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GENERAL COMMITTEES

Public Bill Committee

NATIONALITY AND BORDERS BILL

Fourteenth Sitting

Tuesday 2 November 2021

(Afternoon)

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not later than

Saturday 6 November 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 2 November 2021

(Afternoon)

[Siobhain McDonagh *in the Chair*]

Nationality and Borders Bill

2 pm

The Chair: I highlight an announcement, given the decision about events in Parliament today. Members are strongly encouraged to wear masks when they are not speaking, in line with current Government guidance and that of the House of Commons Commission. Please also give each other and members of staff space when seated and when entering and leaving the room.

Clause 54

Civil legal aid under section 9 of LASPO: add-on services in relation to the national referral mechanism

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

The Chair: With this it will be convenient to consider clause 55 stand part, as announced by Sir Roger at the end of the morning sitting.

The Lord Commissioner of Her Majesty's Treasury (Craig Whittaker): Identifying and supporting victims at an early stage is a key part of the Bill, and the new one-stop process. To underpin that process, clause 54 provides for legally aided advice on the national referral mechanism to be provided to individuals who are already receiving legally aided advice on an immigration or asylum matter. The additional advice will be free to the individual.

The provision of legally aided advice under the clause will help the individual's lawyer to provide holistic advice on the individual's situation as a whole, looking at the range of protection-related issues, including modern slavery. Advice under the clause will additionally help to identify and support potential victims of modern slavery at an earlier stage. Potential victims of modern slavery will be able to understand what the NRM does and able to make an informed decision as to whether to enter it and obtain the assistance and support provided under it.

The Government are firm in our commitment to identifying and supporting all victims of modern slavery. The clause seeks to ensure that individuals are provided with advice on the NRM at the same time as they are receiving advice on an asylum and immigration matter, which will enable more victims of modern slavery to be referred, identified and supported.

Holly Lynch (Halifax) (Lab): It is a pleasure to see you in the Chair, Ms McDonagh. Clause 54 amends the Legal Aid, Sentencing and Punishment of Offenders Act 2012 to enable advice on referral into the NRM to be provided as add-on advice where individuals are in receipt of civil legal services for certain immigration and asylum matters. Although I and many other colleagues welcome the fact that the Government have recognised the importance of legal aid as part of the process, we argue that legislating for it only as an add-on misses the opportunity to extend access to all those who would benefit from it—I include the Home Office as one of the main beneficiaries of people having access to proper advocacy and advice from an early stage.

In England and Wales, 63% of the population do not have access to an immigration and asylum legal aid provider, due simply to a lack of provision—what is known as a legal desert. Where there are providers, many are operating beyond capacity. Sadly, it is therefore commonplace for support workers to be unable to find lawyers for clients who are victims of trafficking.

It is not reasonable to expect vulnerable victims to be able to navigate the system without legal representation. It is vital that this is provided at the earliest stage possible. As the Public Law Project and JUSTICE have pointed out:

> "The provision of legal aid to individuals who seek redress is not simply a matter of compassion, but a key component in ensuring the constitutional right of access to justice, itself inherent in the rule of law and an essential precondition of a fair and democratic society. Failure to provide it can amount to a breach of fundamental rights under the common law and/or the European Convention on Human Rights."

We believe victims deserve better than what is set out before us in the Bill. The Anti Trafficking and Labour Exploitation Unit has highlighted how the single competent authority is currently sending out template witness statements as a guide for how they should be prepared. They warn of the legal implications of the document even in the absence of a lawyer. That is unacceptable. I am sure the Minister agrees that it would make for an improved system with more integrity and fewer errors—the very sort of system he proposes—if a broader approach to legal aid was adopted.

It is also fair to argue that access to legal aid remains somewhat of a postcode lottery, with many outside London and the south-east experiencing difficulties in accessing legal assistance. I take this opportunity to highlight the great work of the Anti Trafficking and Labour Exploitation Unit in attempting to widen access, having developed an online referral system for support workers to simplify the process for sourcing legal aid representation. However, it should not fall to organisations such as ATLEU to plug the gaps in the system. We wish to see improved access through this clause.

Similarly, the Government state in the explanatory notes to the Bill that clause 55 is designed to provide an add-on to legal aid on referral to the NRM if the victim has been granted exceptional case funding and is being advised in relation to the claim that their removal from or requirement to leave the UK would breach the Human Rights Act 1998. That means that clause 55 does not provide a route to pre-NRM advice for those who are not already in receipt of legal aid via the scope of another matter, and therefore does not provide free legal aid pre-NRM for all trafficking cases.

In scrutinising these measures, we have worked closely with the Immigration Law Practitioners Association, which I thank for having been so generous with its expertise, as I know it is for MPs right across the House, and for providing real-life examples that demonstrate the scale of the issue. It said:

"We assisted the pro bono department of a non-legal aid law firm when they helped a potential survivor apply for exceptional case funding—ECF—in August 2020. The funding was requested in order to provide advice on an NRM referral and associated immigration advice. This application was refused. A request to review the decision was refused. A decision on a second review is pending a final decision from the Legal Aid Agency. One ground of refusal at first review stage was that no decision had yet been made to remove the individual as they had not come forward to the authorities, and if a decision to deport or remove a client from the United Kingdom is made, an application for ECF could be made at that stage. The application remains undecided 13 months after the original submission."

The system is a mess, Minister. It is the Opposition's view that free legal aid and advice for potential victims of slavery and trafficking in the UK pre-NRM should not be limited to cases with existing immigration and asylum aspects. Only then will the Government's offer of legal advice on referral to the NRM work in practice. In summary, the proposals contained within clauses 54 and 55 do not fully address the existing shortcomings in the system—another missed opportunity.

Question put and agreed to.

Clause 54 accordingly ordered to stand part of the Bill.

Clause 55 ordered to stand part of the Bill.

Clause 56

Disapplication of retained EU law deriving from Trafficking Directive

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

Craig Whittaker: The trafficking directive—the directive on preventing and combating trafficking in human beings and protecting its victims—was adopted by the UK on 5 April 2011. The Council of Europe convention on action against trafficking in human beings—ECAT—is the principal international measure designed to combat human trafficking. The trafficking directive is intended, in part, to give effect to ECAT. ECAT's objective is to prevent and combat trafficking by imposing obligations on member states to investigate and prosecute trafficking as a serious organised crime and a gross violation of fundamental rights.

Following the end of the transition period on 1 January 2021, the UK is no longer bound by EU law, but ECAT remains unaffected. Therefore this Government intend, by means of clause 56, to disapply the trafficking directive in so far as it is incompatible with any provisions in the Bill. That will bring legislative certainty to the Bill and how its clauses will apply. It will also provide further clarity to victims about their rights and entitlements.

The Government maintain their commitment to identify and support victims of modern slavery and human trafficking, as part of the world-leading NRM. The Modern Slavery Act 2015 and ECAT, which sets out our international obligations to victims, remain unaffected, as do the UK's obligations under article 4 of the European convention on human rights.

I commend the clause to the Committee.

Holly Lynch: I thank the Minister for his opening remarks on clause 56. The explanatory notes on the clause state that, as the Minister has just outlined,

"the Trafficking Directive should be disapplied in so far as it is incompatible with any provisions in this Bill."

There are some substantial and quite technical inconsistencies here that need to be worked through, and to do so we have had to enlist legal expertise from the Anti Trafficking and Labour Exploitation Unit and others, so I thank them all for their service.

The trafficking directive is part of a suite of measures designed to combat the crime of trafficking. The EU has introduced several legislative measures to strengthen the protection of victims of human trafficking, including the 2011 EU directives on preventing and combating trafficking in human beings, and protecting victims of trafficking.

I turn first to the heading of clause 56—"Disapplication of retained EU law deriving from Trafficking Directive". Subsection (1) refers to

"Section 4 of the European Union (Withdrawal) Act 2018",

which saved the trafficking directive in domestic law, so that it continued to have effect on or after the UK left the EU at the end of December 2020. However, it has the opposite effect, by stipulating that any

"rights, powers, liabilities, obligations, restrictions, remedies and procedures derived from the Trafficking Directive"

that were saved cease to apply,

"so far as their continued existence would otherwise be incompatible with provision made by or under this Act."

Therefore, our primary concern about clause 56 is that the power to disapply the rights derived from the trafficking directive will cease the rights and remedies available to victims generally as a matter of domestic or EU law that continues in force in the UK.

The world's largest group of modern slavery researchers, Rights Lab, has argued:

"After eight years of the government's general position being that the rights under the Trafficking Directive were already in domestic law, the choice to legislate now in the Nationality and Borders Bill—to reduce and restrict rights and entitlements through Part 4 of the Bill—and the presence of the express power to disapply them in the event of an incompatibility with the Bill in Clause 56 is concerning. The government should instead ensure that rights under the Trafficking Directive continue to apply in UK law, by incorporating it, and further, it should incorporate ECAT in domestic law and end the fragmented approach to victim identification, protection, and support."

The clause will also threaten the Government's ability to combat the perpetrators of human trafficking, as it will further undermine the response to criminal justice and the rights of victims of trafficking as victims of crime in the victims of crime directive and relevant codes of practice. Additional concerns have been voiced in relation to the rights under the NRM of victim identification and support and non-penalisation. For example, article 8 of the directive provides for the non-prosecution or non-allocation of penalties to victims, and requires the UK to ensure that competent national authorities are entitled not to prosecute or impose penalties on victims of trafficking in human beings for their involvement in criminal activities that they have been compelled to commit as a direct consequence of being subject to any of the acts referred to in article 2.

Therefore, that directive is clearly threatened by clause 56 and other provisions of part 1 of the Bill, including clause 51, which I appreciate is precisely why this Government want to disapply it. However, I am afraid that that is just the wrong judgment call.

In conclusion, the clause is incompatible—

Craig Whittaker: I am not sure whether the hon. Member is aware that the transition period for this measure finished in January, so in effect it has already been disapplied.

Holly Lynch: I thank the Minister for his intervention. We are into the thick of the legal technicalities. These points are from some of the leading legal experts on the subject. They are not entirely satisfied that clause 56 is compatible, and that we are not missing some of the protections that have been hard fought for, with good reason.

In conclusion, the clause is incompatible with the UK's legal international obligations and will have far-reaching consequences. For that reason, it should not stand part of the Bill.

2.15 pm

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

The Committee divided: Ayes 8, Noes 6.

Division No. 55]

AYES

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

NOES

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

Question accordingly agreed to.

Clause 56 ordered to stand part of the Bill.

Clause 57 ordered to stand part of the Bill.

Clause 58

AGE ASSESSMENTS

Paul Blomfield (Sheffield Central) (Lab): I beg to move amendment 150, in clause 58, page 52, line 19, at end insert—

"(3A) Before making regulations under this section, the Secretary of State must consult the ethical committees of the relevant medical, dental and scientific professional bodies and publish a report on the consultation."

This amendment would require the Secretary of State to consult with ethical committees of medical, dental and scientific professions before making regulations in their area, and publish a report on the consultation.

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

Clause stand part.

Government amendment 168.

Government new clause 29—*Interpretation of Part etc.*

Government new clause 30—*Persons subject to immigration control: referral or assessment by local authority etc.*

Government new clause 31—*Persons subject to immigration control: assessment for immigration purposes.*

Government new clause 32—*Use of scientific methods in age assessments.*

Government new clause 33—*Regulations about age assessments.*

Government new clause 34—*Appeals relating to age assessments.*

Government new clause 35—*Appeals relating to age assessments: supplementary.*

Government new clause 36—*New information following age assessment or appeal.*

Government new clause 37—*Legal aid for appeals.*

Paul Blomfield: I understand that the Government seek to delete clause 58 and replace it with new clauses 29 to 37, which provide more detail. However, the detail does not offer any reassurance; quite the contrary.

Mr Robert Goodwill (Scarborough and Whitby) (Con): Does the hon. Gentleman accept that new clause 32 makes amendment 150 superfluous, as it talks about the scientific input into age determination?

Paul Blomfield: I thank the right hon. Gentleman for his intervention, but he is completely wrong and I will explain why shortly.

In existing clause 58 and the new Government clauses, the Government want to introduce new regulations and a standard of proof for age assessments, to compel local authorities to assess age, to allow the use of "scientific methods" to assess age, despite widespread concerns from professional bodies about the validity or accuracy of any such methods, and to penalise children for not consenting to these potentially harmful interventions.

Children who come to the UK on their own, from countries such as Afghanistan, Sudan and Eritrea, face a unique problem when asked to prove their date of birth. The registration of births and the importance placed on chronological age differs across the world, and many are genuinely unable to show official identity documents, such as passports or birth certificates, because they have never had them in the first place, they have had them taken away from them, they have lost them in the chaos of fleeing, or sometimes they have had to destroy them en route.

Disputes over age can also arise from a lack of understanding of the way in which dates are calculated in other countries and cultures, and associated confusion over what is being said by a child about his or her age. So, one might reasonably ask, why are the Government making so much of this issue?

Mr Goodwill: Does the hon. Gentleman not agree that there are incentives for adults to pass themselves off as children? If the age assessment is done incorrectly, the result could be adults being placed in schools or local authority care, putting children at risk.

The Chair: I call Robert Goodwill—sorry, I meant Paul Blomfield.

Paul Blomfield: He can have another go if he wants.

I hear what the right hon. Member for Scarborough and Whitby is saying. I remember watching a BBC programme recently—I think it was on the BBC—on the Kindertransport. The same debate was had about

Jewish refugees fleeing Nazi Germany after Kristallnacht. Some were slightly older than the age restriction of the time. I do not know whether the right hon. Gentleman thinks that this legislation would have been appropriate at that time. We could have turned them around and sent them back to the Nazis.

Paragraph 24 of the explanatory notes states:

"Since 2015, the UK has received, on average, more than 3,000 unaccompanied asylum-seeking children per year. Where age was disputed and resolved from 2016-2020, 54% were found to be adults".

Clearly, 54% is a big number, but the data in the notes is more than a little selective.

According to Home Office statistics, for the most recent normal year unaffected by the pandemic, which was 2019, there were 4,005 unaccompanied children applications. Of those, 748 had their age disputed and 304 were found to be adults. That is just over 7% of child applicants. The problem is that that is in no way as prolific as purported by the explanatory notes. The actual number is likely to be lower, because the Home Office stats do not include decisions later overturned following advocacy or reviews by judges.

Again, the Government have a problem finding evidence to justify a proposal in the Bill. This is clearly not the first time this has happened. I see that the Home Secretary got herself into trouble with the Lords Justice and Home Affairs Committee today by being unable to come up with the facts to justify one of her wilder allegations about those crossing the channel. Nevertheless, the Government are ploughing ahead with their plans to use scientific methods to assess age.

I now turn specifically to new clause 32, which does not offer any of the clarity that the right hon. Member for Scarborough and Whitby suggested. Proposed new subsection (2) mentions the

"types of scientific method that may be specified",

and that the two specified might be included. However, proposed new subsection (9) goes out of its way to state:

"This section does not prevent the use of a scientific method that is not a specified scientific method for the purposes of an age assessment under"

the previous proposed new section,

"if the decision-maker considers it appropriate to do so".

New clause 32 is therefore saying: "Any scientific method that we can come up with at any time in the future will be legitimate."

Mr Goodwill: I understand the point that the hon. Gentleman is trying to make, but I am worried that he is saying, "Well, we'll give a lot of people the benefit of the doubt", which could result in large numbers of adults being placed in settings that are appropriate for children. Surely he is aware that since the 2003 case, age assessments have been Merton compliant. Any actions that the Government take to follow through on the Bill becoming law will obviously be tested in the courts in the same way as the early years situation.

Paul Blomfield: I refer the right hon. Gentleman to what my amendment 150 proposes. All it asks is that the Government should be required to take into account relevant scientific and medical evidence, consulting reports of the ethical committees of the appropriate medical and dental professions, on the Government's planned use of scientific methods for assessing age.

What do the experts think? The British Dental Association called dental X-rays for age assessments "inaccurate and unethical", which is a theme that relates to the rest of the Bill—it will not do what it says it will do. The Government apparently told some journalists that they do not plan to use dental X-rays anyway, but the Bill leaves that option open, so forgive us if we do not take casual briefings to journalists on the side as a way to determine the Government's future conduct on this issue.

The Government are apparently planning to use wrist X-rays, which the British Medical Association tells us it has "serious concerns" about because

"they would involve direct harms without any medical benefit to the individual",

as radiation exposure over a lifetime should be kept as minimal as possible. The BDA agrees:

"The process of radiography is a medical procedure that should be carried out only for medical purposes, and where the patient stands to benefit. Exposing children to radiation when there is no medical benefit is simply wrong."

The BMA also warns that

"the evidence supporting the accuracy of the process is extremely weak".

We are back to the same old theme: there is no real evidence to support what the Government are doing. The BMA goes on to say that the process is particularly weak where,

"as in the case of most asylum seekers, there is a shortage of appropriate age and cultural comparators."

Yet again, Ministers are introducing ineffective proposals without any evidence, making those seeking asylum—in this case, children—part of the narrative of "Let's assume bad faith, and let's assume that everybody is trying to play the system." It will not work, but it is designed to grab headlines and to make it seem as though the Government are talking tough, rather than dealing with the genuine issues on which we agree, such as stopping those who are forced out of desperation to make journeys across the channel. I urge the Minister to accept our amendment or, better still, to just withdraw the clause.

The Chair: The Public Gallery is becoming a little crowded. I encourage everyone sitting there to spread out as much as possible, to ensure social distancing.

Stuart C. McDonald (Cumbernauld, Kilsyth and Kirkintilloch East) (SNP): I would like to speak to clause stand part, and I support everything that the hon. Member for Sheffield Central has already said. We all recognise how important it is to get age assessments right, while acknowledging that it will always be an imperfect process. As he said, what precisely is the nature and scale of the problem that the Government are driving at here? Of course, it is important to ensure as far as possible that adults are not placed in child settings, but the overall tenor of the evidence that we have received is that placing children in adult settings is an even greater risk. If a young adult is placed in a setting designed for older children, there will at least be child-specific safeguarding and other age-appropriate support. If a child is wrongly placed in adult reception and immigration processes, there are no such protections, and such a decision can have profound impacts on and consequences for a child.

[Stuart C. McDonald]

First and foremost, we should continue to think about age assessments as a function of the child protection and safeguarding system, not of the immigration system. The responsibility should remain with social workers, whose expertise and experience make them by far the best people to undertake such assessments where support is required. We should preserve the current position, which does not place an evidential burden on a child or young adult but leaves the decision makers to weigh up all the evidence to a reasonable degree of likelihood. The Home Office has quite simply offered no sound reasons for undermining that arrangement and for imposing a higher standard of proof.

2.30 pm

New clause 29 and other new clauses almost certainly mean that age assessments will be routine. The Secretary of State is basically helping herself to powers to demand tests whenever she wishes, even where social workers think they are entirely inappropriate. The idea of a national age assessment board could be helpful. As we have seen from both oral and written evidence to the Committee, sharing resources and best practice could bring benefits, but what is proposed by the Government in the new clauses goes way beyond that. We need to know who is going to be on the board, how it will work and how its independence will be secured, particularly given the vast, wide-ranging regulation-making powers that the Secretary of State is helping herself to. The role of any such board should be to support local authorities, not to supplant and overrule them. Unfortunately, the Government's provisions go far too far, and they need their wings well and truly clipped if we are to support them.

New clause 29 seems incredibly lazily drafted in how it refers to relevant children's legislation. In Wales, Scotland and Northern Ireland we have to work out whether a piece of statute corresponds to part III, IV or V of the Children Act 1989. It is pretty sloppy drafting. It also serves notice that this is a devolved area. Important questions for the Minister are: what consultation has there been with devolved Governments, and is a legislative consent motion to be sought on these issues?

There has to be recognition that, for many reasons, the process of age assessment can be, and will remain, a very difficult task. We know that children develop into adults at different speeds. The experience of an asylum-seeking child can affect their appearance and demeanour. As the hon. Member for Sheffield Central eloquently put it, the demeanour of a young person who has travelled across continents and survived in some incredibly difficult circumstances may no longer be that of a child, despite them being a child. Completely different physical and nutritional regimes in the country of origin will also cause differences. That is why raising the standard of proof is not appropriate.

These difficulties are not going to be overcome by the use of so-called scientific methods of assessment—methods which are absolutely no more scientific than assessment by expert social workers. Indeed, many would suggest that these methods are a lot less helpful. Much evidence has been submitted to the Committee about the lack of effect of these new methods and their unethical nature, as the hon. Member for Sheffield Central referred to. The British Dental Association is clear that dental tests cannot produce accurate assessments and that taking radiographs is inappropriate where there are no health benefits for the individual undergoing the test. The BDA has submitted detailed evidence on that.

Mr Goodwill: I have just had a look at the NHS website and it says that having an X-ray is equivalent to one or two days of background radiation. If someone takes a short-haul flight, the amount of radiation they are likely to be exposed to is probably more than an X-ray, particularly if it is on a limb and not on the main body.

Stuart C. McDonald: I do not have access to that webpage, but the right hon. Gentleman has access to the extensive evidence submitted to the Committee by the BDA. It is a two-sided issue. First, it is not appropriate to subject people to radiation, and in this case there is no informed consent. The evidence is clear. The Royal College of Paediatrics and Child Health is clear that an assessment can be no more accurate than two years either side. The British Society for Paediatric Endocrinology and Diabetes is clear that we cannot assess a child's age just physically or by analysing bones.

In short, if a decision maker says that somebody is 18 years old, the person is just as likely to be 16 or 20. These new clauses leave the Secretary of State with powers that are far too broad. She should at least be required to have consent and approval from professional bodies, whether medical, dental or scientific. The insistence that so-called scientific methods can be used anyway if the decision maker considers it appropriate—as enabled by new clause 32(9)—totally undermines the other safeguards. It must be removed.

Mr Goodwill: The hon. Member is very generous in giving way. Is he saying, in effect, that in every case we should take the person's word for how old they are and treat them as children, even if there is scientific evidence that they may be many years older than 18?

Stuart C. McDonald: No, I am not saying that. What I am advocating is the position at present—that the decision maker looks at all the evidence that is available in the round. If somebody is 50, I cannot imagine them needing an invasive scientific procedure to establish that they are over 18. I am not by any stretch of the imagination saying that we just take somebody's word for it. I am advocating for the status quo. By all means the Government can introduce some sort of advisory board, but that should not supplant and take over the functions of local authorities—but that, unfortunately, is how I see these new clauses working.

The new clauses suggest that there will be implications for a person's credibility if they choose not to undergo the medical procedures. I object, as a point of principle, to Parliament telling decision makers what to think about someone's credibility when it is those decision makers—not us—who know the circumstances of the decision that they have to make. It is particularly objectionable given that professional medical bodies thoroughly object to these so-called scientific procedures. Despite the fact that professional bodies have said that these tests are inappropriate, the Government are telling decision makers that, if a young person says, "Well, the

medical professionals say this is inappropriate, so I won't undergo this," they must find that young person lacking in credibility.

I repeat the point I made in relation to earlier clauses about the impugning of the credibility of those making statements on someone's behalf. It is especially bizarre that a medical report by a multi-disciplinary panel of experts could have its credibility maligned simple because a child or young adult refuses to undergo one of these so-called scientific methods of testing introduced through regulations by the Secretary of State. Not only is it bizarre; it also undermines the fundamental idea that people should be able to give free consent to medical procedures and examinations, and not be pressured into them. Similarly, it undermines the principle that such a procedure should happen only if it delivers a scientific benefit for that person.

What consultation has there been? We have not been able properly to scrutinise or ask questions of relevant witnesses in relation to these specific provisions. Is consent to be sought from devolved Governments on the basis that large tracts of these new clauses relate to how local authorities should exercise functions related to devolved legislation? In the absence of assurances on any of those fronts—the evidence of problems, proper consultation and devolved consent—the case for change is absolutely not made. On the contrary, there are all sorts of dangers in these clauses that could have serious consequences for children.

Anne McLaughlin (Glasgow North East) (SNP): I will be brief, as I have just a couple of questions. Ethics aside, as is the want of this Government—if that is not the case, why are they running away from the amendment tabled by the hon. Member for Sheffield Central?—I want to look at the issue of estimating the maturity of a child's skeletal system by comparing images with databases of children of the same age and gender. Do children in Ethiopia develop at a comparable rate to children in the UK, because I understand that that is who they are going to be compared to? Do children in Eritrea and Sudan develop at the same rate? The British Medical Association seems pretty certain that they do not. If that is the case, how long will it take to build databases of comparable images for each country or region, and has that work started?

Bambos Charalambous (Enfield, Southgate) (Lab): The Government have tabled new clauses 29 to 37 to replace clause 58, which was a placeholder clause on age assessments. Colleagues have already made the point about lack of scrutiny. Having received these new clauses so late in the day, we have not had a chance to see proper evidence, because we were not aware of what has been said. Clearly, as part of its role a Committee must have time to scrutinise. I am sure we will do the best we can with the time we have been given, but it really is not best form to have so many Government new clauses so late in the day on such an important issue.

We are concerned that the age assessments referred to in new clauses 29 to 37 risk violating children's rights. I thank the Refugee and Migrant Children's Consortium, a coalition of over 60 organisations, for its excellent briefing on these new clauses and for sharing its concerns about their inclusion in the Bill. If implemented, the new regulations and measures on age assessments will significantly increase the risk that children in the system will be treated as adults and criminalised. Before we discuss specific measures, it is worth noting that age assessments are not straightforward, nor are they an exact science. The measures in this Bill fail to recognise that it is impossible to determine age precisely, especially when there is an absence of documentation, which is often the case. By introducing a higher standard of proof in age assessments, more children in the system will be wrongly treated as adults, with devastating consequences.

For unaccompanied children in the asylum system, age is fundamental to receiving the support and protection they need. In the UK, age determines how or whether someone is supported by children's services and has access to education; whether they are provided with asylum support by the Home Office and dispersed to a different part of the UK; and whether they are accommodated or detained with adults. It is imperative that we get age assessment right, and we all agree that there are clear safeguarding issues when people claiming to be children are later found to be adults, but it is also true that the effects of children being wrongly treated as adults are significant. I therefore urge colleagues to consider those safeguarding risks in relation to new clauses 29 to 37.

New clause 29 defines various terms, including "age-disputed person", which governs the persons to whom the provision on age assessments will apply. As it stands, new clause 29 will mean that age assessment is required whenever there is insufficient evidence to be sure of age. Of course, as we know, this is true in many if not all cases. In practice, this clause therefore puts the burden of proof on a child to prove that they are under 18.

This is problematic for a couple of reasons. Children who come to the UK on their own from countries such as Afghanistan face challenges when asked to prove their date of birth. First, the registration of births and the importance placed on chronological age differs across the world. Secondly, and perhaps more significantly, there is often a lack of documentation. For example, many children who come to the UK have never had official identity documents in the first place, or have had documents taken from them or destroyed during their journey to the UK.

It is worth sharing an example, and I thank the Refugee and Migrant Children's Consortium for bringing it to the Committee's attention, as it highlights both the challenges in determining age accurately and the impact of wrong decisions. This case refers to a young person named K, who arrived in the UK from Iran and was held in a police station. He was 16 years old when he left Iran, and he told the staff at the police station his date of birth. They explained that, based on the date of birth, he was now 17.

K was then questioned by someone—he believes they were from social services—who did not believe he was 17, as they believed he looked older. Before entering the UK, K had been living in the jungle in Calais, and had not properly washed for a long time and had grown a beard. K was pressured into accepting he was 18 years old, and the Home Office recorded his age as 18. This meant he was not referred to a local authority for a full age assessment and was dispersed into adult asylum support accommodation in a hotel. He was the only child in the hotel and was left very scared. He reported that adults in the accommodation were taking drugs and he could not eat during his time there.

[Bambos Charalambous]

K managed to get in contact with the British Red Cross, and a safeguarding referral was made to the relevant local authority. The local authority promptly arranged to visit the young person, and two social workers agreed that it was highly likely that K was the age he was claiming to be. K was immediately moved and provided with full support under section 20 of the Children Act 1989. The local authority completed a full needs assessment and quickly took action to refer him to a GP, dentist, optician and immigration solicitor, and supported him to enrol in college. He had been suffering from asthma, and had not received any medical support since he arrived in the UK.

K's case highlights what can happen when a young person is wrongly considered an adult in the asylum system, and the effects are stark. They lose access to the support and protection they need. That is why we must be incredibly careful to develop appropriate and fair age assessments, and also ensure that they are a function of the child protection and safeguarding system more widely.

In relation to K's case, I have mentioned the fact that children are in hotels, and there is a real question about what safeguarding goes on in hotels. I know the Minister is deputising today, but could he look into that for me and to write back to me, or ask officials to do so at some stage, about what safeguarding for children does go on in hotels?

In new clause 30, the Home Office will be given the power to make regulations on how to assess age and introduce a standard of proof on the balance of probabilities for age assessments. The current standard when age is disputed in the context of an asylum appeal, developed through years of case law, is that of a reasonable degree of likelihood. Given the complicated nature of assessing age, introducing such a high standard of proof would significantly increase the risk of children being wrongly treated as adults. Indeed, new clause 30 undermines current statutory guidance from the Department for Education, which makes it clear that age assessments

"should not be a routine part of a local authority's assessment of unaccompanied or trafficked children".

2.45 pm

The Government's proposals will give the Home Office powers to compel local authorities to assess the age of a child, as they must provide the Home Office with evidence for why they believe that the child is the age they claim to be. That will put pressure on local authorities, which have already expressed frustration over having to conduct age assessments when Home Office caseworkers challenge their view that they see no reason to doubt a young person's age. Introducing those changes in new clause 30 will likely undermine the specialist knowledge and experience of those who work in the asylum system, while putting increased pressure from the Home Office on the already stretched resources of local authorities.

New clauses 30 and 31 outline the powers and procedures of the national age assessment board. There are concerns from the sector, in particular the British Association of Social Workers, about the lack of a multi-agency, holistic approach. Indeed, the NAAB as introduced by the Bill will have significant powers, with minimal accountability or transparency. In practice, it will be able to override professional judgment developed over years of experience, including a local authority age assessment, as the NAAB will be able to carry out an assessment if required to by the Secretary of State or a designated person on their behalf.

It is appropriate that age assessments draw on, and consult, a wide range of practitioners in health, care, education and the community, especially as we turn to new clause 32, which controversially provides for the use of scientific methods for age assessment. It includes methods such as examining or measuring parts of a person's body by using imaging technology and analysis of saliva, cell or other samples from a person's body. It is a deeply worrying provision. I note that the new clause is not exhaustive. Could the Minister provide more details on age assessments under it?

It is worth re-emphasising, as many organisations in the sector have, such as the United Nations High Commissioner for Refugees, that medical age assessment methods are highly contested and subject to a high margin of error. The evidential value of scientific age assessment methods is uncertain. Scientific methods, for example, remain contested by UK courts and by medical professionals and associations. The evidence supporting the accuracy of the processes is extremely weak, particularly where, as in the case of most asylum seekers, there is a shortage of appropriate age and cultural comparisons. Indeed, the Royal College of Paediatrics and Child Health has stated that the use of radiological assessment is extremely imprecise and can give only an estimate of within two years in either direction.

While potentially being inaccurate, scientific methods such as those listed in the Government's proposals are also harmful to the individuals who are assessed. It is telling, and very concerning, that the British Dental Association notes at the very end of its written evidence that

"dentists could find themselves performing an act that is not just inappropriate and unethical, but even constitutes criminal battery."

The British Medical Association, too, has serious ethical concerns about the proposed use of imaging technology. The use of radiation for that purpose is harmful for the individual, without any medical benefit. Invasive procedures will likely be traumatic for the individual, and will almost certainly adversely affect vulnerable children and young people, causing anxiety, confusion and frustration. That will actively harm the most vulnerable of asylum seekers and potentially retraumatise them. For those reasons, the Home Office ruled out using dental X-rays, as the BDA found that they would be "inaccurate, inappropriate and unethical" if implemented in asylum cases.

Furthermore, the fine print of new clause 32 includes subsection (9), which appears to create another category of potential scientific methods that can be used—methods that have not been specified in regulations and have not been approved by relevant professional bodies. The subsection states:

"This section does not prevent the use of a scientific method that is not a specified scientific method for the purposes of an age assessment…if the decision-maker considers it appropriate to do so and, where necessary, the appropriate consent is given."

That has potentially very worrying implications, and the Government should clarify why the subsection has been included and whether the methods, which are not specified in regulations, include those that the Government

were advised against when seeking scientific advice. It is critical that any method used to make age assessments has a strong scientific and evidentiary base.

Another worrying aspect of the new clause is around consent and damage to credibility. Subsection (7) states that decision makers must take it

"as damaging the age disputed person's credibility"

if they do not consent to the use of the specified scientific method. A child could object to the use of an invasive method that is not a specified scientific method, which is deeply troubling. That is also included in new clause 33, which allows the Secretary of State to make regulations about age assessments, including damage to a person's credibility, due to lack of co-operation. Refusing to be subjected to an invasive measure, including those that the BMA says are potentially harmful to individuals, should not have a bearing on a person's credibility.

As referred to throughout Bill Committee proceedings, people who come to the UK have often endured significant challenges in their journeys, including trauma and physical, mental and sexual abuse. Further subjecting these vulnerable people, such as unaccompanied people and young people, to invasive measures is deeply concerning, especially when the outcomes will remain inaccurate. By legislating to ensure that decision makers take it as damaging a person's credibility if they refuse to consent to these methods, the Government will penalise children for not consenting to potentially harmful "scientific methods". In practice, this measure will force children and young people to undergo assessments that may be harmful to them.

The Government's proposals fail to take into consideration issues of consent and the competency of children in decision making. For example, children affected by trauma may have had their capacity to make decisions undermined. More widely, it is crucial that we do not view the use of scientific methods as a silver bullet for age assessments, especially given the widespread concern about their accuracy and the harm they will potentially inflict on vulnerable children and young people.

New clauses 34 to 37 provide additional measures around the right of appeal, situations when new information comes to light after an age assessment or appeal, and access to legal aid. We of course welcome measures to provide access to justice provisions. In the interests of time, I will focus on the more controversial aspects of the Government's new clauses on age assessments. I think we all agree that wrongly treating a young asylum seeker as an adult puts an already vulnerable person at immense risk, effectively depriving them of all the support, supervision, awareness and monitoring that ought to be provided. The Government's proposals on age assessments are therefore concerning as they will increase the number of children and young people who enter the adult asylum system in incredibly vulnerable circumstances, with fewer rights and entitlements than they deserve.

The Government's new clauses appear to suggest that there is a simple process to determine age accurately. This is worrying. We must avoid viewing age assessments in asylum cases in this way. We need to get age assessments right. That will involve taking a broader approach than the Government have laid out in new clauses 29 to 37. The new clauses on age assessments risk vulnerable children and young people being denied rights they deserve, protection they need and support we must offer. We oppose the measures set out in the new clauses, and we oppose clause 58 standing part of the Bill.

Jonathan Gullis (Stoke-on-Trent North) (Con): It will probably not shock Committee members that I support what the Government are doing on age assessments. Ultimately, it is about ensuring that we protect our young people in our United Kingdom. When people say that they are children and will be in a classroom surrounded by people of a similar age, we need to make sure that they are indeed children.

As a former teacher, I understand the importance of this. As a former head of year who had responsibility for safeguarding, covering welfare, attendance and the behaviour of young people, it makes no sense to me why anyone would oppose a measure to make sure that people who claim to be young people are indeed young people. An individual who has nothing to hide should have nothing to fear in this regard. It is absolutely essential that age assessments take place to make sure that people claiming to be of school age are indeed of that ilk, because ultimately other young people could be put in a very vulnerable situation.

Stuart C. McDonald: We want age assessments to be as accurate as they can be at the moment, not just through the work of social work groups but with input from outside. Does the hon. Gentleman have any concerns about the impact on children who end up being wrongly placed in adult facilities?

Jonathan Gullis: Of course—absolutely. Young people should not be placed in a situation like that, for safety reasons. As a former teacher, I would not want a 14 or 15-year-old to be somewhere they felt unsafe. The problem is that we have a broken asylum system that needs fixing. Age assessments can be avoided if people do not try to enter the country illegally, but come by safe and legal routes, where we can have documentation.

There are other ways to prove someone's identity, age and application, as we have done in Afghanistan and Syria, which will ultimately be a much better system than having illegal economic migrants crossing the English channel from Calais and entering this country illegally. They are putting a huge strain on the public services of our country and on the people of Stoke-on-Trent North, Kidsgrove and Talke, whose area is the fifth largest contributor to the asylum dispersal scheme.

Age assessment is absolutely essential. It is another way of reminding people that if they make an illegal entry into this country they will face a number of procedures to verify the credibility of their asylum claim, their identity and their age, in order to ensure we protect our country's young and vulnerable people. It is the right and proper thing to, and I fully applaud the Minister on pushing this essential clause.

Craig Whittaker: Let me start with amendment 150. I would say to the hon. Member for Sheffield Central that his amendment applies to all aspects of age assessments, not only the use of scientific measures. As such, it is extremely broad, although I do not know if that remains his intention.

The Home Office takes its statutory duties towards the welfare of children very seriously. The current age assessment system is desperately in need of reform. We have heard many reports from local authorities about

[Craig Whittaker]

the prevalence of adults posing as children and claiming services designed for children, including accommodation, education and social care. This poses significant risks to the welfare of genuine children in our care system and undermines the integrity of the immigration system. Equally, we need to safeguard vulnerable children from being placed in adult services, although I am not sure I agree with the hon. Member for Sheffield Central when he said that this is headline grabbing.

We must do everything in our power—whatever that is—to safeguard children, including vulnerable and unaccompanied asylum-seeking children.

Holly Lynch: The Government were less enthusiastic about protecting children under part 4 of the Bill.

Craig Whittaker: I do not think that deserves a response because I do not believe any Member of the House, wherever he or she sits, would advocate that we leave children vulnerable in the system.

One measure we look to pursue is the use of scientific methods, as has been said. Assessing someone's age is an incredibly difficult task. It is only right that in this complex and sensitive area we seek to improve and expand the evidence base on which decisions can be made. We are aware there are ethical concerns around the use of certain scientific methods for age assessment, which is why new clause 32 includes a number of changes to the Bill to ensure proper safeguards are in place for those who are asked to undergo a scientific age assessment.

First, the Secretary of State may only specify a scientific method of age assessment in regulations once she has sought scientific advice and determined that the method in question is appropriate for assessing a person's age. I expect that scientific advice to also cover related ethical considerations. Secondly, a scientific method of age assessment will not be performed unless the appropriate consent is given by or on behalf of the individual on whom the method is to be performed. We will be as transparent as possible about the nature and consequences of the specified method where consent is required once an appropriate method has been identified. Thirdly, where a person has reasonable grounds for refusing to undergo a scientific age assessment, they will not be required to undertake one. That decision will not then count against them.

3 pm

Existing regulatory frameworks already govern the safe and ethical application of various technologies and they could be employed to assess age. The use of ionising radiation, for instance, is highly regulated by the Justification of Practices Involving Ionising Radiation Regulations 2004, which require a demonstration that the individual or societal benefits of their use outweigh any health detriments. I can assure hon. Members that the Government will comply with all relevant regulatory frameworks in relation to the scientific methods chosen.

An important point to reflect on is that the use of scientific methods for age assessment is not new. They are already widely in use in most countries throughout Europe, including Denmark, Norway and Sweden. The UK, therefore, should draw on the latest technological advances to improve the process for determining age, as that is a positive step towards ensuring that we are doing all that we can to safeguard those vulnerable children.

Reflecting on the safeguards in the Bill and the pre-existing processes to ensure safe and ethical applications for the various technologies—before I finish, I will give way.

Stuart C. McDonald: The Minister is outlining what he sees as safeguards. I am unconvinced. New clause 32(9) seems to say that nothing prevents the use of a scientific method, even if it is not specified in regulations and so on, if the decision maker considers it appropriate and, where necessary, consent is given. Given that there are implications if consent is not provided, that surely rides roughshod over all the other protections that the Minister just outlined.

Craig Whittaker: I will come on to that when I discuss further measures in new clause 32, but our opinion is that the amendment is not necessary and I ask the hon. Member for Sheffield Central to withdraw it. On the new clauses, clause 58 is one of the six clauses drafted as placeholder clauses of introduction, as indicated in the explanatory notes and memorandum for the Delegated Powers and Regulatory Reform Committee. It was drafted as such in the interests of transparency to make clear our intention to bring forward substantive provision on age assessment. New clauses 29 to 37 are intended to replace clause 58 entirely.

Before I touch on the other clauses, regarding new clause 32, we have already said that determining a young person's age is an inherently difficult task. One of the questions posed earlier was how we do that as a comparator between other young people growing up in less well-developed countries. Under current arrangements where an individual's age is disputed, local authorities must already undertake an age assessment. That typically involves two appropriately qualified social workers undertaking a series of interviews with the young person and taking into account any other information that is relevant to their age. However, even where those assessments are conducted thoroughly and reach reasoned conclusions, they are fraught with difficulty, as one would imagine. Such assessments can have a wide margin of error. We are aware of cases where a Merton-compliant age assessment, as they are called, has been conducted on the same individual by different social workers and has come to very different conclusions about the person's age. Given that context, the use of scientific age assessments represents an additional and important source of evidence to help decision makers in a difficult task, allowing them to better come to accurate judgments. At the end of the day, that is our aim.

Various scientific methods of age assessment are already in use across most European countries, and have been for several years. In Finland and Norway, which I mentioned earlier, radiographs are taken to examine development of the teeth and the fusion of bones in the wrist. Two certified experts perform the age assessment and must jointly agree on the person's age. In France, X-rays are taken to examine the fusion of the collarbone, alongside dental and wrist X-rays. In Greece, dental X-rays are used alongside social worker assessments.

Anne McLaughlin: What are the experts comparing with? My question is, will they be comparing the bone density or whatever with that of children of the same

age in the UK, knowing that the development of children from other parts of the world is very different, or will they have a database of comparable images of the skeletal system—whichever part they are using—from each of the other countries? Is that something that is happening at the moment, or will they just be compared with UK-based children?

Craig Whittaker: I suspect that the answer to the hon. Lady's question is that how that is assessed will be down to the individual scientific advice given on the individual case at the time. I cannot see a like-for-like comparator for a child from Ethiopia or Sudan, which was mentioned earlier, being a child in this country. That is why the scientific evidence is a much more accurate way of assessing. It can be a great tool in the arsenal of assessing a child when compared with our existing system, which is the Merton assessment by two individual social workers. Given the challenges of assessing an individual's age, we see no good reason why such technologies should not also be used. In all good faith, this is one of several tools in the arsenal. To further enhance my answer to the question asked by the hon. Lady, the precise scientific method of assessment will be specified in regulation, following scientific advice.

We are also making it clear within new clause 32 that a decision maker will be able to draw a negative credibility inference if an individual refuses to undergo a scientific age assessment without reasonable grounds. The introduction of any scientific method would be entirely undermined if someone who was asked to undergo such an assessment could simply refuse to co-operate. By legislating to develop our own scientific age assessment capability, we hope to emulate best practice across Europe and to ensure that unaccompanied asylum-seeking children are provided with the care they are entitled to in a safe environment.

Let me turn to the rest of the amendments in the group before I answer some of the questions. Amendment 168 is consequential on new clauses 32 and 33. It provides that the regulation-making powers in the clauses are commenced automatically two months after Royal Assent.

The purpose of new clause 29 is to define an "age-disputed person" and to set the parameters to whom the age-assessment clauses apply. It clarifies the meaning of a number of terms, including "age-disputed person", "immigration functions", "immigration officer" and the respective definitions of "local authority" in England, Wales, Scotland and Northern Ireland. The clause also defines the meaning of "relevant children's legislation" across the four nations of the United Kingdom.

New clause 30 relates to the establishment of a decision-making function in the Home Office, referred to as the national age assessment board, or the NAAB, as I think the hon. Member for Enfield, Southgate referred to it. The NAAB will have responsibility for conducting age assessments of age-disputed persons on referral from the local authority or another public authority specified in regulation. Where an age-disputed person is referred to the NAAB by a local authority, the NAAB assessment will be binding on both the Home Office, in relation to immigration functions, and the local authority when determining access to children's services. Alongside new clause 30, new clause 31 relates to the establishment of the NAAB. While most NAAB age assessments will be conducted on referral from a local authority, the new clause stipulates that the NAAB may, in certain situations, conduct age assessments on age-disputed persons for the sole purpose of deciding whether or how the Secretary of State should exercise any immigration functions.

Stuart C. McDonald: Will the Minister say a little bit more about the NAAB? Who will be appointed to it, how will it generally undertake assessments and how will its independence from the Home Office be ensured?

Craig Whittaker: I assure the hon. Gentleman that I will answer him before I finish answering the other questions, if indeed I can find the answer in my book.

I have covered new clause 32 quite extensively. New clause 33 provides the Secretary of State with the power to make regulations about the way in which age assessments are to be conducted under the provisions in new clauses 30 and 31. It will provide the Secretary of State with the power to provide more clarity on what a comprehensive age assessment should entail, including, where appropriate, existing elements of age assessment case law. It will be mandatory for local authorities and the Secretary of State to follow these requirements when conducting age assessments. New clause 34 provides for a right of appeal to the first-tier tribunal for an age-disputed person who has been subject to age assessment. In considering an appeal, the tribunal will be able to consider any evidence it deems relevant. It will determine the age of the age-disputed individual and assign them a date of birth.

New clause 35 provides clarity in a number of areas related to the appeal of an age assessment decision. First, a person who brings such an appeal must do so while they are here in the United Kingdom. If they leave the United Kingdom before the appeal is finally determined, the appeal is discontinued. Secondly, the clause provides for the appellant to apply to the tribunal for an order. Pending the outcome of the appeal, the local authority must exercise its function under children's legislation as if the person is the age they claim to be. Where an age assessment has been made and the individual has not brought an appeal, or has concluded the appeal process, new clause 36 provides a mechanism for them to make further representations to a decision maker where they have new evidence to submit in support of their claimed age. That covers all the specific parts of the new clauses.

The hon. Member for Enfield, Southgate asked me about hotel accommodation. In cases involving a child, local authorities obviously will have obligations to look after them. For adults, hotels are not detention centres, and adults are not held their against their will. There is a duty of care on the local authority when someone is placed there; it is required to give wraparound care for that individual, particularly for children. I cannot really see children being placed there by themselves, but I understand what the hon. Gentleman is saying about where there is an issue around age. Somebody could slip through the net, but the local authority would be required to give wraparound care.

3.15 pm

The hon. Member for Cumbernauld, Kilsyth and Kirkintilloch East asked about the devolved Administrations. As part of the consultation earlier this year, we engaged with the devolved Administrations

and have had conversations about some of the detail of the new clauses, and we intend to continue to do so in the coming weeks. I hope that helps to answer his question.

The hon. Member for Glasgow North East mentioned the skeletal development of people from different ethnic backgrounds. We are conscious that ethnic and environmental factors may have an impact on physical characteristics that may be analysed as part of a scientific age assessment. We will endeavour to ensure that the scientific method used will consider the characteristics of people of different ethnicities and the environmental factors within a person's country of origin.

Paul Blomfield: The Minister may be about to pre-empt me, but I do not think he has answered the questions raised by the hon. Member for Cumbernauld, Kilsyth and Kirkintilloch East in relation to the national age assessment board, so will he at least undertake to write to us on that issue?

Craig Whittaker: No, I have not finished yet. I am not quite ready to sit down, but I will answer that question. Basically, the board will predominantly consist of qualified social workers who, through being dedicated to the task of conducting age assessments and through training and the sharing of expertise, will achieve a more consistent and accurate approach to the task of age assessment. As Members have probably seen, such professionals are referred to as a "designated person" in the new clauses, and the board will have responsibility for conducting age assessments on age-disputed persons on referral from the local authority, as I said. Local authorities will retain the ability to conduct age assessments if they prefer to do so. If they believe that a person is actually the age they claim to be, they must inform the Home Office accordingly.

The hon. Member for Sheffield Central asked whether binding local authorities' hands is just a power grab from central Government. The answer to that question is no. If local authorities wish to carry out their own assessments, they will be able to do so—without question, that will be the case. On that basis, I commend the new clauses to the Committee.

Paul Blomfield: I have listened carefully to the Minister's observations. To be fair, he made a good fist of defending the indefensible, but he failed to answer the concerns expressed by me and the hon. Member for Cumbernauld, Kilsyth and Kirkintilloch East in relation to the way that subsection (9) of new clause 32 drives a coach and horses through all the reassurances that we have been given. His criticism of the amendment as being a bit broad and involving quite a lot of work fails to acknowledge how narrow it is. It would simply require the Secretary of State to take advice before making regulations, and I therefore wish to press the amendment to a vote.

Question put, That the amendment be made.

The Committee divided: Ayes 6, Noes 9.

Division No. 56]

AYES

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

NOES

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

Question accordingly negatived.

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

Question put and negatived.

Clause 58 disagreed to.

Clause 59

PROCESSING OF VISA APPLICATIONS FROM NATIONALS OF CERTAIN COUNTRIES

Paul Blomfield: I beg to move amendment 151, in clause 59, page 52, line 33, at end insert—

"(3A) The Secretary of State must publish impact assessments on the effect of the provisions in this section on—

(a) nationals from countries falling within subsection (3), and

(b) the United Kingdom's economy and trade."

This amendment would require the Secretary of State to publish impact assessments with regard to the effect this clause might have on both nationals from countries in subsection (3) and the UK economy and trade.

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

Clause stand part.

Government amendment 80.

Government new clause 9—*Removals from the UK: visa penalties for uncooperative countries.*

Government new clause 10—*Visa penalties: review and revocation.*

Paul Blomfield: The amendment would require the Home Secretary to publish impact assessments on the effect of clause 59 both on nationals from the countries in subsection (3) and on the UK's economy and trade.

The Government plan to replace clause 59 with Government new clauses 9 and 10. This is a slightly more developed version of the proposal to punish the nationals of countries if the Government consider their Governments to have been unco-operative on returns. The explanatory notes for clause 59 do not explain its purpose—because it was a placeholder clause, there was no detail—so I assume it is to act as an incentive for countries to co-operate with returns, but I hope that the Minister will seek to provide some evidence of that.

The explanatory notes do state that

"a very small number of countries do not cooperate"

with returns, suggesting that penalties would apply only to a limited number of states. However, a report in *The Daily Telegraph* on 15 October—presumably briefed by the Government, which is the way we seem to get information these days—said that

"Pakistan, Iran, Iraq, Sudan, Eritrea and Philippines"

are countries understood not to co-operate with returns. We know that the majority of those on that list have conditions that mean returns are unlikely anyway, as there are strong asylum cases from them, so we know

that the deterrents will not work. So, I would like to press the Minister a little bit more on what the Government expect to achieve with these revisions.

Mr Goodwill: Surely what the hon. Gentleman says defies logic. If we are going to give visas to nationals of a particular country and we know there is a risk they may overstay, surely we can be more generous and more engaged with that country if we know that those overstayers can be removed. In the case of visas, we will have biometric data, so that there is no doubt about a person's identity.

Paul Blomfield: I hear what the right hon. Member is saying, but the scope of this provision seems to go much wider than that. It seeks to introduce punitive measures, including on visa charges and so on, for individuals who may be applying, and I will develop that point. It is nothing to do with overstaying. This is about countries that are unco-operative on returns in other contexts.

I want to press the Minister on what the Government expect to achieve by this. For example, it is not in our interests to sanction doctors, nurses or engineers who have been recruited to the UK from one country with longer visa processing times or higher charges, and that would be deeply damaging for our diaspora communities. Again, it feels as if we have proposals picked from headlines, which are not in the country's interests.

Mr Goodwill: It might help some of these countries if we did not plunder their health professionals, who have trained at the expense of that country, and actually trained our own instead.

Paul Blomfield: I am interested in that observation, and I hope the right hon. Gentleman will lead the charge to persuade the Government to allocate far more resources for the training of health professionals and to tackle the crisis they have created within our health service over the past 11 years.

Amendment 151 will try to ensure that the Government are clear-eyed about the impact of their policy and the trade-offs they are prepared to make, as well as the impact on UK public services, communities and businesses. The amendment would allow the public to examine that trade-off, too. It would ensure that the Government track the impact of their policy, and are transparent with business and trade over the impact any visa penalties might have, either through reduced travel or through deteriorating relationships with those countries.

The Government talk a lot about global Britain, but through our examination of the Bill we have seen many threats to that and a lot of ways in which they plan on sowing discord with other nations around the world, damaging our reputation in the international community. I know that the Minister will not vote for clause 59 stand part, but I would welcome his thoughts on the wider impact of the replacement clauses, along the lines of my amendment. I would appreciate it if he could tell us whether any such impact assessments are being considered.

I have an important point to make about new clauses 9 and 10, to which I hope the Minister can respond. There is significant concern that these clauses will prevent people from joining refugees in the UK through the family reunion route. Let us consider the countries cited in *The Daily Telegraph* again: Pakistan, Iran, Iraq, Sudan, Eritrea and the Philippines. Since the start of 2019, 8,480 people from Iran, Iraq, Sudan and Eritrea have been granted refugee family reunion visas to join loved ones in the UK. That equates to just over half—53%—of all family visas granted over that period. Some 3,584 of those visas were for children and 5,771 for women or girls. The new clause, as drafted, would potentially apply to visas for refugees coming to the UK under one of the Home Office's resettlement schemes, including the relocation scheme for Afghan nationals who have previously worked with the UK Government or applicants from Hong Kong for British national overseas visas.

So, if the Government are determined to proceed with these new clauses, at the very least new clause 9 needs to be amended to include an exemption for refugee family reunion and other protection routes. I should be grateful if the Minister would indicate whether the Government are willing to do that.

Anne McLaughlin: We support amendment 151 for the self-explanatory reason that we need to know the impact of these actions. We are not saying that visa penalties should never be imposed in any circumstances, but we share many of the concerns voiced by the hon. Member for Sheffield Central and I will focus on a couple of them.

The Government say this clause will incentivise other countries to co-operate with the UK Government to remove those who have no right to be in the country, but they have presented no evidence that this will be the case. Saying it is one thing, but if they are so confident of it they should do some work and, as the hon. Member for Sheffield Central asks in his amendment, publish a report examining the impact on our relations with other countries.

The Joint Council for the Welfare of Immigrants says that this clause will affect, among others, workers, including key workers. Have not the Brexit restrictions on key workers coming into the country taught us anything? There are also tourists and their massive contribution to our economies; performers; students—who pay thousands of pounds to study at our universities, many of which would struggle to survive without them—and academics, among others, including the family members of British citizens. Again, we are punishing the wrong people.

3.30 pm

Specifically, I want to express the concerns of Elizabeth Ruddick of the UNHCR about the impact on family reunion. The UNHCR's concern is that although the clause gives the Home Secretary flexibility on the type of penalties to impose, nothing explicitly prevents the imposition of penalties on applications for refugee family reunion. Elizabeth Ruddick says that delaying refugee family reunion on that basis is likely to violate their human rights, particularly under article 8 of the ECHR. Will the Minister do that thing that his colleague has done a lot in Committee, which is to reassure us that that will not happen? For the record, I am not reassured, but reassurances have been offered throughout the Committee and it would be good to hear his thoughts at least.

Will the Minister consider a scenario that could arise from the clause and reassure me about it? I might be taking this too far, but let us take the case of two asylum seekers who arrive irregularly by boat. Perhaps the Home Secretary is feeling generous and decides that, rather than offshoring them or jailing them—both options that the Bill allows to be considered—she will simply return them to their countries of origin, from which they fled. Country No. 1 has not signed an agreement and does not agree to take the person back, perhaps because—I will be generous—its Government recognise that they cannot protect that person, for whatever reason.

Country No. 2, however, is Afghanistan. We have talked a lot about Afghanistan in considering the Bill, and we are not currently returning people to Afghanistan, but that will not always be the case, so bear with me. The second asylum seeker is to be returned to Afghanistan and the Taliban men in charge are ready to welcome refugees back with open arms, primarily because they have been hunting them down anyway. For obvious reasons, Afghanistan complies, signs the agreement and accepts its citizens back. Does that mean that country No. 1 could have restrictions placed on its students, key workers and tourists who wish to visit the UK, while by comparison the Taliban could have free rein? I am not asking whether that is likely to happen; I am just asking whether the clause means that it could happen.

We welcome the reviews included under new clause 10, but they are not sufficient, and the powers under new clause 9 are too wide. Again, they give far too much power to the Secretary of State. It seems that nothing is off limits. The new clause encompasses three themes recurring in the Bill: first, too much power to the Secretary of State; secondly, not enough regard to international relations; and thirdly, closing down one of the few safe and legal routes, unless the Minister can reassure me that refugee family reunion is not affected by the provision—I hope he can.

Craig Whittaker: Starting with amendment 151, I reassure the hon. Member for Sheffield Central that the penalties are there to encourage countries to co-operate. There is international precedent for countries to have the power to impose penalties on countries that do not co-operate on the matter of returns.

Both the United States and the EU have similar powers to those we are seeking. Recently, the Council of the EU decided to suspend temporarily the application of certain provisions in the visa code to nationals of The Gambia, owing to the country's lack of co-operation on readmission of third-country nationals illegally staying in the EU. The new powers in the Bill will bring the UK into line with our international partners and ensure that we are no longer lagging behind other countries.

I assure hon. Members that, given talk of penalties and exemption, family reunion will be an exemption to the penalties, as discussed.

Turning to amendment 151, I can assure the hon. Member for Sheffield Central that the power to impose visa penalties will be exercised only after consideration of the potential economic impact on the UK, and with full agreement across Government. Contrary to the hon. Member's assertion that there is another Government leak, there is no current list: this will be done on a case-by-case basis, based on the impact across areas such as the economy, but also taking each Department into account. I also draw the hon. Member's attention to new clauses 9 and 10, which—as we have already touched on—set out those visa provisions in more detail. I feel that this is a fairly straightforward part of the Bill, with no need for the hon. Member's amendment.

Turning to new clauses 9 and 10 and Government amendment 80, a key function of the Home Office is the removal of individuals who have no legal right to be here, either by deportation or administrative removal, usually to the country of which they are nationals. We expect our international partners to work with us, as they expect us to work with them, to remove such individuals, as the UK does where our own nationals in other countries should not be in those countries. This is a critical component of a functioning migration relationship, and the vast majority of countries co-operate with us in this area. However, a small number do not.

As has been said, new clause 9 is designed to give the Government the power to impose visa penalties. Countries should no longer expect to benefit from a normal UK visa service if they are unwilling to co-operate with us on the matter of returning nationals. We will be able to slow down or suspend visa services for that country, and require applicants to pay a surcharge of £190 when they apply for a UK visa. Specifically, new clause 9 sets out when a country may be specified as unco-operative and the factors that will be taken into account when imposing visa penalties. Additionally, the new clause provides detail on the types of penalties that may be applied. It is a critical step in taking back control of our borders.

Briefly turning to new clause 10, visa penalties are intended to be a matter of last resort, and must not be in place longer than necessary. The new clause requires the Secretary of State to review the application of visa penalties every two months and revoke those penalties if the relevant country is no longer unco-operative. This provision is a safeguard to ensure that any visa penalties applied do not remain in place by default. Government amendment 80 is consequential on new clauses 9 and 10, providing that they will come into force two months after the Bill receives Royal Assent.

I commend new clauses 9 and 10 and Government amendment 80 to the Committee, and by your leave, Ms McDonagh, I request that the hon. Member for Sheffield Central withdraw his amendments.

Paul Blomfield: I was reassured by the commitments on family reunion, and I look forward to the Government's bringing forward an amendment on that topic, perhaps in the House of Lords. I have taken the Minister's other comments on board, so I will not press this amendment to a vote at this stage. I beg to ask leave to withdraw the amendment.

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

Question put and negatived.

Clause 59 accordingly disagreed to.

Clause 60 disagreed to.

Clause 61

SPECIAL IMMIGRATION APPEALS COMMISSION

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

The Chair: With this it will be convenient to consider Government new clause 11—*Special Immigration Appeals Commission.*

Craig Whittaker: Clause 61 is one of six clauses drafted as placeholder clauses, as we have said. New clause 11 is intended to replace clause 61. The new clause makes changes to the Special Immigration Appeals Commission Act 1997 that are required to safeguard sensitive material. Current legislation allows for any immigration appeals and those judicial review challenges against exclusion, deportation or naturalisation and citizenship decisions to be certified so that they are heard by the Special Immigration Appeals Commission if certain criteria are met. Where a case is heard by the Special Immigration Appeals Commission, sensitive information can be relied upon to defend the decision which, if publicly disclosed, would be damaging to the public interest.

Not all immigration decisions can currently be certified, however. For example, a person refused entry clearance as an investor, or who is seeking to work or study in the UK, cannot have their judicial review challenge to that refusal decision certified for SIAC. In contrast, a person appealing a decision to refuse them asylum could have the appeal against the refusal of their claim certified. The effect of not being able to certify a decision is that where there is a judicial review challenge to that decision a range of sensitive information that might otherwise be used to defend that challenge cannot always be disclosed. That has the potential to be damaging to national security.

The new clause will extend the power to certify immigration decisions to cover those cases that carry no right of appeal and where a JR challenging the decision cannot currently be certified. That will ensure that the JR can be heard before the Special Immigration Appeals Commission. The test for certifying immigration decisions is not being changed by the new clause. It will still require the Secretary of State to certify that the decision being taken relies partly or wholly on information that, in her opinion, should not be made public in the interests of national security, in the interests of the relationship between the UK and another country, or otherwise in the public interest.

Bambos Charalambous: New clause 11, which replaces clause 61, significantly expands the jurisdiction of the Special Immigration Appeals Commission. On the face of it, this is a highly draconian measure that has been introduced at a very late stage in the Bill's passage through Parliament, limiting the scrutiny. The new clause will enable SIAC to consider applications and set aside immigration decisions where the Secretary of State certifies that information on which her decision is partly or wholly based should not be made public on national security grounds, in the interest of the relationship between the UK and another country or otherwise in the public interest.

That means that information relating to the decision will not only not be made public; it will also not be provided to the person to whom the decision applies. If we unpick that, the cases to which the new clause applies include a decision of the Secretary of State concerning an entitlement to enter, reside in or remain in the UK, or a person's removal from the UK. We are therefore talking about not only immigration decisions but nationality decisions. The extended powers in the new clause affect not just foreign nationals but British citizens, and do not concern merely migrants but residents. It is a huge expansion of power, and when combined with broad interpretations of the public interest, as mentioned, the power will put British citizens and others with the right to remain at risk of being excluded from the UK. They will also be left with no information regarding why that decision has been made, because the Government believe that it is in the public interest to withhold it from them.

The new clause is not limited to cases where a person's entitlement to enter or stay in the UK is said to be in the interest of national security; it applies also to cases where the denial is authorised by information that the Secretary of State says is in the public interest—information that is kept from the person affected. How are any of those people, including the British citizens, able to defend themselves against expulsion, or even exile, in such circumstances? The power given to the Secretary of State is enormous, and in practice the measures will curb justice by allowing the Secretary of State to process appeals by SIAC, instead of normal processes, denying people their rights to a full case.

3.45 pm

The sector has long expressed concerns about the powers and procedures of SIAC, but the Government are seeking to extend the powers even further. It follows that the wider escalation of the Home Office power in the Bill, which will have a devastating consequence for vulnerable people, will also provide the lead for others to promote and encourage similar draconian measures in their immigration and asylum systems. We are opposed to new clause 11, because it will significantly expand the powers of SIAC and put British citizens—and other people who have or seek an entitlement to enter, reside or remain in the UK—at risk of being excluded from the UK or of being treated as having no right to be here.

Craig Whittaker: Let me address a couple of points. Basically, the hon. Gentleman is asking whether SIAC involves a further erosion of civil liberties. The direct answer to that is no—if anything, it is quite the opposite. New clause 11 allows the specialist court the ability to consider all evidence relied on to ensure that cases may be both brought and properly defended. In addition, the special advocate system, the disclosure procedure used in such hearings and other safeguards are designed to provide individuals with substantial measures of procedural justice in their difficult circumstances when, in the public interest, material cannot be disclosed to them directly.

Question put and negatived.

Clause 61 accordingly disagreed to.

Clause 62

TRIBUNAL CHARGING POWER IN RESPECT OF WASTED RESOURCES

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

Bambos Charalambous: I will also speak to clause 63, because the two clauses seem to be interconnected.

We think that these provisions are unnecessary and should be removed from the Bill. The Government's proposals in both clauses are unnecessary. The Bill requires the tribunal procedure committee to give the tribunal the power to fine individuals exercising a right of audience or a right to conduct litigation, or an employee of such a person, for

"improper, unreasonable or negligent behaviour".

This broad formulation could have a chilling effect on the willingness of solicitors to take on difficult cases, for fear of risking personal financial liability. That may also extend to Home Office presenting officers who would similarly be liable under the measure.

The immigration tribunals already have all the case management, costs and referral powers that they need to control their own procedure. Giving new powers to immigration tribunals without establishing a basis in evidence for them is not warranted. The clauses will therefore make it harder for lawyers acting for people with immigration cases to do their job in immigration tribunal hearings.

Immigration law practitioners fulfil a key role in enabling access to the courts and therefore access to justice, so that a person who is the subject of an immigration decision may make their case properly and seek vindication. Lawyers, both solicitors and barristers, play an important role in facilitating the smooth functioning of the asylum process, helping their clients to navigate the system and providing an additional layer of filtering against meritless cases.

All lawyers have a responsibility to uphold the rule of law and are strictly regulated by several bodies to ensure that they act to the highest professional standard. As a former lawyer myself, I am aware of the rigorous regulatory regime of the Solicitors Regulation Authority, which includes duties to the court and duties of integrity. Solicitors also act in the best interests of their client, and that is vital in ensuring effective access to justice. Those who provide services to people seeking asylum in England and Wales are also likely to be doing so on a legal aid basis, for which the Legal Aid Agency provides a further means of scrutiny and oversight.

In acting for people subject to immigration control, among other things, immigration lawyers work with clients who may lack funds and legal aid entitlements; whose documents may be incomplete, missing or badly translated; and whose statements as to their past experiences may be hard to secure, on account of the ill treatment they have suffered in their country of origin.

In addition, much is at stake in immigration proceedings. A person subject to immigration control who loses their case may be subject to expulsion from the UK and face a risk of harm in their country of origin. They may be separated from their family, or may lose the life they have built up in the UK over many years, leaving their lawyer in the position of making difficult but arguable points on their behalf. The proposals in clauses 62 and 63 of the Bill will only make that task harder.

Labour shares the concerns of the Immigration Law Practitioners' Association and the Law Society that immigration lawyers are being needlessly targeted by the new costs orders and charge orders, which are not necessary and do not apply in other areas of law. Immigration tribunal judges already have all they need by way of case management powers, costs powers and referral powers. Making the task of immigration lawyers harder prejudices access to justice, and has not been shown to be necessary by the evidence.

Craig Whittaker: Does the hon. Gentleman not agree that costs orders will only be made where representatives have been badly behaved and unreasonable without justification? In those circumstances, it is right that a representative should be required to pay wasted costs.

Bambos Charalambous: I will come on to that topic, but those powers already exist, and I do not think that further regulation of this type—forcing the tribunals committee to supply this information—is the correct way of going about this.

Neil Coyle (Bermondsey and Old Southwark) (Lab): We have just heard about the new special court, the new special tribunal and the new special advocate. We have new processes, new bureaucracy and new costs. Does my hon. Friend agree that this clause represents the veneer of the Home Office's pretence to actually give a damn about value for money any more?

Bambos Charalambous: My hon. Friend makes an excellent point. Throughout this Bill, some crumbs of legal aid have been provided in different circumstances, yet the Bill makes it difficult for lawyers to assist those people for whom legal aid is provided, and now they seem to be penalised for not being able to put forward the best case they can.

It is a well-established fact that access to justice includes equal protection under the law. Solicitors are fundamentally obliged to act in their clients' best interests, which may involve adjourning a case due to a change in circumstances that they are not at liberty to disclose. That principle admits of no distinction between British nationals and foreign nationals, and those who are subject to UK law are entitled to its protection. In the context of UK immigration tribunal hearings, through which people subject to immigration control—non-citizens who cannot exercise democratic rights to shape the legislation to which they are subject—seek to vindicate their position against the state, that principle ought to warn against bearing down on them and their lawyers through an extra costs order and charging order regime that is inapplicable to British nationals in the wider courts and tribunals system.

Immigration tribunals already have the powers that they need to regulate their own procedures—as I have mentioned, they have case management powers, a costs jurisdiction and referral powers. Taking each in turn, they have extensive case management powers, as set out in rules 4 to 6 of the Tribunal Procedure (First-tier Tribunal) (Immigration and Asylum Chamber) Rules 2014. Those tribunals already have a costs jurisdiction that enables them to make wasted costs orders against lawyers through the Tribunals, Courts and Enforcement Act 2007:

"(4) In any proceedings mentioned in subsection (1), the relevant Tribunal may—

(a) disallow, or

(b) (as the case may be) order the legal or other representative concerned to meet,

the whole of any wasted costs or such part of them as may be determined".

Wasted costs are defined as

"any costs incurred by a party—

(a) as a result of any improper, unreasonable or negligent act or omission on the part of any legal or other representative or any employee of such a representative, or

(b) which, in the light of any such act or omission occurring after they were incurred, the relevant Tribunal considers it is unreasonable to expect that party to pay."

That costs jurisdiction is given further effect by the rules of procedure set out in rule 9 of the 2014 rules. An order for wasted costs may be made

"where a person has acted unreasonably in bringing, defending or conducting proceedings. The Tribunal may make an order under this rule on an application or on its own initiative."

In practice, tribunals have the power to regulate their own procedure to avoid its abuse. In the context of applications for judicial review in the High Court, it is recognised that the Court may refer a lawyer to their professional regulatory body, such as the Solicitors Regulation Authority, where their conduct warrants it, thus potentially leading to disciplinary proceedings. A legal representative may be asked to show why the conduct should not be considered for referral to the relevant body, or why they should not be admonished. An immigration tribunal might consider making such a referral in appropriate cases. Alternatively, it may decide that the conduct might not be so serious after all and restrain itself.

In clause 62, the Government seek to give immigration tribunals additional new powers, so that they may charge a participant an amount of money if it is considered that the participant

"has acted improperly, unreasonably or negligently, and

(b) as a result, the Tribunal's resources have been wasted".

The fine would be a separate matter from the costs incurred by a party, and it would be payable by the other party. The charge would be paid to the tribunal. In this context, participants who may be ordered to pay a charge in respect of immigration tribunal proceedings include

"(a) any person exercising a right of audience or right to conduct the proceedings on behalf of a party to proceedings,

(b) any employee of such a person, or

(c) where the Secretary of State is a party to proceedings and has not instructed a person mentioned in paragraph (a) to act on their behalf in the proceedings, the Secretary of State.

(4) A person may be found to have acted improperly, unreasonably or negligently…by reason of having failed to act in a particular way."

However, we are not told what that "particular way" is.

Clause 62 provides that rules may be made and may include the "scales of amounts" to be charged, and it is wrong that no framework has been provided for the scales of amounts to be charged. As a rationale for this innovation, it is said that:

"High levels of poor practice around compliance with tribunal directions, which disrupts or prevents the proper preparation of an appeal, can lead to cases being adjourned at a late stage."

No actual evidence is adduced to support that proposition or to demonstrate that existing case management powers, wasted costs powers and powers of referral are inadequate to deal with such matters.

Clause 62 seeks to amend the cost provisions in the 2007 Act in order to put greater emphasis on making an order on grounds of unreasonable behaviour. A tribunal may make an order in respect of costs in any proceedings if it considers that a party, or its legal or other representative, has acted unreasonably in bringing, defending or conducting the proceedings. This is a power to make a costs order against a party and/or their lawyer. Unlike in considering wasted costs, the behaviour identified is solely that which is unreasonable, not behaviour that is improper or negligent. In carving out unreasonable behaviour in this way, there is a risk that the high threshold that applies in the wasted costs jurisdiction is lowered, and that such orders are made where the ordinary difficulties of running an immigration case have impeded its progress. It is unclear why additional regulatory measures are thought to be needed, indicating that the proposal is unnecessary. The tribunal procedure rules already have provisions for wasted costs, and tribunals have the power to refer cases of improper behaviour to the regulator.

Clause 63 provides that:

"Tribunal Procedure Rules must prescribe conduct that, in the absence of evidence to the contrary, is to be treated as—

(a) improper, unreasonable or negligent for the purposes of"

a charge in respect of wasted resources. Where the prescribed conduct occurs, the person in question will be treated as having acted improperly, unreasonably or negligently unless they can show evidence to the contrary, so there is a rebuttal presumption in relation to this. Here too there is a risk that conduct that does not meet the test for being unreasonable allows a wasted costs order to sneak back in. It is also not clear how wasted resources will be defined or quantified, which may lead to satellite litigation challenging the fine itself or the amount imposed, further increasing the burdens on a system already under immense pressure. The rules make provisions to the effect that if the tribunal is satisfied that the conduct has taken place, it must consider whether to impose a charge or make a costs order, though it is not compelled to do so.

According to the Home Office, in immigration tribunals,

"A range of conduct on the part of legal and other representatives…in the way proceedings are conducted or pursued"

is

"disrupting or preventing the proper preparation and progress of an appeal",

but once again, no evidence is adduced to support that proposition, or to demonstrate that existing case management powers, wasted costs powers, and the power to refer are inadequate to deal with such matters.

Introducing further overlapping and potentially duplicative regulatory requirements may have the perverse impact of undermining the effectiveness of all relevant regimes, and increase complexity and bureaucracy. If solicitors are held personally liable for costs that arise for reasons outside their control, it could risk driving a wedge between them and their clients by creating a conflict of interest. The immigration tribunals already have all the case management cost and referral powers that they need to control their procedures. Adding new powers for immigration tribunals without establishing a basis for them in evidence is not necessary and is counterproductive. For the reasons I have outlined, we oppose clauses 62 and 63.

4 pm

The Chair: This debate will now include consideration of clause 63.

Stuart C. McDonald: I echo what the shadow Minister said. This is all really political theatre—a move to get immigration lawyers. As a former immigration lawyer, I cannot let these clauses pass without comment. In my experience, immigration lawyers are a group of people who do an invaluable job, and not one that there is a queue of folk desperate to do. It is a difficult job. Most clients have no resources; legal aid budgets are far from easy; many clients can be communicated with only through interpreters, who are often hard to find; and these lawyers are dealing with facts, circumstances, documents and other evidence from jurisdictions thousands of miles away. The pressures can be enormous. These lawyers are acutely aware that in some cases, if they get things wrong, the client's life, liberty or human rights are at serious risk.

This group have been egregiously maligned by the Home Secretary and the Home Office. Here, they are singled out again. It is wrong, reckless and counter-productive. It is wrong because, not for the first time, we are being asked to make law on the basis of anecdote, rather than detailed evidence. As has been said, the immigration tribunals have all the powers that they need in their case management, cost and referral powers. They do not need these new, distinct and very controversial powers. Given the difficult job that we recognise these lawyers do, and the significant pressures that they face, the very last thing we should do is create a threat of their having to pay money for taking on a case. As the shadow Minister said, the measures create the risk of a conflict of interest, because solicitors could find that doing the right thing for their client, or following their client's instructions, puts them at risk of having to pay a financial penalty.

The measures are also wrong because immigration lawyers have been singled out. I would have thought alarm bells would be ringing in the Home Office at the idea of putting in place a procedure that will apply only to lawyers operating on behalf of non-nationals. I suspect this would see the Home Office in court again. I could go along to the immigration tribunal and do something that I might do without facing consequences in the social security tribunal, employment tribunal, tax tribunal or any other tribunal; but I would find that in the immigration tribunal, there were special provisions in place for me to pay some sort of financial penalty. That seems odd.

Speaking of the tax tribunal, the provisions are essentially a tax. We do not know how much the tax will be, because we are not given any indication at all of the nature of the penalties involved, but it is a tax, because it is not compensation to the other party for wasted costs—we already have provision for that. The money goes straight to the Exchequer. On the other side of the coin, if the Government representative is guilty of this misconduct, the Government pay themselves. They hand over money to the Exchequer. There is not equality of arms, by any stretch of the imagination.

As the shadow Minister said, the measure is also counterproductive, because when the conduct described in the new procedure rules occurs, we will end up with endless hearings, and solicitors will be repeatedly made to come to hearings, just to explain why the situation happened. That is a waste of time, and in absolutely nobody's interests. I have no idea what the Home Office is playing at here, other than performing political theatre and again having a go at immigration lawyers. If hon. Members want an example of vexatious, unreasonable conduct, they should read these two clauses, because that is exactly what they are.

Craig Whittaker: I have already spoken on clause 62; let me comment on clause 63. I apologise, Ms McDonagh, but I did not realise we were taking them together.

Representatives and relevant participants in the legal process on both sides have a role in ensuring that appeals run smoothly so that justice can be served. However, there has been clear judicial concern about the behaviours of some legal representatives in immigration and asylum cases, and we are seeking to strengthen the tribunal's ability to tackle such conduct. As has been mentioned, judges can already issue a wasted costs order when a legal representative acts in a negligent, improper or unreasonable way that causes legal costs to be wasted. The tribunal can also award costs if a party to the appeal has acted unreasonably in bringing, defending or conducting proceedings, which is called an unreasonable costs order.

Costs orders are rarely made and are generally considered only at the request of the other party. To encourage more use of those existing powers, clause 63 provides a duty on the tribunal procedure committee to introduce tribunal procedure rules in the immigration and asylum chamber, which will lead judges to more regularly consider making a wasted costs order or an unreasonable costs order, or the new tribunal costs order introduced by clause 62. That will ensure that circumstances and behaviours that have warranted the making of costs orders previously will more often give rise to judicial attention. Existing case law identifies the types of circumstances and behaviours that have led to costs orders being made or considered, and the principles applied by the courts. Those have included showing a complete disregard for procedural rules, for example through abusing court processes in relation to evidence or the timing of applications.

Question put, That the clause stand part of the Bill

The Committee divided: Ayes 9, Noes 7.

Division No. 57]

AYES

Anderson, Stuart	Howell, Paul
Baker, Duncan	Richards, Nicola
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 62 ordered to stand part of the Bill.

Clause 63

TRIBUNAL PROCEDURE RULES TO BE MADE IN RESPECT OF COSTS ORDERS ETC.

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

The Committee divided: Ayes 9, Noes 7.
Division No. 58]

AYES

Anderson, Stuart	Howell, Paul
Baker, Duncan	Richards, Nicola
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 63 ordered to stand part of the Bill.

Clause 64

GOOD FAITH REQUIREMENT

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

The Chair: With this it will be convenient to discuss Government amendment 81.

Craig Whittaker: Thorough consideration has been given to the impact of clause 64 and what it adds to existing requirements under immigration rules and wider provisions. We have also taken into account the views of stakeholders. After further reflection, we have decided to remove the clause from the Bill in its entirety. As a stand- alone provision, that will not impact on the wider measures in the Bill. Consequently, clause 64 requires an amendment to remove reference to it, which is the purpose of Government amendment 81.

Bambos Charalambous: Am I right that the Government will vote against the clause?

The Chair: I understand that the Government plan to vote against the clause.

Question put and negatived.
Clause 64 accordingly disagreed to.

Clause 65

PRE-CONSOLIDATION AMENDMENTS OF IMMIGRATION LEGISLATION

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

Bambos Charalambous: This might seem innocuous but my concern is that it may be a power grab by the Secretary of State because the clause contains some quite strong measures on what the Secretary of State can do in relation to other parts of legislation. Can the Minister reassure me that my fears are not borne out by the consolidation measures in clause 65?

Craig Whittaker: I can assure the hon. Gentleman that clause 65 was taken from the "Windrush Lessons Learned Review", which is why it is in the Bill.

Stuart C. McDonald: What is taken from that review is perhaps the need for consolidation of immigration legislation, nationality legislation and so on, which I would absolutely support. The challenge with the clause as drafted is that it proposes pretty huge and wide-ranging powers. The Secretary of State can amend pretty much any old Act of Parliament if, in her opinion, it facilitates what is otherwise desirable in connection with the consolidation. It could rewrite citizenship laws, for example, or the entire immigration system. There is a check on it in the sense that the regulations will not come into force until a consolidation Act is passed. There is a broader question about how often Governments tend to help themselves to massive Henry VIII powers when they rewrite all sorts of stuff. I have made that point a million times and nobody listens, so I will leave it at that.

Question put and agreed to.
Clause 65 accordingly ordered to stand part of the Bill.
Clauses 66 to 68 ordered to stand part of the Bill.

Clause 69

EXTENT

Amendment made: 120, in clause 69, page 58, line 28, at end insert—

'(4) A power under any provision listed in subsection (5) may be exercised so as to extend, with or without modifications, to any of the Channel Islands or the Isle of Man any amendment made by any of the following provisions to legislation to which the power relates—

(a) section 37 (illegal entry and similar offences), insofar as it relates to the insertion of subsection (C1A) into section 24 of the Immigration Act 1971;

(b) section(Electronic travel authorisations)(electronic travel authorisations);

(c) section(Liability of carriers)(liability of carriers).

(5) Those provisions are—

(a) section 36 of the Immigration Act 1971;

(b) section 170(7) of the Immigration and Asylum Act 1999;

(c) section 163(4) of the Nationality, Immigration and Asylum Act 2002."—*(Craig Whittaker.)*

This amendment amends clause 69 (extent) to provide that the amendments made by the provisions listed in new subsection (4) may be extended to the Channel Islands and the Isle of Man under the Order in Council provisions listed in new subsection (5).

Stuart C. McDonald: I beg to move amendment 186, in clause 69, page 58, line 28, at end insert—

'(4) Part 4 (modern slavery) only extends to Scotland to the extent that a motion has been approved by the Scottish Parliament, bringing it into force in Scotland.

(5) Part 4 (modern slavery) only extends to Northern Ireland to the extent that a motion has been approved by the Northern Ireland Assembly, bringing it into force in Northern Ireland."

Under this amendment, Part 4 of the Bill would not enter into force in Scotland or Northern Ireland until the relevant devolved legislatures had given their consent.

I am sorry to have to take the Committee back to part 4 and modern slavery and trafficking. The amendment relates to a similar issue that I raised in connection with age assessments, because I tend to believe that certain provisions in part 4 encroach on devolved competences

[Stuart C. McDonald]

in relation to Scotland and Northern Ireland. Given the way that the part 4 is drafted, the Government have recognised that modern slavery and trafficking is a matter that is devolved to both those jurisdictions. That is why certain clauses do not impact on them. However, in this amendment, we are suggesting simply that the Government should go further. For example, in my view, the recovery period is clearly within the competency of the Scottish Government and I think, also, the Northern Ireland Assembly. However, clause 49 interferes with the start and end points of that period. Clauses 46 and 47 trample all over the idea that identification of victims of slavery and trafficking are devolved matters. So too does clause 51. For those reasons, I am prompting the Minister on what engagement there has been and is ongoing and whether a legislative consent motion should be requested from the Scottish Parliament and the Northern Ireland Assembly before the Bill is passed.

4.15 pm

Craig Whittaker: I can assure the hon. Gentleman that we have been engaging with the devolved Administrations, including at ministerial level, over the course of the Bill. I want to reiterate our commitment to continuing to work with the devolved Administrations as we look to operationalise the measures to ensure the policies work for the whole of the UK. Contrary to the spirit of working together across the UK, amendment 186 could lead to the scenario where decisions in reserved areas would operate differently across the UK, thereby reducing the clarity the Bill seeks to provide for victims and decision makers. In line with the devolved memorandum of understanding, the UK Government will continue to engage with the devolved Administrations both at ministerial and official level to ensure that we have time to fully understand any implications and adhere to our priority to safeguard victims. I urge the hon. Member to withdraw his amendment.

On clause 69, I begin by setting out the devolution position. Almost all of the Bill is about nationality, immigration and asylum, which are reserved matters to the UK Parliament. Almost all of the Bill, therefore, extends UK wide.

Neil Coyle: The Minister says "almost all" the provisions. Can he outline which are not?

Craig Whittaker: It is very kind of the hon. Gentleman to interject before I had finished my sentence. Some provisions will apply only to England and Wales. Those provisions are about matters that are devolved in Scotland and Northern Ireland, but are reserved to the UK Parliament in England and Wales. They are civil legal aid, support for victims of modern slavery offences and the early release scheme.

Turning to the extent outside the UK, part 1—nationality provisions—will also extend to the Crown dependencies of Jersey, Guernsey and the Isle of Man, and also the British overseas territories. That follows discussions between the UK Government, the devolved Administrations, the Crown dependencies and the British overseas territories. I want to clarify that we intend to table a further amendment to add a permissive extent clause on Report. That will enable the Crown dependencies to adopt other parts of the Bill that are relevant to them.

Stuart C. McDonald: I am grateful to the Minister for his response and for his assurances that engagement has been taking place and is ongoing. I accept that the amendment is not practicable, because it impinges on reserved matters. The other side of the coin is also true and this was about provoking a discussion about which parts of the Bill the Home Office has identified as relating to devolved matters. The Minister has listed some, which is helpful, but I do not think he has completely listed all that would apply and should be described as devolved. For example, age assessments quite clearly relate in some circumstances to devolved functions regarding children. More relevant to this amendment debate is modern slavery, as I said—for example, the length of the recovery and reflection period and various other matters in relation to identification of victims are, absolutely and definitely, devolved. That is why we have separate modern slavery and trafficking legislation in Northern Ireland and Scotland.

I have done what I needed to do, which is to suggest that the Home Office has a look at whether a legislative consent memorandum is required, but I will leave it there. I beg to ask leave to withdraw the amendment.

Amendment, by leave, withdrawn.

Clause 69, as amended, ordered to stand part of the Bill.

Clause 70

COMMENCEMENT

Stuart C. McDonald (Cumbernauld, Kilsyth and Kirkintilloch East) (SNP): I beg to move amendment 107, in clause 70, page 58, line 30, leave out "and (4)" and insert "to (5)".

This amendment is consequential on Amendment 109.

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

Amendment 108, in clause 70, page 58, line 42, leave out paragraphs (d) and (e).

This amendment is consequential on an Amendment 109.

Amendment 109, in clause 70, page 59, line 9, at end insert—

"(5) Sections 27 to 35 may not be commenced before—

(a) the Secretary of State has consulted with such parties as the Secretary of State considers appropriate on—

(i) the compatibility of each section with the Refugee Convention; and

(ii) the domestic and international implications of the UK adopting each section;

(b) the Secretary of State has laid before Parliament a report on the outcome of that consultation stating which parties were consulted, and stating in respect of each section—

(i) the views of the parties consulted on its compatibility and implications;

(ii) the differences between the interpretation of the Convention provided by the section and any interpretations provided by the higher courts before the passing of this Act;

(iii) the reasons why the Secretary of State concludes that the section should be commenced; and

(c) both Houses of Parliament have considered that report and approved the commencement of each of the sections that is to be commenced.

(6) For the purposes of subsection (5)—

"interpretation provided by the higher courts" means an interpretation provided by any judgement of the High Court or Court of Appeal in England and Wales, of the Court of Session in Scotland, of the High Court or Court of Appeal in Northern Ireland or of the United Kingdom Supreme Court that has not been superseded."

This amendment would require the Secretary of State to hold consultations on the compatibility of Clauses 27 to 35 with the Refugee Convention, and to report to Parliament on such consultations, before the relevant Clauses enter into force.

Stuart C. McDonald: God loves a tryer, and I do try. The amendments are another attempt to encourage the Government to set out their legal thinking on the compatibility of the clauses cited in amendment 109 with the refugee convention. How do the Government think that the provisions in clauses 27 to 35 can be consistent with the refugee convention?

There is significant concern among some Members from all parties on this issue. So far, we have been told repeatedly by a Minister that the Government are committed to living up to their international obligations, and we have had a lot of assertions that the Bill is consistent with those obligations. However, as I have said, I am not aware of any lawyer with expertise in the area who supports that conclusion.

On the contrary, we have a detailed published opinion from Matrix Chambers that the Bill is absolutely not compliant with the refugee convention. Alongside that, organisations such as the Immigration Law Practitioners Association and various others have come to the same conclusion. Crucially, the ultimate authority on the convention, the UNHCR, published detailed reasoning for its view that certain clauses do not comply with the convention.

In the circumstances, I might be asking a little too much to expect a detailed legal treatise from the Minister today. However, he must at least accept that this state of affairs is not good enough. On the one side, we have extensive published arguments that the Bill breaches the refugee convention and, on the other side, we just have assurances that everything is in accordance with our international obligations. If MPs are to make a properly informed judgment on this on Report and Third Reading, it is incumbent on the Government to provide their legal arguments in more detail.

Craig Whittaker: We have listened carefully to the arguments in favour of amendments 107 to 109, which I will speak to collectively. I thank hon. Members for moving and tabling them, and I agree that it is important that the United Kingdom continues to meet its obligations under the refugee convention and other international conventions and treaties.

I am taking amendments 107 to 109 together because they all seek to achieve the same goal. We do not support them. They seek to delay the commencement of clauses 27 to 35 until their compatibility with the refugee convention has been consulted on and reported to Parliament. As the Committee knows, the UK has a proud history of providing protection to those who need it, in accordance with our international obligations under the convention. I assure hon. Members that every clause in the Bill, including clauses 27 to 35, adheres to our obligations under the refugee convention.

There is no uniform international interpretation of many of the key concepts in the refugee convention. That is an inevitable result of the very nature of international conventions. They are designed to be applied to a range of systems and scenarios across the globe, and to achieve consensus between many signatory states. Each signatory therefore needs to interpret the convention based on a range of sources and information to determine its meaning in good faith. That is not a black-and-white exercise, but one that the Government considered carefully before bringing the Bill to the House and one that we have now entrusted to Parliament in its consideration and considerable scrutiny of the Bill.

The legislative process, in which we are all so engaged today, is in itself a transparent and fully consultative process, as demonstrated by the several reports that the Committee has received on the compatibility of several clauses of the Bill with the refugee convention and other international obligations—including from the United Nations High Commissioner for Refugees.

Clauses 27 to 35 are drafted to create clarity on what the key concepts of the refugee convention mean, driving improved consistency among Home Office decision makers and the courts, with the ultimate aim of making accurate, well-reasoned decisions quicker. That can only be beneficial for all who are involved with asylum seekers.

In the light of the points that I have made, I hope that hon. Members will agree not to press these amendments going forward.

Stuart C. McDonald: I have not succeeded in what I wanted to do, which was to move beyond assertion that there is compliance with the refugee convention and to hear a little more about why the Government think that that is the case. I accept the point that different countries have slightly different interpretations of certain provisions; that is legitimate. But there are clear arguments that what the Government are doing in relation to the evidential threshold, their definition of "particular social group" and, in particular, their total rewriting of article 31 on immunity from penalties is inexcusable and way beyond any margin of appreciation that Governments enjoy. I tried. I failed. I will accept that. In the meantime, I beg to ask leave to withdraw the amendment.

Amendment, by leave, withdrawn.

Craig Whittaker: I beg to move amendment 76, in clause 70, page 58, line 34, after "Part" insert "and the following provisions".

This amendment is consequential on Amendment 77.

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

Government amendments 77, 123, 191, 78 and 167.

Clause stand part.

Craig Whittaker: Amendments 76 to 78, which relate to clause 57—interpretation of part 4—will ensure that the regulation-making power in this clause will come into effect at Royal Assent to the Bill rather than two months after Royal Assent. This is to ensure that the regulations that will define "victim of slavery" and "victim of trafficking" have time to progress through

[Craig Whittaker]

Parliament and themselves come into force by the time the remaining clauses relating to modern slavery commence. As currently drafted, clauses 16, 17 and 23 come into force two months after Royal Assent. Amendment 123 ensures that these clauses, which relate to priority removal notices, come into force by commencement regulations aligning with other provisions relating to priority removal notices. This is to ensure that all provisions relating to priority removal notices can commence simultaneously.

Amendment 191 removes the commencement provision regarding clause 42, as the clause is intended to be replaced entirely by new clause 20. Amendment 167 removes the commencement provisions regarding marker clauses 58 to 61—about age assessments, processing of visa applications from nationals of certain countries, electronic travel authorisations and the Special Immigration Appeals Commission—as these clauses have been removed and replaced by substantive clauses.

Clause 70 sets out the commencement of the clauses in the Bill. As currently drafted, the majority of the provisions in the Bill will be brought into force by regulations on a day appointed by the Secretary of State, with the exception of those in part 6, which commence on Royal Assent, as is usual, and those that come into force two months after Royal Assent.

Amendment 76 agreed to.

Amendment made: 77, in clause 70, page 58, line 34, at end insert—

"(a) section 57 (interpretation of Part 4), for the purposes of making regulations under that section;" *—(Craig Whittaker.)*

This amendment brings the power to make regulations defining "victim of slavery" and "victim of human trafficking" into force on the day on which the Act receives Royal Assent.

Craig Whittaker: I beg to move Government amendment 121, in clause 70, page 58, line 34, at end insert—

"(b) section (Notice of decision to deprive a person of citizenship)(1) and (5) to (7) (effect of failure to give notice of pre-commencement decision to deprive a person of citizenship);"

This amendment brings subsections (1) and (5) to (7) of NC19 (concerning the effect of a failure to give notice of a pre-commencement decision to deprive a person of citizenship) into force on the day on which the Bill receives Royal Assent.

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

Government amendment 122.

Government new clause 19—*Notice of decision to deprive a person of citizenship—*

Craig Whittaker: New clause 19 allows the Secretary of State to amend section 40 of the British Nationality Act 1981 to permit that in certain limited circumstances a notice of deprivation does not have to be given to the person concerned, either where there is no way of communicating with them or where to make contact would disclose sensitive intelligence sources. To deprive someone of British citizenship is very serious and is rightly reserved for those whose conduct involves very high harm or who obtained their citizenship by fraudulent means. However, it cannot be right that the proper functioning of the immigration and nationality system grinds to a halt because an individual has removed themselves from contact with the Home Office, there is otherwise no other method of communication, or because our knowledge of a person's whereabouts comes from sensitive intelligence sources which we do not wish to disclose.

4.30 pm

New clause 19 is therefore necessary to avoid the situation where we could never deprive a person of British citizenship just because it is not practicable, or not possible, to communicate with them. Preserving the ability to make decisions in this way is vital to preserve the integrity of the UK immigration system and protect the security of the UK from those who would wish to do us harm. However, we do not wish to deny a person their statutory right of appeal where we have made a decision to deprive, so the amendment also preserves that right. In cases where we have already made a decision to deprive but for one reason or another have not notified the person, the clause also ensures that such decisions, as well as the subsequent deprivation order, are still lawful.

It is important that deprivation orders made before this Bill comes into force remain valid, otherwise individuals who the Home Secretary has already decided should be deprived of their British citizenship because it is conducive to the public good would have their citizenship effectively reinstated and could therefore freely travel in and out of the UK. This could have detrimental consequences for national security. We need amendment 121 so that the relevant provisions of the new clause are enacted at the earliest opportunity.

Stuart C. McDonald: I will not say too much, because I need to give new clause 19 further consideration and to speak with stakeholders about it. Circumstances in which service is difficult because a person is out of contact happen pretty regularly in legal disputes that go through the courts. Rather than just shortcutting by having no procedure at all, what happens is that an alternative method is proposed, such as displaying a notice in newspapers. That was back in the old days; I assume that things have moved online since the dim and distant past when I was a practising solicitor. I wonder if there is a better way that does not result in someone being deprived of citizenship—which, as the Minister said, is a very serious matter—without any procedure having been followed at all.

It is controversial to retrospectively decide that decisions to deprive people of nationality are fine, even though they may not have complied with the laws that were in force at that time. Although provisions of this sort are necessary, I still have concerns that the circumstances in which no service would be required are drawn too broadly and that there may be other ways of doing this that do not undermine the clauses, without depriving people of having notice altogether. I leave it at that just now.

Amendment 121 agreed to.

Amendments made: 122, in clause 70, page 58, line 36, at end insert—

"(za) section (Notice of decision to deprive a person of citizenship)(2) to (4) (modifications of duty to give notice of decision to deprive a person of citizenship);".

This amendment brings subsections (2) to (4) of NC19 (modifying the duty to give notice of a decision to deprive a person of citizenship) into force two months after the Bill receives Royal Assent.

Amendment 123, in clause 70, page 58, line 37, leave out paragraph (a).

This amendment will secure that clauses 16, 17 and 23 of the Bill (evidence in asylum or human rights claims) will be brought into force by regulations rather than coming into force automatically two months after Royal Assent to the Bill.

Amendment 124, in clause 70, page 59, line 2, at end insert—

"(fa) section (Working in United Kingdom waters: arrival and entry), for the purposes of making regulations;".

This amendment brings NC20 into force, for the purposes of making regulations (under the new section 11B for the Immigration Act 1971), two months after Royal Assent to the Bill. The rest of the clause will be brought into force by regulations.

Amendment 191, in clause 70, page 59, line 4, leave out paragraph (h).

This amendment is consequential on the amendment removing clause 42 from the Bill.

Amendment 78, in clause 70, page 59, line 5, leave out paragraph (i).—*(Craig Whittaker.)*

This amendment is consequential on Amendment 77.

Craig Whittaker: I beg to move amendment 79, in clause 70, page 59, line 6, at end insert—

"(ia) section (Counter-terrorism questioning of detained entrants away from place of arrival) (counter-terrorism questioning of detained entrants away from place of arrival);".

This amendment provides for NC12 to come into force two months after Royal Assent to the Bill.

The Chair: With this it will be convenient to discuss Government new clause 12.

Craig Whittaker: Under schedule 7 to the Terrorism Act 2000, counter-terrorism police have the power to stop, question and if necessary, detain and search individuals travelling through UK port and border areas for the purposes of determining whether a person is or has been involved in terrorism. Currently, officers may exercise schedule 7 powers only when an individual is located within a port or border area and their presence in such an area is as a result of them entering or leaving the UK.

The rise in numbers of those attempting to cross the channel illegally, particularly via small boats, means it is impractical to keep large numbers of people, some of whom are minors or in need of medical assistance, at a port or piece of coastline without adequate facilities. Transporting these individuals to locations once they have been detained or arrested under the immigration Acts often means that examining them under schedule 7 is not possible as they are no longer within a port.

New clause 12 seeks to extend the scope of schedule 7 so that individuals who are in detention under immigration provisions are eligible for examination at the location they are taken to following their initial apprehension under immigration powers. Individuals at these locations will be eligible for examination, provided the officer believes they arrived by sea, were apprehended under the immigration Acts within 24 hours of their arrival and it has been no more than five days since they were apprehended. The full suite of powers and safeguards under schedule 7 will apply, including access to legal advice for those detained over an hour. In line with amendment 79, the new clause will come into force two months after the Bill receives Royal Assent.

The new clause will add a further layer to protect our national security by ensuring those who arrive in the UK illegally by sea can be examined for the purpose of determining their involvement in terrorist activity under the same power as if they had passed through conventional border controls.

Amendment 79 agreed to.

Amendments made: 167, in clause 70, page 59, line 7, leave out paragraph (j)

This amendment is consequential on the amendments removing Clauses 58 to 61 of the Bill.

Amendment 168, in clause 70, page 59, line 7, at end insert—

"(ja) section (Interpretation of Part etc) (1) to (4) (interpretation of Part 3A);

(jb) section (Use of scientific methods in age assessments)(1) to (3) and (8) (regulations about use of scientific methods in age assessments);

(jc) section (Regulations about age assessments) (regulations about age assessments);"

This amendment means that amendment NC33 (regulations about age assessments), and the regulation-making power in amendment NC32, will be commenced automatically, two months after Royal Assent, as will the clause that defines certain terms used in the regulation-making power.

Amendment 80, in clause 70, page 59, line 7, at end insert—

"(ja) sections (Removals from the UK: visa penalties for uncooperative countries) and (Visa penalties: review and revocation) (visa penalties);"

This amendment provides for NC9 and NC10 to come into force two months after Royal Assent to the Bill.

Amendment 81, in clause 70, page 59, line 8, leave out paragraph (k) .—*(Craig Whittaker.)*

This amendment is consequential on Amendment 75.

Stuart C. McDonald: I beg to move amendment 179, in clause 70, page 59, line 9, at end insert—

'(5) Sections [Time limit on immigration detention], [Initial detention: criteria and duration] and [Bail hearings] come into force six months after the day on which this Act is passed."

This amendment would bring NC38, NC39 and NC40 into force six months after the day on which the Bill is passed.

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

New clause 38—*Time limit on immigration detention*—

"(1) This section applies to any person ("P") who is liable to detention under a relevant detention power.

(2) P may not be detained under a relevant detention power for a period of more than 28 days from the relevant time.

(3) If P remains detained under a relevant detention power at the expiry of the period of 28 days then—

(a) P shall be released forthwith; and

(b) P may not be detained under a relevant detention power thereafter, unless the Secretary of State or an immigration officer, as the case may be, is satisfied that there has been a material change of circumstances since P's release and that the criteria in section [Initial detention: criteria and duration](1) are met.

(4) In this section, "relevant detention power" means a power to detain under—

[The Chair]

(a) paragraph 16(2) of Schedule 2 to the Immigration Act 1971 (detention of persons liable to examination or removal);

(b) paragraph 2(1), (2) or (3) of Schedule 3 to that Act (detention pending deportation);

(c) section 62 of the Nationality, Immigration and Asylum Act 2002 (detention of persons liable to examination or removal); or

(d) section 36(1) of the UK Borders Act 2007 (detention pending deportation).

(5) In this section, "relevant time" means the time at which P is first detained under a relevant detention power.

(6) This section does not apply to a person in respect of whom the Secretary of State has certified that the decision to detain is or was taken in the interests of national security."

This new clause would prevent people who are liable to detention under a relevant power from being detained for longer than 28 days.

New clause 39—*Initial detention: criteria and duration*—

"(1) A person ("P") to whom section [Time limit on immigration detention] applies may not be detained under a relevant detention power other than for the purposes of examination, unless the Secretary of State or an immigration officer, as the case may be, is satisfied that—

(a) P can be shortly removed from the United Kingdom;

(b) detention is strictly necessary to effect P's deportation or removal from the United Kingdom; and

(c) the detention of P is in all the circumstances proportionate.

(2) P may not be detained under a relevant detention power for a period of more than 96 hours from the relevant time, unless—

(a) P has been refused bail at an initial bail hearing in accordance with subsection (5)(b) of section [Bail hearings]; or

(b) the Secretary of State has arranged a reference to the Tribunal for consideration of whether to grant immigration bail to P in accordance with subsection (2)(c) of section [Bail hearings] and that hearing has not yet taken place.

(3) Nothing in subsections (1) or (2) authorises the Secretary of State to detain P under a relevant detention power if such detention would, apart from this section, be unlawful.

(4) In this section, "Tribunal" means the First-Tier Tribunal.

(5) In this section, "relevant detention power" and "relevant time" have the meanings given in section [Time limit on immigration detention]."

This new clause sets out the circumstances in which a person to whom NC38 applies may be held in initial detention, and the maximum duration of such detention.

New clause 40—*Bail hearings*—

"(1) This section applies to any person ("P") to whom section [Time limit on immigration detention] applies and who is detained under a relevant detention power.

(2) Before the expiry of a period of 96 hours from the relevant time, the Secretary of State must—

(a) release P;

(b) grant immigration bail to P under paragraph 1 of Schedule 10 to the Immigration Act 2016; or

(c) arrange a reference to the Tribunal for consideration of whether to grant immigration bail to P.

(3) Subject to subsection (4), when the Secretary of State arranges a reference to the Tribunal under subsection (2)(c), the Tribunal must hold an oral hearing ("an initial bail hearing") which must commence within 24 hours of the time at which the reference is made.

(4) If the period of 24 hours in subsection (3) ends on a Saturday, Sunday or Bank holiday, the Tribunal must hold an initial bail hearing on the next working day.

(5) At the initial bail hearing, the Tribunal must—

(a) grant immigration bail to P under paragraph 1 of Schedule 10 to the Immigration Act 2016; or

(b) refuse to grant immigration bail to P.

(6) Subject to subsection (7), the Tribunal must grant immigration bail to P at a bail hearing unless it is satisfied that the Secretary of State has established that the criteria in subsection 1 of section [Initial detention: criteria and duration] are met and that, in addition—

(a) directions have been given for P's removal from the United Kingdom and such removal is to take place within 14 days;

(b) a travel document is available for the purposes of P's removal or deportation; and

(c) there are no outstanding legal barriers to removal.

(7) Subsection (6) does not apply if the Tribunal is satisfied that the Secretary of State has established that the criteria in subsection 1 of section [Initial detention: criteria and duration] above are met and that there are very exceptional circumstances which justify maintaining detention.

(8) In subsection (6), "a bail hearing" includes—

(a) an initial bail hearing under subsection (2); and

(b) the hearing of an application for immigration bail under paragraph 1(3) of Schedule 10 of the Immigration Act 2016.

(9) In this section, "Tribunal" means the First-Tier Tribunal.

(10) The Secretary of State shall provide to P or to P's legal representative, not more than 24 hours after the relevant time, copies of all documents in the Secretary of State's possession which are relevant to the decision to detain.

(11) At the initial bail hearing, the Tribunal shall not consider any documents relied upon by the Secretary of State which were not provided to P or to P's legal representative in accordance with subsection (10), unless—

(a) P consents to the documents being considered; or

(b) in the opinion of the Tribunal there is a good reason why the documents were not provided to P or to P's legal representative in accordance with subsection (10).

(12) The Immigration Act 2016 is amended as follows—

(a) After paragraph 12(4) of schedule 10 insert—

"(4A) Sub-paragraph (2) above does not apply if the refusal of bail by the First tier Tribunal took place at an initial bail hearing within the meaning of section [Bail hearings] of the Sovereign Borders Act 2021."."

In respect of people to whom NC38 applies, this new clause would require the Secretary of State to either release them, grant immigration bail or arrange a reference to the Tribunal within 96 hours.

Stuart C. McDonald: This group of amendments and new clauses is not new. It was proposed in similar words in the most recent immigration Bill by, I think, the right hon. Member for Haltemprice and Howden (Mr Davis), but I may be wrong. No Bill passes through this Parliament on immigration and nationality law that does not include amendments and debate about immigration detention. Perhaps, after the last couple of years, Members are more than ever acutely aware that the deprivation of people's freedoms is keenly felt and should not occur without evidence as to its necessity.

We are talking here about the deprivation of liberty not because people have committed a crime but, essentially, for the convenience of the Home Office. The new clauses contain measures to end what is indefinite detention in the UK, whatever the Home Office says to the contrary, and to implement a workable system that ensures detention is used only as a last resort to effect lawful removals from the UK. That is what the situation should be. The existing power to detain without prior judicial authority

would be retained but there would be important safeguards: a 28-day time limit, judicial oversight by way of bail hearings after 96 hours with clear criteria for continued detention and re-detention only when there is a material change in status or circumstances.

Immigration detention has declined over the last several years, which is very welcome. Nevertheless, there is no release date for immigration detainees, which is incredibly severe, particularly in terms of mental ill health. Although numbers have been falling, the length of time that people are detained has not fallen. The fact of falling numbers does not reduce the need for a time limit. We are talking about several thousand individuals leaving detention every year who have been detained for longer than 28 days and hundreds who have been detained for more than six months. In a minority of cases, detention lasts for years rather than months.

Why 28 days? It is not a number that has been pulled from thin air. It is already in Home Office guidance, which requires caseworkers to consider whether removal is imminent and goes on to define imminence in the following terms:

"Removal could be said to be imminent where a travel document exists, removal directions are set there are no outstanding legal barriers and removal is likely to take place in the next four weeks."

This is a recommendation that has been made by many organisations with expertise in the area, including the Joint Committee on Human Rights, the Home Affairs Committee, the Bar Council and the all-party parliamentary groups on refugees and on migration.

Paul Blomfield: As vice-chair of the inquiry to which the hon. Gentleman referred, may I ask whether he will add the House of Commons to the list of those bodies that have endorsed this? When our recommendation was considered on a votable motion in a Backbench Business debate, it was approved by the House.

4.45 pm

Stuart C. McDonald: I am grateful to the hon. Gentleman and the other hon. Members involved for their work on that report, which was incredibly thorough. We then had a Backbench Business debate and the Government did not oppose it, because there was clearly a majority in the House of Commons at that time for such a time limit.

Finally, I want to say why 28 days should be the limit. There is a body of evidence that the effect of indefinite detention on mental health in general is very negative, but that after a month the deterioration is particularly significant. We recognise that there will be a minority of cases where people will try to play the system and use the time limit to frustrate lawful removal, but the amendment allows for re-detention if there is a material change in status or circumstances. Other sanctions are also open to the Government in such circumstances.

If none of that appeals to the Government, I will briefly mention the argument that consistently over half those detained are then released into the community, so it is a completely inefficient system that costs an absolute fortune. There are alternatives that are not only better for the individuals concerned, but easier on the taxpayer. I hope the Government will give serious thought to the amendments. The issue has been championed by Members of all parties for a considerable period. It is now time to see a step change in the Government's approach to the use of immigration detention.

Craig Whittaker: I want to be clear from the outset that this Government's position is that a time limit on detention simply will not work and will not be effective in ensuring that those with no right to be here in the UK leave.

Paul Blomfield: One of the issues highlighted by the report referred to by the hon. Member for Cumbernauld, Kilsyth and Kirkintilloch East, which had genuine cross-party engagement, was that the UK is an outlier in having no limits on detention. Every other country in Europe has a limit. Why does the Minister think it will not work here?

Craig Whittaker: Our immigration system must encourage compliance with immigration rules and protect the public. Those who have no right to be in the UK should leave voluntarily, but where the opportunities to do so are not taken, we have to operate a system to enable us to enforce removal and deport foreign national offenders who would otherwise remain in the UK.

I also want to be clear that we do not and cannot detain people indefinitely. It is not lawfully possible to do so.

Stuart C. McDonald: The Home Office repeatedly asserts that it is not indefinite detention, but can the Minister tell me what is the definite time limit on a person's detention?

Craig Whittaker: I think what the hon. Member has asked me to do is put a time limit on this, and I have already said clearly that just does not work. We have a duty to those in the immigration system, but we have a duty to protect the public too. The introduction of a 28-day detention time limit would severely limit our ability to remove those who refuse to leave voluntarily, and would encourage and reward abuse, to answer the question raised by the hon. Member for Sheffield Central, in some cases from individuals who present a genuine threat to the public, which is not the effect I consider the hon. Members intend with new clause 38.

Anne McLaughlin: Does the Minister not think that if someone represents a threat to the public, they would be in jail? If they are not in jail, there is no evidence that they represent a threat to the public.

Craig Whittaker: The hon. Lady is absolutely right, but we are talking about those who are a threat to the public. We have to have a duty of care. In fact, the first role of the Government is to protect their own citizens.

New clause 38 would allow those who wish to frustrate the removal process to run down the clock, in answer to the hon. Member for Cumbernauld, Kilsyth and Kirkintilloch East, until the time limit is reached and release is guaranteed. It would encourage late and opportunistic claims to be made simply to push them over the 28-day limit.

New clauses 38 to 40 are at total odds with the main objectives of the Bill, which will streamline the asylum process, ensuring that outstanding claims and appeals are dealt with much more effectively, with access to

[Craig Whittaker]

legal advice, while enabling us to remove more easily those with no lawful right to remain in the UK. In summary, it is the firm view of this Government that the introduction of a time limit would significantly impair the UK's ability to proportionately and efficiently remove individuals who have no right to be here and who, in some cases, represent a significant danger to the public. I therefore respectfully ask the hon. Member to withdraw the amendment.

Stuart C. McDonald: I do not know where to start with that response, although it is very similar to those we have had in previous debates. The bogey card is always that foreign national offenders are a serious risk, yet the Government have the power to deport folk straight from prison. That is the power they should use in those situations.

What we are talking about, very often, is people who have committed no crime, or represent absolutely no risk to the public. They are detained for extraordinary periods of time, and face extraordinary hardship. Anyone reading the report by Stephen Shaw, commissioned by the former Home Secretary and former Prime Minister, the right hon. Member for Maidenhead (Mrs May), will see what it does to people. There is also the APPG report, which has already been referred to.

The idea that these amendments somehow undermine the Government's ability to enforce immigration rules is completely at odds with the evidence from around Europe. Other countries have at least as much success—and often far greater success—in enforcing immigration rules and getting people to leave the country if they have no leave, without having to resort to endless and routine immigration detention. For all those reasons, I very much regret what we have heard from the Minister. However, I will not put the amendment to a vote today; we shall keep that for another time. I therefore beg to ask leave to withdraw the amendment.

Amendment, by leave, withdrawn.

Clause 70, as amended, ordered to stand part of the Bill.

Clause 71 ordered to stand part of the Bill.

Ordered, That further consideration be now adjourned. *—(Paul Holmes.)*

4.53 pm

Adjourned till Thursday 4 November at half-past Eleven o'clock.

Written evidence reported to the House

NBB44 Hope for Justice

NBB45 ATLEU (Anti Trafficking and Labour Exploitation Unit)

NBB46 CARE (Christian Action Research and Education)