risks people having their human rights violated as a result of a truncated appeals process for asylum claims.

Clause 21 has serious consequences for the rule of law, procedural fairness and the rights of individuals. It will inevitably lead to the wrong being decisions made that will then go unchallenged. Closing off avenues for appeals risks closing off access to justice. An incorrect decision can cost an individual their safety, security and livelihood. Therefore the clause presents an unacceptable risk of breaching the UK's non-refoulement obligations under the refugee convention and the European convention on human rights. As such, the Opposition will oppose that clause 21 stand part of the Bill.

Stuart C. McDonald: I agree with everything the shadow Minister said. I want to speak in support of amendment 42, which would preserve onward rights of appeal in certain circumstances.

The overall danger of clause 21 is that it risks expediting appeal processes so that mistakes are made and people are denied justice. Given the dangers that are posed by speeding up such processes, it is all the more important that there is access to the supervisory jurisdiction of the higher courts in case errors are made. We are not talking about minor issues; these are matters of life and death. Assessments have been made about a risk of persecution. Errors will have catastrophic consequences for individuals concerned.

All tribunals make mistakes, so in such circumstances, it seems reckless not to have any right of appeal. I absolutely accept that there can be restrictions and that the grounds for such an appeal can be phrased in a way to try to prevent abuse, but to exclude it altogether goes way beyond what can be justified. Expedited appeals without any possibility of onward appeals creates a double danger of getting those decisions wrong. The fact that claims are made late does not remotely mean that they are necessarily without merit, nor does it mean that they can be decided any quicker than another claim and it should not automatically lead to accelerated appeals processes.

Again, I think that all this is missing the point. The tribunal was actually functioning pretty well. It is the Home Office that has to focus on getting its house in order, and the whole clause is completely misconceived.

Amendment 67 agreed to.

Amendments made: 68, in clause 21, page 24, line 28, after "be" insert "brought and".

See the explanatory statement for Amendment 67.

Amendment 69, in clause 21, page 24, line 32, leave out from "is" to end of line 33 and insert

"to be continued as an appeal to the First-tier Tribunal and accordingly is to be transferred to that Tribunal".*—(Tom Pursglove.)*

This amendment is a drafting amendment to clarify that where the Upper Tribunal is satisfied that it is in the interests of justice to do so it has power to order that an expedited appeal is instead to be heard subject to the usual procedure by the First-tier Tribunal.

Amendment proposed: 42, in clause 21, page 24, line 37, leave out subsection (2). *—(Stuart C. McDonald.)*

This amendment would protect the right to an onward appeal from an expedited appeal decision by the Upper Tribunal in certain cases.

Question put, That the amendment be made.

The Committee divided: Ayes 6, Noes 8.

Division No. 22]

AYES

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

NOES

Anderson, Stuart	Howell, Paul
Baker, Duncan	Pursglove, Tom
Goodwill, rh Mr Robert	Whittaker, Craig
Holmes, Paul	Wood, Mike

Question accordingly negatived.

Question put, That the clause, as amended, stand part of the Bill.

The Committee divided: Ayes 8, Noes 6.

Division No. 23]

AYES

Anderson, Stuart	Howell, Paul
Baker, Duncan	Pursglove, Tom
Goodwill, rh Mr Robert	Whittaker, Craig
Holmes, Paul	Wood, Mike

NOES

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

Question accordingly agreed to.

Clause 21, as amended, ordered to stand part of the Bill.

Schedule 2 agreed to.

Clause 22

Civil legal services for recipients of priority removal notices

Question proposed, That the clause stand part of the Bill.

Tom Pursglove: Clause 22 provides for legally aided advice to be available to all individuals who have received a priority removal notice. The priority removal notice is designed to give advance notice to individuals who are being prioritised for removal from the UK, and requires them to raise any reasons why they should not be removed. It is essential that individuals have access to free and impartial legal advice upon receipt of a priority removal notice. Those individuals need to understand what the notice is and what it is asking them to do, and they need the opportunity to go through their individual circumstances with a qualified lawyer and confirm whether there are any reasons why they should not be removed from the UK, and how to raise those reasons. Access to

this legal advice will be free to the individual, with the only criterion for the advice being receipt of the priority removal notice.

3 pm

We hope that the clause will encourage all individuals with a priority removal notice to seek legal advice and ensure that the Home Office is aware of the individual's full circumstances before any removal action is taken. The clause will work to the benefit of all parties involved, from the individuals in need of advice, who can access free and impartial advice, to the Home Office, which will continue to fulfil its duties to protect those in need of its protection and remove those who have no valid reasons to remain in the UK. I therefore commend the clause to the Committee.

Bambos Charalambous: Clause 22 provides for up to—but no more than—seven hours of legal aid to be available to those served with a priority removal notice, enabling them to receive advice on their immigration status and removal. This provision is necessary due to the new priority removal notices regime introduced in part 2 of the Bill, and while we welcome the introduction of the legal aid requirement in the Bill, it does not go far enough. Seven hours is not enough time for a legal representative to take instructions from, advise and represent individuals who are often among the most vulnerable people in society.

The Government's one-stop approach to asylum claims means that there is a significant risk of claimants being unable to obtain legal advice properly despite the provisions set out in the clause, because they have not been given enough time to develop a relationship of trust with their legal advisers and the legal authorities. We know about the difficulties many asylum seekers—for example, those who are victims of torture, sexual gender-based violence, or trafficking—face in disclosing evidence, and the time constraints imposed by clause 22 will likely negatively impact people who have difficulty disclosing information related to their claim due to an initial lack of trust in the advisers or authorities.

More widely, organisations in the sector have rightly made the connection between the Government's offer of legal aid to the recipients of PRNs in this clause and the broader cuts to legal aid in the immigration sector that have become the hallmark of the Government's time in office. According to Bail for Immigration Detainees,

"This meagre provision comes after the gradual decimation of the legal aid immigration sector since the legal aid cuts in 2013",

and the clause

"will not be a sufficient safeguard to ensure access to justice".

It is, of course, essential that people who need legal advice can access that advice in practice, and support must be provided for those who need help navigating the system. In many instances, asylum seekers are highly vulnerable, and may experience difficulties when it comes to the legal intricacies of the asylum process, such as studying legal determinations or preparing submissions for appeals. It is equally clear that the wider proposals in part 2 of the Bill will not achieve the Home Office's aim of creating an immigration system that is fairer and more efficient. As we know from reading the Bill, clause 22 comes alongside a set of sweeping legislative changes that, for example, limit access to appeals, speed up the removal process and penalise late submissions of relevant evidence. These measures can hardly be described as fair, and they fail to make the system more efficient.

We must take the proposals about legal aid in clause 22 in conjunction with other clauses in part 2 that seek to fast-track asylum claims and appeals, and make conditions harder for asylum seekers and refugees here in the UK. When implemented together and in strict draconian fashion, the Bill's provisions therefore inhibit access to justice, risk inherent unfairness, are contrary to the common law and violate procedural requirements. Most importantly, they may give rise to a significant risk of refoulement, which would violate the UK's internal obligations.

While we welcome the introduction of legal aid, we do not believe that the clause goes far enough: we believe that much more should be done to provide more legal aid, particularly in relation to the immigration sector.

Neil Coyle: Members will be pleased to know that I will be brief, not least because my hon. Friend the Member for Enfield, Southgate has been so comprehensive, but also because I spoke on this issue a lot this morning. However, I would like to ask some specific questions—three, I think.

If children are covered by clause 22, perhaps the Minister will take the opportunity—despite failing to do so on the two previous chances I have provided—to outline what the equality impact assessment means when it says,

"We will also provide increased access to legal aid."

As I have explained, the Ministry of Justice seems to be unaware of this extension, and there are previous answers I have yet to exploit. However, it would be useful to know—indeed, I believe we are entitled to know—what cost to Government this will have. What is the cost of this extension to the taxpayer? Is it relevant to clause 22, and how many children or people will benefit from such an extension as we go forward? I hope that the Minister will be able to answer that or, at least, send another letter. I am enjoying our correspondence so far.

My second question is about the organisations that might be providing this advice. Is it the Government's intention, under clause 22, to have a defined list of organisations that will be willing to provide it? As I mentioned, at an asylum hostel in my constituency yesterday, there appeared to be a Home Office list of legal aid providers that is given to asylum seekers in an induction pack. That should be made public, so that we can explore whether those are the best organisations and whether the list could be expanded. I hope the Minister will tell us whether that list will be published, and whether clause 22 will involve a defined set of organisations.

Thirdly, if the Government are serious about genuinely tackling the delays and the pace of these cases, perhaps they would consider expanding legal aid to all cases to make it a genuinely fast, fair and effective system. That is sadly not what we have before us today.

Paul Blomfield: Similarly, I want to ask a couple of questions of the Minister on why the opportunity has not been taken to go beyond the provisions in the clause, because there is a real problem with access to legal aid. Research by Refugee Action has shown that, since the changes introduced in 2012, it has been much more difficult to secure legal aid. There is also a vast

[Paul Blomfield]

difference in provision across the country, with provision concentrated in metropolitan areas such as London and Birmingham, and not in dispersal areas, where it is particularly difficult to access legal aid. Refugee Action's report recommended that the Government should commit to ensuring that everybody in the asylum system who is eligible for legal aid representation has access to it. What are the Government proposing in respect of that?

If the clause is about ensuring that issues are resolved at the appropriate stage, why are the Government not extending legal aid to all stages of the process? If cases are successfully resolved at an earlier stage, surely it is to everybody's benefit.

Tom Pursglove: I will try to respond to the various points that have been raised as best as I am able. I will, of course, happily feed through the views that have been expressed to Ministry of Justice colleagues who have direct responsibility for legal aid within their portfolio.

On the initial point about the seven hours, it is worth saying that the power we are proposing will allow the Lord Chancellor to amend the number of hours of advice available under the clause. The Lord Chancellor will have to lay affirmative legislation to ensure that Members of this House and the other place have full sight of the proposed changes. That power is necessary because the priority removal notice is a new process and, as with all new operational processes, it will take time to bed in. We must be able to change the number of hours to ensure that the purpose of the clause works how we intend in practice. Providing individuals with access to free legal advice ahead of their potential removal from the UK is clearly important. That is why we are making that commitment in the Bill.

I was asked what this extension of legal aid will cost. The estimates are in the region of £4 million to £6 million, so it is a significant increase to meet the need resulting from the new measures we are introducing. If, at the end of the seven hours, more advice is needed—and there are circumstances which dictate that—there is legal advice available for asylum claims and appeals.

Neil Coyle: Is that £4 million to £6 million just for the civil legal services under clause 22 for people under priority removal notices?

Tom Pursglove: Yes. That provision is made precisely for those in receipt of a PRN. I was making a point about the extension. It is worth making the point that, if people find that they require further advice at the end of the seven hours, any individual needing more legal advice on an immigration matter can apply for in-scope legal aid, such as for asylum advice or through the exceptional case funding scheme, subject to passing the relevant means and merits tests. I will make sure that colleagues in the Ministry of Justice are aware of the points raised today on legal aid more generally within the immigration and asylum system.

There was a question about access to justice in dispersal areas. The hon. Member for Bermondsey and Old Southwark asked where information about legal aid provision is provided. My understanding is that it is published online, so it is readily accessible to people. As hon. Members would expect on the issue of dispersal areas, the MOJ monitors the market capacity and works with the Home Office to ensure supply in dispersal areas. If the hon. Member for Sheffield Central wants to write to me with specific concerns on that matter in his community, I would be glad to look at those and make sure that they are considered by Ministers appropriately.

Paul Blomfield: I will take the Minister up on his offer, but I want to press him on another point. He talks about legal aid being made available for the new provision for a priority removal notice. However, the Home Secretary has the opportunity to issue a priority removal notice, but is not required to do so—it might not be done in all cases. There will potentially be people who are served with a notice of removal who have never received a priority removal notice. They will not have the opportunity to access the seven hours of free legal aid. What is the justification for that?

Tom Pursglove: The hon. Member is seeking to extend the provision we are proposing in the Bill. We are very clear that the clause makes the legal advice available to those who have been served with priority removal notices. We do not propose to extend the offer beyond that. However, I will make sure that his concerns are flagged with ministerial colleagues in the Ministry of Justice.

Question put and agreed to.

Clause 22 accordingly ordered to stand part of the Bill.

Clause 23

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

Stuart C. McDonald: I beg to move amendment 43, in clause 23, page 26, line 38, leave out subsection (2) and insert—

"(2) Where subsection (1) applies, the deciding authority must have regard to the fact of the evidence being provided late and any reasons why it was provided late in considering it and determining the claim or appeal."

This amendment would remove the provision which states that "minimal weight" should be given to any evidence provided late.

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

Amendment 38, in clause 23, page 26, line 40, at end insert—

"(2A) Subsection (2) does not apply where—

(a) the claimant's claim is based on their sexual orientation or gender identity; or

(b) the claimant was under 18 years of age at the time of their arrival in the United Kingdom.".

This amendment would remove the direction to the deciding authority to give minimal weight to evidence provided late in cases where an asylum claim or human rights claim is based on issues of sexual orientation or gender identity; or where the claimant was under 18 when they arrived in the UK.

Amendment 131, in clause 23, page 26, after line 40, insert—

"(2A) The deciding authority must accept that there are good reasons why the evidence was provided late where—

(a) the claimant's claim is based on sexual orientation, gender identity, gender expression or sex characteristics;

(b) the claimant was under 18 years of age at the time of their arrival in the United Kingdom;

(c) the claimant's claim is based on gender-based violence;

(d) the claimant has experienced sexual violence;

(e) the claimant is a victim of modern slavery or trafficking;

(f) the claimant is suffering from a mental health condition or impairment;

(g) the claimant has been a victim of torture;

(h) the claimant is suffering from a serious physical disability;

(i) the claimant is suffering from other serious physical health conditions or illnesses."

This amendment sets out the circumstances where the deciding authority must accept that there were good reasons for providing evidence late.

Amendment 44, in clause 23, page 27, line 13, at end insert—

"(6B) This section does not apply where the evidence provided proves that a claimant is at risk of persecution by the Taliban."

This amendment would disapply Clause 23 (under which minimal weight is given to any evidence provided late) in respect of claimants who are at risk of persecution by the Taliban.

Clause stand part.

Stuart C. McDonald: The clause is similar in nature to clauses we have debated already, and most of the amendments address similar issues. It is about penalties for providing evidence after a specified cut-off date. Amendment 43 makes the point, again, that we regard it as legitimate to ask a decision maker to take account of the fact that evidence was provided late and the reasons for that, but it should not tell a decision maker what to conclude. We have also added our names in support of amendment 131, which seeks to ensure an acknowledgement of how difficult the process of the provision of evidence can be for certain categories of claimant, and the inappropriateness of fixing hard and fast deadlines.

3.15 pm

It is important to say that the clause is even more objectionable and even more dangerous than the ones we debated earlier. It does not just require a decision maker to regard late evident without explanation as damaging credibility to whatever extent the decision maker thinks fit; rather, it provides that in considering evidence that is provided late, they must

"have regard to the principle that minimal weight should be given to the evidence."

To my mind, that is a frankly outrageous proposition. Parliament cannot tell decision makers what weight to give to evidence that we cannot know anything about. The evidence does not exist yet. It is the decision makers who see and hear the evidence—we do not. We are just guessing what the evidence might be.

Amendment 44 is a bit different. It provides an example and illustrates the absurdity of the provisions that we have been debating so far. It would mean that the clause did not apply where the evidence provided proves that a claimant is at risk of persecution by the Taliban. Let us say that a claimant from Afghanistan provides very little evidence of particular individual risk, but then—we might say through sheer stupidity or stubbornness—they provide late evidence that shows conclusively that they are at specific risk from the Taliban. How on earth could we then say that that evidence should be given minimal weight? Perhaps the evidence is a threatening letter. Perhaps it is a photo showing torture or punishment. Perhaps it is news footage of the Taliban condemning the claimant publicly and offering a bounty for his capture. How does the clause operate in those circumstances? Why should minimal weight be given to something that is conclusive or clear? Are we going to remove people to Afghanistan even if we know that they are at risk, simply because of this outrageous provision? The whole idea is dangerous and absurd.

Bambos Charalambous: I will speak to amendments 38 and 131, and will seek to press amendment 131.

We do not believe that it is fair that some evidence is deemed to have minimal weight when there are practical and psychological reasons that it cannot be disclosed by a particular date. We have grave concerns about the clause, in particular because of the awful impact it could have on vulnerable women and other groups such as the LGBT+ community. That is why we have tabled the amendments. We want a cast-iron and legal guarantee that groups who have good reasons for late evidence are protected under the law. Otherwise, there is a danger that the persecution they have fled will be compounded by the inappropriate disregard of their late evidence.

The clause instructs decision makers to give regard to the principle that minimal weight be given to later evidence unless there are good reasons, which are undefined in the Bill and are therefore left entirely to the discretion of the Home Secretary. There are many good reasons why, for instance, women who have fled sexual and gender-based violence cannot share relevant experiences right away. This is even acknowledged in Home Office guidance that refers to

"guilt, shame, and concerns about family 'honour', or fear of family members".

The same guidance acknowledges that women who have been trafficked to the UK may be facing threats from their traffickers at the time of their interview, such that they are unable to speak openly. Some women who have fled persecution because of their sexual orientation are not able to disclose their sexuality during the time of their initial claim. They may still be coming to terms with it themselves—a process that can take years. Other women or people who have fled sexual violence or torture may be suffering from post-traumatic stress disorder, and may experience disassociation from their experiences, which is a well-known psychological phenomenon in the aftermath of sexual violence.

Women therefore already face significant barriers to the full investigation and recognition of their protection claims. The clauses on late evidence will worsen those obstacles if they are not given additional protections. As well as causing harm to women in desperate need of safety, if unamended the clause will lead to greater unfairness in the system, an increasing number of incorrect decisions and ultimately, therefore, an increase in the backlog of cases.

With reference to women and late evidence, the Bill taken as a whole goes directly against Home Office policy, which states that late disclosure should not automatically prejudice a woman's credibility. The backlog of asylum cases urgently needs addressing, but restricting the ability of vulnerable women or other vulnerable people to bring evidence is neither a fair nor an effective solution. That is why we believe the amendment that provides the specific categories as set out is so needed.

[Bambos Charalambous]

Introducing a rigid deadline for providing evidence and penalising those who provide late evidence also risks negatively impacting trans people specifically from applying for asylum. Trans people already face difficulty in "proving" their gender identity, due to the innateness of someone's gender identity together with social expectations and stereotypes ostracising a population of trans people from protection. We see a similar difficulty in respect of other LGBT+ identities in so far as it is by nature next to impossible to prove something so intimate, without its becoming disproportionately invasive. Therefore we believe that these groups, too, are adversely impacted by the provisions around late evidence.

For people under 18, there are obvious reasons why their evidence may be late. It seems ridiculous that without amendment, the clause seriously suggests that we punish children by giving their evidence less weight if they cannot meet an arbitrary date. How on earth is it appropriate that children who may have escaped the worst imaginable situations, and who are likely to be suffering from trauma, are then further traumatised with arbitrary conditions placed on evidence and its weight?

Clause 23 creates the principle that a decision maker must give minimal weight to evidence raised late by a claimant, unless there are good reasons why that evidence was provided late. We are deeply concerned about the clause and the impact of the Bill's measures around delayed disclosure in part 2. There are many reasons why it may not be possible to present all information in support of an asylum claim at the earliest opportunity. Women who have been trafficked to the UK may be facing threats from their traffickers at the time of interview. Others who have fled persecution because of their sexual orientation may be unable to disclose their sexuality during the time of their initial claim. They may still be coming to terms with themselves—a process that can take years.

If implemented, the Government's proposals would adversely impact those vulnerable people. We propose that the Government introduce a cast-iron legal guarantee that groups that have a good reason for late evidence are protected under the law. Failing to do so risks penalising the most vulnerable people and those who have been failed by the system.

Neil Coyle: Clause 23 is deeply pernicious and comes at a time that suggests that the Government have rushed this legislation. Last Tuesday, there was a meeting between the Prime Minister's special envoy for freedom of religion or belief and the right hon. Member for Gainsborough (Sir Edward Leigh). That meeting was to discuss the case of Maira Shahbaz, a 15-year-old Christian who has fled Pakistan having been kidnapped, forced to convert religion and forced to marry one of the men who kidnapped her. She managed to escape and is seeking asylum, but she was held for a significant time, so she would not necessarily meet the original timeframe and she might fall foul of the measures in this legislation.

For the Prime Minister's special envoy to be willing to meet and discuss that case suggests that there should be a process by which someone in those circumstances is able to avoid the provisions of this legislation. I am deeply concerned that one bit of the Government are off having discussions elsewhere, while the Home Office is bringing forward plans that could prevent someone in those exact circumstances from benefiting from any exemptions they might have discussed in that meeting last Tuesday. It suggests once again that this is more about culture wars and headlines than it is about the practical reality of the system that exists or building towards a system that is fairer, more effective and faster.

I wanted to quickly raise issues around sexuality. I am deeply grateful to Rainbow Migration, who provided some examples and evidence for the Committee to all members. It said that clause 23 specifically

"would be acutely detrimental to LGBT+ people because of the difficulties in gathering and providing evidence that helps confirm their sexual orientation or gender identity. Many LGBT+ people may have spent a long time trying to hide their sexual orientation or gender identity from other people…in the UK",

never mind in regimes where it is specifically illegal or unlawful, and could be punished.

Earlier, I asked the Minister what a gay man would need to provide to meet the initial evidence threshold, to avoid PRNs and to avoid being punished by clause 23. If someone has been persecuted on the grounds of their sexuality—persecuted for having the temerity to fall in love with someone of the same gender—in their country of birth, they may inevitably worry about revealing that identity, having managed to escape such an horrific regime.

I ask the Minister again to explore some of the practical realities of those circumstances before penalising someone specifically on the grounds of sexuality, because I think that it will fall foul of existing UK law, if not other international obligations. I am very mindful that I have a live case of a gay man trying to flee Lebanon where he is being forced, as the only son in a family, to marry against his wishes. He is seeking to escape Lebanon in order to not be forced to subjugate his sexuality in the interests of his family's wishes.

I hope that the Minister can give more information on what the burden of proof would be, because I do not understand. Producing a boyfriend or girlfriend, or a love letter from someone still living in a regime where it is impossible to do that, will not necessarily be possible; yet the Government are legislating to penalise people in exactly those circumstances. Members across the House are deeply worried about the implications of such a measure.

On 3 February 2020, the Home Office was asked in question 11509 when it

"plans to update the House on the progress of the review into the way asylum claims based on religious grounds and LGBT+ grounds are assessed."

The response was:

"The review into the way asylum claims on the basis of religious and LGBT+ grounds are assessed has been completed."

That review has never been published. The Government refused to publish it in February last year, and they have refused to do so in answer to many subsequent questions. It is troubling that, while the Government withhold information on how existing processes have not necessarily dealt with faith and sexuality-based cases very well, we now have measures before us that deliberately penalise people who will find it harder to prove discrimination or persecution on faith and sexuality grounds. I hope that the Minister will agree that the review should be

made public during the Bill's passage, and certainly before anyone is penalised and has their case impeded on those grounds.

We talked about PTSD. Under clause 23 someone could face having their case undermined before their PTSD symptoms were, importantly, fully diagnosed. I will not repeat what I said this morning, but it would be ludicrous to legislate that someone be forced to have that diagnosis when they cannot access healthcare and not all symptoms will necessarily be evident.

Finally, the Anti Trafficking and Labour Exploitation Unit has provided a case of a Nigerian woman whom it has just listed as "X". Promised a career in the UK as a hairdresser, she was forced into sex work, when in the UK, for nearly a year before she managed to escape. She was unable to meet the time limit, could be subject to a PRN and could be subject to clause 23 if she finally makes a case. The Minister had said that trafficking victims would not be subject to those provisions; but the Home Office initially declared that specific woman, X, not to be a victim of trafficking. By the time the Home Office had admitted its mistake, she could have gone through that process. She could have had the PRN imposed before the Home Office was willing to accept that, and before she had the legal advice to support her to make the case that proved she was the victim of human trafficking. I see no safeguards before us today that would prevent her from being subject to clause 23, and having less weight applied to her case or being removed from the country before she could make that case. The Government need to come forward with more safeguards before they progress these measures any further.

3.30 pm

Tom Pursglove: I thank hon. Members for raising these important issues. We all recognise that young or particularly vulnerable claimants, sufferers of trauma such as sexual violence or ill-treatment on account of their sexual orientation or gender identity, and survivors of modern slavery or trafficking need to be treated with care, dignity and sensitivity. It is important that they are able to participate fully in the asylum process so that, in the case of a genuine applicant, their claim for protection can be recognised and their status settled at the earliest opportunity. That is in the best interests of the claimant and the overall functioning of the asylum system.

At the same time, we recognise that it may be harder for some people to engage in the process. That may be because of their past experiences, because of a lack of trust in the authorities or because of the sensitive and personal nature of their claim. That is why clause 16, together with clauses 17 and 23, provides for good reasons why evidence might be provided late. What constitutes "good reasons" has not been defined in the Bill, because to do so would limit the discretion and flexibility of decision makers to take factors into account on a case-by-case basis. It would be impractical to legislate for every case type where someone may have good reasons for not previously disclosing evidence in relation to their protection claim.

Good reasons may include objective factors such as practical difficulties in obtaining evidence—that may be where the evidence was not previously available, or where an expert report is not available. Good reasons may also include subjective factors, such as a claimant's particular vulnerabilities relating to their age, sexual orientation, gender identity or mental health. Decision makers, including the judiciary, will be better placed to identify and assess those factors on an individual and case-by-case basis.

Amendment 43 would effectively remove the minimal weight principle; it would disapply the requirement for a decision maker to have regard to the principle that minimal weight should be given to late evidence for two categories of people. The amendments fail to take into account the fact that decision makers will have discretion in how they apply the principle that minimal weight should be given to late evidence, and that they may choose not to apply the principle in any given case. Clause 23 does not create a provision whereby decision makers are required to give late evidence minimal weight; they are required only to have regard to the principle, which they can choose to disregard.

Amendment 131 would place a statutory obligation on decision makers to accept that there are good reasons for late evidence where an individual's claim is based on certain factors, or the individual falls into a particular category. That would apply to Home Office decision makers as well as the judiciary. Compelling a judge to accept good reasons for late evidence based solely on the grounds of the person's claim raises significant issues and interferes with their fact-finding role. It also ignores the possibility that a claim may fall within a particular category or a person may identify as one of the listed categories, but their evidence may be late for unrelated reasons. The amendment would therefore create a blanket acceptance of late evidence in specific prescribed circumstances, and yet a vulnerable individual who did not fall within the specified groups might have late evidence and face a different test for whether or not they have good reasons. We feel that is unfair.

On amendment 44, this country has a proud history of welcoming with open arms those who require its protection. That includes circumstances where, as in Afghanistan, a significant change in circumstances means a sudden shift in a country's security situation. Where evidence is brought late on account of such a change, that is clearly capable of falling within the "good reasons" consideration, so there is no need to make specific provision in relation to a fear of the Taliban.

Stuart C. McDonald: But what would happen in the hypothetical example I gave, where there was not good reason? The guy was a bit stubborn and did not think he should have to go through this process; he thought he should have had some automatic leave. I am still at a loss to understand what it means for the decision maker to have regard to the principle that minimal weight should be given to the evidence. I do not understand the expression. How does that work in the context of the hypothetical example I gave?

Tom Pursglove: I will come back to that point and try to give the hon. Gentleman some further clarity, which I hope will be helpful. I will make the point again that, in the current circumstances that we find ourselves in regarding Afghanistan, people are not being removed there.

Of course, all the relevant information is taken into consideration when reaching decisions on individual cases. For example, if there is an assessment that a

[Tom Pursglove]

particular country is safe but for a particular individual there are grounds whereby it is not safe for them in their circumstances, that is reflected in the decisions that are taken.

To finish the point about amendment 44, it would create a system where those with a fear of the Taliban were treated differently from all other asylum seekers, no matter the risks they faced or the vulnerabilities of the individuals involved, simply on the basis of where they were from. That is discriminatory and cannot be right.

On the point about how decision makers can be told that they must apply minimal weight to evidence, clause 23 does not create a requirement for Home Office decision makers or the judiciary to give late evidence, following the receipt of an evidence notice or a priority removal notice, minimal weight. In protection and human rights claims, decision makers must have regard to the principle that minimal weight will be given to any late evidence, but they can consider the principle and determine that it should not be applied in a particular case.

Neil Coyle *rose—*

Tom Pursglove: I have made that point previously and I have reiterated it now for the record. I will give way to the hon. Gentleman, but I have made the point pretty clear.

Neil Coyle: The Minister suggests there is clarity where no clarity exists. If the clause is not to reduce the weight that the evidence is given, what exactly is it there for? Is he suggesting that he will withdraw it?

Tom Pursglove: No, that is not for a moment what I am suggesting. The point that I am making is that, as I have alluded to on many occasions in relation to the clauses that we have considered, we want decision makers to have the appropriate discretion within the framework that we are establishing through the Bill. We think that is the right approach to reach the right decisions in individual cases, taking into account all the relevant circumstances and all the relevant information that is provided. We think that is the right way to proceed. More detail will of course be set out in the guidance.

The hon. Gentleman earlier alluded to very difficult circumstances that a particular individual has found challenging to talk about and disclose. I repeat that caseworkers are trained to be sympathetic to circumstances. The burden of proof, as he described it, will be set out in the guidance that follows. Again, I want to see proper discretion and proper consideration of cases on a case-by-case basis. That is the right and proper way to address such matters.

All individuals should be treated with respect by having proper consideration given to their case. As I said, the detail will be established in the guidance. There will also be training for decision makers, but there is already training for decision makers to ensure that they are sympathetic to the sorts of issues that the hon. Gentleman has raised.

Neil Coyle: With the best will in the world, no amount of training will change the fact that, even if someone has come out in the UK, the Bill makes it harder for gay men in particular from certain countries. What do they need to provide to prove that they would face homophobic persecution if they went back? What do they need to show or do? I want a practical example of how it will work in practice. I cannot believe that one even exists at the moment.

Tom Pursglove: I am sure the hon. Gentleman will understand why it is difficult to set out in the Bill all the circumstances that would capture all the situations that individuals face in relation to such matters. It is just not possible to do that, which is why we are saying that we will establish that in the guidance that will be published if and when the Bill becomes law, as I hope it will. The guidance will set out the circumstances and the way that cases will be considered. Again, that discretion, flexibility and consideration will be shown to individual cases.

Neil Coyle *rose—*

Tom Pursglove: I am conscious that we are going over this ground repeatedly, but I will give the hon. Gentleman the opportunity to intervene again.

Neil Coyle: Is the Minister saying that the guidance will set out what a gay man needs to provide in order to prove that they will face persecution? I think and hope that is what he is saying, and I hope that he will say why the Home Office has not published the review it has already undertaken of the existing process and when it will be published.

Tom Pursglove: I am not familiar with the review to which he refers, but the hon. Gentleman will appreciate that I have been in this role only for the past four weeks. However, I will go away and look into that.

I can only repeat the point that we will set out in guidance the relevant factors that will be taken into consideration when cases are determined. I would expect there to be sympathetic consideration of people's individual circumstances. I have also made that point at the Dispatch Box when we have talked about the operationalisation of the policy. Of course, it is right that that information is established in full. With that, I encourage the hon. Member for Cumbernauld, Kilsyth and Kirkintilloch East to withdraw his amendment.

Stuart C. McDonald: I am grateful to the Minister for his answer. At points, he did sound almost reassuring, but the problem is that he sounds reassuring when he says, essentially, "This clause will not have any effect," suggesting that decision makers will be able just to have regard to all the circumstances on a case-by-case basis. That is what decision makers do anyway without the need for this myriad of statute provisions telling them what to think about a, b, c and the weight to be applied to evidence here, there and everywhere. While I take at face value his intention—I think we probably intend the same thing—that my Afghan example would not end up with conclusive evidence being disregarded because the man was stubborn or behaved in a stupid way

because he was at risk, I still find the wording in the clause troubling. I hope the Home Office will think again.

In the meantime, we have pressed similar amendments to a vote, so I do not need to do so again. I beg to ask leave to withdraw the amendment.

Amendment, by leave, withdrawn.

Amendment proposed: 131, in clause 23, page 26, after line 40, insert—

"(2A) The deciding authority must accept that there are good reasons why the evidence was provided late where—

(a) the claimant's claim is based on sexual orientation, gender identity, gender expression or sex characteristics;

(b) the claimant was under 18 years of age at the time of their arrival in the United Kingdom;

(c) the claimant's claim is based on gender-based violence;

(d) the claimant has experienced sexual violence;

(e) the claimant is a victim of modern slavery or trafficking;

(f) the claimant is suffering from a mental health condition or impairment;

(g) the claimant has been a victim of torture;

(h) the claimant is suffering from a serious physical disability;

save-line2(i) the claimant is suffering from other serious physical health conditions or illnesses."—*(Bambos Charalambous.)*

This amendment sets out the circumstances where the deciding authority must accept that there were good reasons for providing evidence late.

Question put, That the amendment be made.

The Committee divided: Ayes 6, Noes 7.

Division No. 24]

AYES

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

NOES

Anderson, Stuart	Pursglove, Tom
Baker, Duncan	Whittaker, Craig
Goodwill, rh Mr Robert	
Holmes, Paul	Wood, Mike

Question accordingly negatived.

Question put, That the clause 23 stand part of the Bill.

The Committee divided: Ayes 7, Noes 6.

Division No. 25]

AYES

Anderson, Stuart	Pursglove, Tom
Baker, Duncan	Whittaker, Craig
Goodwill, rh Mr Robert	
Holmes, Paul	Wood, Mike

NOES

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

Question accordingly agreed to.

Clause 23 ordered to stand part of the Bill.

Clause 24

ACCELERATED DETAINED APPEALS

Stuart C. McDonald: I beg to move amendment 45, in clause 24, page 28, leave out lines 9 to 11.

This amendment would remove the requirement for detainees to give their notice of appeal within 5 working days.

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

Amendment 46, in clause 24, page 28, line 22, leave out "may" and insert "must".

This amendment would require (rather than merely empower) the Tribunal or the Upper Tribunal to cease to treat cases as accelerated detained appeals where it is in the interests of justice to do so.

Clause stand part.

Government new clause 7—*Accelerated detained appeals.*

3.45 pm

Stuart C. McDonald: Clause 24 establishes a system of fast-track appeals for those in detention. The explanatory notes state that in 2019-20 it took almost 12 weeks on average for detained immigration appeals to progress from receipt in the first tier tribunal through to disposal, and the aim is for faster decisions in certain cases

"to allow appellants to be released or removed more quickly".

That sounds almost benign, and who does not want appeals to take place as quickly as possible? But the key issue is whether they can be decided fairly within the timeframe set down in the clause. We are talking not about trying to take three or four weeks off the average time, but about reducing it by almost three quarters. Clearly, the Government believe that the tribunal is wasting a lot of time but I do not see any evidence for that, and I do not see any analysis of why that 12-week average exists.

Five days is an incredibly short timeframe in which to launch an appeal, particularly when a person is detained in an immigration detention facility, often in the middle of nowhere, and where the chances of securing proper legal advice and consultation in that time are incredibly slim. Amendment 45 would delete that requirement.

Amendment 46 would also mean that the tribunal would be required to stop treating an appeal as an accelerated appeal if it was in the interests of justice to do so. Again it is not clear to us why the tribunal should be empowered to continue an accelerated appeal when that is not in the interests of justice. More generally, the clause gives rise to the question of why the Secretary of State should have any say in which appeals can be disposed of expeditiously. Why is she not required just to assess the fairness of a case or give consideration to how complex a case is? Why not leave the tribunal to make those determinations? It would be far better placed to make that assessment.

As Members will know, in 2015 the Court of Appeal found similar rules to be unlawful and held that they created a system in which asylum and human rights appeals were disposed of too quickly to be fair. The Court said that the timetable was

"so tight that it is inevitable that a significant number of appellants will be denied a fair opportunity to present their cases".

[Stuart C. McDonald]

It also said that the policy did not appreciate the problems faced by legal representation obtaining instructions in such cases or the complexity or difficulty of many asylum appeals, and the gravity of the issues raised by them. I have absolutely no reason to think that the proposed policy is any better than that one.

The Government now intend to replace the entire clause with new clause 7, principally it seems to expand the categories of appeal that could be subject to the proposed procedure. My party opposes that expansion and opposes the clause.

Bambos Charalambous: We oppose the clause. It seeks the return of the detained fast-track system and to recreate it in primary legislation. The clause imposes a duty on the tribunal procedure rules committee to make rules for an accelerated timeframe for certain appeals made from detention that are considered suitable for consideration within that timeframe.

In the explanatory notes, an accelerated detained appeal is defined as being

"an appeal brought by an appellant who…received a refusal of their asylum claim while in detention…remains in detention under a relevant detention provision…is appealing a decision which was certified by the Secretary of State as suitable for an accelerated detained appeal".

That system previously existed but was found to be illegal by the High Court in a landmark case brought by Detention Action. The system was found to be unfair as asylum and human rights appeals were disposed of too quickly to be fair. The Court of Appeal described the timetable for such appeals as

"so tight that it is inevitable that a significant number of appellants will be denied a fair opportunity to present their cases".

It also emphasised, perhaps instructively for this Committee, that speed and efficiency must not trump justice and fairness—something of a feature of part 2 of the Bill. Indeed, hundreds if not thousands of cases have had to be reconsidered by the Home Office or the tribunal because they were unfairly rushed through the process that the Government now seek to recreate. Those cases include survivors of trafficking and torture and other individuals who, on the basis of a rushed and unfair procedure, will have been removed to places where they fear persecution or are separated from their families. There was no adequate system for ensuring that such people were removed from the fast track and given a fair opportunity to present their claims.

Despite that background, the Bill aims to create this unjust and ineffective procedure by reintroducing the detained fast-track process through this clause. It will put that same system, which was deemed unlawful in 2015, on a statutory footing, which will insulate it against future legal challenges.

The clause provides for the Secretary of State to certify a decision if she considers that an appeal would be disposed of expeditiously. It requires the tribunal procedure committee to introduce the following time limits: a notice of appeal must be lodged no later than five working days after the decision was received; the tribunal must make a decision no later than 25 days after the appeal date; and an application for permission to appeal to the upper tribunal must be determined by the first-tier tribunal not later than 20 working days after the applicant was given notice of the tribunal's decision.

The clause would deny access to justice. First, five days is insufficient to prepare an appeal against a negative decision, particularly where the individual is detained and where their access to legal advice is poor and an individual's wellbeing may be affected by their detention. For those detained in prison, the situation is even worse. For example, in a case in February of this year, the High Court declared the lack of legal aid immigration advice for people held under immigration powers to be unlawful. More widely, Home Office decision making is frequently incorrect or unlawful. As we know, half of all appeals against immigration decisions were successful in the year leading up to June 2019. It is therefore vital that people are able to effectively challenge decisions through the courts.

The detained fast track is unjust. It is also unnecessary. As the Public Law Project and Justice have pointed out, the tribunal has adequate case management powers to deal with appeals expeditiously in appropriate cases and already prioritises detained cases. The Home Secretary should not be trying to force the hand of the independent tribunal procedures committee to stack the cards in her favour in appeals against her decisions. The Bill does not learn the lessons of the past and seeks to resurrect an unworkable system of accelerated detained appeals. The clause proposes that the appeals process be fast-tracked. I am very worried that provisions in part 2 of the Bill will therefore disadvantage the most vulnerable.

By allowing the Home Secretary to accelerate appeals when she thinks they would be disposed of expeditiously, the clause is clearly unjust. Once again, it also seems to violate the refugee convention. As my hon. Friend the Member for Warwick and Leamington (Matt Western) said on Second Reading:

"It is more than regrettable that the convention appears now to be held in such little regard by this Government."—[*Official Report*, 19 July 2021; Vol. 699, c. 769.]

For those reasons, we will oppose that the clause stand part.

Tom Pursglove: I understand the motivation behind amendment 45. However, the Government oppose the amendment, as it is contrary to our policy intention and would undermine the effective working of the accelerated detained appeals process.

The period of five working days strikes the right balance, achieving both speed and fairness. The detained fast-track rules put in place in 2003 and 2005 allowed only two days to appeal. The 2014 rules set the same time limit. The current procedure rules allow a non-detained migrant 14 days to lodge their appeal against a refusal decision.

On amendment 46, I can assure hon. Members that it is not necessary, as the Bill already achieves the objective sought. The Government's aim is to ensure that cases only remain in the ADA where it is in the interests of justice for them to do so. The consideration of what is in the interests of justice is a matter of judicial discretion. Where a judge decides that it is not in the interests of justice to keep a case in the ADA process, we would expect that they would use their discretion to remove the case. The current wording of the Bill—"may" rather

than "must"—is consistent with the drafting of the rules that govern all appeals considered in the immigration and asylum chamber.

For these reasons, I invite the hon. Member for Enfield, Southgate to withdraw the amendments. On the detained fast track and wider points about the Government's intentions, although the courts upheld the principle of an accelerated process for appeals made in detention, we have considered the legal challenges to the detained fast track carefully. We are confident that the new accelerated detained appeals route will ensure fairness as well as improving speed. All Home Office decisions to detain are made in accordance with the adults at risk in detention policy and reviewed by the independent detention gatekeeper. Changes made to the screening process, drawing on lessons learned, will enable us to identify appellants who are unsuitable for the accelerated detained appeals route at the earliest opportunity. Suitability will be reviewed on an ongoing basis and the tribunal will have the power to transfer a case out of the accelerated route if it considers that that is in the interests of justice to do so.

The timescales proposed for the accelerated route are longer than under the previous detained fast track. Appellants will have more time to seek legal advice and prepare their case. We are confident that the new route will provide sufficient opportunity to access legal advice. I am also conscious that Members are interested in what happens in the eventuality that a migrant misses the deadline to appeal a refusal decision. Provided that there are no other barriers to return, removal will be arranged. It is open to a migrant and/or their legal representatives to submit an appeal after the deadline and ask a judge to extend the time and admit the appeal late.

On new clause 7, the Government are committed to making the asylum appeals system faster, while maintaining fairness, ensuring access to justice and upholding the rule of law. In particular, it is right that appeals made from detention should be dealt with quickly, so that people are not deprived of their liberty for longer than is necessary. New clause 7 sets out a duty on the tribunal procedure committee to make rules for the provision of an accelerated detained appeals route. That will establish a fixed maximum timeframe for determining specific appeals brought while an individual is detained.

Currently, all immigration and asylum appeals are subject to the same procedure rules. Appeals involving detained appellants are prioritised by Her Majesty's Courts and Tribunals Service but there are no set timeframes. It often takes months for detained appeals to be determined, resulting in people being released from detention before their appeals are concluded.

Changes to procedure rules are subject to the tribunal procedure committee's statutory consultation requirements and procedures. However, the Government's intent is to ensure that straightforward appeals from detention are determined more quickly. Under a detained accelerated process all appellants will benefit from a quicker final determination of their immigration status, spending less time in limbo, and getting the certainty they need to move forward with their lives sooner.

Those whose appeals are successful will have their leave to remain confirmed earlier than if the standard procedure rules had been followed. Meanwhile those with no right to remain will be removed more quickly, as they can be detained throughout the process, which reduces the risk of absconding.

The courts have been clear in upholding the principle that an accelerated process for asylum seekers while detained, operated within certain safeguards, is entirely legal. I made that point earlier. We have considered the legal challenges to the previous detained fast track carefully and we are confident that the new accelerated detained appeals route will ensure fairness as well as improving speed. We will ensure, through regulations and guidance, that only suitable cases will be allocated to the accelerated route. Cases will be assessed for whether they are likely to be able to be decided fairly within the shorter timeframe, and individuals will be screened for vulnerability and other factors that may impact their ability to engage fairly with an accelerated process.

As an additional safeguard, the clause makes it clear that the tribunal can decide to remove cases from the accelerated route if it considers it is in the interests of justice to do so. The new accelerated detained appeals route will contribute significantly to the timeliness with which appeals are decided for those in immigration detention. It will allow us to swiftly remove from the country people found not to need protection, while those with valid claims can be released from detention more quickly.

Stuart C. McDonald: I am grateful to the Minister for his response. I still have serious concerns about the provisions in the clause, particularly the short timeframe of five days to launch an appeal, and particularly when it could be the Secretary of State who has decided somebody has to go through that process. If she gets that decision wrong, by the time there is any ability to apply to the tribunal to move away from the fast-track process, it could be too late. In that case, a removal attempt will have been made, and a vulnerable person who was unable to contact a solicitor in time is completely without any chance of rectifying what the Secretary of State has done.

I maintain my opposition to what is proposed. I think that the safeguards fall way short, but I do not see any point in putting my amendment to a vote, and I beg to ask leave to withdraw the amendment.

Amendment, by leave, withdrawn.

The Chair: I will now put the question that clause 24 stand part. I understand that the Government will vote no.

Craig Whittaker: I thought we were voting for clause 24 to stand part of the Bill.

The Chair: As Chair, I do not wish to stop you voting as you wish to. I understand that the Government have indicated that they would vote to leave out the clause.

Tom Pursglove: To be clear, we are seeking to remove clause 24 and replace it with new clause 7.

The Chair: If that is the Government's intention, far be it from me to tell them what to do.

Clause 24 disagreed to.

Clause 25

CLAIMS CERTIFIED AS CLEARLY UNFOUNDED: REMOVAL OF RIGHT OF APPEAL

Question proposed, That the clause stand part of the Bill.

4 pm

Tom Pursglove: Protection or human rights claims that are certified as clearly unfounded are those so clearly without substance that they are bound to fail. The refusal of such claims can currently be appealed after the person has left the UK. By contrast, there is no right of appeal against the rejection of further submissions received after a protection or human rights claim has previously been refused, where those submissions do not create a realistic prospect of success. That approach is right: there should be no right of appeal unless there is something of real substance for the tribunal to consider.

The clause removes the out-of-country right of appeal under section 94 of the Nationality, Immigration and Asylum Act 2002 for those whose protection or human rights claims are certified as clearly unfounded and bound to fail, bringing them into line with how we treat further submissions that have no realistic prospect of success. It will apply only to claims that are certified after the clause comes into effect. I would like to be clear that removing the right of appeal for certified claims does not prevent a person from applying for a judicial review to challenge a certification decision. It provides a necessary and effective safeguard in the event that a claim is incorrectly certified as clearly unfounded.

Bambos Charalambous: It is ironic that we are debating this clause as the Judicial Review and Courts Bill is receiving its Second Reading. We oppose the clause. We have heard time and again that the Government are aiming to make it harder for a person in the UK to establish their refugee status and entitlement to asylum. Clause 25 further restricts appeal rights for people seeking asylum. This clause removes the in-country and out-of-country rights of appeal for human rights and protection claims certified as clearly unfounded. It is concerning as, once again, it seeks to limit the rights of individuals, while failing to increase efficiency in the system and in turn decreasing fairness, with regrettable consequences for individuals. In respect of articles 6 and 8 of the ECHR, it represents a clear breach and will give rise to legal challenge. That was seen in the case of Kiarie and Byndloss *v.* the Home Secretary in 2017. At present, where the Home Secretary certifies a case as clearly unfounded, any appeal may be brought only after removal from the UK. In cases concerning protection claims or article 3 human rights claims, such appeals are incapable of providing an effective remedy, because the feared harm will have eventuated before the appeal can be heard.

As the explanatory notes to the Bill acknowledge, the right of appeal is rarely exercised; instead, challenges are brought by way of judicial review. This provision therefore contributes to the general trend in immigration and asylum law away from rights of appeal to the First-tier Tribunal and towards unappealable decisions, which are amenable to judicial review.

For the reasons specified in my speech, we will oppose clause 25 standing part of the Bill.

Question put, That the clause stand part of the Bill.

The Committee divided: Ayes 7, Noes 6.

Division No. 25]

AYES

Anderson, Stuart	Pursglove, Tom
Baker, Duncan	Whittaker, Craig
Goodwill, rh Mr Robert	
Holmes, Paul	Wood, Mike

NOES

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

Question accordingly agreed to.

Clause 25 ordered to stand part of the Bill.

Clause 26

REMOVAL OF ASYLUM SEEKER TO SAFE COUNTRY

Question proposed, That the clause stand part of the Bill.

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

Amendment 159, in schedule 3, page 62, line 39, at end insert—

"(2D) Notwithstanding subsection (2A), a person who is particularly vulnerable to harm must not be removed to, or required to leave to go to, a State falling within subsection (2B) or any state to which Part 2, 3 or 4 of Schedule 3 to the Asylum and Immigration (Treatment of Claimants, etc) Act 2004 for the time being applies.

(2E) For the purposes of subsection (2D), a person is particularly vulnerable to harm if they—

(a) are suffering from a mental health condition or impairment;

(b) have been a victim of torture;

(c) have been a victim of sexual or gender-based violence;

(d) have been a victim of human trafficking or modern slavery;

(e) are pregnant;

(f) are suffering from a serious physical disability;

(g) are suffering from other serious physical health conditions or illnesses;

(h) are aged under 18 or 70 or over;

(i) are gay, lesbian or bisexual;

(j) are a trans or intersex person."

This amendment would prevent persons who are particularly vulnerable to harm from being removed to, or required to leave to go to, a state falling within subsection (2B).

That schedule 3 be the Third schedule to the Bill.

New clause 18—*Removal of asylum seeker to safe country*—

"Schedule N makes amendments to section 77 of the Nationality, Immigration and Asylum Act 2002 (no removal while claim for asylum pending)."

This new clause introduces the proposed NS2.

New schedule 2—*Removal of asylum seeker to safe country*—

"In section 77 of the Nationality, Immigration and Asylum Act 2002 (no removal while claim for asylum pending), after subsection (2) insert—

'(2A) This section does not prevent a person being removed to, or being required to leave to go to, a third State if all of the following conditions are met—

(a) the removal is pursuant to a formal, legally binding and public readmission agreement between the United Kingdom and the third State;

(b) the State meets the definition of a safe third State set out at section 14 of the Nationality and Borders Act 2021, as shown by reliable, objective and up-to-date information;

(c) the person has been found inadmissible under section 80B of the Nationality, Immigration and Asylum Act 2002;

(d) the third State in question is the State with which the person was found to have a connection under Section 80B of the Nationality, Immigration and Asylum Act 2002;

(e) taking into account the person's individual circumstances, it is reasonable for them to go to that State; and

(f) the person is not a national of that State.'"

This new schedule modifies the circumstances in which a person can be removed to, or required to leave to go to, a safe third State.

Tom Pursglove: This Government have been clear that claiming asylum in the first safe country reached is the fastest route to safety. We must dissuade all those considering making dangerous journeys to the UK in order to claim asylum. We are working closely with international partners to fix our broken asylum system and discussing how we could work together in the future.

Clause 26 introduces schedule 3, which aims to reduce the draw of the UK by working to make it easier to remove someone to a safe country, where their claim will then be processed. It amends existing legal frameworks in order to support our future objective to transfer some asylum claims to a safe third country for processing.

Mr Robert Goodwill (Scarborough and Whitby) (Con): What my hon. Friend the Minister is saying about deterring these dangerous journeys is even more poignant given the rescue operation that took place today off Harwich, where I understand five Somalis were in a small inflatable boat. As I understand it, two have been rescued, but three are feared drowned. That brings starkly into all our minds the need to deter these dangerous journeys and the desperate people who face these terrible things. I am sure the condolences of the whole Committee go to all those involved—not only those actually in the boat, but the rescue services, which must have had a fairly tough time.

Tom Pursglove: I am grateful to my right hon. Friend for his intervention. It is fair to say that I am very mindful of the enormous risks that we are finding people taking in trying to cross the channel at the moment. We have debated the matter extensively in this Committee up to this point, and no doubt that debate will continue. I am very concerned to hear about the situation that he has described. I have asked to be updated, and to be kept updated as to the progress of the operation to try to find the individuals who, it would seem, have been lost at sea. Of course, we send our thoughts and best wishes to those who are caught up in that terrible tragedy, and we hope for the best for them. This absolutely and without question underlines the gravity of the risks that people are taking by getting into small boats and trying to cross the English channel to get to the United Kingdom.

The Bill contains a suite of measures designed to protect those in genuine need while breaking the business model of criminal gangs who profit from people trafficking and exploit vulnerable people for their own gain. Our aim is to disincentivise people from seeking to enter the UK by dangerous means, facilitated by those criminal smugglers, with a clear message that those who arrive via an irregular route may be eligible to be transferred to and processed in another safe country not of their choosing.

Stuart C. McDonald: Is schedule 3 confined to applicants who arrive via irregular and dangerous routes, or could it be applied, in theory, to pretty much anyone who is claiming asylum?

Tom Pursglove: If I may, I will set out the detail that underpins schedule 3 in the course of my remarks.

Clause 26 is designed to be part of a whole-system deterrent effect to prevent illegal migration. Access to the UK's asylum system should be based on need, and not driven by the actions of criminal enterprise. Under current policy, it is too easy for removals of individuals with no right to remain in the UK to be delayed as a result of speculative and, in some cases, unfounded article 3 human rights claims.

Consequently, schedule 3 will also introduce a presumption that specified countries are safe, because of their compliance with obligations under article 3 of the European convention of human rights.

Neil Coyle: Earlier today, the Minister mentioned that Albania, from where we accept many asylum cases, could be considered a safe country. Can he tell us about other safe countries? Gibraltar, which was touted by the Government, has said categorically that it will not be a safe country for these purposes. Ghana and Rwanda have ruled themselves out, despite being touted by the Government. Morocco and Moldova have appeared in the press as potential examples, but the FCDO has said:

"No north African country, Morocco included, has a fully functioning asylum system".

The Foreign Office stated that Moldova has "endemic" corruption, and that

"If an asylum centre depended on reliable, transparent, credible cooperation from the host country justice system we would not be able to rely on this"

in Moldova. Can the Minister tell us which safe country he is talking about?

Tom Pursglove: One thing I will say is that the measures are not about opening camps on overseas territories. I will not get into a running commentary about the negotiations or discussions that may or may not be taking place with individual countries.

Claimants will be required to present strong evidence to overturn this presumption to prevent removal. That will support the aim of swiftly removing individuals who have no basis to remain in the UK by preventing unnecessary delays where speculative article 3 claims are made prior to removal to safe countries. Adding to the existing removal power, schedule 3 will also provide the Secretary of State with a power to add countries to the safe list. That will ensure that the list of safe countries remains accurate.

Schedule 3 also ensures that rights of appeal are not afforded either to asylum seekers on the basis of removal to safe countries, or to clearly unfounded human rights claims, thus preventing unnecessary appeals for unsubstantiated claims.

Neil Coyle: The Minister says that he does not want to get into a running dialogue—that is fine—but can we have just a rough idea of how many countries are currently in bilateral negotiations with the Home Office? That may be useful. I think it is only right and proper that the Committee has an idea of the costs involved, because they will vary massively depending on the country—or indeed the continent, given some of the ludicrous examples that have been touted by people as high up as the Home Secretary. How many countries are in those negotiations, and how much can the public expect to pay for this particular part of this ridiculous Bill?

Tom Pursglove: The hon. Gentleman is a crafty parliamentarian who will, I have no doubt, try to elicit that information from me, but I am afraid that he will be unsuccessful in that endeavour, however hard he tries. The bottom line is that I am not going to get into a running commentary in this Committee about discussions that may or may not be taking place with countries around the world in relation to this policy.

Holly Lynch (Halifax) (Lab): Will the Minister give way?

4.15 pm

Tom Pursglove: I will give way, but the hon. Lady will get the same response if she is trying to extract the same information from me.

Holly Lynch: I am grateful to the Minister for giving way. He might remember that I asked previously whether he had any examples of returns to third countries. He responded in writing with an update this morning. He updates Committee members that

"4,561 'notices of intent' were served to individuals, informing them that inadmissibility action was being considered in their cases."

So we are not discussing hypotheticals here. The wheels are in motion for individuals. Can he understand that we have got to do our due diligence in pushing for the details, because the consequences for these people who have had notices of intent are very real? That is why we need to put those questions to him.

Tom Pursglove: I would make a few points in response. Obviously, removals and deportations generally have been much more difficult to organise during the last 18 months, as a direct consequence of covid-19. That is not unsurprising, and of course it is reflected in the fact that we have seen fewer removals and deportations than we would have expected. It is not the Government's intention to apply retrospectively the inadmissability measures we are talking about. That is an important point in providing clarity for the Committee.

We are committed to upholding our international obligations including under the 1951 refugee convention, and that will not change. While people are endangering lives making perilous journeys, we must fix the system to prevent abuse of that system and the criminality associated with it. Our aim is that the suite of measures in the Bill, including those in clause 26 and schedule 3, will disincentivise people from making dangerous journeys across Europe to the UK, and encourage people to claim asylum in the first safe country they reach.

Stuart C. McDonald: The Minister has scuttled over the idea that the Government are keen to abide by their international obligations. The UNHCR is absolutely clear that the clause rides a coach and horses—I paraphrase slightly—through the convention. Can he say a little bit more about how he possibly believes that this is consistent with what the refugee convention provides?

Tom Pursglove: I am actually meeting the UNHCR tomorrow, and I am obviously looking forward to that meeting. No doubt we will cover a range of topics during that discussion and engagement, which I most certainly value. I repeat to the hon. Gentleman the point that I have now made several times in relation to the provisions in the Bill: we believe that they are compliant with our international obligations. I have made that point previously and will continue to make it.

Mr Goodwill: Does my hon. Friend agree that the principle of a safe country is well established? When we were members of the European Union, removals to EU countries were permitted because of that particular situation. Does he further agree that countries that seek to be candidates to join the European Union will have to bring their standards up to those equivalent to the European Union, so there is a list of countries, particularly in the Balkans and elsewhere, that may well meet those criteria before they join the European Union?

Tom Pursglove: My right hon. Friend raises various points on the back of his experience covering at least part of the role that I now cover. I would build on that by making the point that we do not remove people to countries where they would be unsafe. Of course, we are also talking here about countries that are compliant with the obligations set out under the refugee convention. That is an important point to re-make.

I thank those who drafted amendment 159 for their contribution to the debate thus far. Let me begin by being clear that this Government are wholly committed to ensuring that removals of individuals are done in accordance with our international obligations, and that the safety of those transferred is at the forefront of our actions. However, we simply cannot support any amendment that seeks to limit our ability to remove individuals to safe third countries. I assure the Committee again that we would only ever remove an individual to a country that we are satisfied is safe for them. However, the amendment is overly restrictive and therefore could not be used flexibly to consider the circumstances in the country in question. By way of illustration, the amendment would mean that we could not remove someone who is gay, lesbian or bisexual to France or Italy.

Committee members can be assured that the amendment is superfluous given the safeguards already in the Bill. Indeed, we will only ever send individuals to countries where we know that their removal will be compliant with the UK's international legal obligations, including those that pertain to potential victims of modern slavery. Even where we are assured that a particular state is safe, changes made by the Bill make it clear that every individual in scope for removal to that state will be able to rely on the protection of article 3 of the ECHR to demonstrate why that state may not be safe in their unique circumstances. That is to prevent any individual from being transferred to a country where they would genuinely be at risk of inhumane and degrading treatment.

Stuart C. McDonald: The Minister keeps referring to safeguards in the Bill and consideration of individual applicants' safety, but none of that is in schedule 3, which does not require a finding of inadmissibility or a connection with the state. There is no consideration of the reasonableness of the transfer. The country might not even be a signatory to the refugee convention or offer refugee protection or the chance to secure the full rights that refugees are entitled to. Will he talk us through the safeguards?

Tom Pursglove: I would argue that I have already set out those safeguards.

The Government are clear that we must consider all options to break the business model of people smugglers and prevent people from putting their lives at risk by making perilous journeys from safe countries. Changes in schedule 3 are a key component of the wholescale system reform that we are committed to undertaking to prevent irregular migration. For those reasons, I ask hon. Members not to press amendment 159.

On schedule 3, the Government have been clear that the fastest route to safety is to claim asylum in the first safe country reached. We must dissuade all those considering making dangerous journeys to the UK to claim asylum. We are working closely with international partners to fix our broken asylum system and are discussing how we could work together in the future.

Neil Coyle: Will the Minister give way?

Tom Pursglove: I have been generous to the hon. Gentleman, but I will give way one more time.

Neil Coyle: I thank the Minister—he is being generous. On the first safe country, the Government might have more standing and the public more confidence in them had they not abandoned their obligations. Pakistan, for example, is seeing a cut of £62 million in aid from the UK to help manage the refugee crisis spilling over the border from the Taliban. Turkey is seeing a cut of £16 million in aid from the UK, Lebanon is seeing a cut of £71.5 million and Syria is seeing a drop of £105 million. If the Government were serious about people being able to stay nearer to their home country, those cuts, which certainly were not in their manifesto at the last election, would not be happening.

Tom Pursglove: In recent years, UK aid in crisis circumstances has made a significant difference in relation to properly caring for and ensuring—

Neil Coyle: If so, why cut it?

Tom Pursglove: Let me finish the point. We have regularly made additional aid available in crisis circumstances to help relieve particular pressures that have arisen, and UK aid has been essential as part of the global effort. I have been proud of the crisis measures we have put in place in relation to those circumstances as they have arisen. No doubt we will continue to have a commitment to that going forward.

Neil Coyle: Will the Minister give way on that point?

Tom Pursglove: No, I am going to make some progress because I am conscious that we have still got some way to go.

Schedule 3 aims to reduce the draw of the UK by working to make it easier to remove someone to a safe country where their claim will be processed. It amends existing legal frameworks to support our future objective to transfer some asylum claims to a safe third country for processing. The Bill contains a suite of measures designed to protect those in genuine need while breaking the business model of criminal gangs who profit from people trafficking and exploit vulnerable people for their own gain. We aim to disincentivise people from seeking to enter the UK by dangerous means facilitated by these criminal smugglers with a clear message that those arriving via an irregular route may be eligible to be transferred to another safe country not of their choosing to be processed.

Stuart C. McDonald: I just do not understand why the Minister tries to suggest that the provision will apply only to people who are not in genuine need. The Government do not know that because they are not looking at the cases before removing them to a third country. How is he circumscribing those who will be subject to this procedure, which we utterly oppose? How can he keep on saying that it will apply only to those who do not have genuine need?

Tom Pursglove: Schedule 3 is designed to be part of a whole system deterrent effect to prevent illegal migration. Access to the UK's asylum system should be based on need, and not driven by the actions of criminal enterprise. Under current policy, it is too easy for removals of individuals with no right to remain in the UK to be delayed as a result of speculative, and in some cases unfounded, article 3 human rights claims. Consequently, schedule 3 will also introduce a presumption that specified countries are safe, due to them being compliant with their obligations under article 3 of the ECHR. Claimants will be required to present strong evidence to overturn that presumption to prevent removal. This will support the aim to swiftly remove individuals who have no basis to remain in the UK by preventing unnecessary delays where speculative article 3 claims are made prior to removal to safe countries.

Schedule 3 will also provide the Secretary of State with a power to add countries to the safe list—that is in addition to the already held removal power. This will ensure that the list of safe countries remains accurate. The schedule also ensures that rights of appeal are not afforded to asylum seekers on the basis of removal to safe countries nor to clearly unfounded human rights claims, thus preventing unnecessary appeals for unsubstantiated claims.

We are committed to upholding our international obligations, including under the 1951 refugee convention. That will not change. While people are endangering lives making perilous journeys, we must fix the system to prevent abuse of the asylum system and the criminality associated with it. Our aim is that the suite of measures contained within this Bill, including those within schedule 3, will disincentivise people from making dangerous journeys across Europe to the UK and encourage people to claim asylum in the first safe country they reach.

[Tom Pursglove]

I thank the hon. Member for Cumbernauld, Kilsyth and Kirkintilloch East for proposing new clause 18, which introduces new schedule 2. I agree wholeheartedly with the importance of ensuring the safety of those who are removed from the UK to third countries. However, we cannot support the proposals, which seek to limit our ability to remove individuals to a safe country. This Government have made our position clear throughout today's debate: people should claim asylum in the first safe country that they reach. That is the fastest route to safety. I would like the Committee to consider each of the conditions in new schedule 2 in turn.

Neil Coyle: This comes back to the first safe country. The Minister makes the point that we both agree on—we are proud of the UK's contribution to humanitarian support and of military interventions that prevented refugees from being created in the past. The Conservative manifesto said that the Army would not be cut and aid would not cut, but voters have been betrayed by the Government's actions since. They have reneged on those manifesto promises. And asylum seekers have been betrayed by those same cuts. The Bill does nothing but compound that betrayal.

Tom Pursglove: On 3 September, we announced £30 million of life-saving aid to Afghanistan's neighbouring countries to help those who choose to leave Afghanistan. That is part of the Government's efforts to support regional stability. The hon. Gentleman spoke earlier about resources being made available to help in-region. Yet again, this country has demonstrated that commitment to try to help provide stability as far as possible, and to help to ensure that as much support as possible can be provided in the vicinity of where crises arise. I think that—

Neil Coyle: Will the Minister give way?

Tom Pursglove: I will not take another intervention from the hon. Gentleman on that point.

Neil Coyle: Frit.

Tom Pursglove: I have been very generous to the hon. Gentleman. I think that aside was a little bit unfair on his part, given the number of interventions that I have taken. I know that it was not meant in an unpleasant spirit, so I will move on.

I invite the Committee to consider each of the conditions in new schedule 2. Regarding the form of a transfer arrangement, we are currently in discussions with our international partners to consider the shared challenge of irregular migration. I do not wish to pre-empt the form or content of future arrangements as that could tie the hands of our negotiators, but I can assure the Committee that the Government will act in accordance with our international obligations, considering both the content and form of any arrangement reached. Furthermore, that condition would have the perhaps unintended consequence of preventing the removal of individuals in ad hoc cases, which has been a long-standing process within our asylum system to which I have alluded in response to earlier questions.

4.30 pm

We do not consider the additional definition of a safe third state to be necessary, as the provision already clearly outlines that. Similarly, we do not believe the new conditions (c) and (d) would have the intended effect, as an individual who had been found to be inadmissible would not be impacted by section 77 of the Nationality, Immigration and Asylum Act 2002 in any event. Section 77 applies only to those whose asylum claims are pending. Those who have received a declaration of inadmissibility do not have a pending asylum claim. Furthermore, the measure already allows for the individual to be able to demonstrate why the state may not be safe in their particular circumstances. Finally, changes under the provision already clearly prevent the removal of a person to a state to which they are a national.

I am sympathetic to the intention behind new clause 18, which introduces the proposed new schedule, as I believe the aim is to ensure the safety of those removed under the provisions. I assure the Committee that the Government will act in accordance with our international obligations, including those under the European convention on human rights, which critically insure against inhumane and degrading treatment.

I highlight to the Committee that the proposed new schedule would remove all references in clause 26 to the proposed changes to schedule 3 of the Asylum and Immigration (Treatment of Claimants, etc.) Act 2004. Those changes ensure that we will continue to adhere to our obligations under the European convention on human rights, particularly article 3, while preventing unnecessary delays to removal. The introduction of a rebuttable presumption of article 3 compliance will prevent speculative and unfounded human rights claims from delaying removals of individuals with no right to remain in the UK. Individuals will be able to present evidence to overturn the presumption and prevent removal, however.

People smugglers are profiting from the misery of those who endanger their lives by undertaking dangerous and unnecessary journeys. We must act to fix our broken system and reduce the draw of the UK. The changes in clause 26 and schedule 3 are key components of the system-wide efforts that we are making to prevent irregular migration. For those reasons, I ask hon. Members not to press the proposed new clause and schedule.

Bambos Charalambous: The Labour party will oppose clause stand part. Clause 26 opens the door to offshoring by permitting the removal of asylum seekers from the UK while their claim is being determined or while the UK decides whether to take responsibility for the claim.

The clause introduces schedule 3, which allows the Government to remove people who are seeking asylum to countries outside the UK, and hold them in detention there while their asylum claims are being processed—in other words, offshoring. It is our strong belief that the clause should be deleted, and we will vote against clause stand part and against schedule 3. We believe that, through the clause, the Government are seeking to emulate the Australian system as a model. It has been reported that the Home Office is in talks with Denmark to share costs on an offshore detention centre in Rwanda, and a number of other places have also been mentioned.

It is worth examining the available empirical evidence on the ideas underpinning the clause. In 2015, a United Nations report found that Australia's offshore detention regime was systematically violating the international convention against torture. In addition, in 2020, the prosecutor of the International Criminal Court said the regime was "cruel, inhuman or degrading", and unlawful under international law.

We are deeply concerned that the Government's plan appears to emulate a failed system that has been widely condemned for its human rights abuses. When we look in more detail at the Australian model that the Government seem to want to emulate, we find more causes for concern. In 1992, the Australian Government introduced mandatory indefinite detention for asylum seekers who arrive by boat—that policy remains in place. In 2001, they introduced the Pacific solution, whereby boats were intercepted by the navy and taken to processing centres on Manus and Nauru. In 2008, the Australian Labour Government ended that practice, branding it an "abject policy failure", only to reintroduce offshore detention in the early 2010s. Approximately 4,180 people were transferred offshore between 2012 and 2014, at which point the transfers stopped.

Conditions and events inside the centres were secretive; journalists and legal representatives were generally banned from entering. That created the conditions for the systematic abuse of asylum seekers by those running the facilities. In 2016, *The Guardian* released records of more than 2,000 incident reports from Nauru—known as the Nauru files—documenting widespread abuse and neglect in offshore detention. That included systematic physical and sexual assault on children and adults, the use of blackmail by guards, and attacks and harassment by people on Nauru or Manus Island. At least 12 people are reported to have died in the camps, with the causes of death including medical neglect, suicide and murder by centre guards.

Aside from the immeasurable human cost, this failed system has been dismantled by its own architects. A recent research report by the Kaldor Centre found that there is no evidence that the policy achieved the stated aim of "stopping the boats" and that since 2014 the Government have been trying to distance themselves from the policy. Thanks to the powerful stories of the people affected, it has been increasingly rejected by the Australian public. It has cost billions of Australian dollars. The policy has clearly failed disastrously, and we are deeply concerned that this Government are seeking in this clause to bring the policy to the UK.

The impact of offshore detention on mental health cannot be overstated. In the Australian example, conditions in offshore detention centres have been inhumane and unfit for human habitation. The mental and physical health impact of offshore detention has been colossal. In 2014, the Australian Human Rights Commission found that 34% of children in detention suffered from mental health disorders of a seriousness that would require psychiatric referral if the children were in the Australian population, and paediatricians reported that the children transferred to Nauru were among the most traumatised they had ever seen. Medical experts working with the UNHCR found rates of mental illness in people in offshore detention to be among the highest recorded in any surveyed population. Médecins Sans Frontières reported that the suffering on Nauru was some of the worst that it had ever encountered. There is absolutely no way, in our view, that the UK Government should be risking huge harm against children in terms of their mental health by emulating that failed policy.

Furthermore, the financial cost of the Australian system is astronomical and regularly more than $1 billion a year. The Refugee Council of Australia compiled a detailed breakdown of offshoring costs and found that it had cost the Australian Government $8.3 billion between 2014 and 2020. The annual cost per person of holding someone offshore in Nauru or Papua New Guinea has been estimated to be $3.4 million—per person. Again, we are deeply concerned that the UK Government are seeking to emulate a policy that is extremely likely to have extortionate costs in financial terms. The financial impact of this policy will be huge. That all these increased costs go simply to stopping boats, as a deterrent, which the Minister alluded to, shows that it is a failed policy. This is fiscal incompetence from the Government: in their own prediction of what the policy costs, they have estimated exceeding that every year. It will be a budget impossible to predict, based on the number of people whom they propose to offshore. We have the Budget tomorrow, so I will be interested to see what provision the Chancellor of the Exchequer has made in relation to that and the comprehensive spending review.

Let us look in more detail at what the Government are risking with this policy in terms of the human cost. There are countless stories of the lives destroyed by the policy of offshoring. Loghman Sawari, whose story was covered by *The Guardian,* is still detained, despite having been accepted by Australia as a refugee in 2014. Eight years after the initial detention, he told *The Guardian* that the days have begun to run one into another and his memory is failing. The Maghames family arrived in Australia by boat in 2013 and were detained on Christmas Island before being transferred to Nauru in March 2014. Hajar Maghames, along with her parents and younger brother, has been in detention ever since, despite being granted refugee status in 2019. In 2020, they were transferred to Australia so that her father could receive medical care, and they are now in cabins at the back of Darwin airport. They are now the only people held there.

I would be grateful if the Minister clarified whether people being processed wherever they are offshored will, if their claim is successful, be brought back to the UK, and what estimate he has made of the cost of that.

To continue with my examples, Reza Barati, who, like the family to whom I just referred, had fled Iran, is one of the 18 people to have died in offshore detention. He was beaten to death by guards and other workers on Manus Island after a protest turned violent and the centre was attacked. He died four days after his 24th birthday. His family are suing the Australian Government and G4S for negligence. During the same incident over two days in February 2014, 70 refugees and asylum seekers were injured. One lost his right eye. Another was shot in the buttocks. One man was attacked from behind by a G4S guard who slashed his neck, causing a 10 to 12 cm horizontal slit across his throat. There have been many others, including the high-profile cases of author Behrouz Boochani or the Tamil family from Biloela, whose harrowing stories have ultimately helped to turn public opinion against this policy.

[Bambos Charalambous]

Offshoring in large accommodation centres poses particular risks to LGBT+ people seeking asylum because of their particular vulnerability. Organisations such as Rainbow Migration and Stonewall have raised concerns that housing people in such centres outside the UK will result in systemic verbal, violent and sexual abuse of LGBT+ people who are in need of protection and who have higher rates of self-harm and suicide.

There is much evidence that LGBT+ people already experience systemic abuse and harassment in the UK's current accommodation and detention system, led by staff and others with whom they are housed or detained alongside. The problems tend to continue, even when people are moved to a new property. Documented examples provided by organisations that deal with victims have included unwanted sexual advances, threats, invasions of privacy, verbal abuse, being prevented from sleeping, pranks and sexual assault.

It is therefore deeply worrying that offshore processing centres are likely to escalate the homophobic, biphobic and transphobic abuse that LGBT+ people experience in existing asylum accommodation and detention centres. It is even more shocking when one considers that many refugees in the LGBT+ community have fled their home countries specifically because of abuses and persecution that they have experienced there.

Offshoring also presents a significant risk of harm to women who have survived rape and sexual exploitation. It is difficult to see how women who have survived such atrocities would be exempt from offshoring because it is clear that the Government's key objective for offshore detention is deterrence. According to the Government's logic, there can be no exceptions to this policy, because otherwise the objective of deterrence is undermined.

This was seen when offshore detention was reintroduced by the Australian Government in 2012. All people seeking asylum who arrived by boat were liable for removal to the islands of Nauru or Manus

"even if they...had characteristics warranting special consideration, such as being an unaccompanied minor, a survivor of torture and trauma, or a victim of trafficking".

It is clear that the UK Government, by introducing such provision for offshoring, must be willing to subject children, pregnant women, survivors of trafficking and other vulnerable people to offshore detention.

Tom Pursglove: I hope that I can help the hon. Gentleman somewhat by making it very clear that children will not be transferred overseas for their claims to be processed.

Bambos Charalambous: I am grateful to the Minister for clarifying that point, but there are still others with vulnerable characteristics, including pregnant women and survivors of trafficking who will be subject to offshore detention.

I hardly need to outline the inhumanity of this policy as it applies to women victims of rape and sexual violence. I am deeply concerned about the conditions in which women will be held, and particularly the risk to them of further sexual violence and abuse. In detention centres in the UK, where there are a range of safeguarding mechanisms in place, it has not been enough to protect people in detention from abuse. The 2015 Lampard report on Yarl's Wood, which until last year was the main detention centre for women in the UK, highlighted that between 2007 and 2015, 10 members of staff had been dismissed for incidents involving "sexual impropriety" towards women held there. Such "impropriety" included the repeated sexual harassment and abuse of a 29-year-old woman by a male healthcare worker.

When it comes to offshoring, the UK Government will have even less control over the treatment of detainees in offshore detention centres. The risk to women of sexual violence and abuse in such centres will be increased. The sexual harassment and violence to which women detained offshore by the Australian Government were subjected has been well documented.

There is no empirical evidence to support the effectiveness of offshoring as a deterrent strategy in respect of those fleeing persecution. A recent report by the Kaldor Centre for International Refugee Law highlights that in the year following the Australian Government's reintroduction of offshore detention

"more than 24,000 asylum seekers arrived in Australia by boat. This number was considerably more than at any other time since the 1970s, when boats of asylum seekers were first recorded in Australia. Moreover, as the months passed, and news of the policy presumably reached some of those who were contemplating travelling by sea to Australia, there was no noticeable change in the rate of arrivals, with boats of varying numbers of people (from two to more than 200) continuing to arrive on average several times per week."

That brings us back to the fundamental fact, discussed earlier in reference to other clauses, such as clauses 10 and 11, that policy measures that rely on deterrence assume that people have a choice in the decisions they make. People who are forced to flee their countries because of violence and persecution have no such choice. Therefore, deterrent measures will not stop them making the journey to find safety. The likelihood is that offshoring will be completely ineffective in its aims, as well as deeply inhumane.

4.45 pm

Mandating indefinite detention prevents any exercise of sensible discretion, and detaining children is designed only to create despair. This highlights the sheer callousness of the policy and goes back to one of the key driving points: it is designed specifically to create despair and to break people. It is inhumane and degrading treatment. There are huge health and wellbeing risks, with potential harmful impacts on individuals that will only worsen their prospects of integration.

This is an absolutist policy, but there are loopholes. For a policy to work effectively, there must be no exceptions. There is also no end point. Where do the Government plan to end their deterrent policy? As there is no end point, we may get so far down the policy of offshoring that we cannot unwind it, creating a deeply unfair and inefficient system. If there is any chink in its armour, the whole thing will collapse. If it collapses, it will be a political embarrassment for the Government and the legislation will not achieve its aims and objectives. For those reasons, we oppose clause 26.

Stuart C. McDonald: I will speak briefly in support of amendment 159, new clause 18 and new schedule 2.

I echo everything the shadow Minister said. This is a terrible clause. I echo in particular all that he said about Australia. I take a tiny crumb of comfort from the fact

that the Minister, despite the Home Office's having adduced evidence in relation to the Australian example, did not mention it during his speech. Perhaps the Home Office is learning that it should run a million miles from the Australian offshoring scheme, because it was awful.

I did not recognise the clause from what the Minister said. He kept referring to safeguards and asserting that it was absolutely consistent with our international obligations. My reading of schedule 3 and clause 26 is the polar opposite. Schedule 3 drives a coach and horses through the principle that people cannot be removed while they have a claim outstanding. It allows removal to anywhere if some very basic safeguards are met. The person might have no link to the country to which they are removed—they might have been nowhere near it. It is clearly nothing to do with responsibility sharing between states. Like clause 14, it is just about offloading responsibility.

We are not saying that no one can ever be removed to have a decision made on their claim elsewhere. While not perfect, the Dublin scheme allowed for the transfer of a claim and the removal of a claimant in appropriate circumstances and with appropriate safeguards. We have set out the criteria that would put in place similar safeguards in new clause 18 and new schedule 2. They include a formal, legally binding and public readmission agreement with the state; a requirement that the person has a connection with the country in question; that it is reasonable in the circumstances for the person's case to be considered there; and that all the requirements and safeguards that we said should have been in place around clause 14 are present, such as the proper implementation of the full refugee convention, protection against harm, access to fair and efficient asylum processes, and so on.

Again, all those protections are informed by the UNHCR's public commentary on and critique of the Bill. I appreciate that the Minister expressed sympathy for what we are trying to achieve, but I suspect that when he has his discussions with the UNHCR, it will urge him to go further and to adopt some of these safeguards.

There are huge differences between what we propose in new schedule 2 and what appears in schedule 3. The absence of so many crucial safeguards in the latter shows why the clause should not form part of the Bill. Schedule 3 does not even require a finding of inadmissibility or a connection with the state. There is no consideration of the reasonableness of the transfer. The country might not even be a signatory to the refugee convention, offer refugee protection, or offer the chance to secure the full rights to which refugees are entitled under the convention.

To use the UNHCR's own words:

"Transferring asylum-seekers or recognised refugees to territories with which they have no prior connection and without an individualised consideration of safety, access to fair and efficient asylum procedures and to international protection, or reasonableness is at odds with international practice and risks denying them the right to seek and enjoy asylum, exposing them to human rights abuses and other harm, delaying durable solutions to forced displacement, and encouraging onward movement. To transfer asylum-seekers and refugees to countries that are not parties to the Refugee Convention, and without any expectation, let alone commitment, that they will provide a fair asylum procedure and treatment in line with the Refugee Convention would be an abdication of the United Kingdom's responsibilities under international law towards refugees and asylum-seekers under its jurisdiction."

That is the UNHCR's commentary on schedule 3. That is why we have tabled our new schedule, new clause and amendment, and I hope that the Minister will—not today, obviously—give that further thought.

We know that this is essentially about offshoring. We oppose the clause and the schedule because we are completely and utterly opposed to that concept. It is unlawful, unethical and, as the experience in Australia shows, it does not work. As the shadow Minister highlighted, it did not discourage arrivals by boat. The Kaldor Centre for International Refugee Law went into great detail on that in its submission to the Committee, which is absolutely spot on. It highlighted the humongous cost and, more than anything else, the humanitarian disgrace that those camps represent. Doctors Without Borders has talked about

"some of the worst mental health suffering we have ever encountered in our 50 years of existence, including in projects that provide care for torture survivors."

Finally, on amendment 159, it is good that the Minister has said that children would not be subject to that procedure. However, as the shadow Minister said, there are still various categories of vulnerable people who must be removed from the scope of the clause and schedule. If the Home Office insists on taking that terrible step, surely to goodness it will not subject pregnant women, disabled or sick people, torture victims, victims of trafficking or gender-based violence, LGBT people or the young and old to that procedure. Perhaps the Minister could accept that amendment, just to give us a tiny crumb of comfort.

Tom Pursglove: I will briefly pick up on a few points that have been raised during the debate on clause 26. The Government argue that the suite of measures are intended to have a deterrent effect. The measures under the clause are just one part of system-wide reforms that make clear our position that individuals must claim asylum in the first safe country they reach. I recognise that there are fundamental differences of opinion in the Committee about some matters, but we argue that that is the fastest route to safety.

I want to clarify the situation. Although we are, of course, working with our international partners to meet our joint challenges, I assure Committee members that we are not working with Denmark to open an offshore detention centre. It is important to be clear on that point.

Neil Coyle: Will the Minister give way on that issue?

Tom Pursglove: I will give way, although I gave quite a bit of clarity in what I just said.

Neil Coyle: The Minister has given some clarity by saying that the Government are not working with Denmark, but, as he has already said today, he cannot tell us which countries the Government are working with. We know that Albania, Ghana, Rwanda and Gibraltar have all said, "No, thanks", and that, frankly, we look like we have fewer friends than North Korea on this issue. However, the Minister cannot tell us which countries the Government are negotiating with or how much the measures will cost. When we are supposed to be going through a very costly and controversial set of plans in line-by-line scrutiny, I think that is a dereliction of duty.

Tom Pursglove: I reject the hon. Gentleman's characterisation of the situation. The truth is that a very particular point was raised about the United Kingdom establishing an offshore detention centre with Denmark, which is not the case. It is important to be clear about that on the record.

A number of issues were raised about vulnerabilities. Again, I want to make it very clear that we will only ever act in line with our international commitments and legal obligations, including the ECHR. Any particular vulnerabilities will be taken into account. Flexibility is already built into the system to ensure that individual circumstances are properly taken into account, and that will continue to be the case.

To conclude, the shadow Minister sought further clarification on the Government's intentions on clause 26. Changes in the Bill are not about housing people offshore while their asylum claims are considered under the UK's asylum system. The measures in the Bill support our future objective of removing someone to a safe third country where we intend their claims to be admitted and processed under the third country's asylum system. I am very happy to provide the clarification he sought.

Question put, That the clause stand part of the Bill.

The Committee divided: Ayes 8, Noes 6.

Division No. 26]

AYES

Anderson, Stuart	Holmes, Paul
Baker, Duncan	Pursglove, Tom
Goodwill, rh Mr Robert	Whittaker, Craig
Gullis, Jonathan	Wood, Mike

NOES

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

Question accordingly agreed to.

Clause 26 ordered to stand part of the Bill.

Question put, That the schedule be the Third schedule to the Bill.

The Committee divided: Ayes 8, Noes 6.

Division No. 27]

AYES

Anderson, Stuart	Holmes, Paul
Baker, Duncan	Pursglove, Tom
Goodwill, rh Mr Robert	Whittaker, Craig
Gullis, Jonathan	Wood, Mike

NOES

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

Question accordingly agreed to.

Schedule 3 agreed to.

4.57 pm

Sitting suspended.

5.13 pm

On resuming—

[Sir Roger Gale *in the Chair*]

Clauses 27 and 28 ordered to stand part of the Bill.

Clause 29

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

Stuart C. McDonald: I beg to move amendment 152, in clause 29, page 30, leave out subsection (2) and insert—

"(2) The decision-maker must first determine whether there is a reasonable likelihood that—

(a) the asylum seeker has a characteristic which could cause them to fear persecution for reasons of race, religion, nationality, membership of a particular social group or political opinion (or has such a characteristic attributed to them by an actor of persecution), and

(b) if the asylum seeker were returned to their country of nationality (or in a case where they do not have a nationality, the country of their former habitual residence)—

(i) they would be persecuted for reason of the characteristic mentioned in subsection (a), and

(ii) they would not be protected as mentioned in section 31."

This amendment would remove the "balance of probabilities" phrase from the Bill and would maintain the status quo.

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

Amendment 48, in clause 29, page 30, line 45, leave out subsections (2) and (3).

This amendment would remove the requirement for the decision-maker to assess, on the balance of probabilities, whether a claimant's fear of persecution is well-founded.

Amendment 132, in clause 29, page 30, line 45, leave out

", on the balance of probabilities"

and insert

"whether there is a reasonable likelihood that".

Amendment 133, in clause 29, page 31, line 1, leave out "whether".

Amendment 134, in clause 29, page 31, line 5, leave out paragraph (b) and insert—

"(b) if the asylum seeker were returned to their country of nationality (or in a case where they do not have a nationality, the country of their former habitual residence)—

(i) they would be persecuted for reason of the characteristic mentioned in subsection (a), and

(ii) they would not be protected as mentioned in section 31."

The amendment would maintain the status quo and bring the bill back in line with UNHCR standards and UK jurisprudence.

Clause stand part.

Stuart C. McDonald: The clause makes fundamental changes to important aspects of what it means to be a refugee under the convention. It seeks to require that important elements of the claim are to be established on

the balance of probabilities before the decision maker goes on to make an overall assessment of real risk. Previously an overall assessment of the reasonable degree of likelihood of persecution was applied.

We regard this as a hugely dangerous and possibly very confusing clause. It fails to take into account the challenge of evidence and facts that arise many thousands of miles away, or facts to which only the claimant's testimony can speak to. If, for example, a claim is made on the grounds that a person is LGBT, it can be hugely challenging to prove that to the standard of the balance of probabilities. As the UNHCR has explained:

"Some claimants, because of the shame they feel over what has happened to them, or due to trauma, may be reluctant to identify the true extent of the persecution suffered or feared."

Similar issues will arise with many other groups that we have already spoken about this morning.

What is proposed is really dangerous. If a decision maker is certain, for example, that LGBT people in general are at risk of persecution on return to a particular country, and even if that decision maker thinks that there is a reasonable likelihood that this particular applicant is LGBT, that would no longer be enough to justify an award of refugee status.

Mr Goodwill: The hon. Gentleman is absolutely right that it is very difficult to prove some of these things. It is also difficult to disprove them. Is he aware that asylum seekers from places such as Uganda may well claim to be gay when they are not because they see that as the route to getting a good result quickly?

Stuart C. McDonald: I am not aware of the evidence of that, so I cannot comment. At the end of the day we are talking about people who are at risk. We are not talking about a road traffic case, a minor bump or the small claims court. We are talking about people whose lives are at risk, or they are at risk of serious harm and persecution. That is why we have to be very, very careful about requiring evidence beyond the standard that is internationally accepted.

Let us say that a decision maker is certain that LGBT people in general are at risk of persecution on return to a particular country. Even though the decision maker thinks there is a reasonable likelihood that a particular applicant is LGBT, that will not be enough to secure refugee status. The decision maker could be 49% certain that the applicant is LGBT and 100% certain that an LGBT person returned to a particular country will be tortured and killed, but that 1%—that tiny little bit of doubt—means that the balance of probabilities threshold will not be met, and that case will be rejected. The implications are huge.

Amendment 152 seeks to maintain the status quo. Let us not mess with a long-established principle, and let us be very, very careful that we are not denying refugee status to people who we know should be awarded it.

Tom Pursglove: I thank hon. Members for tabling the amendments. I agree about the importance of the UK carefully assessing whether asylum seekers have a well-founded fear of persecution, as required under article 1A(2) of the refugee convention. However, we do not agree with the amendments, which, when considered together, will leave decision makers with a lack of clarity on how to consider whether a claimant has a well-founded fear of persecution.

Clause 29 is currently drafted to introduce a clear, step-by-step process for decision makers considering whether an asylum seeker has a well-founded fear of persecution. Currently, there is no clearly outlined test as such. While there is case law, policy and guidance, the current approach leads to a number of different elements being considered as part of one overall decision. The reforms that the Government want to introduce create distinct stages that a decision maker must go through, with clearly articulated standards of proof for each. I am confident that hon. Members will agree that that will lead to clearer and more consistent decisions. That is desirable for all involved.

The amendments include what is already in subsection (4) of clause 29, and it is unclear how they are proposed to fit with subsections (3) and (5). That therefore creates a lack of clarity and defeats the clarificatory purpose of the clause. As identified by hon. Members, clause 29 also raises the standard of proof for one element of the test to the balance of probabilities. Whether an asylum seeker has a characteristic that causes them to fear persecution, also referred to as a convention reason, will be tested to the balance of probabilities.

Stuart C. McDonald: There is one further issue that I did not raise earlier. The Minister has spoken about whether an appellant has a convention characteristic. How does the clause deal with imputed characteristics—that is, when a person is not LGBT but is perceived to be, or a person who does not have a political opinion but is treated and thought of as having such an opinion? That is quite an important concept and it seems to be absent.

Tom Pursglove: Obviously, we are clear that our proposal is entirely consistent with our obligations under the convention. However, I will happily write to the hon. Member with further detail on that point. It is important to give clarity, and I am keen to do so.

At the clause's core, we are asking claimants to establish that they are who they say they are and fear what they say they fear, to a balance of probabilities standard. That is the ordinary civil standard of proof for establishing facts—namely, more likely than not. Surelyit is reasonable that claimants who are asking the UK for protection are able to answer those questions.

We have looked carefully at the difficult situations from which many claimants come and the impact on the kinds of tangible evidence they may be able to provide as a result of that. We consider that our holistic approach to making decisions, which includes a detailed and sensitive approach to interviewing as well as referring to expert country guidance, allows all genuine claimants an opportunity to explain their story and satisfy the test. The raising of the standard of proof for this distinct element of the test is appropriate to ensure that only those who qualify for protection under the refugee convention are afforded protection in the United Kingdom.

Stuart C. McDonald: On the hypothetical example that I gave, if a decision maker is 49% certain that somebody is LGBT or that their membership of a political party meant that they would definitely be

persecuted on return, is the Minister not uncomfortable that that small shortfall from 50% would mean that their whole claim would be rejected, given the consequences?

Tom Pursglove: On the concerns around LGBTQ+ individuals, we have acknowledged that it may be more difficult to prove such claims compared with individuals making applications based on other convention reasons. We already have specific asylum policy instruction on considering such claims, which sets out in detail how caseworkers should fully investigate the key issues through a focused, professional and sensitive approach to questioning. As part of the operationalisation of the programme, we will seek to update the training and guidance provided to decision makers. That will concentrate on interviews, to ensure that they are sufficiently detailed to enable claimants to meet the standard. I hope that gives the hon. Member some reassurance. I will of course write to him on his earlier point.

The second element of the test—whether the claimant would be persecuted if returned to their country of origin or their country of former habitual residence—remains at the reasonable degree of likelihood standard of proof. The subjective element—the future fear—is naturally harder for the claimant to demonstrate. Consequently, a lower standard of proof is appropriate.

Responses to the public consultation as well as recent reports from non-governmental organisations have warned of the effects that the clause will have on those with certain protected characteristics, including those with LGBT+ claims. The Committee should be assured that we have considered that carefully, and there are several ways in which we will ensure that such individuals are not disadvantaged by the change. It is worth reflecting on the points I made and the explanation I set out in response to the hon. Member's intervention. In the light of those points, I hope he will agree to withdraw the amendment.

Stuart C. McDonald: I am grateful for the offer of a letter, but I am not remotely reassured about the new higher standard, which will lead to marginal cases being sent away to persecution, torture and all sorts of terrible consequences. In the meantime, I beg to ask leave to withdraw the amendment.

Amendment, by leave, withdrawn.

Question put, That the clause stand part of the Bill.

The Committee divided: Ayes 7, Noes 6.

Division No. 28]

AYES

Anderson, Stuart	Pursglove, Tom
Goodwill, rh Mr Robert	Whittaker, Craig
Gullis, Jonathan	
Holmes, Paul	Wood, Mike

NOES

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

Question accordingly agreed to.

Clause 29 ordered to stand part of the Bill.

Clause 30

ARTICLE 1(A)(2): REASONS FOR PERSECUTION

Stuart C. McDonald: I beg to move amendment 49, in clause 30, page 31, line 47, leave out "both" and insert "either".

This amendment would mean that – in order to be defined as a particular social group for the purposes of the Refugee Convention – a group would only have to meet one (not both) of the conditions set out in subsections 3 and 4.

I have a short but important point to make. The clause concerns the definition of a particular social group, which is an important concept in refugee law and has been crucial to its ongoing relevance across many decades. The clause is controversial because it makes an important change to how a particular social group is defined. In the House of Lords case of the Secretary of State for the Home Department *v.* Fornah, a long-standing argument about whether the tests in subsection (3) of the clause should be cumulative or alternative was addressed and it was decided that there was no need to meet both of those conditions; one or the other would suffice. However, in the Bill, the Government have decided to change that approach. It now demands that both conditions are met, and that seems to contradict established case law in this country. I simply ask the Government to explain why they have taken a more restrictive approach.

Tom Pursglove: Clause 30 aims to clarify an area where there has been a degree of contradiction and confusion. There is a clear mismatch between how the concept of "particular social group" is set out in current legislation, Government policy and in some tribunal judgments, against the interpretation taken in some case law. That is unhelpful for all those working in and engaging with the asylum system, and who most of all want clarity and consistency. Defining how key elements of the convention should be interpreted and applied is vital in creating a robust system that can generate consistency and certainty, which ultimately will drive efficiency. I trust that members of the Committee will agree with that principle. The historical confusion demonstrates perfectly why what we are doing in this clause is so important and is a desirable law reform.

I cannot agree to the change proposed by the hon. Gentleman. First, it is important to state that the conditions set out in the clause reflect current Government policy; it is not a change. The amendment would mean that a group need only meet one of the conditions to be considered as a particular social group. That significantly broadens the scope of who may be covered by the convention. It would erode the concept that people deserve and need protection based on fundamental characteristics that go to the core of who they are, such as their faith or sexuality. It proposes instead to broaden the definition to cover potentially transient factors that can perhaps be changed, but that fundamentally misunderstands the very basis of what it means to be a refugee, as envisaged by the refugee convention, and why we have a system to offer protection. I hope my explanation has reassured colleagues across the Committee, and I urge the hon. Gentleman to withdraw the amendment.

The hon. Gentleman has mentioned established case law on the correct definition of "particular social group", so I will say something briefly about that. As with many

of the key concepts of the refugee convention, case law has developed over the years on how to apply the term "particular social group" for the purpose of considering whether a claimant has a convention reason. Despite significant judicial interest in the interpretation of "particular social group" in case law, there is no established case law on the point. There is, however, conflicting tribunal-level case law and obiter comments by the House of Lords in the case of Fornah. Consequently, the clause seeks to provide clarity on the UK's interpretation of a particular social group, to ensure that it is applied consistently among decision makers.

Stuart C. McDonald: I agree with the Minister that we need clarity, but there are two different ways of providing clarity: we can either combine the requirements or use them as alternatives. I say that we should provide clarity by using them as alternatives. That is how the House of Lords interpreted the convention in the case of Fornah, and that is what the tribunal did recently as well, so I wish to press the amendment to a vote.

Question put, That the amendment be made.

The Committee divided: Ayes 6, Noes 7.

Division No. 29]

AYES

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

NOES

Anderson, Stuart	Pursglove, Tom
Goodwill, rh Mr Robert	Whittaker, Craig
Gullis, Jonathan	
Holmes, Paul	Wood, Mike

Question accordingly negatived.

Clauses 31 to 33 ordered to stand part of the Bill.

Clause 34

ARTICLE 31(1): IMMUNITY FROM PENALTIES

5.30 pm

Stuart C. McDonald: I beg to move amendment 157, in clause 34, page 33, line 20, at end insert—

"(1A) Subsection (1) shall not apply to any refugee—

(a) whose claim for asylum is on the basis of sexual orientation, gender identity, gender expression or sex characteristics;

(b) whose claim for asylum is on the basis of gender-based violence;

(c) who has experienced sexual violence;

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

(e) who is suffering from a mental health condition or impairment;

(f) who has been a victim of torture;

(g) who is suffering from a serious physical disability;

(h) who is suffering from other serious physical health conditions or illnesses."

This amendment would exempt certain groups from subsection (1).

The Chair: With this it will be convenient to consider amendment 158, in page 33, line 34, at end insert—

"(2A) Subsection (2) shall not apply to any refugee—

(a) whose claim for asylum is on the basis of sexual orientation, gender identity, gender expression or sex characteristics;

(b) whose claim for asylum is on the basis of gender-based violence;

(c) who has experienced sexual violence;

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

(e) who is suffering from a mental health condition or impairment;

(f) who has been a victim of torture;

(g) who is suffering from a serious physical disability;

(h) who is suffering from other serious physical health conditions or illnesses."

This amendment would exempt certain groups from subsection (2).

Stuart C. McDonald: The clause relates to article 31 of the convention, which provides refugees with immunity from certain penalties. It is an important protection that the Government are seeking to limit by, in my view, reinterpreting and undermining article 31, and setting out expectations of where and when individuals should claim that go beyond the letter and spirit of the convention.

The amendments take us back to this morning's discussion about why it was especially inappropriate to place these requirements and expectations on particular groups, including victims of trafficking, sexual violence and torture. They are designed to pose a question to the Minister: why is he seeking to strip such groups of their immunity from penalties that the refugee convention provides?

Tom Pursglove: Again, 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 in producing these amendments. As they will know, the provisions they are seeking to amend are crucial to the Government's intention to uphold the first safe country of asylum principle. In this respect, these 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 they 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.

Amendments 157 and 158 would apply to clause 34, which is closely related to clause 10 in that it sets out the UK's interpretation of certain criteria within article 31(1) of the refugee convention. The criteria in article 31 provide the basis for the legal framework we are using to differentiate within clause 10. The intention of the amendments is to seek statutory carve-outs from differentiation for a wide range of cohorts.

I absolutely understand where this is coming from. I would like to reassure hon. Members that the powers in clause 10 do not compel the Secretary of State to act in a certain way, and leave discretion to impose or not impose conditions as appropriate, depending on the individual circumstances. We will of course set out our policy in immigration rules and guidance in due course. The policy will be exercised with full respect to our international obligations and will most certainly be sensitive to certain types, some of which are referenced in the amendment, such as having been trafficked.

[Tom Pursglove]

I would note that blanket carve-outs are an attractive option to ensure protection of the most vulnerable, but ultimately I do not believe it would appropriate to do this in the way amendments 157 and 158 seek. In reality, blanket carve-outs would simply encourage people coming by small boat to claim they belonged to an exempted cohort. Most importantly, this would of course prevent us from protecting those people who do genuinely have those characteristics. By creating this perverse incentive, it would also undercut the entire purpose of the policy to serve as a deterrent. Indeed, people could then simply continue to make dangerous journeys to the UK and not claim in the first safe country because they know they can avoid group 2 refugee status simply by saying that they are LGBT+ or have a mental health condition.

For all these reasons, I invite the hon. Members for Cumbernauld, Kilsyth and Kirkintilloch East and for Glasgow North East not to press their amendments.

Stuart C. McDonald: Obviously, we maintain a fundamental opposition to the whole scheme proposed by this clause and clause 10. In the meantime, I beg to ask leave to withdraw the amendment.

Amendment, by leave, withdrawn.

Stuart C. McDonald: I beg to move amendment 50, in clause 34, page 34, line 1, leave out paragraph (b) and insert—

"(b) in subsection (3), after (b), insert—

"(ba) entry in breach of a deportation order, entry without leave, remaining in the United Kingdom without leave, or arriving in the United Kingdom without entry clearance under section 24 of the 1971 Act";

(c) in subsection (4), after (c), insert—

"(ca) entry in breach of a deportation order, entry without leave, remaining in the United Kingdom without leave, or arriving in the United Kingdom without entry clearance under section 24 of the 1971 Act"".

This amendment would mean that individuals who committed these offences (and the other offences set out in section 31 of the Immigration and Asylum Act 1999) would be able to use the defence set out in section 31 of that Act, even if the offence was committed in the course of an attempt to leave the UK.

Again, I want to prompt the Government—perhaps optimistically—for their thinking on the compatibility of these provisions with the convention. The amendment would mean that individuals charged with certain offences could still rely on defences provided by the convention, even if the offence was committed in the course of an attempt to leave the UK. It is important that the Government explain clearly why they think that removing that possibility is consistent with the convention. To be honest, I am struggling to understand the Government's reasoning.

Tom Pursglove: Amendment 50 is extensive. I thank the hon. Member for the considerable thought he has put into the amendment, which would list the illegal entry, arrival without clearance and remaining in the UK without leave offences as subject to the statutory defence against prosecution. However, the express statutory defence under section 31 of the Immigration and Asylum Act 1999 has never applied to the existing offences referred to in amendment 50. We do not consider the new arrivals without entry clearance offence needs to be referred to expressly for the same reason. Where relevant in a particular case, the Crown Prosecution Service will take into account the UK's obligations under article 31 of the refugee convention.

Another effect of amendment 50 would be to reverse our clause 34(4) and reintroduce a defence from prosecution for those transiting through the UK having entered illegally and intending to go and claim asylum elsewhere, such as Canada or the USA. I disagree that the statutory defence should extend to those who have tried to exit the UK without first seeking asylum, but I reassure hon. Members that that does not mean that every asylum seeker who tries to exit the UK will be prosecuted. We are targeting for prosecution those migrants where there are aggravating factors involved—for example, causing danger to themselves or others, including rescuers; causing severe disruption to services such as shipping routes or closure of the channel tunnel; or where they are persons who have previously been removed from the UK as failed asylum seekers.

We have of course been very clear that people seeking protection must claim in the first safe country they reach. That is the fastest route to safety. In the same way that we will not tolerate smugglers exploiting vulnerable people to come to the UK when a claim could easily be made in another safe country, we will also not tolerate those migrants who transit through the UK, having previously travelled through European countries, to reach other places. They must claim in the first safe country they reach. For those reasons, I invite the hon. Member to withdraw his amendment.

Stuart C. McDonald: It is useful to have that on the record. I will go away and give it some further thought. We maintain our fundamental opposition to the whole scheme, but, in the meantime, I beg to ask leave to withdraw the amendment.

Amendment, by leave, withdrawn.

Clause 34 ordered to stand part of the Bill.

Clause 35

Article 33(2): particularly serious crime

Stuart C. McDonald: I beg to move amendment 51, in clause 35, page 34, line 1, leave out sub-paragraph (i).

Under this amendment, persons receiving certain prison sentences in the UK shall be presumed (as at present) but not automatically deemed (as proposed in the Bill) to have committed a particularly serious crime.

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

Amendment 53, in clause 35, page 34, line 21, leave out "12 months" and insert "four years".

Under this amendment, persons shall be deemed to have committed a "particularly serious crime" if they receive a prison sentence of more than four years in the UK (as opposed to two years at present, or 12 months as proposed in the Bill).

Amendment 52, in clause 35, page 34, line 24, leave out sub-paragraph (i).

Under this amendment, persons receiving certain prison sentence outside the UK, or persons who could have received such a sentence had they been convicted in the UK, shall be presumed (as at present) but not automatically deemed (as proposed in the Bill) to have committed a particularly serious crime.

Amendment 54, in clause 35, page 34, line 27, leave out paragraphs (b) and (c) and insert—

"(b) in paragraph (b), for "two years" substitute "four years";

"(c) in paragraph (c), for "two years" substitute "four years"".

Under this amendment, persons shall be deemed to have committed a "particularly serious crime" if they receive a prison sentence of more than four years outside the UK (as opposed to two years at present, or 12 months as proposed in the Bill), or if they could have received such a sentence had they been convicted in the UK.

Clause stand part.

Stuart C. McDonald: The amendment is a probing one. The basic point is that if someone is at risk of persecution, we must be incredibly careful when creating gaps, loopholes and exceptions that would still see that person subject to removal to the very place where they would be at risk. The convention creates and recognises very specific exceptions to the fundamental principle of non-refoulement.

If someone is a danger to security here or has committed a particularly serious crime, they constitute a danger to the community. The amendment challenges the attempts in the clause to broaden the scope of the exceptions so that persons are automatically deemed and not just presumed to have committed a serious offence if they are sentenced to one year in prison, rather than two years. We have particular concerns about the circumstances where the crime has been committed overseas. How do the Government intend to be sure about the safety and appropriateness of prosecution, conviction and sentence?

Nobody is saying that refugees should not face appropriate punishment for their crimes, but the danger is that those sentenced to one year or more face an additional punishment that puts them at risk of persecution, torture and death. That is way beyond what is merited by the crime. The withdrawal of refugee rights should not be done in anything other than the most serious circumstances. We fear that the clause goes beyond what the convention envisages.

Bambos Charalambous: I just wish to add to the points made by the SNP spokesperson. The whole UK criminal justice system is based on having magistrates courts that deal with the less serious offences, which have a maximum sentence of up to 12 months, and we then have the Crown court, which deals with the more serious offences, with a sentence above 12 months. Defining something as serious with 12 months' imprisonment seems to be contrary to other aspects of our judicial system.

Labour also has concerns about people who have been trafficked who may have been forced to commit offences. They may have been convicted of a criminal offence as a result of their trafficking, whether that is because of drugs, prostitution or another such offence that might attract a penalty above 12 months. We have some concerns about the redefinition and I wonder whether the Minister can clarify what might happen to someone who has been trafficked, has committed an offence and has received a sentence of 12 months. Would the clause apply to them, because that does raise concerns about it? I do not know whether he will be able to assist in that regard.

Tom Pursglove: I am afraid that we simply cannot agree to amendments that would allow individuals to remain in the United Kingdom despite being convicted of offences that are even more serious than those described under the current legislative framework. This Government cannot support provisions that allow dangerous foreign national offenders to remain in the United Kingdom, and if it means putting the public at risk.

This Government are committed to continuing to meet our international obligations, in particular those under the refugee convention and European convention on human rights. A key principle of the refugee convention is non-refoulement, also referred to as removal, of refugees to a place or territory where there is a real risk that their life or freedoms would be threatened. But the convention itself recognises that there have to be exceptions to this. Article 33(2) of the convention allows refugees to be returned when they have committed a particularly serious crime and as a result, constitute a danger to the community, or are a danger to the security of the UK.

The aim of clause 35 is to redefine a "particularly serious crime". I would like to reassure Committee members that we have looked carefully at the type of offending that may be caught by a new lower threshold. It is that that has contributed to the Government's position that offences with 12 months' custody or more should be considered as being particularly serious.

It is worth taking a moment to consider some of those offences for which the Sentencing Council's guidelines indicate that a year's custody is the starting point. They include causing a child to watch sexual activity, inciting a child to engage in sexual activity and carrying a firearm in a public place, in certain circumstances. Hon. Members surely agree with me that they and the public would consider those crimes as particularly serious. Clause 35 as drafted, like all clauses in the Bill, is fully compliant with our obligations under the refugee convention.

I turn specifically to amendments 51 and 52. They seek to make the first limb of the article 33(2) assessment, that is whether an individual has committed a particularly serious crime, rebuttable. That would mean that an individual who had been sentenced to 12 months or more in prison could argue that their crime was not in fact serious. That is despite a court of law, based on all the facts in the case, taking into account mitigating and aggravating factors, determining that the offending was so serious that an individual should be deprived of their liberty for 12 months or more.

If we are agreed that a year's imprisonment means someone has committed a crime that society clearly considers serious, this amendment seemingly gives offenders a second bite of the cherry to disagree with the ruling of the criminal courts in the UK—some of the most respected legal bodies in the world. The Government propose in clause 35 that a crime which has been punished by 12 months or more imprisonment is an appropriate definition, ensuring that all particularly serious crimes are captured. Such a sentence, which limits the freedom of an individual for a considerable period, would be inappropriate if the crime was not particularly serious.

I also stress that there is a safeguard in the process. If an individual commits a particularly serious crime, the bar on refoulement is not automatically lifted. The individual has an opportunity to rebut the presumption

[Tom Pursglove]

that they are a danger to the community in the UK. Only individuals who are unable to rebut the presumption will be considered for removal. I also flag the UK's other international obligations, in particular those under the European convention on human rights. An individual would not be removed from the UK if doing so would breach our obligations under the convention. Instead, they would be granted shorter, more restricted forms of leave to remain, and would be removed at the earliest opportunity, when it is safe to do so.

5.45 pm

Amendments 53 and 54 seek to redefine a particularly serious crime in section 72(2) and (3) of the Nationality, Immigration and Asylum Act 2002 as one that is punished by four years or more imprisonment, in comparison with the 12 months or more imprisonment proposed by the Government in clause 35. As I have outlined, the Government have identified 12 months or more imprisonment as an appropriate definition for a particularly serious crime.

Mr Goodwill: Is the Minister aware that in the Representation of the People Act 1981 the same 12-month sentence would disqualify a Member of Parliament—so what is sauce for the goose, I guess?

Tom Pursglove: My right hon. Friend puts the matter in a way that only he can. To raise the definition to a level that captures only crimes that have resulted in a sentence of four years or more imprisonment would be reckless, and would undermine the aims of the new plan for immigration to build a fair but firm immigration system. It would clearly send the wrong, and dangerous, message that the UK welcomes and rewards serious offenders. I do not believe that the people of the UK want that. The amendments would mean that individuals who commit some of the most serious crimes would continue to receive the generous benefits of refugee status in the United Kingdom. Their continued presence in the UK could also lead to avoidable reoffending. The Government would not be upholding their responsibility to protect the public of the United Kingdom by supporting the amendments.

The hon. Member for Enfield, Southgate queried the process for a person who has been trafficked. I can confirm that such a person will be tested under the second limb for whether they amount to a danger to the community. With regard to offences committed overseas, section 72(3)(c) of the Nationality, Immigration and Asylum Act 2002 contains a provision to ensure that any convictions abroad would result in a sentence of 12 months or above in the UK for a similar offence.

In the light of those points, I hope that the hon. Member for Cumbernauld, Kilsyth and Kirkintilloch East will withdraw the amendment, and that the Committee agree that the clause stand part of the Bill.

Stuart C. McDonald: It is useful to have that on the record. I do not think that all the points were addressed, but I beg to ask leave to withdraw the amendment.

Amendment, by leave, withdrawn.

Clause 35 ordered to stand part of the Bill.

Clause 36

INTERPRETATION OF PART 2

Stuart C. McDonald: I beg to move amendment 55, in clause 36, page 35, line 14, at end insert—

> "'protection in accordance with the Refugee Convention' means a legal status that is inclusive of the rights and obligations set out at Articles 2-34 of the 1951 Convention".

This amendment would define – for the purposes of Part 2 of the Bill – what constitutes protection in accordance with the Refugee Convention.

The Chair: With this it will be convenient to discuss amendment 135, in clause 36, page 35, line 27, at end insert—

> "'protection in accordance with the Refugee Convention' means a legal status that is inclusive of the rights and obligations set out at Articles 2-34 of the 1951 Convention."

This amendment would clarify the meaning of "protection in accordance with the Refugee Convention" and ensure that it includes the positive rights and obligations necessary to ensure durable and humane solutions, and not merely protection against refoulement.

Stuart C. McDonald: Certain very important provisions in the Bill refer to a state providing protection in accordance with the convention. In particular, it is incredibly important to the inadmissibility provisions in justifying removal to so-called safer countries. We need to define it, and we would do so through amendment 55 by referencing all the rights set out in the refugee convention. We thereby seek to ensure that the standards of that convention have been fully upheld. The amendment poses the question to the Government of whether they are a champion of the full range of rights in the convention, or are requiring people to claim asylum in countries where little more than lip service is paid to it, and nothing more than a protection against refoulement is provided. That is the issue at stake, in a nutshell.

Bambos Charalambous: In order to save time—I know that we have had a very long day—I will bear in mind that the wording of amendment 135 is almost identical to that of the amendment tabled by the hon. Member for Cumbernauld, Kilsyth and Kirkintilloch East. He did it justice when speaking to it, and we will support it.

Tom Pursglove: I thank hon. Members for tabling the amendments. I have listened carefully to the arguments that they have put forward. I agree about the importance of the United Kingdom continuing to meet its obligations under the refugee convention, including through the rights that we provide to refugees. The amendments to clause 36 relate to the inadmissibility provisions set out in clause 14. I understand the spirit of the amendments in wishing to define protection in accordance with the refugee convention where we may seek to remove an individual to a safe country. However, clause 14 as drafted ensures that the principles of the refugee convention should be met if we are to remove an individual to that country.

If individuals have travelled via, or have connections to, safe countries where it is reasonable to expect them to have claimed asylum, they should do so. They should

not make unnecessary and often dangerous onward journeys to the UK; however, if they do, we will seek to remove them to a safe country. We will only ever return inadmissible claimants to countries that are safe and where the principles of the refugee convention are met. For those reasons, I cannot support the amendments, and I ask that the hon. Member for Cumbernauld, Kilsyth and Kirkintilloch East withdraw amendment 55.

Stuart C. McDonald: Again, it is useful to have that on the record. The Minister defends the clause as it is by referencing the protection that clause 14 provides on the principles of the refugee convention, but when I asked him what that meant earlier I was not remotely satisfied by the answer. It is another clause that is completely undefined, so I wish to press amendment 55 to a vote.

Question put, That the amendment be made.

The Committee divided: Ayes 6, Noes 7.

Division No. 30]

AYES

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

NOES

Anderson, Stuart	Pursglove, Tom
Goodwill, rh Mr Robert	Whittaker, Craig
Gullis, Jonathan	
Holmes, Paul	Wood, Mike

Question accordingly negatived.

Clause 36 ordered to stand part of the Bill.

Ordered, That further consideration be now adjourned. *—(Craig Whittaker.)*

5.53 pm

Adjourned till Thursday 28 October at half-past Eleven o'clock.

Written evidence reported to the House

NBB40 Evangelical Alliance

NBB41 Natalie Hodgson, Assistant Professor, School of Law, University of Nottingham

NBB42 Médecins Sans Frontières (MSF)/ Doctors Without Borders