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Public Bill Committee

NATIONALITY AND BORDERS BILL

Ninth Sitting

Tuesday 26 October 2021

(Morning)

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Saturday 30 October 2021

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

(Morning)

[Sir Roger Gale *in the Chair*]

Nationality and Borders Bill

9.25 am

The Chair: Good morning, ladies and gentlemen. Before we start, I ask Members to ensure that their electronic devices are either switched off or on silent. Members are encouraged to wear masks at all times, except when speaking, but I entirely accept that it is a matter of personal choice, and of necessity in some cases. I understand from the usual channels that we might sit past 5 o'clock. I put that on the record so that Members can adjust their diaries accordingly should that be necessary, although it may not be. The reason, as some Members might not understand, is that come 4 November at 5 o'clock, the guillotine comes down, which means that anything undebated in the Bill remains undebated in Committee, so it is necessary to pace the pitch backwards. We hope to get through all the work in a timely fashion, but we are putting down a marker. If Ms McDonagh is not available to take the Chair this evening, I shall. *Hansard* and the Doorkeepers have been informed as well.

Clause 14

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

Stuart C. McDonald (Cumbernauld, Kilsyth and Kirkintilloch East) (SNP): I beg to move amendment 56, in clause 14, page 17, line 31, at end insert—

"(d) there are in law and practice—

(i) appropriate reception arrangements for asylum seekers;

(ii) sufficient protection against serious harm and violations of fundamental rights;

(iii) protection against refoulement;

(iv) access to fair and efficient state asylum procedures, or to a previously afforded refugee status or other protective status that is inclusive of the rights and obligations set out at Articles 2-34 of the 1951 Convention;

(v) the legal right to remain during the state asylum procedure;

(vi) a grant of refugee status that is inclusive of the rights and obligations set out at Articles 2-34 of the 1951 Convention for those found to be in need of international protection;

(e) it is safe for the particular claimant, taking into account their individual circumstances."

This amendment modifies the definition of a "safe third State".

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

Amendment 18, in clause 14, page 17, line 33, leave out "5" and insert "3".

This amendment is consequential on a later amendment about the definition of "connection".

Amendment 19, in clause 14, page 17, leave out lines 35 to 38.

This amendment removes subsection (6), which states that a claimant whose asylum claim has been denied by virtue of their connection to a particular safe third State may be removed to any other safe third State.

Amendment 20, in clause 14, page 17, line 40, leave out "may" and insert "must".

In cases where it is unlikely to be possible to remove the claimant to a safe third State, or in other exceptional circumstances, this amendment would require otherwise inadmissible claims to be considered under the immigration rules.

Amendment 21, in clause 14, page 17, line 41, leave out line 41 to line 2 on page 18 and insert—

"(a) in the absence of a formal, legally binding and public readmission agreement between the United Kingdom and the State to which the person has a connection;

(b) as soon as the proposed State of readmission refuses to accept the person's return or if the person's readmission has not been agreed within three months of the registration of their asylum claim, whichever is sooner;

(c) if, taking into account the claimant's personal circumstances, including the best interests of any children affected by the decision, it is more appropriate that the claim be considered in the United Kingdom;

(d) in such other cases as may be provided for in the immigration rules".

This amendment broadens the circumstances in which the Secretary of State must consider an asylum application, despite a declaration of inadmissibility.

Amendment 22, in clause 14, page 18, line 13, leave out line 13 and insert—

"(a) has been granted refugee status or another protective status in the safe third state that is inclusive of the rights and obligations set out at Articles 2 to 34 of the 1951 Convention".

This amendment would strengthen the safeguards in place before a "connection" can be relied on for the purposes of inadmissibility.

Amendment 23, in clause 14, page 18, leave out lines 16 to 24.

This amendment changes the definition of a "connection" to a safe third State.

Amendment 24, in clause 14, page 18, leave out lines 35 to 37.

This amendment changes the definition of a "connection" to a safe third State.

Amendment 25, in clause 14, page 18, leave out lines 38 to 43 and insert—

"(6) For the purposes of this section, a "relevant claim" to a safe third State is a claim for refugee status or other protective status that is inclusive of the rights and obligations set out at Articles 2 to 34 of the 1951 Convention."

This amendment changes the definition of a "relevant claim" to a safe third State.

Amendment 26, in clause 14, page 18, line 46, at end insert—

"**80D Conditions for implementation of section 80B**

(1) The Secretary of State may not make a declaration under section 80B(1) in relation to any State unless there are in place reciprocal arrangements with that State by which—

(a) that State has agreed to receive from the United Kingdom a person with a connection to it; and

(b) the United Kingdom has agreed to receive from that State a person who has made an asylum claim in that State who has a connection to the United Kingdom.

(2) For the purposes of subsection (1), any reciprocal arrangements must provide for the period within which a State is to receive a person from the United Kingdom; and any declaration made under section 80B(1) shall cease to apply if that period has passed and the person remains in the United Kingdom.

(3) The period to which subsection (2) refers must not be longer than 6 months from the date the asylum claim to which it relates is first made.

(4) Notwithstanding subsection (3), the passing of the period shall not prevent the transfer of a person from the United Kingdom to another State in which the person has a family member and to which the person wishes to be transferred.

(5) The Secretary of State may not make a declaration under section 80B(1) in relation to any person who—

(a) has a family member in the United Kingdom;

(b) has been lawfully resident in the United Kingdom;

(c) has worked for or with any United Kingdom Government body or other body carrying out work for or sponsored by the United Kingdom Government; or

(d) has a family member who has been lawfully resident in the United Kingdom or worked with or for such a body.

(6) In this section—

"a family member" means a child, grandchild, parent, grandparent, brother, sister, uncle, aunt, nephew or niece."

This amendment would prevent the Secretary of State from rejecting asylum claims on the grounds that the claimant has a connection to a safe third State unless the UK has reciprocal arrangements with that State.

Clause stand part.

Stuart C. McDonald: It is a pleasure to serve under your chairmanship again, Sir Roger. I will speak to amendment 56 and the other amendments in the group, and against the clause, as currently drafted, standing part of the Bill. The clause allows the Secretary of State to declare asylum claims inadmissible on the grounds that she considers the person has a connection to a safe third state. That brings us to another provision in the Bill in relation to which we allege profound inconsistencies with the refugee convention—no doubt those will have been discussed when the Minister met with the United Nations High Commissioner for Refugees last week.

That inconsistency is one of the reasons why we believe the clause should not stand part of the Bill. Another reason is that we already know it does not work, because a version of this scheme has been in place in the immigration rules since the start of the year. It is incumbent on the Minister to provide the evidence that the provision has achieved anything remotely along the lines of what was intended. From the information that I have seen, it has achieved nothing of the sort.

Those immigration rules were put in place because, with the end of the transition period, the applicability of the EU's Dublin rules came to an end. That created a significant problem for the Government as they had no replacement agreement in place with the EU under which individuals who would more appropriately have their asylum claim processed elsewhere could have their case transferred there. The clause is not a replacement for Dublin, but a dreadful, one-sided, pale imitation of it, and it is incompatible with the refugee convention.

The Dublin regulations were far from perfect but, first, they included important safeguards that are totally absent from the Government's scheme, and they contained some restrictions on the grounds for transfer, whereas here the connection can be flimsy indeed, including mere transmit. Secondly, the Dublin rules are two-way. People could be transferred here from the EU or could remain here if they had connections to the UK, such as family, that made it appropriate for asylum claims to be considered in this country. Under the rules that the Government are offering, it is one-way only. The absence of such provision means that, unlike Dublin, this is not about responsibility sharing; it is about responsibility offloading.s

The UK is failing to live up to its international obligations and hoping that somebody else will pick up the slack. More often than not, that will be a country that already supports larger numbers of refugees and processes far more asylum claims, including France, Germany, Belgium, the Netherlands, Italy and Greece—all highlighted by the Home Secretary at Second Reading.

Thirdly, the Dublin rules represented an agreed framework between member nations. Other countries had actually agreed in principle to take people back. In contract, the scheme set out in the immigration rules and in this Bill, as it stands, is a Home Office pipe dream. There are no agreements with our neighbours to take back those whose claims have been deemed inadmissible. In essence, the Home Office is suspending consideration of asylum claims for six months, even with no realistic prospect of removing more than an handful of people to have their claims considered by other countries. It simply adds another six months of limbo to these people's lives, at a time when there is already a massive waiting time.

The latest figures I have read showed that something like 4,500 asylum seekers had been subject to the inadmissibility procedures since they came into effect in January. I think seven had ultimately been found inadmissible, and nobody had been removed. Those figures will have changed since then, and I look forward to receiving the updated figures, but what a disaster that represents. Freedom of information requests have confirmed that thousands of cases, including hundreds of Eritreans, Syrians and Afghans, have been served with inadmissibility notices, even though the Home Office knows that, for all intents and purposes, it will not be possible to remove them to so-called connected safe third states.

This is a waste of officials' time, adds six months to the backlog and adds to, rather than resolves, the problems with the UK asylum system. I would ask the Minister, in responding, if he has calculated how much money the Home Office has spent supporting and accommodating people declared inadmissible only for the Home Office then to start assessing their claims six months down the line. As it stands, clause 14 should not form part of the Bill.

The amendments in this group prompt the Government to think about safeguards that could enable the clause to be consistent with the refugee convention, including restrictions and reciprocity. Amendment 26 tries to do that in a comprehensive but succinct way, while the other amendments probe more deeply into certain aspects of the clause as drafted.

Amendment 26 would basically add a new clause into the Nationality, Immigration and Asylum Act 2002, alongside the Home Office clauses, to fix the failures

[Stuart C. McDonald]

highlighted. Subsections (1) to (3) would require that an arrangement is in place with the third country, so there is no mass service of inadmissibility notices on people who there is no prospect of removing. Subsection (1) would also address the absence of reciprocity by ensuring that the agreement is a reciprocal one, so the Home Secretary can operate an inadmissibility regime only in relation to countries that are able to send people here or transfer claims here as well. Thus, for example, people with a family connection to the UK are able to have their claims considered in this country, and other examples are given in the amendment. As it stands, people's connections, such as with family—even their closest family members—as well as language, previous residence in the UK or working for UK entities, including the British Army, are all totally overlooked by the Government's scheme.

The remaining amendments in this group probe in more detail how the Government will ensure various other vital protections are in place. They take into account the published legal opinion of the United Nations High Commissioner for Refugees on the concept of inadmissibility and some of the criticisms raised there. Amendment 56 seeks to ensure that the rights of asylum seekers will be fully protected in the country to which the Government are seeking to transfer the claim.

As it stands, the definition of a safe third state is really pretty pathetic. So long as your life and liberty are not at risk for a refugee convention reason and that some sort of asylum process is in existence, off you go. There could be an almost certain risk of human rights breaches, albeit falling short of a threat to life or liberty, and that would not matter. There could be a threat to life, but for a non-convention reason, and again it seems that it does not matter, and the country is still deemed safe.

The wording of the safe third state definition is troubling from all sorts of angles. For example, the clause states that a country is safe if "a person" can apply for refugee status and "a person" will not be removed in contravention of the convention, without specifically asking the question, "Will this individual that we want to declare inadmissible be at such a risk?" It is not robust enough either in what it requires for access to asylum and refugee procedures. It simply says that a person may apply and receive protection in accordance with unspecified principles of the convention.

As I read clause 14 just now, if I was at risk in a proposed country I had a connection to because of new autocratic rules or a ruler who decided they wanted capital punishment for people with red hair, it would still very likely meet the definition of a safe country, because my life would not be threatened for a convention reason—arguably, it could be a particular social group, but it is not clear—and if I had previously made a claim there and it had been refused, apparently I am connected enough to be required to go back there. If I am wrong about that, I look forward to the explanation of how that would apply in these particular circumstances.

Amendment 56 therefore surely sets out totally unobjectionable safeguards about which we can all agree, so that—not just on paper, but in practice—fundamental rights are going to be respected, there are appropriate reception arrangements for asylum seekers, there is access to fair and appropriate asylum procedures, and the full convention of refugees must be available if accepted as a refugee.

Amendment 19 again seeks information from Ministers about their intentions in relation to a new provision that allows them to deny an asylum claim on the basis of a connection to country A, but instead remove that person to country B, even when, it seems, there is no connection. I guess that is a foretaste of the debate we will have on clause 26, but this is an extraordinarily wide provision and it is not constrained by any assessment of the appropriateness or otherwise of the transfer in the circumstances of the individual person.

Mr Robert Goodwill (Scarborough and Whitby) (Con): Does the hon. Gentleman accept that any country that meets the Copenhagen criteria, by virtue of being either a member of the European Union or an accession country, would be, by definition, a safe country?

Stuart C. McDonald: It almost certainly would, and it would meet the criteria in the Bill. However, that is not really the issue, because, as drafted, the definition of "safe country" goes way beyond who would meet those criteria in the EU. That is what I am driving at. Again, we struggle to see how clause 14 can be justified and how it can possibly be said to be appropriate or consistent with the convention. As the UNHCR put it:

"This would be a significant break from…international practice".

Amendment 20 would simply mean that if there is no reasonable likelihood of removal to a third country in a reasonable period or there are exceptional circumstances that mean that the Home Secretary should consider the claim, then she "must" do so. As it stands, she "may" do so, but she also may not. Surely it is odd to want to give the Secretary of State the power not to consider a claim when she has decided that

"the claim should be considered".

The amendment should probably also have taken out the reference to "exceptional circumstances". After all, if the unexceptional circumstances suggest that the claim should be decided here, where is the logic in not doing that?

Amendment 21 sets out circumstances in which claims should, on any reasonable view, be processed here rather than attempts made to move them elsewhere. In short, if there is not an agreement with a third country that will allow for the transfer of cases, the Home Office should just get on with considering it. If the third country refuses the transfer or does not reply in three months, the Home Office should, again, just get on with considering the case. And if in the circumstances, including the best interests of any children affected, it is better for the claim to be decided here, the Home Office should get on and do it.

Amendments 18 and 22 to 24 take us to the current definition of "connection" to be introduced into law by clause 14. Amendments 23 and 24 remove from the Bill two circumstances in which it is currently said that a connection is sufficient for the purpose of the inadmissibility regime. Amendment 24 would remove what is termed "condition 5", which is so vague as to be almost incomprehensible and allows the Secretary of State to decide that a connection has been established in an almost unlimited number of scenarios. There is reference to "the claimant's particular circumstances" but no explanation of what is meant by that.

Amendment 23 takes out "condition 2", so that a connection can be provided only by proper and full-blown refugee status in accordance with the convention, and not a substandard or pale imitation of it. Amendment 22 puts the full-blown refugee status as a possible connection in the clause.

Amendment 25 is similarly motivated. In short, if the making of an asylum claim in another country is to establish the connection necessary for an inadmissibility declaration, it must be the case that the protection status offered in that other country to a refugee is fully compatible with the 1951 UN refugee convention. Again, it is absolutely not enough for a substandard asylum regime to be in place, and it would be outrageous for the UK Government to say otherwise and to be seen to be tolerating the watering down of refugee rights across the globe.

All these amendments provide ways to fix the flaws in the scheme. We could also have tabled other amendments to fix the inability of anyone to challenge inadmissibility decisions on any grounds. The Government say that this is all about deterring onward movements from France and other neighbours, but the clause is drafted in a way to allow removal to any old regime, regardless of how they treat asylum seekers and refugees. That is not remotely good enough, so the Minister must accept the flaws in the drafting and engage with the UNHCR on changing them.

Bambos Charalambous (Enfield, Southgate) (Lab): I speak in support of the Scottish National party amendments and against clause 14 standing part. Once again, we are faced with a draconian, punitive clause that we the Opposition believe risks putting vulnerable people in danger and depriving them of the protection that they deserve under international law. I will begin by setting out what clause 14 does. Again, I thank the many sector organisations that have helped us to analyse the likely impacts of the clause.

Clause 14 puts in the Bill an existing immigration law on inadmissibility that makes any asylum claim inadmissible in a number of circumstances, including if the claimant has passed through a safe country or if they have a connection to a safe third country. The result of a finding of inadmissibility is that, unless the Secretary of State decides that there are exceptional circumstances, the claimant will be denied access to the United Kingdom's asylum system for a "reasonable period"—currently defined as six months by Home Office policy—while the UK seeks to transfer them to "any other safe country".

Before getting to the extremely problematic moral and legal aspects of clause 14, I want to draw hon. Members' attention to the unworkable practical aspects of it. Members know that the current regime is unworkable even as it stands because the UK Government do not have returns agreements with European Union member states, namely the "safe third countries" that refugees are most likely to have passed through. With the huge backlog and delays currently in the system, it is truly impossible to understand how adding another six months to the asylum process will help an already dysfunctional system.

Any Member who is familiar with dealing with asylum cases will be only too familiar with cases that have dragged on for years and seemingly been lost in the system, and the many refusal cases that are overturned on appeal. The current system is not working and by adding extra time to it before a case can even begin suggests a huge increase in the processing backlog. As an ex-lawyer, I know that justice delayed is justice denied, and therefore I have grave reservations about the time stipulations in the clause.

To put the Government's actions so far into greater context, it is worth noting that in the first six months after implementation of the inadmissibility provisions of the immigration rules—they are echoed in the statutory provisions we are currently considering—the asylum claims of more than 4,500 people were put on hold by the issuance of notices of potential inadmissibility. Incredibly, the UK sought to transfer only seven of those cases—seven out of 4,500. Surely that demonstrates that the concept of inadmissibility is deeply flawed, and that attempts to enforce it by statute, as currently envisaged in clause 14, are equally flawed.

To make matters even worse, the inadmissibility rules set out in clause 14 have a far broader reach than anything that has gone before. First, let us consider the clause's reference to a "safe third country". The clause creates a disturbingly low standard for when a state would be considered safe for a particular claimant. The criteria are that their

"life and liberty are not threatened there by reason of their race, religion, nationality, membership of a particular social group or political opinion."

That state must be one from which "a person" will not be removed in breach of a non-refoulement obligation under the refugee convention or the European convention on human rights, and that "a person" may apply for refugee status there and, if recognised, receive protection in accordance with the refugee convention. According to clause 14, therefore, a country could still be considered safe even if the applicant had been, or perhaps continues to be, at real risk of being subjected to human rights violations in that country which either fall short of threats to life or liberty, or to which they were not exposed for reasons of a refugee convention ground.

Equally worrying is that, according to clause 14, although that safe state must be one in which in general a person "may" apply for refugee status and receive protection

"in accordance with the Refugee Convention" ,

it is not clear from the terms of the Bill that that possibility needs to be available to the particular applicant. Given the reference in the Bill to "a person", it appears that it may be sufficient that, in general, there is the "possibility" of applying for refugee status in that state. That is hardly reassuring. In fact, it means that the supposed "safe" third country might not be at all safe for any particular individual. That surely makes a mockery of the term "safe" as commonly understood.

In addition, in order to be found to have a connection to a safe third state, the particular applicant need not have had a reasonable opportunity to access refugee status there. It is worth examining that in more detail. The terms of the clause imply that although the state would have to be one in which, in general, the possibility existed for a person to apply for refugee status, an individual claimant could be found to be inadmissible because they had received nothing more than protection against removal, in violation of the refugee convention

[Bambos Charalambous]

or article 3 of the ECHR, or had made or had a reasonable opportunity to make a "relevant claim" for such protection in that state.

Furthermore, we need to look at the use of the term "connection" in clause 14. The clause makes it clear that the mere presence in a safe state where it would have been reasonable to expect the applicant to make a "relevant claim" would be sufficient to establish a "connection". That in turn would be enough to trigger inadmissibility. Overall, the use of the term "connection" is nothing short of Orwellian. The framing of that term suggests that it could be an otherwise unelaborated connection—in other words, in the claimant's particular circumstances, it would have been hypothetically reasonable for them to have gone to a given state to make such a claim, even if they had never been there.

9.45 am

Furthermore, in a significant and highly problematic departure from international practice and UK case law, it is irrelevant whether the claimant would actually be admitted to the safe third state in question. Although a connection, in the limited sense of the proposed new section 80C, between the applicant and the safe third state is required for a claimant to be declared inadmissible, the Secretary of State may still remove the applicant to any safe third state. The required connection therefore appears to be utterly meaningless in terms of ensuring the reasonableness and appropriateness of actual transfers. How on earth is that fair? Such fake definitions of the terms "connection" and "safe" imply that clause 14 is underpinned by nothing other than a desire to be shot of people from our shores—people who in all probability deserve our support and are entitled to support under international law.

With clause 14, Ministers seem intent on inventing yet more impossible hurdles for refugees. The mere idea that someone could, perhaps in another lifetime, have applied for refugee status in another state, in which they may or may not be safe, may or may not have been granted refugee status and may or may not have a hypothetical connection, is being used as an excuse to deem their claim in the UK inadmissible. Franz Kafka could not have dreamed up a more absurd and irrational state of affairs.

I would like now to examine a view on some of these matters provided by Matrix Chambers in response to a request from Freedom from Torture. Matrix Chambers' legal assessment of many aspects of the Bill is so extremely damning that, as Members may have seen, it gained national press coverage a few days ago. The opinion states that the key legal concerns arising from the proposed inadmissibility regime are

"the absence of adequate safeguards against returning individuals to countries where they will be denied rights owed to them under the Refugee Convention while they await determination of their status, in breach of the UK's duty to implement its treaty obligations in good faith"

and that

"One of the key pillars of the Refugee Convention is the prohibition on refoulement."

In other words, according to this legal opinion, clause 14 is likely to return vulnerable people to unsafe countries and therefore breach international law and the refugee convention.

It is also worth reminding the Committee of what the refugee convention says. Article 33(1) provides:

"No Contracting State shall expel or return ('refouler') a refugee in any manner whatsoever to the frontiers of territories where his life or freedom would be threatened on account of his race, religion, nationality, members of a particular social group or political opinion."

As the Matrix opinion states,

"The principle of non-refoulement applies to all refugees unless they fall within the narrow exceptions identified in Article 33(2) of the Refugee Convention."

The Matrix opinion points out that the principle of non-refoulement has two important aspects, particularly in reference to clause 14. The refugee convention prohibition on refoulement applies to all refugees, not only those whose status has been formally recognised. As a result, it must in practice be treated as applicable to all asylum seekers, whereas clause 14 seeks to establish a precedent according to which those who have not been granted asylum are clearly at more risk of refoulement if their claim is deemed inadmissible.

In conclusion, I and other Labour Members are deeply concerned by clause 14, and we deplore the Orwellian doublespeak and how it renders meaningless terms such as "safe country" and "connection" with a safe country. We are appalled by the real risk that it poses to international law and the refugee convention through refoulement.

We would find the fantasy underpinning clause 14 laughable if it were not so concerning. The clause is clearly predicated on the presumption that the Government can persuade other countries to accept people from the UK. Ministers appear to believe that their powers of persuasion are so fantastic that others who already take far greater asylum responsibility than the UK will agree to relieve the UK of a substantial part of the very modest responsibility that it currently takes.

That is, plainly, nonsense. The reality of clause 14 is that no such agreements will materialise. Instead, the clause will lead at best to more backlogs in a sclerotic system and at worst to very real harm to already vulnerable people, breaches of international law and a further erosion of civilised values in the UK. We reject the clause and will vote against it standing part.

The Parliamentary Under-Secretary of State for the Home Department (Tom Pursglove): I thank hon. Members for tabling their amendments. I have listened carefully to the arguments that they have put forward.

Amendments 18 to 26 and amendment 56 seek to amend the Bill provisions relating to the inadmissibility of asylum claimants with a connection to a safe third country. This Government are clear that people should seek asylum in the first safe country they reach rather than make dangerous journeys to the UK to claim asylum here. Inadmissibility is a longstanding process designed to prevent secondary movements across Europe, and these measures are being introduced to support that. The amendments seek to significantly weaken our ability to treat these individuals as inadmissible, and therefore weaken our ability to focus our resources on those most in need of our help. I make no apologies for prioritising the protection of the individuals most in need of help over those who could have claimed asylum elsewhere.

Neil Coyle (Bermondsey and Old Southwark) (Lab): Will the Minister indicate where in international law there is a requirement on an individual to make such a claim in the first safe country they reach? Or is the UK seeking to impose its domestic law on the international community?

Tom Pursglove: It is fair to say that the Committee had an extensive debate about this issue last week in relation to earlier clauses. I would refer the hon. Member to the comments read out in the Committee from a previous Bill Committee under the last Labour Government, where the principles we are talking about here were very firmly established and endorsed. They have underpinned the approach that has been taken on these matters under successive Governments in this country, and we continue to believe that they are applicable.

I wholeheartedly agree with the importance of the UK continuing to meet its obligations under the refugee convention, including through the rights that we provide to refugees in the UK. I understand the spirit of amendment 56 in defining a safe third state in a way that ensures that an individual removed to that country is provided with adequate protection and their individual rights as a recognised refugee under the refugee convention. However, the definition of a safe third state as set out in clause 14 already ensures that the principles of the refugee convention should be met if we are to remove an individual to that country.

Stuart C. McDonald: The term "the principles of the refugee convention" is vague. What do the Government mean by that?

Tom Pursglove: As we have repeatedly made very clear during the passage of the clauses we have already debated, our obligations are being properly upheld through the provisions of this Bill. We believe that the Bill is fully compliant, and I maintain that that remains the case. The approach is not new; it has been part of our previous legislation on safe countries. We will only ever return inadmissible claimants to countries that are safe, so I do not agree that the amendment is necessary.

Neil Coyle: Defining what is safe is very important. It is not adequately set out in the Bill. Does the Minister believe that Afghanistan is a safe country?

Tom Pursglove: I refer the hon. Member to our earlier exchanges during the passage of the clauses we debated previously. In relation to Afghanistan, as that situation has evolved, the approach that we have taken has also evolved, and quite rightly so. No one is being returned to Afghanistan at the moment. That fully reflects the in-country situation in Afghanistan, of which we are incredibly mindful, as the hon. Member and people of this country would quite rightly expect.

Neil Coyle: The Home Office has published updated guidance that suggests that it is open to question as to whether there continues to be a situation of international or internal armed conflict in Afghanistan, and that should indiscriminate violence be taking place, it is only in some areas and to a far lesser extent following the Taliban takeover. Therefore, the Home Office is saying that Afghanistan is becoming safer because the Taliban are now in control. Does the Minister accept that position?

Tom Pursglove: I will repeat this point again: we are not returning individuals to Afghanistan at the present time. I believe that is the right decision and I believe it fully takes into account the circumstances within the country at the moment. That is an approach that Members across this House can support.

Mr Goodwill: Does the Minister agree that situations in different countries can change? I have a constituent who was granted asylum from Iran, but subsequently has gone on a package holiday to Turkey and visited his family in Iran. As far as he is concerned, the situation in Iran has obviously improved.

Tom Pursglove: It is of course the case that situations in countries change. That is why the approach we take is flexible and means that we keep under constant review the circumstances in individual countries. We then make judgments on the approach that we take in response.

Neil Coyle: The Government's resettlement scheme for citizens of Afghanistan is not even open and they are paving the way for Afghanistan to be redetermined as a safe country. Based on the previous example, if an Afghan asylum seeker ever gets to come through the scheme in this country and then goes back to visit Pakistan to see relatives—probably in one of the refugee camps there—they may be deemed to be okay to go back to Afghanistan.

Tom Pursglove: I can only the refer the hon. Gentleman to the point that I have now made several times about Afghanistan.

Neil Coyle: Have you got a more convincing argument?

Tom Pursglove: The hon. Gentleman says from a sedentary position that it is not a convincing argument. The bottom line is that we are not removing people to Afghanistan based on the current circumstances. I think that is the right approach.

The ability to return an individual declared inadmissible to any safe country, and not just the safe third country they have a connection to, has formed a part of our inadmissibility process since the changes to our immigration rules in December 2020. In seeking to remove that ability, amendment 19 would remove a provision that Parliament has already been provided an opportunity to scrutinise.

Stuart C. McDonald: We all know that there is no scrutiny with these things in any real sense, but that is not a justification for the change. On what possible grounds can a connection with a country A justify removal to country B? What is the point?

Tom Pursglove: Again, we have had extensive debates in Committee about the approach that the Government are seeking to take on these matters. We have to stop these dangerous, unacceptable crossings of the channel. We believe that the deterrent effect is very important.

Amendments 18 and 22 to 25, taken together, seek to narrow the meaning of whether we consider an individual to have a connection to a safe third country, and therefore whether it is appropriate to consider them inadmissible. If individuals have travelled via or have connections to safe countries where it is reasonable to expect them to

[Tom Pursglove]

have claimed asylum, they should do so, rather than making dangerous and unnecessary onward journeys to the UK.

We already have in place a well-established process, should it become clear that an individual cannot be returned to a safe country or if after a reasonable period no return agreement has been possible. Where that is the case, the individual's asylum claim will be considered in the UK. The Bill provisions will not change that. Therefore, I do not agree that amendments 20 and 21 are required.

Agreements by a safe third country to accept an asylum seeker may not always be via a reciprocal arrangement. I believe it is right to also seek returns on a case-by-case basis where appropriate.

Neil Coyle: Will the Minister set out how many reciprocal arrangements we have at the moment? Will there be more detail in the Bill documents about what those arrangements might be?

Tom Pursglove: As I have said, there are case-by-case agreements that are reached in relation to returns. The Government are ambitious about the approach we want to take through the Bill. We want to try and forge fresh returns agreements with countries. The hon. Gentleman will note that this year we reached a returns agreement with Albania. That is a positive and welcome development. I will not give a running commentary on the negotiations we might be having with countries to forge returns agreements, and he would not expect me to do that.

Mr Goodwill: We certainly have a returns agreement with Nigeria, where we have biometric evidence that the person concerned is indeed the person who came to the UK. I know that because I signed it myself.

Tom Pursglove: It is fair to say that my right hon. Friend was a proactive Immigration Minister. That was a significant achievement during his tenure.

Neil Coyle: While we are celebrating this one reciprocal arrangement that can be used, and having trashed the Dublin Accord and all that it provided, can I just remind the Minister that Albania provided, in the last full year we have stats, the second highest number of successful asylum claims to the UK? The Albanian Foreign Minister has described the Government's approach to negotiations on offshoring with Albania as "fake news".

10 am

Tom Pursglove: As I said, I am not going to get into a running commentary about negotiations that the Government may or may not be having with individual countries. What I would say more generally on returns arrangements is that we are seeking to negotiate readmission arrangements with key EU member states. Where we do not have broad return agreements, we will seek returns on a case-by-case basis—a long-established process that we will continue to follow.

Mr Goodwill: I note the point made by the hon. Member for Bermondsey and Old Southwark, but is it not the case that Albania, Montenegro, North Macedonia, Serbia and Turkey are in negotiation with the European Union, under article 49 of the 1992 Maastricht treaty? That means that they will have to meet the 1993 Copenhagen criteria on human rights, and respect for and protection of minorities. If they meet those criteria regarding accession to the EU, they must meet the criteria for returns.

Tom Pursglove: The simple reality is that we will not return people to countries where to do so would put them in danger, or where their rights would not be respected and upheld. That is a perfectly correct approach to take, and entirely in line with what people would expect.

Stuart C. McDonald *rose—*

Tom Pursglove: I will give way, but I am very conscious that I want to make some progress.

Stuart C. McDonald: I absolutely accept that that is the Minister's intention. He is not going to remove people; he is going to do all he can not to remove people to unsafe countries. The problem is: what about the next Minister responsible for immigration? As drafted, this definition of safe third state allows his successor to remove somebody to a place where they are at risk of serious human rights abuses, albeit falling short of a threat to life and liberty—it could be torture or whatever else, just as long as it is not a convention ground. I accept that the Minister is going to do the right thing, but we need a Bill that has proper constraints on the next Minister to come along, and that is not clear.

Tom Pursglove: The provisions, as drafted, define safe countries as states where people would not be at risk of persecution or a breach of their article 3 ECHR rights. The provisions are considered and consistent with our obligations under the refugee convention. An individual will have an opportunity to raise specific ECHR claims against removal under schedule 3 provisions.

I am confident that the measures in place are appropriate and sufficiently robust. We know it may not always be appropriate to apply inadmissibility to all claimants. Any oral or written representations from a claimant about why inadmissibility processes should not be applied in their case, including any connections they may have to the UK, will be considered ahead of any removal to a safe third country. However, if an individual has family in the UK, there are family reunion routes available. These amendments should not be used to circumnavigate those provisions. For those reasons, I do not support the suggested addition of proposed new section 80D in the Nationality, Immigration and Asylum Act 2002, under amendment 26, and I invite hon. Members not to press it to a Division.

Turning to the clause overall, an increasing number of people are risking their lives to get to the UK, using unseaworthy vessels, putting at risk not only their lives but those of the UK Border Force and rescue services. Those routes are often facilitated by criminal gangs, seeking to arrange those dangerous journeys for profit. We are determined to make the use of small boats to cross the channel an unviable option for reaching the UK. We are determined to send a clear signal that it is unacceptable for individuals to travel through multiple safe countries to then claim asylum in the UK.

To stop people risking their lives on those dangerous crossings, reduce the unsustainable pressure on the asylum system and protect those most in need, we must be clear that many of those coming to the UK by irregular means will not be admitted into our asylum system. Inadmissibility is a long-standing process, designed to prevent secondary movements across Europe, and these measures are being introduced to support that. People should claim asylum in the first safe country they reach, rather than make dangerous journeys to the UK to claim asylum here.

Paul Blomfield (Sheffield Central) (Lab): What consideration has the Minister given to the impact on the system of international protection for those fleeing conflict and persecution if the entire world adopted that principle, so that the responsibility only ever fell on the countries on the frontline of conflict and persecution?

Tom Pursglove: I have heard the point that the hon. Gentleman has raised. I would make the point that this country has and will continue to make a significant contribution to the global effort to tackle the challenges that we face around displacement. We would argue that that must be achieved through safe and legal routes. That is the cornerstone of our policy, and I think that is the right approach. We must render these dangerous channel crossings unviable.

Paul Blomfield: I thank the Minister for giving way again. I want to press the issue, because it is helpful to have an answer that reflects the question. The question did not ask him to reiterate his belief, but to articulate what the Government feel would be the consequences for the international protection system if every country adopted the same approach.

Tom Pursglove: The point that I would make is that we need to establish a clear principle that people should come to this country through safe and legal routes. We would argue that the best and most effective contribution that we can make as part of the global effort is to establish those safe and legal routes—there are many past and current examples. We think that is the right approach; we cannot in any way support or endorse people making dangerous and unacceptable crossings.

As a result, we strongly believe that the approach that we are taking in the Bill is right and builds on our proud traditions in this country of providing sanctuary to those who require it. That gets to the heart of the hon. Gentleman's question. It is not about this country refusing to participate in the global effort, but about establishing clear expectations around how we intend to do that. We will continue to build on the proud traditions that we have in this country.

Neil Coyle: I am finding the Minister's answers increasingly disappointing. Could he come back to the specific legal question from my hon. Friend the Member for Enfield, Southgate about article 33 of the refugee convention and the principle of non-refoulement?

Tom Pursglove: Again, I refer back to the point that has been raised, which is that we will not return individuals to countries where they would be unsafe as a consequence. Of course we would look at cases on an individual basis and at the concerns that have been raised. If there are concerns, it is important that they are properly taken into account. I am confident that the approach we are taking addresses that issue.

We know, however, that it may not always be appropriate to apply inadmissibility to all claimants. For example, we will not apply those procedures to unaccompanied asylum-seeking children. The introduction of the clauses on inadmissibility aims to strengthen our position on inadmissibility, further disincentivise people from making those dangerous journeys, and encourage them to claim asylum in the first safe country they reach. Those who fear persecution should claim asylum in the first safe country they reach. Parliament has already had an opportunity to scrutinise the measures when they were placed in the immigration rules in December 2020.

Stuart C. McDonald: I just do not think that the significant legal questions that have been asked have been answered appropriately, and there are all sorts of questions about the safeguards around the description of a safe third state, so I want to press amendment 56 to a vote.

Question put, That the amendment be made.

The Committee divided: Ayes 7, Noes 9.

Division No. 13]

AYES

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

NOES

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

Question accordingly negatived.

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

The Committee divided: Ayes 9, Noes 7.

Division No. 14]

AYES

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

NOES

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

Question accordingly agreed to.

Clause 14 ordered to stand part of the Bill.

Clause 15 ordered to stand part of the Bill.

Clause 16

PROVISION OF EVIDENCE IN SUPPORT OF PROTECTION OR HUMAN RIGHTS CLAIM

Bambos Charalambous: I beg to move amendment 36, in clause 16, page 20, line 8, at end insert

", subject to subsection (1A)"

This amendment is consequential to the amendment which would remove the ability to serve an evidence notice on certain categories of person.

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

Amendment 37, in clause 16, page 20, line 8, at end insert—

"(1A) The Secretary of State may not serve an evidence notice on a person—

(a) who has made a protection claim or a human rights claim on the basis of their sexual orientation or gender identity;

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

(c) who has made a protection or human rights claim involving sexual or gender-based violence; or

(d) is a victim of modern slavery or trafficking."

This amendment would remove the ability to serve an evidence notice on certain categories of person.

Amendment 153, in clause 16, page 20, line 8, at end insert—

"(1A) The Secretary of State must not serve an evidence notice on a person—

(a) who has made a protection claim or a human rights claim on the basis of sexual orientation, gender identity, gender expression or sex characteristics;

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

(c) who has made a protection or human rights claim on the basis of gender-based violence;

(d) who has experienced sexual violence;

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

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

(g) who has been a victim of torture;

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

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

This amendment would prevent the Secretary of State from serving an evidence notice on certain categories of people.

Bambos Charalambous: We are extremely worried about the implications of clause 16 and its possible effects on vulnerable people. We tabled these amendments because we wish to further understand the Government's intention with regard to certain particularly vulnerable groups. We believe that the impact of this clause, if it remains unamended, will further retraumatise vulnerable people.

As the Committee will know, clause 16 provides for an evidence notice to be issued to a claimant requiring them to provide evidence in support of their claim before a specified date. If they fail to do so, the provision of evidence will be deemed to be "late" and the claimant will be required to provide a statement setting out their reasons for providing that evidence "late". The consequence for not complying with the evidence notice without good reason is that a decision maker may give minimal weight to the evidence. Apart from potentially impacting on a claimant's credibility, the late provision of evidence in respect of evidence notices, under clauses 16 and 17, and priority removal notices, under clauses 18 and 20, may prejudice the weighting that a decision maker may give to the evidence. As we will see later, clause 23 states:

"Unless there are good reasons why the evidence was provided late, the deciding authority must, in considering it, have regard to the principle that minimal weight should be given to the evidence."

It is unclear what "minimal weight" or, indeed, a decision maker having "regard to" this principle would mean in practice.

We are therefore extremely concerned that this clause and the others alongside it may potentially compound discrimination faced by people with protected characteristics. It is well established that people with different traumatic experiences may find it more difficult to disclose on demand their experiences of persecution, especially if they lack effective access to legal advice. Indeed, the Government's message about legal aid to PRN recipients is insufficient amid the broader gutting of legal aid for the immigration sector since the legal aid cuts in 2013. This on its own is reason to doubt that individuals are likely to receive adequate legal support in terms of submitting evidence.

The situation may be compounded for people with protected characteristics. For example, women who have experienced sexual and/or gender-based violence may find it particularly difficult to disclose information about their experiences. The Home Office itself acknowledges the particular difficulties that LGBTQI+ asylum seekers may have in substantiating their claim or providing full disclosure, including experiences of discrimination, hatred, violence and stigma.

The stipulation about late evidence in clause 16 also has profound implications for the victims of trafficking and modern-day slavery. Frontline anti-trafficking organisations have previously highlighted how lack of identification is compounded because victims of trafficking are often unaware that there is a system to protect people who have experienced exploitation. The Government's own guidance on the national referral mechanism provides that

"Victims may not be aware that they are being trafficked or exploited, and may have consented to elements of their exploitation, or accepted their situation."

It is highly concerning that an individual could potentially be punished for failing to give evidence on time, in that such late disclosure might affect the credibility and/or weighting given to their evidence, which in turn would adversely affect their chances of a protection or human rights claim succeeding. It is clear that this is likely to lead to compounding of the discrimination experienced by certain groups, and make it harder for them to make the best possible case for themselves.

10.15 am

This brings me to the amendments. Anyone who takes the slightest interest in the plight of refugees will understand that, as I have outlined, there are many reasons why it may not be possible for someone to present all relevant information in support of their claim before a specified date. Our amendments seek to find out how this process will be adapted for those who

may be too traumatised to recall coherently the events that led to flight, particularly if they are survivors of torture, sexual violence or trafficking. This also includes children: it is fairly self-explanatory that children, especially traumatised children, may not be able to provide evidence by a specified date. That is particularly the case if they have experienced failings in the process, such as a poor-quality interview or difficulty accessing quality legal advice.

Amendment 37 is fairly obvious and self-explanatory. However, should the Minister require more evidence about why late evidence may be a significant issue for vulnerable groups, it has been provided by studies, including one conducted by the *British Journal of Psychiatry* in 2007. The background to that study was the way in which late disclosure or non-disclosure during Home Office interviews is commonly cited as a reason to doubt an asylum seeker's credibility. It sought to find out whether sexual violence affects asylum seekers' disclosure of personal information during Home Office interviews.

For the study, 27 refugees and asylum seekers were interviewed. The results found that the majority of participants reported difficulties in disclosing. Those with a history of sexual violence reported more difficulties in disclosing personal information during Home Office interviews and were more likely to disassociate during those interviews, and scored significantly higher on measures of post-traumatic stress symptoms and shame than those with a history of non-sexual violence. The conclusion of the psychiatrists involved was that the results indicated the importance of shame, disassociation and psychopathology in disclosure. They concluded that their findings support the need for immigration procedures to be sensitive to those issues, and that judgments that late disclosure is indicative of a fabricated asylum claim must take into account the possibility of factors related to sexual violence and the circumstances of the interview process itself.

Without alterations, the proposals in clause 16 will penalise the most vulnerable and those who have been failed by the system by seeking to reduce the weight that is given to any evidence that is submitted after the applicant has been through an already draconian process. It is worth remembering that the proportion of asylum appeals allowed in the year to March 2021 was 47%, a figure that has been steadily increasing over the past decade. That shows how the system is already flawed, and how important evidence is already not given due weight. The attempt to make evidence even more contingent on its timing will make this situation worse and actively harm those in need of support.

In short, the Opposition believe that clause 16 and the other clauses up to and including clause 23 have the potential to inhibit access to justice, risk inherent unfairness contrary to the common law, and violate the procedural requirements of articles 2, 3, 4, 8 and 13 of the ECHR. Most importantly, they may add a significant risk of refoulement, which, as Members know, is in contradiction of the refugee convention.

The provisions in clause 16 on providing evidence are profoundly troubling. We believe that the impact of this clause, if it remains unamended, will be to further re-traumatise vulnerable people—something we come back to time and again in the Bill. The evidence notices and late provision of evidence will worsen discrimination. It is wholly accepted that people with different traumatic experiences find it more difficult to disclose what has happened to them. Let us consider the matter of torture: survivors rarely speak about what they have gone through; even long after the event they find doing so both draining and harrowing.

The potential consequences of the clauses may be to compound the discrimination faced by people with protected characteristics, breach people's right to an effective remedy in relation to any international protection or human rights claim they make, or give rise to the risk of refoulement in breach of the UK's international and domestic law obligations.

The Chair: In his opening remarks the hon. Gentleman referred in some depth to clause 16 in addition to speaking to the amendment. I have no problem with that whatever, but I remind the Committee that you cannot have two bites of the cherry. In the light of the line that has been taken, I suggest that we treat this as a stand part debate as well. If anyone has anything to say, now is the chance.

Stuart C. McDonald: May I confirm, Sir Roger, that there are two groups of amendments to this clause?

The Chair: Absolutely.

Stuart C. McDonald: Thank you, Sir Roger. In relation to the first group, we fully support the shadow Minister and amendments 36 and 37, which would limit the range of applicants who might face those notices, including children survivors of trafficking and those who need protection because of gender-based violence or sexual orientation. Amendment 153 simply excludes a number of additional groups of people, including those suffering from mental ill health. The shadow Minister explained exactly why it can be very difficult to demand disclosure by certain deadlines from certain applicants. The same arguments apply in relation to our amendments. If we go down this route, there must be a recognition that disclosure of evidence for some can be an incredibly difficult process. How will that be taken into account?

Paul Blomfield: Taking account of your suggestion, Sir Roger, I wanted to make a few comments, although my hon. Friend the Member for Enfield, Southgate made a substantial contribution. We need to pay close attention to this clause and those that follow it, because they cut across a basic principle of English and Scottish law: the presumption of innocence until proven guilty. Underlying the clauses is an assumption of disbelief—everybody is playing the system. Of course, there are people who do, but we do not design our justice system on that assumption, nor should we design the asylum system on that basis.

Instead, we should look at the practical application, because as I said when I spoke to clause 10, we need to understand the journeys taken by those seeking refuge in our country as they flee persecution and conflict, and understand the trauma that led them to uproot themselves from their homes and the trauma that they experience on their journeys. That should give the Government serious pause for thought.

Clauses 16, 17 and 23 prejudice the system against survivors of violence, including sexual and gender-based violence, and reduce access to refugee protection. Clause 16 permits the Home Secretary to serve an evidence notice

[Paul Blomfield]

on a person who has made a protection of human rights claim, forcing them to provide evidence before a specified date. That needs to be looked at in terms of the consequences set out in clause 23 diminishing the weight of their evidence. We are returning to a theme here, because this is in conflict with the Home Office's own asylum policy, which recognises that there are many good reasons why women who have survived sexual and other gender-based violence would be late in applying for asylum or in submitting evidence.

Let me quote the Home Office's policy:

"There may be a number of reasons why a claimant, or dependant, may be reluctant to disclose information, for example feelings of guilt, shame, and concerns about family 'honour', or fear of family members or traffickers, or having been conditioned or threatened by them…Those who have been sexually assaulted and or who have been victims of trafficking may suffer trauma that can impact on memory and the ability to recall information. The symptoms of this include persistent fear, a loss of self-confidence and self-esteem, difficulty in concentration, an attitude of self-blame, shame, a pervasive loss of control and memory loss or distortion."

That policy—the policy of the Home Office—states that

"disclosure of gender-based violence at a later stage in the asylum process should not automatically count against their credibility."

Yet that is precisely what the Government are trying to do in these clauses, in conflict with their own policy.

The Women for Refugee Women charity, which does extraordinary work supporting those fleeing gender-based violence, says:

"because there are so many legitimate reasons for why a woman who has survived gender-based violence may submit evidence late, we do not think there is a way in which these evidence notices can be implemented fairly in respect to these highly vulnerable individuals."

Let me return to the Home Office's own assessment of the proposals, which found that the Bill's

"policies could indirectly disadvantage protected groups",

such as

"children, disabled people and people who are vulnerable for reasons linked to other protected characteristics—including but not limited to gender reassignment, pregnancy and maternity, sexual orientation and sex."

That disadvantage, which the Home Office has identified, to vulnerable people and victims of huge trauma and violence will be hardwired into our law by these clauses, so I urge the Government to withdraw them.

Neil Coyle: On a day like this, I really do regret giving up coffee. I remind Members of my entry in the Register of Members' Financial Interests and of my support for the Refugee, Asylum and Migration Policy project.

I had not planned to speak but I was very disappointed with the first set of answers I received. The only reason our debating time is limited is that the Government set an artificial timeframe for a very controversial piece of legislation. Yesterday morning I visited an asylum hostel set up in Southwark without giving prior notice to the council or to local organisations that would be willing, and have the network, to support asylum seekers. In the course of my discussion with asylum seekers in my constituency, I asked what specific support they had received in making their applications. They said, "Nothing apart from an interpreter." When I asked if they had been given access to legal aid, they said they did not know what it was. The Home Office officials and the charity present said that legal aid information had been included in their induction materials, which are in several languages, but nobody had bothered to explain to them in their first language what legal aid meant, and no one had pointed out how someone could get access to legal aid in Southwark. Members should bear in mind that some of them were being told, especially when they first arrived, that they should not leave the premises. Access is a crucial point.

If the Home Office actually bothered to get out of bed and talk to local authorities before making such impositions on local communities, it would find that there is a willingness to better co-ordinate support and to help. There are some brilliant organisations, such as the Southwark Law Centre and the Southwark Day Centre for Asylum Seekers, which are there, willing and able to support those asylum seekers—if the Home Office just bothered to communicate. Instead, we have a more expensive system, with duplication and the Home Office imposing new contracts, commissioning new services and ignoring networks and systems that are already there, at substantial cost to the taxpayer—something that the Government seem to ignore. That is the context of clause 16: people do not have access to sufficient support to make the best application possible at the first point.

10.30 am

I want to speak explicitly about children today, because the Children's Society has suggested that clause 16 will disproportionately affect children and young people, who are often unable to disclose evidence because of trauma and abuse or because they have not received adequate and child-appropriate legal representation. It believes that to subject asylum-seeking children and young people to clause 16 would be an outright disregard of the Home Office's guidance and its obligations to safeguard and promote the welfare of children, as outlined in the UN convention on the rights of the child. The question for the Minister, which I hope he will return to, is how does the Home Office ensure that there is support to complete applications, given that direct, real-life example I gave, both for adults—I was talking to men yesterday—and for children, for the purposes of this contribution?

As my hon. Friend the Member for Sheffield Central pointed out, the Government's equality impact assessment of its new immigration plan explicitly sets out that vulnerable people, including children,

"might find it more difficult than others: to disclose what has happened to them; to participate in proceedings; and to understand the consequences of non-compliance with legal requirements."

Even the Home Office's own documents suggest an understanding of UK law that may not be there—in fact, it is very unlikely to be there—for asylum seekers in the UK and especially for children and anyone who has gone through trauma. Hon. Members have already referenced the sexual violence that many may have experienced on their journeys to the UK.

The Home Office bears a duty to promote and protect the welfare of children, as set out in section 55 of the Borders, Citizenship and Immigration Act 2009, but in the year ending March 2020, there were 5,000 unaccompanied asylum-seeking children who were looked after, and such children arrived in this country alone, scared and in need of protection and support. Clause 16 would make

it significantly harder for those children to build a happy and stable life in the UK, where they can be safe and have opportunities.

I do not pretend to be an individual expert on this, and we have all had access to the same information from the Children's Society, which is sending its excellent briefings through. It has supported many asylum-seeking children and young people through the appeals process and has had to present new claims or evidence in later proceedings. That is the reality of the asylum process that the Government are seeking to impose: new demands, new complexity and new punishments for those who fail to meet higher standards.

The Children's Society says that these young people and children are unlikely to set out the breadth of their claims and evidence in the first instance. That is due not to the weakness in any claim, but to the impact of the journeys they have endured and the consequent trauma they have faced, as well as being the direct result of poor initial legal representation—or none, as with the cases I mentioned yesterday, which real people out there have experienced.

We have just had some disappointing answers. The idea that even adults, never mind children, understand the need to point out religious or sexuality-based discrimination that they have experienced on the way, is frankly ludicrous and would be another example of—we talked about this in Committee last week—where the Home Office can be shown to be failing in its duty to consider the best interests of children, which means we will not end up with legislation that goes through, that no one comes back to and that is implemented effectively. We will see further legal action and millions more pounds of taxpayers' money poured down the drain because the Government would prefer to have a culture war than build a fair, effective and fast system to deliver asylum decisions.

I am sure the Minister is an expert in medical conditions, but post-traumatic stress disorder does not always appear immediately after a traumatic incident or event. This legislation requires PTSD to occur immediately. It seeks to change the nature of a medical condition that most medical professionals, who I would argue know a little bit more about it than any member of this Committee, suggest usually takes between three to six months to appear, and before it has the most traumatic impact in an individual's life. The suggestion that the UK, just one country on the planet, should legislate to require that to happen, and in relation to a medical condition that does not present itself immediately, is absurd. Frankly, I find it bizarre.

Preventing asylum-seeking children and young people from substantiating their claims and adding to their evidence at a later stage disregards the hugely traumatic experiences and trauma that they have been through. Instead of making the system fairer, it will penalise the most vulnerable groups, including children, who struggle to disclose information up front, as we know from the previous evidence base. It will lead to more unfair and more incorrect decisions, more bureaucracy, more appeals and more costs to the taxpayer, the Home Office and the justice system. Of course, it also fails the best-interests test, and I would suggest that it fails the Equality Act 2010, the Human Rights Act 1998 and international law.

Mr Goodwill: Does the hon. Gentleman accept, however, that there will be cases where the reason evidence is presented late is that the initial reason for an asylum claim was exposed as a complete pack of lies, and therefore the claimant, maybe following the advice of people who understand the system, casts around for another reason why he or she might want to make an asylum claim?

Neil Coyle: I think the right hon. Gentleman makes the point that I am making, which is that we need a fast, fair and effective system up front. If we had such a system, those bogus claims would be weeded out pretty early on, and we would not have a Government desiring to implement a new set of impositions on children who have gone through trauma. The Government's own statistics show how many cases are actually proven and upheld, so he does an injustice when he suggests that there might be some volume to the level of the claims he described.

I want to come back to the point about legal advice. It is poor legal advice, in addition to trauma, and an inability, not through any deliberate purpose but just through a lack of understanding, that lead—I am trying to find my place.

Holly Lynch (Halifax) (Lab): I just want to support the incredibly powerful contribution that my hon. Friend is making, following our hon. Friend the Member for Sheffield Central. As we have heard, it is often those who have been subject to the most trauma and who are most deserving of sanctuary who will take the longest to disclose. Those are the people who will be really negatively impacted if we allow these provisions to go ahead.

Neil Coyle: My hon. Friend is not only right; she is also a jolly good egg for helping me out.

All too often with asylum-seeking children and young people, poor legal advice, in addition to trauma, can lead to an inadequately prepared case and the rejection of their claim—in the small number of cases that are rejected. Having a good solicitor can make all the difference in enabling young people to give instruction, and to anticipate a thorough and full asylum claim, which negates the need to present at later stages.

In the hostel I visited yesterday, I was told that there is a Home Office list of legal aid providers that can be used. It would be really helpful if the Government agreed to publish the list so that it could be expanded and improved. Other local organisations that do this—often on a pro bono basis but obviously with professionals—could provide the best advice up front, so that we do not end up with lengthy cases, with stuff added later that could have been added up front, and the individuals could then have the best support possible. I think we should be committed to having a first-class, up-front service.

I will give one example, provided by the Children's Society, of a child who went through the process:

"My solicitor did nothing, it was horrible. They didn't even prepare a witness statement for my interview. I had to do everything myself. I had my social worker but she didn't know how to help me with my asylum case. The interviewer told me she had no information and that I had to tell her everything".

Of course, we have had a decade of legal aid funding cuts, with many asylum-seeking children and young people struggling to access quality legal advice. The

[Neil Coyle]

availability of high-quality legal advice under the legal aid contract or on a charitable basis is both patchy and frequently limited. We are very fortunate to have some excellent organisations in Southwark but I know that that is not the case across the country, where there is a dearth of legally aided advice for asylum seekers. That is the system that exists and that has been attacked for a decade because the failure to provide up-front support necessitates further stages. Clause 16 will make that worse.

Another example from the organisations that have briefed us is the fact that many asylum seekers change solicitor. That is not because they have hundreds of thousands of pounds in their pocket and are looking for a different lawyer who might get a better result but because of the process. It is because the Home Office has moved them and because they rely on free legal aid contracts. They do not have the funds to stick with one solicitor and visit them by train if they move from city to city as part of the accommodation process that the Home Office requires. The Home Office is not doing this because it is deliberately trying to upset the legal support but because it is moving people and takes too long to make decisions. If it committed to a timeframe to make decisions up front, perhaps we would be in a stronger position and would be more supportive of legislation that makes such demands, though I doubt it very much in this case.

Last week, I asked the Minister about the extension of legal aid and I did not get a particularly precise answer, if I may put it delicately. I also tabled a named-day question—I think it was 58412—to the Ministry of Justice because the equality impact assessment suggests that legal aid will be extended. I asked the Minister whether it would be and I did not get an answer last week. Nor is there a commitment to extended legal aid for these cases in the answer from the Ministry of Justice, so I am confused and surprised. There must be a cost attached to this. The Department must have some more information, which I hope the Minister can share today, on how this new extension for legal aid will be paid for, where exactly it sits and who is delivering it. Is the Home Office again going to seek to extend its empire and build new services and contracts rather than working better with the Ministry of Justice? Councils often get dumped on by the Home Office rather than being supported and worked with. They have contracts with legal aid solicitors and experts on the ground who could provide a valuable service that speeds things up and cuts costs for the Home Office, rather than having the Home Office suddenly impose a new contract. I hope that the Minister can shed some light on that.

I am concerned about the clause's potential cost and damage to the UK's reputation, and about the potential breach of Home Office duties. Hon. Members have already touched on this, so I shall just whizz through. The Secretary of State bears a duty

"to safeguard and promote the welfare of children"

under section 55 of the Borders, Citizenship and Immigration Act 2009. It is through section 55 that the spirit of the UK obligation to the best-interest principle set out in article 3 of the 1989 UN convention on the rights of the child in respect of asylum-seeking children has been translated into UK law.

The Home Office's own casework guidance for assessing claims from asylum-seeking children makes it clear that decision makers are to take account of what it is reasonable to expect a child to know or relay

"in their given set of circumstances."

That is crucial to the children we are discussing. It is inappropriate for authorities to question the credibility of a child's claim if they omit information, bearing in mind the child's age, maturity and other reasons that may have led to those omissions, which may be many, given the people we are talking about. The guidance sets out distinct factors that decision makers are to take into account, including age, maturity, the time of the event, the time of the interview, mental or emotional trauma experienced by the child, educational level—bearing in mind that many children will have had a fractured education—fear or mistrust of authorities given the experience many of them will have come through, and feelings of shame and painful memories, particularly those of a sexual nature.

Once again, we look set to have a Government, who have already been found to be acting unlawfully, failing to take into account the best interests of children. We have had that in the High Court. The Government want to spend hundreds more millions of pounds going through legal cases. Let us not do that. Let us get the system right and ensure that first-class legal aid and support are there for children at the soonest point rather than requiring them to fail because they do not understand the system and because no legal aid is there, and then punishing them for their failure, which is actually a state failure.

I have one more example from the Children's Society—again, from a child:

"My first court hearing was horrible, my solicitor advised me to not answer every time anyone asks you any questions. However, when I got the refusal letter from the judge, it said it was because I hadn't answered any of the questions. As soon as I changed solicitor, my solicitor told me to appeal, prepared an expert report and told me to speak in court this time round and finally my case was accepted."

10.45 am

We agree with the Government that asylum applications need to be dealt with in a timely manner. That is not happening at present, and it should not come at the cost of limiting the ability to present new or late evidence, as proposed in the Bill. Children should be a focus in our minds because they make up nearly a quarter—23%—of asylum claims. To include children in some of the measures in the Bill is frankly cruel. Can the Minister confirm whether a child rights impact assessment has been carried out on clause 16? If not, will it be done before we meet again?

The Chair: Before I invite the Minister to respond, I need to clarify something. At the start of his remarks, the hon. Member for Bermondsey and Old Southwark indicated that there had been a lack of time to consider the Bill. I cannot recall whether he was a member of the Programming Sub-Committee, which I chaired, but the programme motion was agreed by its members, from both sides of the House. The motion was then put to the whole Committee at the start of the first evidence session, and was again agreed without dispute. I am sure that no criticism of the Chair was intended, but I think it is necessary to clarify that.

Let me also make it absolutely plain that this Chair, and I am sure Ms McDonagh, is at the service of the Committee, as are the Officers of the House. It may be unpalatable, inconvenient or undesirable, but if it is necessary for the Committee to sit late into the evening, or even into the night, and that is what the Committee desires, then we are at your disposal. Clearly, we have to expedite the business, and believe me that this Chair, at least, understands the difference between a filibuster and a contribution, and I will say so, but no Member on either side of the Committee should feel constrained by time. We have an important job to do, and it is vital that we do it thoroughly. I hope that is absolutely clear.

Tom Pursglove: Thank you for that clarification, Sir Roger. I thank hon. Members for raising these important issues. I will start by addressing amendments 36 and 37.

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 fully participate 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, a lack of trust in the authorities, or because of the sensitive and personal nature of their claim. That is why clauses 16, 17 and 23 provide for good reasons why evidence might be provided late. What constitutes "good reasons" has not been defined in the Bill, as that 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 there was a lack of availability for an expert report. 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.

Rather than facilitate engagement in the process, amendments 36 and 37 would exclude claimants from it. They would artificially limit the circumstances in which the evidence notice would apply, favouring certain groups above others, who may have genuinely good reasons for providing late evidence. The amendment could create a perverse outcome, whereby it takes longer for the particulars of a genuine claim to be surfaced and to receive favourable consideration. Furthermore, this would create a situation in which unscrupulous claimants could cynically abuse the process by falsely claiming to be within one of those categories. That would tie the hands of decision makers, who are able to look at the facts of a case in detail and make an appropriate decision based on the facts before them. That would perpetuate the issues that the clauses are designed to address, to the detriment of genuine claimants.

Neil Coyle: I did point out earlier that 23% of these applications come from children. Is the Minister suggesting that they are making bogus claims and are cynical? Those are the words he is using. I urge him to distinguish more carefully between children and adults, and would make the case again that children should be exempt, specifically because of their age.

Tom Pursglove: I will develop my remarks a little further. I will come back to some of the points raised in the debate, but to start with I want to get through the rationale behind our thinking on the various amendments before the Committee.

Amendment 37 also fails to fully understand the remit of clause 16. The evidence notice applies solely to evidence in support of protection and human rights claims. The new slavery and trafficking information notice, covered in clause 46, will require a person to provide any information relevant to their status as a victim of modern slavery or trafficking.

On amendment 153, the Government take their responsibility towards those seeking international protection seriously. We recognise that particularly vulnerable claimants and survivors of modern slavery need to be treated with care, dignity and sensitivity. Individuals may be particularly vulnerable as a result of their age, their health, the experiences they have lived through or a range of other factors. It is because these factors can be so wide ranging that I am resisting this amendment.

Clause 16 and the new evidence notice will require those who make a protection or human rights claim to provide evidence in support of their claim before the date specified in the evidence notice. This clause works in parallel with clauses 17 and 23. Where evidence is provided late, claimants will be required to provide reasons for that. Where there are no good reasons for the late provision of evidence, this should result in damage to the claimant's credibility, and decision makers must have regard to the principle that little weight should be given to that evidence.

By introducing a statutory requirement to provide evidence before a specified date, clause 16 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. However, we recognise that it may be harder for some people to engage in the process. That may be as a result of trauma they have experienced, 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, allows for good reasons why evidence might be provided late. As I say, what constitutes good reasons has not been defined in the Bill. 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.

Stuart C. McDonald: Nobody is arguing for an exhaustive list, but if we are all agreed that these are examples of good reasons, why not include them as a non-exhaustive list, just to make sure that these people are protected?

Tom Pursglove: Of course, the situation will be set out clearly in guidance. We think that is the better approach, because it allows greater flexibility on the sorts of factors that might be relevant to the disclosure of late information, and obviously on matters that are relevant to individuals circumstances.

We tend to think that taking a less prescriptive approach than what the hon. Member is suggesting is the best way to address that, because we want to focus on individual cases and on ensuring proper consideration on a case-by-case basis, which is very difficult to capture in the circumstances being suggested here or by adopting the approach necessary to achieve that. That is why clause 16, together with clauses 17 and 23, allows for good reasons why evidence might be provided late.

As per the amendments directly commented on, rather than facilitate engagement in the process, amendment 153 would exclude claimants from it. This would have the perverse impact of some vulnerable claimants facing different evidential requirements simply because their particular vulnerability was not included in the list of exceptions. In addition, the amendment could create a situation where individuals who do not fall into one of the categories identified by the amendment were able to abuse the process by falsely claiming that they did. This would perpetuate the issues these clauses are designed to address to the detriment of genuine claimants, undermining their usefulness.

I am mindful that a number of detailed points were raised during the debate that I want to come to. The issue of deviation from the Home Office's existing policy was raised by the hon. Member for Sheffield Central. I would not accept that depiction. I would say that the Home Office will have discretion over who is served an evidence notice and the extent to which credibility is damaged by late evidence. Where there are good reasons for late evidence, credibility will not be damaged. There is nothing automatic about this. Credibility is also not by itself determinative.

Building on that point, there are various safeguards in the clauses that mitigate a decision that could lead to removal in breach of the rights afforded by the conventions. First, claimants who raise matters late will have the opportunity to provide reasons for that lateness—and where those reasons are good, credibility will not be damaged. Decision makers will have the discretion to determine the extent to which credibility should be damaged, and that determination need not by itself be determinative of a claim, as I have already said.

The point was raised, understandably and quite rightly, about how we intend to deal with potential victims of trauma. Of course, how decision makers reach decisions is important in all this, and they should treat claims from vulnerable people in accordance with the guidance that we will set out. Extensive training will of course be put in place alongside that. Decision makers are already accustomed to ensuring that complex factors relating to trauma are properly considered.

Neil Coyle: How will this training operate in practice, given the points already made about how long it can take for PTSD symptoms and impact to emerge? No training on the planet can force those symptoms to emerge sooner, unless the Home Office is developing a particularly pernicious system.

Tom Pursglove: I do not accept the hon. Gentleman's latter point. I would expect there to be extensive training for decision makers on guidance when it is issued. Again, I make the point that the approach we are adopting is intended to be responsive to individual circumstances, and cases should be considered on a case-by-case basis. That is the entire approach we are taking here.

The shadow Minister, the hon. Member for Enfield, Southgate, raised the issue of refoulement, and I just want to be clear on this point. Again, individuals will not be removed if there is a risk of refoulement, and the provisions are drafted to ensure this.

On the point made by the hon. Member for Bermondsey and Old Southwark about legal aid, it is generally not available to individuals who are seeking advice or assistance with citizenship applications or on nationality matters. That is because it is not an issue within scope of the legal aid scheme—in other words, it is not an issue that Parliament has expressly provided for in statute as something for which legal aid can be provided.

For any issue where legal aid is not available, individuals can apply for exceptional case funding. The test for this is whether, without legal aid, an individual's human rights might be breached. The only group of people who can routinely receive advice on nationality and citizenship are separated migrant children, as that is provided for in statute. We will come on to later clauses in which the legal aid provisions in this Bill, which relate to priority removal notices, will no doubt be debated as part of our consideration.

The hon. Gentleman also asked me whether a child rights impact assessment has been carried out on clauses 16 to 23. As part of our obligations under the public sector equality duty, equality impact assessments have been completed in respect of these clauses, and those assessments incorporate a consideration of the impacts on children.

Bambos Charalambous: Having looked at the amendments, I think amendment 153 is more substantive than my amendments 36 and 37. On the understanding that the spokesperson for the Scottish National party, the hon. Member for Cumbernauld, Kilsyth and Kirkintilloch East, will be pressing amendment 153 to a vote, I beg to ask leave to withdraw the amendment.

Amendment, by leave, withdrawn.

11 am

The Chair: I have had no notification that amendment 153 is going to be pressed to a vote, but, in the spirit of the Committee's operation, if the hon. Gentleman wishes to move it perhaps he would like to say so now.

Stuart C. McDonald: I thank you for your indulgence, Sir Roger.

Amendment proposed: 153, in clause 16, page 20, line 8, at end insert—

"(1A) The Secretary of State must not serve an evidence notice on a person—

(a) who has made a protection claim or a human rights claim on the basis of sexual orientation, gender identity, gender expression or sex characteristics;

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

(c) who has made a protection or human rights claim on the basis of gender-based violence;

(d) who has experienced sexual violence;

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

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

(g) who has been a victim of torture;

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

(i) who is suffering from other serious physical health conditions or illnesses."—*(Stuart C. McDonald.)*

This amendment would prevent the Secretary of State from serving an evidence notice on certain categories of people.

Question put, That the amendment be made.

The Committee divided: Ayes 7, Noes 9.

Division No. 15]

AYES

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

NOES

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

Question accordingly negatived.

Stuart C. McDonald: I rise to speak to amendment 27, in clause 16, page 20, line 9, leave out "requiring" and insert "requesting".

Under this amendment, evidence notices would "request" (rather than "requiring") the provision of supporting information for a protection or human rights claim.

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

Amendment 28, in clause 16, page 20, line 14, leave out "must" and insert "may".

This amendment would remove the obligation for applicants to provide supporting information for a protection or human rights claim.

Amendment 40, in clause 18, page 22, line 4, leave out "requiring" and insert "requesting".

Under this amendment, priority removal notices would "request" rather than "require" the recipient to provide information.

Stuart C. McDonald: We have had an extensive debate on these clauses, so I can be brief. Amendment 27 would cast the evidence notices that we have just debated in the form of a request, rather than a requirement. Amendment 28 would mean that an explanation for late evidence could be provided, rather than it being mandatory, so that we were explaining these rights and responsibilities instead of imposing inappropriate penalties. Amendment 40 would provide for similar changes to the priority removal notices instituted by clause 18.

The previous debate was essentially about whether those notices should extend to various groups of people, but in this group of amendments we are attempting to challenge the principles behind them.

Like other hon. Members, we agree that this is just a rehash of the one-stop process, which will achieve little and risk harm to claimants who need refugee protection. It is a distraction from the real issues that the Home Office needs to get a grip of. People who are at risk of persecution are generally desperate to provide evidence if they can, and if they are aware of and understand the processes that they are involved in. There is no advantage to them in providing evidence late, but there are often very good reasons why that happens. On the other hand, if evidence is provided late, it is still ultimately going to have to be looked at; if it proves someone is a refugee, it will have to be recognised, so it is time for the Home Office to get on with fixing the real problem in the asylum system, which is the appalling delays and backlogs in that system. That is why we have tabled these amendments. However, rather than putting them to a vote, I beg your leave to withdraw them, Sir Roger. I will vote against the clause standing part instead.

The Chair: That is unusual. The amendment cannot be withdrawn, because it has not been moved.

Question put, That clause 16 stand part of the Bill.

The Committee divided: Ayes 9, Noes 7.

Division No. 16]

AYES

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

NOES

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

Question accordingly agreed to.

Clause 16 ordered to stand part of the Bill.

Clause 17

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

Stuart C. McDonald: I beg to move amendment 39, in clause 17, page 20, line 22, at end insert—

'(1A) For subsection (1) substitute—

In determining whether to believe a statement made by or on behalf of a person who makes an asylum claim or human rights claim, a deciding authority shall take into account any behaviour to which this section applies."

This amendment would mean that – whilst attempts to conceal information, mislead, or delay the processing of a claim would still be taken into account – it will be for the deciding authority to assess what impact this has on the claimant's credibility.

Section 8 of the Asylum and Immigration 2004 is hugely controversial, both on a point of principle and in its practical effect. It tells decision makers, whether at the Home Office or an independent judge, that if an applicant behaves in a certain way that must be taken as damaging their credibility. Clause 17 adds to the list of behaviours.

Amendment 39 would take us back to the point of principle by saying it is not for Parliament to tell decision makers, judges of fact, what to think about evidence that they have seen and we have not. Are the Government

[Stuart C. McDonald]

saying that they do not trust them to do their job properly? If we take a step back, the clause would represent the Home Office using legislation to tell decision makers what to think about evidence, in a dispute that it is party to itself. In that light, it is an outrageous principle.

The amendment would mean that those decision makers are asked to take into account the behaviour, rather than being told what to think about it. It is up to them to decide what they should read into late provision of evidence. What if the late provision of evidence is not the claimant's fault? What if the lawyer made the mistake? What if a medical expert took too long to finalise a report? Ultimately, decision makers have to decide whether the person is at real risk of persecution. If late evidence provides compelling proof of that, they need to be recognised as refugees. Again, get on with fixing decision-making times and quality. From the point of view of principle, we should leave decision makers to weigh up the evidence themselves, without direction from legislators. It is as simple as that.

The Chair: I remind the Committee that this will also be considered a clause stand part debate.

Bambos Charalambous: As with clause 16, the Opposition are deeply concerned that clause 17 will contribute to a culture of disbelief that will harm vulnerable people who deserve our support. We will oppose the clause because we do not believe there is any way that it can be amended to be more reasonable. Clause 17 builds on the false premise established by clause 16 that evidence given after a certain date lessens the weight and, in turn, the credibility of the claimant. Clause 17 would extend that to the possible use of evidence in appeals.

Before I go further, I would like to draw the Committee's attention once again to the startling statistics I referred to in the debate on clause 16. I do not believe they can be stated enough to illustrate the fallacy inherent in the culture of disbelief being pushed by the Government. Let me state again for the record: the proportion of successful asylum appeals allowed in the year up to March 2021 was 47%, and that has been steadily increasing over the past decade.

That is in a context where legal aid has been decimated. The Home Office is notoriously floundering with delays and a sclerotic process within the context of the hostile environment encouraged by the Government. If with those factors, nearly half of appeals are successful, how on earth can the Minister think it is fair to introduce another arbitrary hurdle for vulnerable people? What kind of civilised society implies that people who have escaped the most horrific situations imaginable are likely to be acting in bad faith? Clause 17, along with clause 16, will shame us and UK values if it reaches the statute book.

All the arguments that apply to clause 16 apply once again. As Ministers well know, there are many reasons why people who are escaping sexual abuse, gendered violence, torture and trauma cannot produce evidence by a particular date. Well-known psychological processes, such as dissociation, PTSD and denial of sexual trauma, militate against the so-called efficient delivery of evidence. That is before we get to the dysfunctional lack of legal aid and advice available, and the broken nature of the asylum system as a whole, as we discussed with reference to clause 16. Again, the Government seem to want to blame their own failings on vulnerable people, and scapegoat them for 11 years of a broken asylum system.

I will give an example of how unfair clause 17 is, and why someone's credibility is in no way contingent on their ability to provide evidence by an arbitrary date. The example, concerning someone I will call "Gloria", is a real case that was described to me by the excellent organisation Women for Refugee Women.

Gloria and her husband were supporters of the Opposition political party in the Democratic Republic of the Congo. When the Government started to suspect that her husband was talking to journalists about human rights abuses, they targeted both him and Gloria. Gloria was raped by soldiers and taken to prison. Upon release, she and her husband fled the Congo, but they were forced back into the DRC and targeted by the Government again. Gloria was violently raped again by several soldiers and held in a detention centre from where she was trafficked to the UK.

When she arrived here, Gloria was detained in a house and forced to have sex with several men for weeks, until a cleaner helped her to escape. This woman encouraged her to claim asylum, but Gloria was too scared to talk about her traffickers in the interview, so she could not explain why she had not claimed asylum earlier. Her male interpreter at the interview did not speak Lingala fluently and got angry with her when she tried to clarify points. She had no mental health support so was unable to discuss the extreme sexual violence she had experienced, and her lawyer never explained to her that the experience of being trafficked was relevant to her claim.

Gloria was refused asylum and taken to Yarl's Wood, which she found highly traumatic, given her previous experience of incarceration in the DRC. She was released from Yarl's Wood and then came to seek help from Women for Refugee Women, as she was homeless. She joined one of the organisation's creative projects and, over time, began speaking about her story. Gloria now has a positive reasonable grounds decision and is preparing further submissions for a fresh asylum claim. Under clauses 16 and 17, Gloria could be prohibited from presenting evidence of the violence that she faced, with the ultimate risk of being returned to her persecutors. Gloria continues to suffer from post-traumatic stress disorder, depression and suicidal thoughts.

Surely when hearing of cases such as Gloria's, Ministers must pause and realise that provisions such as clause 17 are inappropriate. Worse than that, calling into question the credibility of people who are traumatised is severely harmful. As discussed with reference to clause 16, the ultimate risk of undermining the credibility of applicants and denying the validity of their evidence is refoulement and is in contradiction of the refugee convention.

The one-stop process being proposed in the group of clauses that include clause 17 would force traumatised women to raise all the reasons why they need protection at the outset. If they fail to do so, their credibility could be damaged, according to the clause. It is worth stating again that, as with clause 16, this goes directly against the Home Office's guidance, which states that late disclosure should not automatically prejudice a woman's credibility.

As highlighted, moreover, many women do not realise that their experiences of gendered violence may constitute an asylum claim. Poor legal advice compounds that problem, so women do not raise these experiences in their initial claim. Clauses 16, 17 and 23 will result in more women being wrongly refused protection and so becoming liable for detention.

Clauses 16, 17 and 23 create a mechanism that forces people to produce relevant evidence by a fixed date. If that deadline is missed, the evidence could be given "minimal weight", which will impact on a decision maker's assessment of an applicant's LGBT+ status and/or whether they have a well-founded fear of persecution. That would be acutely detrimental to LGBT+ people because of the difficulties in gathering and providing evidence that helps to 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 not only in their countries of origin, but in the UK. Further, it can be an enormous challenge, if not impossible, to obtain supporting evidence from former partners, friends or family members in their country of origin, who can be too afraid to write a witness statement. For trans people specifically, many are unable to access healthcare in their countries of origin and to receive timely support in the UK, and, again, struggle to offer supporting evidence as a result.

If LGBT+ people get evidence such as letters from those who can testify to their sexual orientation or gender identity, proof of membership of LGBT+ organisations or photos at Pride, it may not be until they are more comfortable and confident in being open about their sexual orientation or gender identity, and therefore easily after any deadlines for evidence are imposed by the Home Office.

Clauses 17, 20 and 23 direct or encourage decision makers, including immigration judges on appeal, to exclude evidence or reject the credibility of a claimant. That exclusion or rejection is arbitrary. It is not on the basis of the decision maker's assessment of the relevance or probity of the evidence or truthfulness of the claimant. It is not on the basis of any individual assessment of all the relevant material and circumstances.

11.15 am

Unless Ministers wish to make the charge that decision makers, whether Home Office staff or independent tribunal judges, are incapable of fulfilling their responsibilities, they must surely anticipate that this can only increase the likelihood that some people with good asylum claims are made unable to substantiate them. What then? It cannot be expected that people who are in real fear of persecution, for what will be good reasons, will be willing to accept a return to torture or execution, or some other serious harm. There will be greater obstruction to the Home Office, because it will be charged with carrying out the return of someone who, quite justifiably, will not co-operate and, similarly justifiably, will wish to take every opportunity, including by making a fresh claim and pursuing litigation—appeal or judicial review—to substantiate their good claim to be a refugee. Home Office and other limited public resources, including legal aid and court time, will be spent pursuing what should not be pursued and what may and, it must be hoped, will turn out to be unattainable. That will not merely add directly to delays and backlogs. It will have a wider impact in diminishing confidence in the asylum and immigration system, particularly where the treatment and outcomes for people are manifestly unequal for no reason properly related to the strength of their claim.

The Opposition are deeply concerned by clause 17. It will contribute to a culture of disbelief that will harm vulnerable people who deserve our support, including women such as Gloria. Under clauses 16 and 17, Gloria could be prohibited from presenting evidence of the violence that she faced, with the ultimate risk of being returned to her persecutors. That is unconscionable. We will therefore oppose this clause, as we do not believe that there is any way in which it can reasonably be made better.

The Chair: The Chair has no desire to curtail comment, particularly from the Front Benches, but we do have to remain within the scope of the matter under discussion. I am conscious that that is difficult when there are related clauses, but the hon. Gentleman has strayed into referring to clauses 20 and 23. The Chair will bear that in mind when we come to those debates; I would not expect repetition on the subject.

Tom Pursglove: Amendment 39 would render clause 17 inoperable. Clause 17 introduces two new behaviours into section 8 of the Asylum and Immigration (Treatment of Claimants, etc.) Act 2004. That section provides that a decision maker shall take account, as damaging the claimant's credibility, of the behaviour to which the section applies. Without the consequent amendment to section 8, which amendment 39 seeks to remove, there is no penalty for late evidence or not acting in good faith, which would make such a measure inappropriate for primary legislation and would also render it pointless.

Clause 17 is not prescriptive as to how decision makers, within both the Home Office and the judiciary, determine credibility or the claim itself. It has always been the case that decision makers must consider egregious conduct by the claimant. It is then open to the Home Office or the courts to decide the extent to which credibility should subsequently be damaged. Amendment 39 simply seeks to do away with that well established principle.

Let me build on the point about the judiciary and the point that was raised by the hon. Member for Cumbernauld, Kilsyth and Kirkintilloch East. He asked, "Aren't judges best placed to determine the credibility that evidence should have? Why be prescriptive?" The point that I will make in response is that clause 17 is not prescriptive as to how judges determine credibility or the claim itself. It adds two new behaviours to the existing section 8 of the 2004 Act. That section provides that a decision maker shall take account, as damaging the claimant's credibility, of the behaviour to which the section applies. I think it is important to clarify this. It should be noted that clause 17 applies to all decision makers. That includes Home Office staff who make the initial decision on protection and human rights claims. Clause 17 adds new behaviours to the existing behaviours that should already be taken into account as damaging to credibility under section 8 of the 2004 Act. The concept that certain conduct should be damaging to credibility is nothing new. It has always been the case that decision makers must consider egregious conduct by the claimant. It is then open to the Home Office or the courts to decide the extent to which credibility should subsequently be damaged.

[Tom Pursglove]

Clause 17 will also not be determinative of a claim. Decision makers will still be required to consider the claimant's credibility in the round, as they would currently as part of their decision-making processes.

Neil Coyle: Clause 17 further compounds the damage potentially arising from clause 16. When answering the question about a child rights impact assessment, the Minister seemed to talk about an equality impact assessment. I wonder again whether a child rights impact assessment, as developed by his colleagues in the Department for Education for schools, would benefit the Government, to prevent them from imposing conditions that fall foul of other Government legislation—

The Chair: Order. I understand the hon. Gentleman's concern, but we have gone past clause 16; we are now on clause 17.

Neil Coyle: But having a child rights impact assessment would prevent the Government from implementing clause 17 in a way that harms children and causes the Government to lose legal cases further down the line, so I believe it is relevant, Sir Roger.

The Chair: I will allow the question.

Tom Pursglove: Thank you, Sir Roger. I want to pick up on a couple of other points that were raised in responding to amendment 39. I should clarify that clauses 17 and 23 do not apply to consideration of modern slavery referrals. Claims are considered holistically, and credibility is not by itself determinative of a claim. It is important to emphasise that point. The hon. Member for Enfield, Southgate raised the case of Gloria. Obviously, I am mindful of talking about individual cases because of the difficulties associated with that, as I am sure that he will appreciate, but clauses 17 and 23 do not prevent someone from providing late evidence. Late evidence will still be considered in full. Where there are good reason for lateness, a person's credibility will not be damaged and clause 23 will not apply. I wanted to provide clarity on that point. With that, I ask that the hon. Member for Cumbernauld, Kilsyth and Kirkintilloch East withdraw amendment 39, and that the Committee agree that clause 17 stand part of the Bill.

Stuart C. McDonald: As a point of principle, I object to Parliament telling decision makers what to think, but having made my point I am happy to leave it there for now, and I beg to ask leave to withdraw the amendment.

Amendment, by leave, withdrawn.

Question put, That clause 17 stand part of the Bill.

The Committee divided: Ayes 9, Noes 7.

Division No. 17]

AYES

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

NOES

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

Question accordingly agreed to.

Clause 17 ordered to stand part of the Bill.

Clause 18

PRIORITY REMOVAL NOTICES

Tom Pursglove: I beg to move amendment 60, in clause 18, page 22, line 26, leave out "10(1) or (2)" and insert "10".

This amendment is consequential on clause 43 of the Bill.

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

Government amendment 61.

Clause stand part.

Tom Pursglove: It is often the case that those facing removal or deportation from the UK raise late protection or human rights claims that could have been provided at an earlier juncture. That causes unnecessary delay and expense to the taxpayer. The clause strengthens the existing one-stop process by establishing a priority removal notice, or PRN, which may be issued to a person who is liable to removal or deportation from the UK. The PRN will require a person to raise any new or additional grounds for why they should remain in the UK before the date specified in the notice. That includes information relevant to whether the person is a victim of modern slavery or trafficking. Any supporting evidence must be provided at the same time. That will ensure that all claims can be considered sufficiently in advance of the person's removal, reducing the extent to which removal can be frustrated, and allowing those in need of international protection to be identified and supported as early as possible.

Factors that may lead to a person being issued with a priority removal notice will be set out in guidance and will include, for example, where a person has previously made a protection or human rights claim. Where information or evidence is provided on or after the PRN cut-off date and without good reason, it should be damaging to the person's credibility. Those reforms will drive efficiencies across the system, decreasing the cost of unnecessary litigation and failed removal attempts, while maintaining fairness, ensuring access to justice and upholding the rule of law.

Amendments 60 and 61 are minor amendments to reflect a change to clause 43 and to remove a superfluous paragraph in subsection (7) of the clause that has no material impact.

11.25 am

The Chair adjourned the Committee without Question put (Standing Order No. 88).

Adjourned till this day at Two o'clock.